Social Justice Report

2003

Aboriginal & Torres Strait Islander Social Justice Commissioner

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Wayne can be contacted either by calling 0413 812 222 or by email at TribalVision@hotmail.com.

Wayne has provided an explanation of each image reproduced on the cover. From left to right *Eyes to the Soul, 2003*, was taken on Horn Island in the Torres Strait Islands after the photographer met the students at the Croc Festival in Weipa earlier that year; *Shades of Black, 2002*, was taken at the Sydney Olympic stadium when the first Australian Rules football match was ever played there. To celebrate the night the AFL dedicated the night to Indigenous footballers and the community and a huge celebration was held; and *Untitled*, the girls in the image are a part of a dance group on the Gold Coast called Guma Dhagun Bugeram Dancers which means "strong spiritual country". Their aim is to "preserve our culture and tackle family issues in a culturally appropriate manner".

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About the Social Justice Commission logo

The right section of the design is a contemporary view of a traditional Dari or head-dress, a symbol of the Torres Strait Islander people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commission. The dots placed in the Dari represent a brighter outlook for the future provided by the Commission's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.
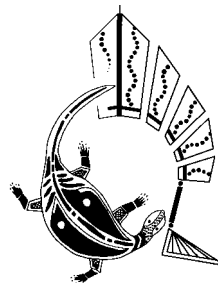
The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Social Justice Commission and the support, strength and unity which it can provide through the pursuit of Social Justice and Human Rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander Social Justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

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Human Rights and Equal Opportunity Commission

30 January 2004

The Hon Phillip Ruddock
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I am pleased to transmit to you the *Social Justice Report 2003*.

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

This year's report addresses issues relating to reconciliation, government accountability for service delivery, progress in the Council of Australian Government's whole-of-government community trials, capacity building and governance reform in Indigenous communities, ATSIC reform, progress in addressing petrol sniffing issues on the Anangu Pitjantjatjara Lands, and programmes addressing family violence in Indigenous communities.

The report contains a number of recommendations relating to these issues, which are reproduced at the beginning of the report. I look forward to receiving the Government's response to the issues raised in the report in due course.

Yours sincerely

W. Jonas

Dr William Jonas AM
Aboriginal and Torres Strait Islander
Social Justice Commissioner

Contents

Recommendations

In accordance with the functions set out in section 46C(1)(a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), this report includes 12 recommendations. The recommendations appear in the text of the report and are also reproduced here.

Recommendation 1 on reconciliation: Data collection

1. That the federal government request the Australian Bureau of Statistics (ABS) to provide to COAG information on the actions that need to be taken in order to improve Indigenous data collection. The ABS should respond to the suggestions made by the Steering Committee for the Review of Government Service Delivery in the *Overcoming Indigenous Disadvantage Report 2003,* as well as identify actions that they consider necessary to ensure the availability of relevant data on a regular basis. In providing this information, the ABS should:
    *   identify those issues that could be addressed through improvements to its existing data collection processes, as well as those issues which would require additional one-off funding allocations and those issues which would require additional recurrent funding from the federal government or COAG;
    *   estimate the cost of any additional one-off and recurrent funding needs, including the cost of conducting the Indigenous General Social Survey on a triennial basis; and
    *   consult with the Steering Committee for the Review of Government Services, the Aboriginal and Torres Strait Islander Commission, and other relevant agencies.

Recommendations 2 -5 on Reconciliation: Ministerial Council Action Plans

2. That the federal government, through its leadership role in the Council of Australian Governments, ensure that all Commonwealth / State Ministerial Councils finalise action plans on addressing Indigenous disadvantage and reconciliation by 30 June 2004. These action plans must contain benchmarks, with specific timeframes (covering short, medium and long term objectives) for their realisation. Where appropriate, these benchmarks should correlate with the strategic change indicators and headline indicators reported annually by the Steering Committee for the Provision of Government Services.

3.	That the federal government, through its leadership role in the Council of Australian Governments, request the Aboriginal and Torres Strait Islander Commission (ATSIC) to advise COAG whether it endorses these action plans and the benchmarks contained within, following consultations through its Regional Councils. ATSIC should be required to advise COAG of its endorsement or any concerns about the action plans within a maximum period of six months after being furnished with the action plans.

4.	That the federal government ensure that all Commonwealth / State Ministerial Council Action Plans are made publicly available as a compendium of national commitments to overcoming Indigenous disadvantage.

5.	That COAG publicly report on progress in meeting the benchmarks contained in each Commonwealth / State Ministerial Council Action Plan on an annual basis.

Recommendations 6-9 on reconciliation:
COAG Whole-of-government community trials

6.	That the federal government, through the Department of Immigration, Multicultural and Indigenous Affairs, commit to the existence of the Indigenous Communities Coordination Taskforce for a minimum of the five year duration of the COAG whole-of-government community trials and accordingly commit resources to the Taskforce until 2007.

7.	That federal government departments participating in the COAG whole-of-government trials increase their staffing commitments to the Indigenous Communities Coordination Taskforce by placing additional officers in the Taskforce's Secretariat.

8.	That COAG request the Productivity Commission (as Chair of the Steering Committee for the Review of Government Service Provision) to provide advice on aligning the benchmarks and outcomes agreed at the local level with COAG's National Framework for Reporting on Indigenous Disadvantage. This advice should include any recommendations for adapting the Indigenous Communities Coordination Taskforce Database to enable reporting of outcomes against this National Framework.

9.	That COAG agree and fund an independent monitoring and evaluation process for the whole-of-government community trials initiative. The Productivity Commission, Commonwealth Grants Commission or ATSIC's National Office of Evaluation and Audit would be suitable agencies to conduct this review.

Recommendations 10-12 on capacity building and governance reform

10. That COAG adopt ATSIC's *Integrated framework on capacity building and sustainable development* as a central component of its Reconciliation Framework.

11. That COAG also provide funding for research into best-practice models of governance reform and capacity building relating to Indigenous peoples in Australia. Such research should be based on overseas models such as the Harvard Project on American Indian Economic Development, and build on the findings of existing work on governance reform in Australia.

12. That the Minister for Aboriginal and Torres Strait Islander Affairs (Cth) ensure that reform of the *Aboriginal Councils and Associations Act 1976* (Cth) is treated as a high priority of the federal government and ensure extensive consultation is undertaken with Indigenous peoples about proposed amendments to the legislation. Any proposed legislative reforms should be in accordance with the recommendations of the 2002 review of the Act's operation. In particular, proposed amendments should recognise the need for special regulatory assistance for Indigenous organisations and maintain a distinct legislative framework for regulation outside of the *Corporations Act* as a special measure.

Chapter 1

Introduction

This is my fifth *Social Justice Report* as Aboriginal and Torres Strait Islander Social Justice Commissioner. In the course of this report I look back at developments over the past five years to ascertain the extent to which we are moving towards achieving long term, sustainable improvements in the situation of Aborigines and Torres Strait Islanders and the extent to which government policy making and program delivery is inhibiting such improvement.

As I have prepared this report, I have had a number of questions in mind such as, when we look at the current approaches and priorities of governments to Indigenous policies and programs, what is working well? What is not? Where are we making progress? Where are we going backwards? And ultimately, what needs to be done?

In addressing these questions, I have not sought to provide a comprehensive overview of every area of life of Indigenous peoples and of governmental activity. Not only is such a review beyond the scope of the resources available to me, but we already have a number of processes in place which provide us with partial answers to these questions.

In 2003, we have had the release of 2001 Census data and various analyses of that which provides a clear picture of the level of progress in improving the material conditions of Indigenous peoples' lives. We also had the first report of the Steering Committee on the Provision of Government Services on overcoming Indigenous disadvantage, which has drawn this and other statistical information together within an integrated, multi-dimensional framework. Other significant processes included the annual report on government services (or 'Blue Book') by the Productivity Commission, which provided an overview of expenditure and programs for Indigenous peoples; and the report of the Senate Legal and Constitutional References Committee on national progress towards reconciliation.

Instead, I have approached these questions in three ways. First, I have provided an overview of key developments in relation to Indigenous well-being and socio-economic status based on recently released data, including the 2001 Census.

Second, I have approached the issue thematically by examining progress in relation to the following key themes: accountability (including monitoring and

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evaluation frameworks, benchmarking and measuring progress within a human rights framework), participation (including representation of Indigenous peoples in decision making and service delivery, and the role of ATSIC), moving beyond welfare dependency (including sustainable development and capacity building), and reconciliation.

Third, I have examined some critical issues that raise significant challenges for governments in the short, medium and long terms, such as the responsiveness of governments to specific, urgent issues relating to family violence and petrol sniffing.

Overall, this report concludes that there are a number of recent initiatives which are moving us in the right direction, as well as small gains being made in some areas. Of particular note are recent developments in implementing the Council of Australian Government's commitments to reconciliation through the finalisation and first release of the national indicators on overcoming Indigenous disadvantage and the whole-of-government community trials.

There is also a lot of talk from governments about the need to change the way they interact with and provide services to Indigenous peoples and communities. There is a level of optimism created by the determined words of senior government members to pursue a changed approach, particularly through their efforts in the eight Council of Australian Governments whole-of-government community trial sites.

Processes for moving towards such change are, however, still in the preliminary stage and action or results are yet to be achieved. Developments over the coming year in relation to support for capacity building, corporate governance reform of Indigenous organisations and reform to ATSIC will be critical issues in this regard.

What is not yet entirely clear is whether the emphasis of governments is on doing *better* exactly what they do now or whether it involves a more radical transformation of the relationship, with governments instead attempting to do what they currently do *differently*.

This optimism that there might be change in the air is accompanied, however, by a level of uncertainty for Indigenous peoples. This uncertainty relates in large part to the upheaval that has centred on the role of the Aboriginal and Torres Strait Islander Commission (ATSIC) over the past year.

During the year, the federal government has issued directions to ATSIC aimed at preventing conflicts of interest in funding decisions by ATSIC's elected officials, and from 1 July 2003 stripped ATSIC of over $1 billion in funding through the creation of a new executive agency to manage ATSIC's programs. The newly created Aboriginal and Torres Strait Islander Services (ATSIS) was declared by the Minister to be an 'interim' measure pending the outcomes of the review of ATSIC announced in 2002 by the Minister. The ATSIC Review Team produced a discussion paper in June 2003 expressing significant concerns about the way ATSIC currently operates and in November 2003 released a final report with recommendations for reform. In between these events, the Minister took the first steps towards suspending the elected Chairman of ATSIC.

Addressing this uncertainty, principally through renewing the role of ATSIC, is a critical issue that is dealt with at length in this report. It is a central feature of an agenda for change in Indigenous policy.

These developments are also accompanied by serious concerns that the pace of progress, where it exists, is too slow and may not necessarily be sustainable into long term. The release of Census data from 2001 shows that such progress is in fact minimal. Overall, it is difficult to see any progressive trend towards reducing the level of inequality experienced by Indigenous peoples compared to non-Indigenous people (even in areas where there might have been some marginal improvement in absolute terms).

There is an overwhelming sense that the crisis situation that Indigenous peoples face is highly likely to worsen substantially over the next decade due to the faster growth rate of the Indigenous population (in other words, that government programs will not be able to keep up with the growth of the Indigenous population with the result that it will become increasingly difficult to maintain the status quo or prevent a further deterioration in key areas of well-being). The absence of a clear accountability framework for governments, including benchmarks and targets, is a matter of great urgency in addressing this situation.

Consequently, rather than having an overwhelming sense of optimism that there is a consistent forward trend in addressing Indigenous disadvantage and well-being, I feel apprehensive that the genuine efforts being made by governments at this time may not be sufficient to overcome the significant legacy of Indigenous disadvantage and marginalisation.

For a range of reasons that are outlined in this report, there is not sufficient commitment by governments at any level to do whatever it takes to progressively improve the life chances and opportunities for Indigenous people, in terms of both absolute improvement in socio-economic conditions and in terms of reducing the level of inequality that exists compared to the life chances and opportunities for non-Indigenous Australians. I am encouraged that there is recognition by government of the scope of the issues faced, within the confines of practical reconciliation, and some significant movement towards addressing these problems. But ultimately, we are not progressing as well as we can or as well as we need to. This needs to change.

Structure of this report

This report is divided into five chapters and three appendices.

Chapters 2 and 3 of the report provide an overview of developments in relation to key themes in Indigenous policy. They consider current progress in addressing a range of issues in relation to reconciliation, accountability, participation and moving beyond welfare dependency. It considers the adequacy of the structures and processes that have been put into place at the national level to progress programs and services to Indigenous peoples.

Chapter 2 focuses on developments relating to reconciliation and ensuring accountability of government for their responsibilities. It considers progress in addressing Indigenous disadvantage within the confines of practical reconciliation; and COAG initiatives such as the reporting framework on

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Indigenous disadvantage, benchmarking and actions plans by Ministerial Councils, and the whole-of-government community trials initiative.

Chapter 3 then focuses on processes relating to Indigenous participation in decision-making and changing the relationship of Indigenous peoples to government. It focuses on developments relating to capacity building and governance reform; ATSIC's proposed integrated framework for capacity building and sustainable development; and the reform of ATSIC.

Chapters 4 to 5 of the report then analyse current progress by governments in addressing three critical issues relating to Indigenous peoples.

Chapter 4 looks at the response of the federal and South Australian governments to the recommendations of the South Australian Coroner following the deaths of three young Anunga men from petrol sniffing on the Anunga Pitjantjatjara Lands (AP Lands) between 1999-2001. Petrol sniffing has reached endemic proportions on the AP Lands and is not susceptible to short term or quick fix solutions. This chapter examines progress in addressing petrol sniffing issues within the context of the COAG whole-of-government community trial on the AP Lands.

While acknowledging that there are deeply entrenched problems relating to petrol sniffing and service delivery in general on the AP Lands, it is essential that governments are able to respond to an issue of such destructive impact in a timely manner. This chapter raises significant concerns about the ability of governments to do so.

Chapter 5 then examines the responses of governments to issues of family violence in Indigenous communities. Despite considerable attention to this issue in public debate in recent years, commitments and programs to address it are still minimal and limited in scope. This chapter reviews the current approach of governments to addressing family violence issues and alternative strategies that they could adopt to be more effective.

The report also contains three appendices.

Appendix 1 provides a statistical overview of the current circumstances of the Aboriginal and Torres Strait Islander populations in Australians. Where possible it shows progress over the past five and ten year periods, comparisons to the situation of non-Indigenous Australians and international comparisons with so-called 'third world' countries and to Indigenous peoples in other countries.

Appendix 2 then provides a detailed overview of the structure of the eight Council of Australian Government whole-of-government community trials and current progress in each trial site.

Appendix 3 contains an extract from the findings of the South Australian Coroner in the inquests into three deaths on the AP Lands from petrol sniffing. The appendix includes the executive summary of the Coroner's findings, as well as his comments about compliance with the Royal Commission into Aboriginal Deaths in Custody and the recommendations of the Inquests.

The report also contains a number of recommendations for addressing concerns raised throughout the report. These recommendations are reproduced in full at the front of this report, and are also contained at the relevant sections of each chapter of the report.

Postscript – An annual progress report on reconciliation

In the *Social Justice Report 2000*, I committed to providing a national progress report on reconciliation within the annual *Social Justice Report*. This was in response to a proposal of the Council for Aboriginal Reconciliation in draft legislation for promoting reconciliation that was contained in their final report to Parliament. Each subsequent *Social Justice Report* has contained such a national progress report.

In 2003, the Senate Legal and Constitutional References Committee concluded their inquiry into national progress towards reconciliation. The inquiry considered the adequacy of the response of the federal government to the recommendations of the Council for Aboriginal Reconciliation as well as to the recommendations on reconciliation in the *Social Justice Report 2000* and *Social Justice Report 2001*.

In the course of the inquiry, the Committee considered mechanisms for improving accountability for reconciliation. The Committee stated that 'progress towards reconciliation would be greatly improved if an independent body scrutinised that progress on an ongoing basis'.[1] The Committee noted the proposal of the Council for Aboriginal Reconciliation that the Social Justice Commissioner report annually on reconciliation and endorsed this proposal as follows:

> **Recommendation 7:** The Committee recommends that the Aboriginal and Torres Strait Islander Social Justice Commissioner be required by statute to report publicly on progress towards reconciliation (as proposed by clause 10 of the Reconciliation Bill).

> **Recommendation 9:** The Committee recommends that the Government should be required by statute to respond to the reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner…[2]

They argued:

> While the Social Justice Commissioner already includes reporting on reconciliation in his annual *Social Justice Reports*, the Committee notes that the Government's Australian Human Rights Commission Bill 2003 proposes the abolition of this specialist position. Earlier this year the Senate Legal and Constitutional Legislation Committee unanimously opposed the abolition of the position, and the Committee endorses that position most strongly. The Committee also considers that a statutory reference to reporting on progress towards reconciliation would be desirable, and that the government should be obliged to respond to the Social Justice Commissioner's reports, as recommended in the *Social Justice Report 2001*.[3]

Consistent with the Committee's recommendation, and in absence of such a statutory requirement, this year's report also includes a progress report on reconciliation in Chapters 2 and 3. Due to the nature of the issues considered throughout the report, other chapters of the report are also relevant to progress on reconciliation.

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1   Senate Legal and Constitutional References Committee, *Reconciliation: Off Track*, Parliament of Australia, Canberra 2003, p120.
2   *ibid*, p121.
3   *ibid*, p120.

Chapter 2

Reconciliation and government accountability

In the *Social Justice Report 1999*, my first report as Social Justice Commissioner, I identified four key themes and challenges that existed in the approach of the federal government to Indigenous policy making at the time. These were moving beyond welfare dependency, accountability, participation and reconciliation.[1] Since the release of that report approximately four years ago, the key themes and challenges facing the government have remained relatively constant. The fundamentals of the government's approach to Indigenous affairs have not changed substantially, with only subtle refinements and a locking down of their approach across all program and policy areas and at the inter-governmental level. These refinements have taken place through the consistent use of coded language such as 'practical reconciliation', 'mutual obligation', 'agreement making' and 'partnerships', and more recently 'shared responsibility'.[2]

To the phrase 'moving beyond welfare dependency' we could now add 'sustainable development', 'capacity building' and 'mutual obligation'. For 'accountability' we could add 'governance reform', 'shared responsibility', 'whole-of-government approach' and 'changing the way we do business with Indigenous communities'. For 'participation' we could add 'self-management', 'agreement making' and 'partnerships'. For 'reconciliation' we can directly substitute 'practical reconciliation' and divide issues into so-called real and symbolic ones.

The next two chapters examine current progress in addressing a range of issues in relation to these four themes. They consider the adequacy of the structures and processes that have been put into place at the national level to progress programs and services to Indigenous peoples; and ultimately, based on this analysis, identify an agenda for change with recommendations to improve Indigenous policy and program design. This chapter focuses on developments

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1   See: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 1999*, HREOC Sydney 2000, pp2-24.

2   For an analysis of these themes see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, HREOC Sydney 2001, Chapters 2,3,6 and Appendix 2 (Herein *Social Justice Report 2001)*; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC Sydney 2002, Chapters 2,3 and 4 (Herein *Social Justice Report 2002)*.

relating to reconciliation and mechanisms for government accountability. Chapter 3 then focuses on the participation (and accountability) of Indigenous organisations and peoples in government activity and developments relating to the objective of moving Indigenous peoples beyond welfare dependency. The subject matter of the two chapters is inter-related and together they constitute my annual progress report on reconciliation.

Reconciliation

In 2003, there have been three main sets of developments in relation to the government's approach to reconciliation. First, there has been continuity in the implementation of programmes and in the policy direction of the federal government towards reconciliation. The primary focus of activity during the year has been on advancing initiatives that were announced or committed to in either 2002 or previous years (such as through the Council of Australian Governments' Communiqués on Reconciliation in 2000 and 2002).

There has been a high level of commitment by the federal government to continuing to implement programmes in accordance with its 'practical reconciliation' agenda. There have been significant developments in implementing the commitments of the Council of Australian Governments (COAG) to conduct a number of whole-of-government community trials across Australia and to establishing an annual reporting framework on Indigenous disadvantage. There has also been an increased focus on debilitating problems affecting Indigenous communities such as family violence, with the convening of a national summit by the Prime Minister and the announcement of new funding for programs to address it (these were described as a 'down-payment' and are expected to be backed up with further funding in the 2004 Budget).

Second, and concurrent to this continuation of the existing approach, has been public debate about the adequacy of accountability mechanisms for government service delivery to Indigenous peoples and for reconciliation. Specifically in relation to reconciliation, this debate has taken place through the Senate Legal and Constitutional References Committee's inquiry into national progress towards reconciliation and through the commencement of the second reading debate in the Senate on the *Reconciliation Bill 2001* (which seeks to introduce monitoring and evaluation processes for reconciliation, in accordance with the recommendations of the final report of the Council for Aboriginal Reconciliation). Through both of these processes the government has revealed that it considers it unnecessary to introduce formal legislative monitoring mechanisms for progress towards reconciliation at the national level.

In more general terms, this debate has taken place through the review of the Aboriginal and Torres Strait Islander Commission (ATSIC). The review process saw a clear expression of dissatisfaction with progress in addressing the disadvantage experienced by Indigenous peoples and in government service delivery to Indigenous peoples, as well as at the perceived failure of ATSIC to effectively represent Indigenous peoples. The findings and recommendations of this review are discussed in detail in the next chapter. Of note here, however, is that while the review was intended to review mechanisms for service delivery to Indigenous peoples (i.e., not to be solely focused on ATSIC) its ultimate

focus from an accountability perspective was on the role of ATSIC. It provided only limited focus on accountability mechanisms and the responsibilities of the rest of government.

The third main set of developments in relation to the government's approach to reconciliation has been that the limits of practical reconciliation were exposed through a number of processes and events during the year. These included the Senate Legal and Constitutional References Committee's inquiry into national progress towards reconciliation, the release of data from and analysis of the 2001 Census, the release of the first national report on overcoming Indigenous disadvantage by the Steering Committee for the Review of Government Service Provision, and the public debates about service delivery to Indigenous peoples that took place as part of the ATSIC Review.

The *Social Justice Report 2002* had noted that the dominant feature of the government's approach to reconciliation and Indigenous affairs the previous year was the refinement and bedding down of its 'practical reconciliation' approach.[3] The report expressed the concern that 'by continually reinforcing that its commitment is to addressing key issues of Indigenous disadvantage and nothing else' the government had 'developed a tunnel vision that renders it incapable of seeing anything that falls outside the boundaries that it has unilaterally, and artificially, established for relations with Indigenous peoples'.[4] It also expressed the concern that as a consequence of this, the limited processes that existed for accountability were not directed to those issues with which the government did not agree or which fell outside of its limited approach.

In the remainder of this chapter, I examine key developments relating to reconciliation at the national level during 2003. The focus of this progress report is on the adequacy of processes for accountability of the government for reconciliation, particularly as they relate to 'practical' reconciliation.

National progress towards reconciliation in 2003 – Key developments

This section considers developments over the past year relating to reconciliation under the following headings:

- A 'highly controlled' commitment to 'practical' reconciliation;
- Progress in addressing Indigenous disadvantage; and
- Implementing the commitments of the Council of Australian Governments.

a) A 'highly controlled' commitment to 'practical' reconciliation

On 27 November 2003, the Senate began the second reading debate on the *Reconciliation Bill 2001*. The Bill was identical to that included in the final report of the Council for Aboriginal Reconciliation and which the Council had recommended should be passed by the Parliament in order to provide a legislative framework to deal with the unfinished business of reconciliation. The Bill was first introduced by Senator Ridgeway on 5 April 2001, with debate on

3   *Social Justice Report 2002*, p58.
4   *ibid*, p87.

the Bill adjourned that same day. It has taken more than two and a half years for the Bill to be reconsidered and reach the second reading stage in the Senate.[5]

As Senator Ridgeway noted in his second reading speech, the Bill provided 'an opportunity to debate essentially what the Council for Aboriginal Reconciliation recommended'.[6] It was the first extensive debate to take place directly on reconciliation in the Senate chamber since the Council released its report in December 2000 (notwithstanding the debates that took place through the parliamentary committee system with the Senate Legal and Constitutional References Committee's inquiry into reconciliation and estimates processes).

The debate on the Bill was acrimonious. The opposition parties stated that 'there has been a clear lack of responsibility on the part of the government which…seems to be intent on destroying the spirit of what reconciliation is about by putting forward a policy of practical reconciliation';[7] that reconciliation 'is clearly an issue that has fallen off the Howard government's agenda';[8] and that the government has a 'record of not performing when it comes to reconciliation in this country'.[9]

Government Senators responded angrily to these comments. One government minister interjected that criticisms of the government's performance were 'sanctimonious rubbish' and that 'you could be a bit gracious and comment on some of the positive things'.[10] Another member of the government accused a fellow Senator of being 'one of the phoney people… There is a lot of phoniness in this debate. People come in here and make symbolic speeches and then go home and forget about it. You want to live it'.[11]

A striking feature of the debate is the deeply impassioned nature of the speeches made by members of the government and their outrage at the suggestion that the government is not committed to reconciliation. Senator Ferris put the position of the government as follows:

> If one were to listen to the contribution of (the Opposition)… one would believe that reconciliation is dead in this country. Nothing could be further from the truth. Reconciliation between Indigenous Australians and the wider community is an objective that the federal government is fully committed to, and all of us on this side of the chamber are fully committed to. The Australian government strongly reaffirms its support for reconciliation, as expressed in the historic motion of reconciliation that was passed by both houses of the federal parliament on 26 August 1999… [T]his motion confirmed a whole-hearted commitment to reconciliation as an important national priority for all Australians.[12]

There is a subtle but important factor illustrated by comments such as these that must be acknowledged about the government's approach to reconciliation.

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5   The debate on the Bill was interrupted after 2 ½ hours and it is unclear when it will recommence.
6   Senator Ridgeway, *Hansard – Senate*, 27 November 2003, p17988.
7   *ibid*.
8   Senator Evans, *Hansard – Senate*, 27 November 2003, p17988.
9   Senator Brown, *Hansard – Senate*, 27 November 2003, p17993.
10   Senator Patterson, *Hansard – Senate*, 27 November 2003, p18003.
11   Senator Heffernan, *Hansard – Senate*, 27 November 2003, p18008.
12   Senator Ferris, *Hansard – Senate*, 27 November 2003, p17990.

Members of the government are committed to achieving reconciliation. Analyses of how the government is performing on reconciliation, such as this report, do not seek to present the government's position as if it were opposed to achieving reconciliation. Instead, the crucial issue is the nature of the commitments made by the government and whether they are sufficient (or in other words, do they progress reconciliation or instead impede progress, either through commission or omission?).

Senator Ferris explained what the government means by reconciliation in the debate on the *Reconciliation Bill* as follows:

> Of course, the concept of reconciliation is one that means different things to different people… But there is one common thread to people's view of reconciliation in this country and that is that all Australians are entitled to equal life chances, to equality of opportunity, and that true reconciliation will not exist until Indigenous disadvantage has been eliminated. The very sad truth is that Aboriginal and Torres Strait Islander people in Australia still remain the most disadvantaged group in our society… despite the best efforts of hundreds, perhaps thousands of individuals in this country over many years…

> The federal government believes that the best way it can act to achieve reconciliation is through the provision of practical and effective measures that address the legacy of profound economic and social disadvantage that are experienced by many Indigenous Australians, particularly in those crucial areas of health, education, housing and employment. Practical measures in these key areas have a positive effect on the everyday lives of Indigenous Australians.[13]

I have extensively criticised this approach to reconciliation in the *Social Justice Reports* for 2000-2002.[14] At core, concerns about the government's approach to reconciliation focus on the limited scope of the commitments that they make; the lack of a process for dealing with issues that fall outside the parameters set by the government; the derisive and somewhat arbitrary way that the government discards issues which it does not agree with as 'symbolic' and then simply ignores them; and the lack of a rigorous monitoring framework to hold the government accountable for its commitments and for any lack of progress in areas which it has chosen to ignore.

The government's approach to reconciliation is also malleable. In 2003, for example, the design and wording for a memorial on the stolen generations for inclusion at Reconciliation Place in Canberra was agreed between the government and the National Sorry Day Committee.[15] While there is a clear preference for 'practical' measures of assistance rather than 'symbolic' measures, the government's approach does involve and recognise the importance of such symbolic measures. It is often not clear, however, why

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13 *ibid*, pp17990-91. See also: Department of Immigration, Multiculturalism and Indigenous Affairs, *Fact Sheet No.3 – Reconciliation*, online at www.minister.immi.gov.au/atsia/facts/index.htm, accessed 10 November 2003.

14 See in particular: *Social Justice Report 2001*, Chapter 6; *Social Justice Report 2002*, Chapters 2,3 and 4.

15 Ruddock, P and National Sorry Day Committee, *Recognition of removal practices at Reconciliation Place*, Joint Media Statement, 29 June 2003.

particular issues are acceptable and fall within the parameters of practical reconciliation while others do not.

These concerns about the government's approach do not, however, suggest that there is an absence of a commitment to reconciliation. Instead they identify that this commitment is to a *particular type* of reconciliation around which the boundaries are tightly proscribed by the government.[16]

Jackie Huggins has effectively addressed the issue of the nature of the government's commitment to reconciliation as follows:

> There is little doubt that the current Government in Canberra would like to make an impact in Indigenous affairs, though its vision of a reconciled Australia would be very different to that of many of us… Although, there are strong indications that Ministers across a number of Commonwealth portfolios are becoming more open to looking at creative solutions to persistent problems.
>
> But the bottom line for this Prime Minister and his governmental has always been the compartmentalising of reconciliation and Indigenous affairs into so-called practical and symbolic measures, the latter having been rejected as unacceptable to mainstream Australia…
>
> In this highly controlled context… it is true to say that many in the community have been left with the impression that the reconciliation agenda in Australia has run into the sand. Others have been basking in the mistaken belief that reconciliation has already arrived. The truth is somewhere in between…[17]

The continuity over several years of this 'highly controlled' approach of the government towards reconciliation has inevitably seen policy debates shift towards the government's framework. This was increasingly the case in 2003. Progressively each year has seen less focus on issues that do not fall within the government's approach, such as an apology, the plight of the stolen generations, the treaty debate and native title. As Reconciliation Australia notes, these issues 'have not gone away however those involved in reconciliation have chosen to engage with the government where constructive progress can be made'.[18] This reflects political reality rather than an embracing or endorsement of the government's position. As Jackie Huggins has noted:

> Those of us involved in reconciliation and Indigenous affairs have had to make a choice about whether to keep beating our heads against a wall on… issues (of unfinished business)… or whether we look to what can be achieved in the political context in which we find ourselves, and try to move forward. And that is the choice we have made. We have a

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16   In the *Social Justice Report 2001* I described the consequences of this approach as follows: 'Recent years have seen the emphasis of the reconciliation process shift dramatically. Currently, it is not about mutual accommodation on the basis of equality – it is about whether one group, Indigenous people, are prepared to conform to the rest of society. If not, then the offer is closed.': *Social Justice Report 2001*, p221.

17   Huggins, J, 'The figures seem to confirm that practical reconciliation is not enough', On Line Opinion, 19 November 2003, p2, <www.onlineopinion.com.au/view.asp?article=872>, (5 December 2003).

18   Reconciliation Australia, *2003 Reconciliation report*, Reconciliation Australia, Canberra 2003, p10.

responsibility to keep the rest of the agenda alive but we also have a duty
to engage and to continue to progress things that can be progressed.[19]

Similarly, processes for sustaining and monitoring progress towards
reconciliation are increasingly focused on 'practical' reconciliation. In 2003, the
Senate Legal and Constitutional References Committee concluded its inquiry
into national progress towards reconciliation and made several
recommendations to implement a broader approach to reconciliation which
incorporates all aspects of reconciliation that were identified by the Council for
Aboriginal Reconciliation.[20] A similarly based debate also commenced in the
Senate on the *Reconciliation Bill 2001.* The government has indicated that it
does not consider the mechanisms in either of these processes as necessary,
on the basis that it already has mechanisms in place for progressing practical
reconciliation. Consequently, it is unlikely that there will be mechanisms
introduced which will enable issues that do not fit exactly within the government's
framework to be advanced.

b) Progress in addressing Indigenous disadvantage

The government has emphasised time and again that the key focus of
reconciliation should be on practical and effective measures that address the
legacy of profound economic and social disadvantage that is experienced by
many Indigenous Australians. As quoted above, the government's position is
that 'true reconciliation will not exist until Indigenous disadvantage has been
eliminated'.

Newly released data in 2003 provided the opportunity to establish whether we
are progressing towards this ultimate goal of the government's reconciliation
agenda and to determine whether the pace of such progress is adequate.

The *Social Justice Reports* for 2000 through to 2002 raised a number of
challenges for the government in order to determine whether they are meeting
their commitment to address the social and economic inequality experienced
by Indigenous Australians. These challenges include the establishment of
benchmarks and targets which commit to a rate of progress in improving the
socio-economic conditions of Indigenous peoples and improved data collection
to enable such progress to be more accurately measured. There have been
some developments over the past year relating to data collection and reporting,
such as the establishment of the national reporting framework on key indicators
of Indigenous disadvantage (which is discussed more fully in the next section
of this chapter).

However, the long-standing commitment of governments to develop benchmarks
and action plans for key areas of Indigenous disadvantage through the various
inter-governmental ministerial councils remains largely unfulfilled. Accordingly,
it is not possible to determine whether government efforts to address Indigenous
disadvantage have progressed at a rate that meets the expectations (and
targets) of governments and Indigenous peoples. There are no publicly reported

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19   Huggins, J, *op.cit*, p3.
20   Senate Legal and Constitutional References Committee, *Reconciliation: Off track*, Parliament
      of Australia, Canberra 2003.

goals setting out what is an acceptable rate of improvement against which we can determine whether current progress is adequate and fully matches the potential of available resources and programs. This is a critical issue of lack of accountability of government and I return to it later in this chapter.

Despite the lack of publicly reported benchmarks and action plans, we can still evaluate progress in addressing Indigenous disadvantage from the following three perspectives.

First, we can see whether there have been improvements in the circumstances of Indigenous peoples on a number of key indicators over the past five and ten years. Generally, due to difficulties in comparing data over time periods the Australian Bureau of Statistics recommends that such comparisons be made on the basis of changes in percentages over time rather than raw figures.[21]

Second, we can see whether there have been improvements in the situation of Indigenous peoples compared to non-Indigenous people over the past five and ten years. In other words, given the prime goal of the government of eliminating the inequality in socio-economic conditions experienced by Indigenous peoples, is there relative improvement in the situation of Indigenous peoples compared to the rest of Australian society? If the government's approach is working then we can reasonably expect a continual closing of the gap between the two groups.

Third, we can make comparisons between the situation of Indigenous peoples in Australia and Indigenous peoples in other similar countries, as well as to people in less developed countries. By doing so we can establish whether we are progressing at a rate comparable to that in other countries or whether we are lagging behind in the improvements being achieved.

The government's view is that it is making progress in addressing Indigenous disadvantage. In October 2003 the Minister for Indigenous Affairs stated:

> The wellbeing of Indigenous people is improving under this Government. Record amounts of money and effort are now being spent on trying to solve the problem of Indigenous disadvantage. Since coming to Government, real steps forward have been made. Between the 1996 and 2001 censuses, many indicators of Indigenous disadvantage show real improvement. For example:
>
> - Indigenous unemployment rate fell from 22.7 per cent to 20.0 per cent, and there were an additional 18,000 Indigenous people in employment
> - the proportion of Indigenous people employed in the private sector rose from 46.3 per cent to 48.5 per cent
> - the proportion of Indigenous adults who had left school before their 15th birthday fell from 44.2 per cent to 33.4 per cent, and
> - the proportion of Indigenous adults with post school qualifications rose from 23.6 per cent to 27.9 per cent
> - the proportion of Indigenous children who stayed on at school through to Year 12 increased from 29.2 per cent in 1996 to 38 per cent in 2002

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21   See Appendix 1 of this report for discussion of data collection issues.

- there were 5566 Indigenous students enrolled in a bachelor's level degree or higher degree course in 2002, 24.3 per cent more students than were enrolled in 1996
- there were 59 763 Indigenous people who undertook post-secondary vocational and educational training in 2002, nearly twice the number of Indigenous students registered for training in 1996.

While things are getting better, I am not saying everything is good or that we can sit back and be complacent. This Government will remain committed to building an Australia where Indigenous people enjoy the same standards of living as other Australians while maintaining their unique cultural identities.[22]

In the debate on the *Reconciliation Bill 2001* in November 2003, Senator Ferris also stated the government's position as follows:

Despite (the opposition's) claims of economic failure and government policy failure, let us have a look at some of the improvements that have taken place in Indigenous affairs since this government came to office in 1996.

In terms of education, from 1996 to 2002 the proportion of Indigenous children who stayed on at school increased from a very poor 29.2 per cent to 38 per cent. I know that 38 per cent is still very low, but an improvement of 10 per cent since this government came to office is very significant. More importantly, the number of Indigenous students registered for post-secondary vocational and educational training has nearly doubled from 1996 to 2002… to a total of 59,763... if that is failure of government policy, one can only imagine what would be determined to be successful. The number of young Indigenous Australians who are undertaking post-secondary training has almost doubled. Over the same period of time, there was a 32 per cent increase in the number of Indigenous men and women involved in bachelor-level degree courses or higher degree courses in Australian universities. I know that those figures are still low, but we are starting to build a base of economic advantage through higher education and training for young Indigenous men and women…

In terms of unemployment, the unemployment rate for Indigenous people actually fell from 22.7 per cent to 20 per cent between the 1996 census and the 2001 census. Again, I am the first to say that we have a long way to go before we can honestly in this place say that there is equality of opportunity for jobs for young Indigenous people. However, between 1996 and 2001 the number of Indigenous people in employment increased from 82,346 to 100,348, an increase of 22 per cent...

In terms of health, the Australian government has substantially increased its spending on Indigenous-specific health programs. Such spending is now at record levels. So much for failure… Our total spending on specific Indigenous health services this year will rise to more than $258 million—more than has ever been spent before. Again I say that we know this does not indicate we are going to solve this problem, but it is a significant first step. This is a real increase of nearly 90 per cent since this government

22 Senator Vanstone, 'Indigenous wellbeing is a top priority', *Media Release*, 15 October 2003, http://www.minister.immi.gov.au/atsia/media/media03/v03002.htm

took office in 1996... how can you say that this is a failure of government policy? We have increased real spending on Indigenous-specific health by more than 90 per cent since 1996. In the last five years, 46 remote communities have gained access to primary health care for the very first time. Indigenous infant and perinatal death rates have fallen by a third over the last decade...

Commonwealth spending on Indigenous programs has increased by one-third in real terms since 1996 and is now at record levels. In 2003-04, the Commonwealth government will spend $2.7 billion on Aboriginal affairs, on Aboriginal policies—more than has ever been spent by any government in this nation's history. There is still much that we can do and still much that state governments can do to help with the practical measures that improve the day-to-day lives of Indigenous Australians, but, as we all know, many of those problems will not be solved with money. You cannot continue to just throw money at the issue without looking at some of the other measures…

This government is committed to seeing that every policy initiative is carried out to reconcile Indigenous Australians and the broader community. Improvements are being made, and the statistics that I gave to this chamber earlier indicate that. We are making steps forward. There is a long way to go.[23]

These statements have been reproduced here at length to ensure that I have authentically represented the government's position on the rate of progress in addressing Indigenous disadvantage.

There are a number of notable features about these statements. First, the government's position on reconciliation clearly states that the ultimate test of success is whether the inequality experienced by Indigenous peoples compared to non-Indigenous people is eliminated. Despite this, in its claims to success above there is not a single reference to progress in reducing the gaps that exist between Indigenous and non-Indigenous Australians.

The only reference by the Minister to this inequality gap can be found in a press release dated 12 November 2003, which comments on the release of the first national report on national indicators for overcoming Indigenous disadvantage.[24] The Minister stated: 'While there has been improvements in many key indicators, greater rates of improvement for non-Indigenous people, tend to mask the gains that have been made'.[25]

In my progress report on reconciliation in the *Social Justice Report 2002,* I noted a tendency of the government to misrepresent progress towards reconciliation through the way that it presents statistics.[26] This statement by the Minister is a further example of this. Greater rates of improvement in key indicators for non-Indigenous Australians do not 'mask the gains that have been made' for Indigenous people. Instead, they indicate that the gains made have not been

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23   Senator Ferris, *Hansard – Senate*, 27 November 2003, pp17991-2.

24   This report is discussed in the next section of this chapter.

25   Senator Vanstone, 'Overcoming Indigenous Disadvantage', Media Release, 12 November 2003, www.minister.immi.gov.au/atsia/media/media03/v03003.htm, accessed 12 November 2003.

26   See *Social Justice Report 2002*, pp85-87.

sufficient to reduce the level of inequality or that improvements for Indigenous peoples are not keeping pace with the rest of society. There is a substantial difference between presenting information in this way and the way that it has been presented by the government.

Second, there are significant omissions in the indicators that the government presents as demonstrating 'real improvement'. This is most obvious in relation to indicators of health status, where the only achievement listed above is that the government has 'substantially increased its spending on Indigenous-specific health programs to record levels'. There are also no indicators cited relating to contact with criminal justice processes or care and protection systems, for example.

At no stage does the government state that there are areas where the situation is not improving. The Minister's statement above, for example, is unequivocal that 'the wellbeing of Indigenous people is improving under this Government'. The only qualification, that there is still a way to go, also does not admit lack of progress in key areas: 'While things are getting better, I am not saying everything is good or that we can sit back and be complacent'. It is hardly a frank assessment of the actual situation.

Third, some of the measures of success are presented purely as raw numbers and as percentages of increases in raw numbers (for example, 5566 Indigenous students enrolled in a bachelor's level degree or higher degree course in 2002, 24.3 per cent more students than in 1996). As noted above, the ABS cautions against such presentation of statistics as they do not account for changes in the accuracy of data collection or increased rates of identification of people as Indigenous. This can result in the presentation of the level of progress being misleading. Indeed, as discussed shortly, there are significant concerns being expressed about poor rates of achievement by the government in education over the past five years, particularly in relation to higher education.

Taking these factors into account, and examining the statistics on Indigenous well-being from the different perspectives listed above (namely, on the basis of absolute change in the situation of Indigenous peoples; relative change compared to the non-Indigenous population; and where available, international comparisons), it can be seen that the claim of the government that 'the wellbeing of Indigenous people is improving under this Government' cannot be verified across many core areas of practical reconciliation. There are undoubtedly some areas where improvements are being realised. Overall, however, there is no consistent forward trend in improving the well-being of Indigenous peoples, and particularly no forward trend towards a reduction in the disparity between Indigenous and non-Indigenous Australians.

Appendix 1 of this report provides a statistical profile of the Aboriginal and Torres Strait Islander population. It includes information on the current status of Indigenous peoples on key measures of socio-economic well-being including health status, employment, income, education, housing, and contact with criminal justice and care and protection systems. The main findings in the appendix in terms of progress in addressing Indigenous disadvantage across these areas are summarised below.

Progress in addressing Indigenous disadvantage

Income

- Gross household income for Indigenous people increased by 11% between 1996 and 2001. In 2001, it was 62% of the rate for non-Indigenous Australians, compared to 64% in 1996.
- Median gross individual income for Indigenous people increased by 19% from 1996 to 2001, compared to an increase of 28.4% for non-Indigenous people. There has been a considerable increase in the disparity in individual income between these two groups between 1996 and 2001, as well as over the decade from 1991 to 2001.

Employment

- In 2001, 54% of Indigenous people of working age were participating in the labour force compared to 73% of non-Indigenous people.
- In 2001, the unemployment rate for Indigenous people was 20% – an improvement from the rate of 23% in 1996. This is three times higher than the rate for non-Indigenous Australians.
- 18% of all Indigenous people in employment in 2001 worked on a CDEP scheme. If CDEP were classified as a form of unemployment, the Indigenous unemployment rate would rise to over 34%.

Education

- 69% of Indigenous students progressed from year 10 (compulsory) to year 11 (non-compulsory) schooling, compared to 90% of non-Indigenous students in 2001.
- 38% of Indigenous students were retained to year 12 in 2002 compared to over 76% for non-Indigenous students. This was an increase from 29% in 1996.
- In 2001, Indigenous people participated in post-secondary education at a similar rate to non-Indigenous people, although they had a slightly higher attendance rate at TAFE colleges and lower attendance rates at universities. The proprtion of Indigenous youth (aged 15-24 years) attending a tertiary institution declined between 1996 and 2001.

Housing

- In 2001, 63% of Indigenous households were renting (compared to 27% of non-Indigenous households), and 13% owned their home outright (compared to 40%).
- Indigenous people are 5.6 times more likely to live in over-crowded houses than non-Indigenous people.

Contact with criminal justice system

- Indigenous people have consistently constituted 20% of the total prisoner population since the late 1990s, compared to 14% in 1991.
- Indigenous people are imprisoned at 16 times the rate of non-Indigenous people. Indigenous women are imprisoned at over 19 times the rate of non-Indigenous women. These rates are higher than

in 1991, when the Royal Commission into Aboriginal Deaths in Custody reported.

- Since 1997, Indigenous juveniles have constituted at least 42% of all incarcerated juveniles, despite constituting 4% of the total juvenile population. In 2002, Indigenous juveniles were incarcerated at a rate 19 times that of non-Indigenous juveniles, an increase from 13 times in 1993.

Contact with care and protection system

- Indigenous children come into contact with the care and protection system at a greater rate than non-Indigenous children, and are increasingly represented at the more serious stages of intervention.

Of particular concern is the lack of achievement in relation to improving the health status of Indigenous Australians. Appendix 1 illustrates the following.

Progress in addressing Indigenous disadvantage – Health status

Life Expectancy

- Life expectancy for Indigenous females declined slightly from 1997-2001 to 62.8 years. This rate is lower than the life expectancy rate for females in India and sub-Saharan Africa (with the impact of HIV-AIDs factored out).The gap with non-Indigenous female life expectancy increased from 18.8 to 19.6 years in the same period.
- Aboriginal and Torres Strait Islander females can also expect to live between 10.9 and 12.6 years less than Indigenous females in Canada, the United States of America and New Zealand.
- Life expectancy for Aboriginal and Torres Strait Islander males increased slightly from 1997-2001 to 56.3 years. This rate is lower than the life expectancy rate for males in Myanmar (Burma), Papua New Guinea and Cambodia. The gap between Indigenous and non-Indigenous male life expectancy increased slightly from 20.6 to 20.7 years in the same period.
- Aboriginal and Torres Strait Islander males can also expect to live between 8.8 and 13.5 years less than Indigenous males in Canada, the USA and New Zealand

Median death age

- In 2001, the median age of death was 24 years lower for Indigenous Australians than for non-Indigenous Australians. There has been no identifiable trend towards a reduction in this gap for either Indigenous males or females over the past decade.

Infant health

- There are twice as many low birth-weight babies born to Indigenous mothers than to non-Indigenous mothers. The rate of low birth-weights has increased for both groups in recent years, with a slight increase in the disparity between the two groups over the decade.

- There are higher rates of low birth-weight babies among Indigenous Australians than there are for mothers in countries that are classified as low development countries by the United Nations, such as Ethiopia, Senegal, Zimbabwe, Lebanon and Indonesia.
- There are 2.5 times as many deaths among Indigenous infants than non-Indigenous infants in Australia, with no discernable reduction in the number of deaths or the rate of inequality since 1995.
- Rates of infant mortality for Indigenous people in Australia are significantly higher than rates for Indigenous people in Canada, the USA and New Zealand.

These figures indicate that there are clear disparities between Indigenous and non-Indigenous people, and limited progress in reducing these disparities across many key areas of socio-economic status.

These findings are confirmed by significant research published by the Centre for Aboriginal Economic Policy Research (CAEPR) in late 2003. CAEPR released analysis by Professor Jon Altman and Dr Boyd Hunter of 2001 Census data which sought to monitor progress towards reconciliation by measuring absolute and relative changes in Indigenous peoples' labour force status, income, housing, education and health over the period 1991-2001.

As the authors of the study noted, for the first time ever there was a relatively close correlation between the conduct of the five-yearly national census and political cycles:

> The change in government shortly before the 1996 Census means that the 1996 data reflect the Labor legacy rather than the effect of early policy initiatives of the new government. While arguably there are various types of policy lags… the second inter-censal period (1996-2001) can be readily interpreted as the policy domain (and legacy) of the Howard government.[27]

The research aimed to answer the following question:

> How do the outcomes in the period 1991-1996, represented by the Federal government and many conservative commentators as a period when symbolic reconciliation was too dominant, compare with those in the period 1996-2001 when a change in government saw greater policy focus on practical reconciliation?[28]

The research concluded that in the period 1996-2001, labour force status for Indigenous people worsened relative to the rest of the population when measured by labour force participation rates, unemployment rates, the employment to population ratio, and rate of full time employment. There was, however, a slight improvement in employment of Indigenous people in the private sector. The authors expressed concern about this general worsening in Indigenous labour

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27   Altman, J and Hunter, B, 'Monitoring 'practical' reconciliation: Evidence from the reconciliation decade, 1991-2001', Discussion Paper 254/2003, Centre for Aboriginal Economic Policy Research, Canberra 2003, p1. Available online at: www.anu.edu.au/caepr/discussion2.php.

28   *ibid*, p2.

force status as it moved 'against the trend for the rest of the population'.[29] They noted:

> Unemployment rates fell by less for the Indigenous population than for other Australians, despite rapid economic growth over the five year period and growth in numbers participating in the CDEP scheme. There is little evidence of trickle down improving Indigenous economic participation and reducing the significance of non-employment (welfare) income. Given that low skilled workers are often the first to lose work in an economic downturn, the lack of improvement is worrying, especially if there is any significant deterioration in the Australian and international economies in the near future.[30]

In terms of income, the research noted a continued relative decline in income for Indigenous individuals, but a slight improvement in the relativity in median family income between Indigenous and non-Indigenous families.[31] In terms of housing, the research also noted marginal improvements in the relativity between Indigenous and non-Indigenous people for both home ownership rates and household size.

The research expressed significant concern about the lack of improvement in relation to both health and education. The authors expressed concern at the 'substantial inertia in Indigenous health'[32] as indicated in the lack of improvement in relativities relating to life expectancy and proportion of the population aged over 55 years. In relation to education, the research notes a slight reduction in the disparity in the proportion of adults who have never gone to school, but a worsening in the comparative rate of early school leavers. There was a slight improvement in the proportion of Indigenous adults with post-school qualifications, but a significant decline in the comparative rate of Indigenous youth currently attending a tertiary institution. The authors commented that:

> it is an indictment of current education policy that there was a large decline in the Indigenous to non-Indigenous ratio between 1996 and 2001… future prospects for improved socio-economic outcomes for the Indigenous population are not good when attendance of Indigenous youth at tertiary institutions fell by 2.2 percentage points…
>
> Even in its own terms the government is failing in the education arena.[33]

When these results are compared to the results achieved by the previous government in the period from 1991-1996, the research revealed that:

> in absolute terms, it is difficult to differentiate the performance of governments pre-1996 and post-1996. However, in relative terms – that is when comparing the relative wellbeing of Indigenous people as a whole with all other Australians – there is some disparity between the periods, with the early period 1991-1996 clearly outperforming the more recent

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29   *ibid*, p9.
30   *ibid*.
31   Although note that the Australian Bureau of Statistics produced alternative adjusted figures for household income (as presented in Appendix 1 of this report) which showed a slight increase in the disparity between Indigenous and non-Indigenous people.
32   Altman, J and Hunter, B, *op.cit*, p11.
33   *ibid*, pp10-11.

period…[34] Of particular concern was relative decline over the period in educational and health status.[35]

As a consequence, the authors offered the following appraisal of the achievements of practical reconciliation in addressing Indigenous disadvantage:

> Despite the policy rhetoric of three Howard governments, there is no statistical evidence that their policies and programs are delivering better outcomes for Indigenous Australians, at the national level, than those of their political predecessors…[36] It is of particular concern that some of the relative gains made between 1991 and 1996 appear to have been offset by the relative poor performance of Indigenous outcomes between 1996 and 2001…[37] This intractability is worrying in part because it is evident during a time when (in) Australia the macro-economy is growing rapidly. This suggests, in turn, that problems are deeply entrenched – it is not just a matter of choosing between practical and symbolic reconciliation.[38]

There is one further issue of grave concern relating to progress in addressing Indigenous disadvantage. As CAEPR note:

> A major problem for both Indigenous Australians and the nation is that other research suggests that the situation described using the latest 2001 Census statistics is likely to get worse, rather than better, over the next decade.[39]

This is due to the demographic characteristics of the Indigenous population. As I noted in the *Social Justice Report 2002*, there is 'a well-documented, emerging crisis facing Indigenous policy design'. Not only is the Indigenous population growing at a faster rate than the non-Indigenous population (2.3 per cent compared to 1.2 per cent annually), but the Indigenous population's median age is younger (20 years compared to 35 years) and nearly twice as many Indigenous compared to non-Indigenous people are under 15 years of age (almost 40 per cent compared to just over 20 per cent). Similarly, only 2.8% of the Indigenous population are aged over 65 compared to 12.5% of the non-Indigenous population.[40] The consequence of this age structure and rate of population growth is that there will be a significant increase in the number of Indigenous people entering the age group where they will be seeking employment.

Based in this demographic profile, research by CAEPR forecasts that there will be a further widening of the disparity between Indigenous and non-Indigenous employment rates over the next decade:

> Because the rate of employment growth is anticipated to be slower than population growth, the overall employment rate is expected to fall from 40 per cent to 36 per cent over the projection period (2001-2011).

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34   *ibid*, pv.
35   *ibid*, p12.
36   *ibid*, p16.
37   *ibid*, pv.
38   *ibid*, p16.
39   *ibid*.
40   *Social Justice Report 2002*, pp59-60.

Assuming no change in the labour force participation rate, the reverse side of this equation will see unemployment numbers rise from an estimated 32,808 in 2001 to 58,565 by 2011, with a consequent increase in the unemployment rate from 22.5% to almost 31% of those in the labour force.

These projections point clearly to a worsening in the labour force status of Indigenous adults. Moreover it should be noted that they are based on the inclusion of working CDEP scheme participants in the estimates of persons employed. If these were excluded, and instead counted as unemployed… then predicted labour market outcomes for Indigenous people would become far worse, with an unemployment rate of 43 per cent rising to 50 per cent...[41]

It is worth recalling that the equivalent rates for the rest of the Australian population are presently around 6.0 per cent for unemployment… these are likely to remain relatively unchanged… The medium term prognosis, then, all other things being equal, is for a substantial worsening of the overall labour force status of Indigenous people both relatively and absolutely.[42]

These figures from CAEPR update analysis that they conducted in 1997 and 1998 into the likely growth in employment disparity for Indigenous peoples.[43] Consequently, the government has been aware of the likelihood of deterioration in employment status for Indigenous peoples since at least 1997. The absence of benchmarks and an action plan to address this potential situation is a serious omission from the 'practical reconciliation' agenda.

These projected high rates of Indigenous unemployment and low rates of Indigenous participation in the labour force have impacts not only on the overall financial wellbeing of Indigenous individuals and communities, but it also has major direct impacts on the Australian economy at large. For example, CAEPR estimates the cost of the current level of Indigenous employment (including unemployment, underemployment, CDEP participation and discouraged workers) to be approximately $700 million in total foregone tax revenue.[44] CAEPR have made the following projections for the situation over the decade to 2011:

If Indigenous unemployment was reduced to a level commensurate with the rest of the population, and assuming that this latter rate remained constant, then the savings to government in payments to the unemployed, in real terms, would be $328 million in 2006 and $450 million in 2011. On the credit side, if all those formerly unemployed were to gain mainstream employment (excluding CDEP scheme employees) with an annual income equivalent… [similar to reported income of non-CDEP employees in 1994]… then the estimated tax return to government would approximate $211 million and $290 million in 2006 and 2011 respectively.

41   Hunter, H, Kinfu, Y and Taylor, J, 'The future of Indigenous work: Forecasts of labour force status to 2011', Discussion paper 251/2003, Centre for Aboriginal Economic Policy Research, Canberra 2003, p3. Available online at: www.anu.edu.au/caepr/discussion2.php, p9.

42   *ibid*, p10.

43   Taylor, J, and Altman, J, *The job ahead – Escalating economic costs of Indigenous employment disparity*, ATSIC, Canberra 1997; Taylor, J, and Hunter, B, *The job still ahead: Economic costs of continuing Indigenous employment disparity*, ATSIC, Canberra, 1998.

44   Hunter, H, Kinfu, Y and Taylor, J, 'The future of Indigenous work: Forecasts of labour force status to 2011', *op.cit*, Table 12, p17.

These estimates are conservative because they hold the Indigenous participation rate at their 2001 levels. If all the Indigenous people outside the labour force who wanted jobs found them, then the government would save an additional $416 million in 2006 and $472 million in 2011 on government payments. That is, the additional welfare cost of not finding work for discouraged workers is even greater than that for the unemployed. The cost of lost tax revenue from discouraged workers will be as much as $345 million by 2011.[45]

CAEPR have summarised this situation as follows: 'the current fiscal cost of this failure to eradicate Indigenous employment disparity is massive – in 2001, it was estimated to be around 0.5 per cent of Australian GDP. Findings from this new analysis indicate that the cost will be even higher in the future'.[46]

Overall, the statistics across key areas of Indigenous disadvantage for the past five years indicate that there is no consistent forward trend in reducing the extent of disadvantage experienced by Indigenous peoples, and limited progress in eradicating the disparities between Indigenous and non-Indigenous Australians. There is some evidence that in relation to key measures, this situation may deteriorate further in the coming decade. The outcomes being achieved by governments are not adequate on any measure of success and despite the investment of significant resources by governments. This situation needs to change.

c)   Implementing the commitments of the Council of Australian Governments

An area where there has been significant progress in advancing the reconciliation process over the past year is the efforts of governments, lead by the federal government, in implementing the commitments made by the Council of Australian Governments (COAG) towards reconciliation.

In its communiqué of 3 November 2000, COAG agreed to take a leading role in driving change to address Indigenous disadvantage. COAG agreed to focus on three priority areas: community leadership; reviewing and re-engineering programs and services to support families, children and young people; and forging links between the business sector and indigenous communities to promote economic independence. As part of this process, Ministerial Councils were to develop 'action plans, performance reporting strategies and benchmarks' with COAG to review progress regularly.

In its communiqué of 5 April 2002, COAG agreed to conduct a number of whole-of-government community trials across Australia and to commission an annual reporting framework on key indicators of Indigenous disadvantage. This reporting framework had its genesis in the efforts of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs in progressing COAG's communiqué of November 2000.

This section reviews developments in relation to the disadvantage reporting framework, COAG trials and Ministerial action plans over 2003.

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45   *ibid*, p19.
46   *ibid*, p20.

i)   Overcoming Indigenous disadvantage – Annual report against key indicators

In his capacity as Chairman of COAG, the Prime Minister wrote to the Steering Committee for the Review of Commonwealth/State Service Provision[47] on 3 May 2002 to request the Committee to develop a framework for reporting to COAG against key indicators of indigenous disadvantage. COAG had agreed to the production of such a regular report at its April 2002 meeting.

The Steering Committee developed a draft reporting framework in 2002 and consulted with Indigenous organisations and governments about it in 2002 and 2003. This draft framework was the subject of a workshop convened by the Social Justice Commissioner in November 2002, and was discussed in detail in Chapter 4 of the *Social Justice Report 2002*.

On 22 August 2003, the Prime Minister wrote to the Steering Committee on behalf of COAG to formally endorse the Committee's proposed framework for reporting progress in addressing indigenous disadvantage. The finalised framework is reproduced in Figure 1 below.

Figure 1: COAG Framework for reporting on Indigenous disadvantage

Priority Outcomes

- Safe, healthy and supportive family environments with strong
- Positive child development and prevention of violence, crime and self-harm
- Improved wealth creation and economic sustainability for individuals, families and communities

Headline indicators

- Life expectancy at birth
- Rates of disability and/or core activity restriction
- Year 10 and 12 retention and attainment
- Post-secondary education: participation and attainment

- Labour force participation and unemployment
- Household and individual income
- Home ownership
- Suicide and self-harm

- Substantiated child protection notifications
- Deaths from homicide and hospitalisations for assault
- Victim rates for crime
- Imprisonment and juvenile detention rates

Strategic areas for action

| Early child development and growth (prenatal to age 3) | Early school engagement and performance (preschool to year 3) | Positive childhood and transition to adulthood | Substance use and misuse | Functional and resilient families and communities | Effective environmental health systems | Economic participation and development |

Strategic change indicators (see Table 1 below)

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47   The Committee has since been renamed the Steering Committee for the Review of Government Service Provision.

COAG and the Prime Minister nominated two core objectives for the Report: namely, to identify indicators that 'are of relevance to all governments and indigenous stakeholders' and 'demonstrate the impact of programme and policy interventions'.[48]

As the Chair of the Steering Committee has stated about the report:

> The… commissioning (of this report by COAG) demonstrates a new resolve, at the highest political level, not only to tackle the root causes of Indigenous disadvantage, but also to monitor the outcomes in a systematic way that crosses jurisdictional and portfolio boundaries. In doing so, the Report will henceforth also raise the transparency of government's performance.
>
> This report's purpose, therefore, is to be more than just another collection of data. It seeks to document outcomes for Indigenous people within a framework that has both an agreed *vision* of what life should be for Indigenous people and a *strategic focus* on key areas that need to be targeted if that longer term vision is to be realised.[49]

The *vision* of the reporting framework is that 'Indigenous people will one day enjoy the same overall standard of living as other Australians. They will be as healthy, live as long, and participate fully in the social and economic life of the nation'.[50] This vision is encapsulated in the three, inter-related priority outcomes of the reporting framework, namely:

- Safe, healthy and supportive family environments with strong communities and cultural identity;
- Positive child development and prevention of violence, crime and self-harm; and
- Improved wealth creation and economic sustainability for individuals, families and communities.[51]

The report also seeks to present the statistics within a *strategic* framework. There are two key features to this framework. First, it seeks to report on Indigenous disadvantage on a holistic and whole-of-government basis. As the Committee has explained:

> [T]he report is predicated on the view that achieving improvements in the wellbeing of Indigenous Australians in a particular area will generally require the involvement of more than one government agency, and that improvements will need preventative policy actions on a whole-of-government basis…[52]
>
> Without detracting from the importance of individual agencies being responsible and accountable for the services they deliver, the structure

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48 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage – Key indicators 2003*, Commonwealth of Australia, Melbourne 2003, pxvii (Herein, *Overcoming Indigenous disadvantage*).

49 Banks, G, 'Indigenous disadvantage: assessing policy impacts', Speech, *Pursuing Opportunity and Prosperity conference,* Melbourne, 13 November 2003, pp1-2, available online from: www.pc.gov.au. Emphasis added.

50 *Overcoming Indigenous disadvantage*, pp1.1, 1.2.

51 *ibid*, p2.4. The Steering Committee notes that these outcomes were widely supported by Indigenous peoples during their consultations on the draft framework.

52 *ibid*, p2.2.

of this Report seeks to facilitate interaction between sectors and between governments on programs that are delivered to Indigenous people. Furthermore, it can assist agencies to consider how they can strategically develop programs which have the capacity to deliver outcomes outside of their traditional sphere of action.[53]

A recurring theme of the framework is acknowledgement that areas such as health, education, employment, housing, crime and so on are inextricably linked. Disadvantage or involvement in any of these areas can have serious impacts on other areas of well-being. Acknowledgement of, and action based on, these interconnections is therefore critical in assisting COAG to inform policy development with respect to Indigenous peoples.

Second, the framework is premised on a realisation that there are a range of causative factors for Indigenous disadvantage. This necessitates reporting on progress in addressing both the larger, cumulative indicators (such as life expectancy, unemployment and contact with criminal justice processes) which reflect the consequences of a number of contributing factors, as well as identifying progress in improving these smaller, more individualised factors.

To reflect these strategic considerations, the framework seeks to present progress in addressing Indigenous disadvantage at two levels. The first level is a series of twelve 'headline indicators' that provide a snapshot of the overall state of Indigenous disadvantage. The twelve indicators are:

- Life expectancy at birth;
- Rates of disability and/or core activity restriction;
- Years 10 and 12 retention and attainment;
- Labour force participation and unemployment;
- Household and individual income;
- Home ownership;
- Suicide and self-harm;
- Substantiated child protection notifications;
- Deaths from homicide and hospitalisations for assault;
- Victim rates for crime; and
- Imprisonment and juvenile detention rates.

These 'headline indicators' are measures of the major social and economic factors that need to be improved if COAG's vision of an improved standard of living for Indigenous peoples is to become reality. But as the Chairman of the Steering Committee notes, these headline indicators:

reflect desired longer term outcomes and therefore are themselves only likely to change gradually. Because most of the measures are at such a high level and have long lead times (eg life expectancy) they do not provide a sufficient focus for policy action and are only blunt indicators of policy performance.

Indeed, reporting at the 'headline' level alone can make the policy challenges appear overwhelming. The problems observed at this level are generally the end result of a chain of contributing factors, some of which may be of long standing. These causal factors almost never fall

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53   *ibid*, p2.1.

neatly within the purview of a single agency of government, or indeed a single government.[54]

Hence, the Steering Committee has devised a second level of reporting which breaks down these broader, longer term measures. The Committee has identified seven 'strategic areas for action' and a number of supporting 'strategic change indicators' to measure progress in these. The particular areas and change indicators have been chosen for their 'potential to respond to policy action within the shorter term… (and to indicate) intermediate measures of progress'[55] while also having the potential in the longer term to contribute to improvements in overall Indigenous disadvantage (as reflected through the 'headline indicators').[56] The seven strategic areas and related indicators are set out in the following table.

Table 1: COAG Overcoming Disadvantage framework:
Strategic areas for action and strategic change indicators[57]

Strategic areas for action	Strategic change indicators
1. Early child development and growth (prenatal to age 3)	• Infant mortality • Birth weight • Hearing impediments
2. Early school engagement and performance (preschool to year 3)	• Preschool and school attendance • Year 3 literacy and numeracy • Primary school children with dental caries
3. Positive childhood and transition to adulthood	• Years 5 and 7 literacy and numeracy • Retention at year 9 • Indigenous cultural studies in school curriculum and involvement of Indigenous people in development and delivery of Indigenous studies • Participation in organised sport, arts or community group activities • Juvenile diversions as a proportion of all juvenile offenders • Transition from school to work
4. Substance use and misuse	• Alcohol and tobacco consumption • Alcohol related crime and hospital statistics • Drug and other substance use

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54   Banks, G, *op.cit*, p3.
55   *ibid.*
56   For a more detailed overview of the rationale for choosing each strategic area and the change indicators underneath these, see: *Overcoming Indigenous Disadvantage*, pp2.6-2.10
57   *ibid*, p2.5.

5. Functional and resilient families and communities	• Children on long term care and protection orders • Repeat offending • Access to the nearest health professional • Proportion of indigenous people with access to their traditional lands
6. Effective environmental health systems	• Rates of diseases associated with poor environmental health (including water and food borne diseases, trachoma, tuberculosis and rheumatic heart disease) • Access to clean water and functional sewerage • Overcrowding in housing
7. Economic participation and development	• Employment (full-time/part-time) by sector (public/private), industry and occupation • CDEP participation • Long term unemployment • Self employment • Indigenous owned or controlled land • Accredited training in leadership, finance or management • Case studies in governance arrangements

The Steering Committee published its first report against this framework, titled *Overcoming Indigenous Disadvantage – Key Indicators 2003*, in November 2003. The report confirms that Indigenous disadvantage is broadly based, with major disparities between Indigenous and other Australian in most areas. As the Chairman of the Steering Committee has commented on the findings of the report:

> [The report] confirms the pervasiveness of Indigenous disadvantage. It is distressingly apparent that many years of policy effort have not delivered desired outcomes; indeed in some important respects the circumstances of Indigenous people appear to have deteriorated or regressed. Worse than that, outcomes in the strategic areas identified as critical to overcoming disadvantage in the long term remain well short of what is needed.[58]

The presentation of information within the strategic areas also highlights the inter-related nature of the challenges faced in improving Indigenous well-being. As the Chairman of the Committee notes, 'in the three strategic areas that focus on young Indigenous people, the potential for cumulative disadvantage is plain to see'.[59] The presentation of what are generally well known statistics in this way under the strategic areas of action 'are not rocket science'[60] but the ability

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58   Banks, G, *op.cit*, p9.
59   *ibid*, p5.
60   *ibid*, p3.

to highlight cumulative disadvantage factors is a significant breakthrough which should assist policy making in relation to Indigenous peoples.

There are, however, two main issues relating to the framework which have a bearing on how influential it will be in promoting change to policy and program approaches by governments and ultimately in improving the well-being of Indigenous peoples.

First, a critical issue for the reporting framework is the availability of adequate and regular data. The *Social Justice Report 2000* identified limitations in data collection as a critical problem that must be addressed in order to ensure government accountability for progress towards reconciliation.[61] This has been an issue that the Steering Committee has had to grapple with in establishing the framework and in reporting against it.

The Committee has noted that the existence of data sets or ease of developing them was a practical consideration that influenced the choice of indicators in the framework:

> In many cases, the selected indicators are a compromise, due not only to the absence of data, but also to the unlikelihood of any data becoming available in the foreseeable future… In some cases, however, an indicator has been included even when the data are not available on a national basis, or are substantially qualified. These are indicators where there is some likelihood that data quality and availability will improve over time. In two cases where there were no reliable data available, the indicators were nevertheless considered to be so important that qualitative indicators have been included in the report.[62]

In reporting against each of the headline indicators and strategic change indicators in the first report, the Steering Committee has noted limitations in data availability and quality. Each chapter of the report contains a section titled 'future directions in data' which notes current developments which will contribute to addressing the difficulties in data availability and quality in future years, and how exactly specific initiatives will do this. It also identifies major deficiencies and areas where there is an urgent and outstanding need for improved statistical collection methods.[63]

I envisage that in future years the Committee is also going to face additional issues relating to the regularity of data availability and hence the ability to report progress over time. In this regard, I have previously recommended that the Indigenous General Social Survey (IGSS) should be conducted on a triennial basis, alongside the General Social Survey, to ensure the regularity of comparable data on the unique issues covered in that survey. Currently, the IGSS is intended to occur every 6 years, with the results of the first IGSS conducted in 2002 due to be released in early 2004.

On the positive side, it was announced in the federal budget for 2003 that a national longitudinal study on Indigenous children will be conducted. This study will track the development of 4,000 Indigenous children over a nine year period

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61   *Social Justice Report 2000*, pp96-100 and recommendations 6-10, pp131-32.
62   *Overcoming Indigenous disadvantage,* p2.9.
63   For a summary of these see the overview of the report: *ibid*, pLII.

and will be a rich source of ongoing data for the Steering Committee. The study, however, is not due to commence until at least 2005 in order for extensive consultations to be conducted with Indigenous peoples and communities prior to its introduction.

There may also be issues in future years relating to the ability to disaggregate available data from the national and state or territory level, down to a regional level.

It is critical that the recommendations and suggestions of the Steering Committee in relation to improved data collection are addressed as a matter of urgency in order to ensure that the reporting framework is able to fully realise its potential and to be viable into the longer term. As the Chairman of the Steering Committee notes:

> [the] immediate contribution [of the report] is constrained by serious gaps and deficiencies in data. For example, we know that hearing impediments in young children can seriously undermine their ability to succeed at school, yet we have little basis for knowing whether this problem is getting better or worse. We know that attendance at school is critical to lifelong achievement, but we have inadequate data to monitor it. Substance abuse is blighting young lives, but we have little systematic information on it. Data on the extent of disabilities among Indigenous people is almost non-existent. The Review documents these and a range of other data priorities that will need to be addressed if the Report is to realise its potential and meet COAG's needs.[64]

In producing this report I am mandated to make recommendations on actions which should be taken to secure the enjoyment and exercise of the rights of Indigenous peoples. In light of the crucial nature of this issue, I have chosen to make the following recommendation about improving data collection in the context of the Steering Committee's report.

Recommendation 1 on reconciliation: Data collection

1. That the federal government request the Australian Bureau of Statistics (ABS) to provide to COAG information on the actions that need to be taken in order to improve Indigenous data collection. The ABS should respond to the suggestions made by the Steering Committee for the Review of Government Service Delivery in the *Overcoming Indigenous Disadvantage Report 2003,* as well as identify actions that they consider necessary to ensure the availability of relevant data on a regular basis. In providing this information, the ABS should:

    *   identify those issues that could be addressed through improve-ments to its existing data collection processes, as well as those issues which would require additional one-off funding allocations and those issues which would require additional recurrent funding from the federal government or COAG;

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64   Banks, G, *op.cit*, pp9-10.

- estimate the cost of any additional one-off and recurrent funding needs, including the cost of conducting the Indigenous General Social Survey on a triennial basis; and
- consult with the Steering Committee for the Review of Government Services, the Aboriginal and Torres Strait Islander Commission, and other relevant agencies.

The second main issue that impacts on the potential of the Steering Committee's report is how it is incorporated into policy design and programmes across governments and between government departments. As the Chairman of the Steering Committee notes:

> The Report's contribution to this important national endeavour is essentially *informational*. It does not (and cannot) in itself provide policy answers. But it can (and hopefully will) help governments and Indigenous people to identify where programs need to deliver results, and to assess whether they are succeeding. For it to be effective in this, it will be important that governments integrate elements of the reporting framework into their policy development and evaluation processes.[65]

This is the most critical issue relating to the report – ultimately it does not matter how refined the statistics that are reported are if the report is not utilised by governments to inform and change the way they go about delivering services to Indigenous peoples.

In the *Social Justice Report 2002,* I expressed the concern that the Steering Committee's framework 'currently exists in isolation from any other form of performance monitoring, particularly on identifying progress on important goals such as capacity building and governance reform, as well as identifying the unmet need and accordingly whether policy approaches are moving forward or in fact regressing'.[66] If the reporting framework is not integrated into policy development then the Steering Committee's report risks becoming, in the words of the Chairman of the Steering Committee, 'an annual misery index'[67] which simply reminds us on an annual basis of continuing Indigenous disadvantage without action to change this situation.

At this stage, it is not clear how the report will inform policy development and how governments will use the report to review their approach to Indigenous issues. This is in part because COAG has not yet formally considered and responded to the first report of the Steering Committee. It is anticipated that further guidance will be provided when COAG next meets.

It is clear, however, that the other two main activities of COAG relating to reconciliation have a vital role to play in drawing lessons from the reporting framework and connecting the framework to day to day policy development processes. As the Chairman of the Steering Committee has noted:

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65   *ibid*, p9.
66   *Social Justice Report 2002*, p133.
67   *ibid*, p130.

One important national vehicle for this is the Action Plans that are being developed by Ministerial Councils in such areas as health, education, employment, justice and small business. The whole-of-government, outcomes orientation of the framework also complements the coordinated service delivery trials in eight different regions across Australia that was initiated by COAG.[68]

It is notable that when developing the framework for reporting it was debated whether there should be a third level of indicators added to the framework which could report on service delivery. Ultimately, this was seen as a role for the Ministerial Council action plans, which are intended to link service delivery with the reporting framework. These action plans form the vital link in drawing lessons from the reporting framework. Progress in developing these action plans is discussed in the next section of this report.

Overall, as I noted in the *Social Justice Report 2002*, the Steering Committee's framework is a 'significant institutional development in measuring progress for Indigenous peoples' and the 'only positive form of monitoring and evaluation that the Government has provided for practical reconciliation'.[69]

The endorsement of the framework by COAG in August 2003 and the production of the first report by the Steering Committee in November 2003 are both substantial achievements. And as the Chairman of the Steering Committee has stated, one of the most significant contributions of the reporting framework is that it 'challenges us to do better. It also vindicates COAG's decision to give new impetus to the development and coordination of Indigenous policies and programs'.[70]

ii) Developing Ministerial Council action plans and benchmarks

The COAG Communiqué on reconciliation of 3 November 2000 commits to an integrated framework for addressing Indigenous disadvantage. As the former Minister for Immigration and Multicultural and Indigenous Affairs notes:

Under the aegis of the Framework to Advance Reconciliation agreed by the Council of Australian Government s(COAG) in November 2000, all Australian governments are collectively establishing a comprehensive regime of performance monitoring and reporting that supports (the government's) overarching performance benchmark and objective of... a society where Aboriginal and Torres Strait Islander peoples enjoy comparable standards of social and economic wellbeing to those of the wider community, especially in the areas of education, health, employment, and law and justice, while maintaining their unique cultural identities…

This regime has two key elements:

• a regular national report on Indigenous disadvantage; and
• a series of sectoral performance monitoring strategies and benchmarks oversighted by the responsible Commonwealth/State Ministerial Council.

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68   Banks, G, *op.cit*, p9.
69   *Social Justice Report 2002*, pp132-33.
70   Banks, G, *op.cit*, p9.

> The purpose of this regime is to enable governments, community organisations, indigenous people and other Australians to monitor progress of the nation in overcoming Indigenous disadvantage. The regime is still in its development phase and the government anticipates that it will be firmly in place by the third quarter in 2003.[71]

Each Ministerial Council is to develop action plans, performance reporting strategies and benchmarks for addressing Indigenous disadvantage. In its action plan, the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA) resolved to review all of the other Ministerial Council action plans, performance reporting strategies and benchmarks in order to identify gaps to COAG and comment on those gaps.[72] Progress under the action plans would then be regularly reviewed by COAG.

The COAG communiqué of 5 April 2002 admits that progress by the Ministerial Councils in developing action plans and benchmarks in the year and a half after this commitment was made has been 'slower than expected'.[73] The communiqué indicates that COAG will continue to review progress and that a report on the state of the action plans would be submitted by MCATSIA to COAG for consideration no later than the end of 2003.

In his submission to the Senate Legal and Constitutional References Committee inquiry into national progress towards reconciliation, the Minister for Immigration and Multicultural and Indigenous Affairs noted that MCATSIA had provided its initial report of comments on the action plans to the Prime Minister (in his role as the Chair of COAG) in June 2003.[74] At the time of writing, MCATSIA's report had not been made public and a number of action plans were still not finalised. It has now been three years since COAG agreed to the production of these action plans and benchmarks.

The federal government noted in November 2002 that:

> Already a number of Ministerial Councils have performance monitoring strategies and benchmarks in place. A leading example is the annual performance report against the Aboriginal and Torres Strait Islander health indicators. Other ministerial councils also have specific data agreements that will support the development of performance monitoring strategies and benchmarks.[75]

The government noted that the following Ministerial Councils have, or had prior to COAG's decision in 2000, developed action plans:

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71   Minister for Immigration and Multicultural and Indigenous Affairs, *Submission – Senate Legal and Constitution References Committee Inquiry into national progress towards reconciliation,* 26 November 2002, p10.

72   Council of Australian Governments, *Communiqué*, COAG, Canberra, 5 April 2002, p18 (contained in Attachment 1: COAG Reconciliation Framework – Report on progress in 2001).

73   *ibid*, p4.

74   Senate Legal and Constitutional References Committee, *Reconciliation: Off track*, Parliament of Australia, Canberra 2003, p75.

75   Minister for Immigration and Multicultural and Indigenous Affairs, *Submission – Senate Legal and Constitution References Committee Inquiry into national progress towards reconciliation, op.cit,* p12.

- Community Services Ministers Conference;
- Ministerial Council on Mineral and Petroleum Resources;
- Australian Transport Council;
- Sport and Recreation Ministerial Council;
- Standing Committee of Attorneys-General;
- The Online Council;
- Primary Industries Ministerial Council;
- Ministerial Council for Education, Employment, Training and Youth Affairs;
- Australian Health Ministers Conference;
- Cultural Ministers Conference;
- Housing Ministers Conference; and
- Small Business Ministerial Council.[76]

Examples of Ministerial Council action plans, performance reporting strategies and benchmarks include the following:

■ *Community services and juvenile justice:* The central aspect of the community services action plan is the National Aboriginal and Torres Strait Islander Community Services Information Plan. This implements the report *Principles and Standards for Community Services Indigenous Population Data* and aims to improve data collection across this sector, with a key focus on child protection and welfare, juvenile justice, the Supported Accommodation Assistance Scheme and agencies funded under the Commonwealth/State Disability Agreement.

■ *Housing:* In 2001, state and territory Housing Ministers and relevant federal Ministers committed to new directions in housing through *Building a better future: Indigenous Housing to 2010*.[77] An agreement on national housing information was also signed by all jurisdictions in 1999. All jurisdictions have agreed to a performance monitoring system through improving the availability of reliable data; developing reporting systems which will enable performance appraisal at the national, state/territory and regional levels; and reporting annually to relevant ministers at the federal and state/territory level against outcomes identified in *Building a better future*. A reporting framework has also been developed by ATSIC and the Department of Family and Community Services to facilitate this performance reporting.

■ *Employment:* Indigenous specific employment data is collected at the federal level. Quarterly reports of outcomes data are published by the Department of Workplace Relations.

■ *Justice related areas:* The Standing Committee of Attorneys-General have agreed to performance indicators in five areas, namely prevent crime and community safety; improve access to justice related services; improved access to bail; improved access to diversionary schemes; and enhanced participation of Indigenous peoples in justice administration systems.

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76   *ibid*, p13.
77   Available online at: www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/ community_indig_housing_2010.htm.

Chapter 2

- *Health:* Processes have been in place since 1998 for reporting on national performance indicators, although 'data required to report on some indicators are either unavailable, of poor quality, or require substantial development'.[78] Indigenous health care agreements with the states and the Commonwealth/State Australian Health Care Agreements also have requirements relating to data collection. The *National Strategic Framework for Aboriginal and Torres Strait Islander Health* was endorsed by health ministers in July 2003. It includes reporting on three 'key result areas' which relate largely to reforming the structure of the health system to increase its accessibility to Indigenous people.

- *Education:* The Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) has agreed on national performance indicators for all students (not just Indigenous). The main measures are national literacy and numeracy benchmarks for years 3 and 5 (with benchmarks for year 7 still under development). The objective is that all students meet the standards. Under the National Aboriginal and Torres Strait Islander Education Policy (NATSIEP), all governments have made commitments 'to bring about equity in education for Indigenous Australians'.[79] The main goals of the policy are improved Indigenous participation in educational decision-making; equality of access to education services; equity of educational participation; and equitable and appropriate educational outcomes. These goals are enshrined in the *Indigenous Education (Targeted Assistance) Act 2000* (Cth).

  One of the main federal programs under the NATSEIP is the Indigenous Education Strategic Initiatives Programme (IESIP). IESIP funding is provided on a quadrennial basis and States/Territories are required to acquit the spending of IESIP funds against negotiated indicators which include numeracy and literacy, Indigenous workforce, retention rates and attrition. Service providers are required to submit annual reports against annual targets. This information is tabled, along with progress in addressing other performance indicators, in Parliament through the *National Report to Parliament on Indigenous Education and Training* by the federal Department of Education Science and Training. The first report was tabled in 2002. Programs under the IESIP, such as the National Indigenous English Literacy and Numeracy Strategy, also have targets for improving literacy and numeracy rates of Indigenous people to levels comparable to other Australians.[80]

The federal government admits that these action plans 'vary in their sophistication'.[81] In fact, many of these action plans are rudimentary in scope

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78 Minister for Immigration and Multicultural and Indigenous Affairs, *Submission – Senate Legal and Constitution References Committee Inquiry into national progress towards reconciliation, op.cit,* p15.
79 Department of Education, Science and Training, *National Report to Parliament on Indigenous Education and Training 2001*, DEST, Canberra 2002, p2.
80 See: www.dest.gov.au/schools/indigenous/nielns.htm.
81 Minister for Immigration and Multicultural and Indigenous Affairs, *Submission – Senate Legal and Constitution References Committee Inquiry into national progress towards reconciliation, op.cit,* p12. For details of a number of these action plans see: *ibid*, pp13-17.

and deal almost exclusively with data collection and performance monitoring issues. Very few have any benchmarks or targets.

The Council for Aboriginal Reconciliation defined a 'benchmark' as 'an agreed standard or target that reflects the community aspirations that either have been met or are desirable to be met'.[82]

Benchmarking is a critical aspect of ensuring human rights compliance and accountability. This is in accordance with the guiding principle of 'progressive realisation' under international human rights law (and as reflected in the *International Covenant on Economic, Social and Cultural Rights)*. The Office of the High Commissioner for Human Rights and United Nations Development Programme has explained this obligation as follows:

> The idea of progressive realization has two major strategic implications. First, it allows for a time dimension in the strategy for human rights fulfilment by recognizing that full realization of human rights may have to occur in a progressive manner over a period of time. Second, it allows for setting priorities among different rights at any point in time since the constraint of resources may not permit a strategy to pursue all rights simultaneously with equal vigour…

> The recognition of a time dimension is accompanied by certain conditions aimed at ensuring that the State does not take it as a licence either to defer or to relax the efforts needed to realize human rights. In particular, the State is required to do the following.

> First, the State must acknowledge that with a serious commitment to poverty reduction it may be possible to make rapid progress towards the realization of many human rights even within the existing resource constraint… Second, to the extent that the realization of human rights may be contingent on a gradual expansion in the availability of resources, the State must begin immediately to take steps to fulfil the rights as expeditiously as possible by developing and implementing a time-bound plan of action. The plan must spell out when and how the State hopes to arrive at the realization of rights.

> Third, the plan must include a series of intermediate – preferably annual – targets. As the realization of human rights may take some considerable time, possibly extending well beyond the immediate term of a Government in power, it is with regard to these intermediate targets (or benchmarks) rather than the final target of full realization that the State will have to be held accountable.

> Fourth, as a prerequisite of setting targets, the State will have to identify some indicators in terms of which targets will be set... Realistic time-bound targets will have to be set in relation to each indicator so as to serve as benchmarks.[83]

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82   Council for Aboriginal Reconciliation, *Towards a benchmarking framework for service delivery to Indigenous Australians*, CAR and Centre for Aboriginal Economic Policy Research, Canberra 1998, p16.

83   United Nations High Commissioner for Human Rights and United Nations Development Programme, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*, OHCHR, Geneva 2002, Guideline 4, pp14-15. See also: *Social Justice Report 2002,* Chapter 4; *Social Justice Report 2000*, Chapter 4.

The *Social Justice Report 2000* described the key attributes of a benchmark as that it is:

- specific, time bound and verifiable;
- set with the participation of the people whose rights are affected, to agree on what is an adequate rate of progress and to prevent the target from being set too low; and
- re-assessed independently at their target date, with accountability for performance.[84]

In relation to benchmarking, the Council for Aboriginal Reconciliation's national strategy to overcome Indigenous disadvantage also recommended that governments and ATSIC:

- set national, state, territory and regional outcomes and output benchmarks that are measurable, include time-lines and are agreed in partnership with Indigenous peoples and communities;
- ensure that they have appropriate methods to enable accurate and consistent output and outcome reporting for mainstream and Indigenous specific programs; and
- publicly and annually present an outputs and outcomes based report to their parliaments, on a whole-of-government basis, against these agreed benchmarks.[85]

Even the most sophisticated of these action plans, in education, does not meet the attributes necessary for adequate benchmarking. Like the Steering Committee's framework, a target of statistical equality between Indigenous and non-Indigenous Australians can be implied into some of these action plans. But the establishment of benchmarks requires more than the identification of this ultimate goal. It requires an identification of an agreed rate of progress towards this goal, within a short, medium and longer term context, and an evaluation of issues relating to the prioritisation, resourcing and re-engineering of programs and services that will be needed in order to achieve this. The action plans and strategies adopted at the inter-governmental level to date do not contain critical elements for benchmarking.

The absence of appropriate benchmarks is perhaps the most significant failure of governments in implementing practical reconciliation since the year 2000. On this basis, I make the following recommendations to improve government accountability for reconciliation.

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84 *Social Justice Report 2000*, p97; quoting the United Nations Development Programme's *Human Development Report 2000*.
85 Council for Aboriginal Reconciliation, *Overcoming disadvantage*, as quoted in *Social Justice Report 2000*, p99.

Recommendations 2-5 on Reconciliation:
Ministerial Council Action Plans

2.   That the federal government, through its leadership role in the Council of Australian Governments, ensure that all Commonwealth/State Ministerial Councils finalise action plans on addressing Indigenous disadvantage and reconciliation by 30 June 2004. These action plans must contain benchmarks, with specific timeframes (covering short, medium and long term objectives) for their realisation. Where appropriate, these benchmarks should correlate with the strategic change indicators and headline indicators reported annually by the Steering Committee for the Provision of Government Services.

3.   That the federal government, through its leadership role in the Council of Australian Governments, request the Aboriginal and Torres Strait Islander Commission (ATSIC) to advise COAG whether it endorses these action plans and the benchmarks contained within, following consultations through its Regional Councils. ATSIC should be required to advise COAG of its endorsement or any concerns about the action plans within a maximum period of six months after being furnished with the action plans.

4.   That the federal government ensure that all Commonwealth/State Ministerial Council Action Plans are made publicly available as a compendium of national commitments to overcoming Indigenous disadvantage.

5.   That COAG publicly report on progress in meeting the benchmarks contained in each Commonwealth/State Ministerial Council Action Plan on an annual basis.

iii) The COAG whole-of-government community trials

In its communiqué of 5 April 2002, COAG agreed to trial a whole-of-government cooperative approach in up to ten communities or regions of Australia. It was subsequently decided that there will be eight trial sites, one in each state or territory of Australia. The eight trial sites are:

- Murdi Paaki region (New South Wales);
- Wadeye (Northern Territory);
- Shepparton (Victoria);
- Cape York (Queensland);
- Anangu Pitjantjatjara Lands (South Australia);
- Northern Tasmania;
- East Kimberley region (Western Australia); and
- The Australian Capital Territory.

Appendix 2 of this report provides a detailed overview of the trials, the mechanisms that have been put into place for inter-agency and inter-governmental coordination, monitoring and evaluation mechanisms for the trials, as well as progress in each of the trial sites.

The COAG Communiqué of April 2002 recognised that outcomes and management processes in Indigenous policy and service delivery need to be improved. The COAG initiative is intended to trial a different approach as current and past approaches have not achieved the desired outcomes. As the Indigenous Communities Coordination Taskforce notes:

> Many people are saying that the relationship between the community and the governments has got to change. It is clear that some of the ways that governments and communities approach their responsibilities needs to be done differently if we are going to move forward together.
>
> Recently, Commonwealth and State and Territory governments have agreed to improve their approach. They have agreed to work together…. And they have agreed to work in partnership with Indigenous communities to support them find and manage sustainable solutions to local problems. This means government have agreed to learn new ways of doing business with Indigenous communities.[86]

It is intended that the trials will be flexible in approach in order to reflect the specific needs of each community trial site, to build on existing initiatives and to improve the compatibility of the approaches currently undertaken by the federal and state or territory governments in order to achieve better outcomes. COAG will be looking for transferable outcomes from the trials, to be applied more broadly in service delivery to Indigenous peoples.[87]

The objectives of the COAG trials are to:

- tailor government action to identified community needs and aspirations;
- coordinate government programmes and services where this will improve service delivery outcomes;
- encourage innovative approaches traversing new territory;
- cut through blockages and red tape to resolve issues quickly;
- work with Indigenous communities to build the capacity of people in those communities to negotiate as genuine partners with government;
- negotiate agreed outcomes, benchmarks for measuring progress and management of responsibilities for achieving those outcomes with the relevant people in Indigenous communities; and
- build the capacity of government employees to be able to meet the challenges of working in this new way with Indigenous communities.[88]

It is anticipated that the trials will encourage governments to modify the way they conduct their program and service delivery responsibilities, including by

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86 Indigenous Communities Coordination Taskforce, *Towards better outcomes for Indigenous Australians*, DIMIA Canberra 2003, www.icc.gov.au/publications?MySourceSession =6c119361b7d1a3a6cffc8b581a0eba82, accessed 15 November 2003.
87 Council of Australian Governments, *Communiqué*, 5 April 2002, www.pmc.gov.au/docs/coag050402.cfm, accessed 12 December 2003.
88 Indigenous Communities Coordination Taskforce, *Trial Objectives*, online at: www.icc.gov.au/communities/objectives/, (29 October 2003).

encouraging the pooling of funding, breaking down internal administrative barriers and improving the way government manages and awards contracts.[89]

Overall, the broader policy context for the COAG trials is the federal government's emphasis on mutual obligation and the responsibility of all players (government, communities, families and individuals) to address issues of social and economic participation. It is a continuation of the approach adopted by the government in its welfare reform package as well as through practical reconciliation.[90]

The philosophy that underpins the trials is 'shared responsibility – shared future'. The ICCT has stated that the 'Shared Responsibility approach will involve communities negotiating as equal parties with government'[91] and asserts that the wellbeing of Indigenous communities is shared by individuals, families, communities and government. All parties must work together and build their capacity to support a different approach for the economic, social and cultural development of Indigenous peoples. This partnership approach is formalised in each trial site through the negotiation of a *Shared Responsibility Agreement* (SRA) between governments and Indigenous peoples.

The Minister for Immigration, Multicultural and Indigenous Affairs has overall federal responsibility for the trials. A federal government department is also identified for each trial site to lead the federal government's involvement in that particular trial. It is then responsible for coordinating all federal government input into the trial. The involvement of state and territory governments is generally coordinated through the departments of the premier or chief minister. Senior state and territory government officials meet through the COAG processes every six months.

Federal government involvement in the trial is also coordinated through three main processes. First, meetings are held every three to four months by federal Ministers with program responsibilities for Indigenous affairs. Second, monthly meetings are held of federal government departmental secretaries (the Secretaries Group). Third, a coordinating taskforce (known as the Indigenous Communities Coordination Taskforce or ICCT) has been established, located within the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) to implement the directives of these groups. The ICCT is comprised of senior officers seconded from each of the government departments participating in the trials.

As demonstrated by the descriptions of current progress in the eight trial sites in Appendix 2, there are significant differences between the selected sites. These differences include the location of the trials (across urban, regional and remote areas), the representative structures for involvement of Indigenous peoples and communities (varying from heavy involvement of ATSIC Regional Council

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89 Indigenous Communities Coordination Taskforce, *Imagine What Could Happen if we Worked Together: Shared Responsibility and a Whole of Governments Approach,* Conference Paper – The Native Title Conference, Alice Springs, 3 June 2003, www.aiatsis.gov.au/rsrch/ntru/ conf2003/papers/hawgood.pdf, 24 December 2003.

90 For a detailed evaluation of mutual obligation in an Indigenous context see: *Social Justice Report 2001,* Chapters 2 and 3.

91 Hawgood, D, *Hansard – House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs*, 13 October 2003, p1294.

structures through to traditional governance models), and the priority areas for action identified in each site.

While the trials remain in the preliminary stages of development, rapid progress has been made during 2003. At this initial stage, this progress has involved the selection of appropriate trial sites and consultations with Indigenous communities in those sites to determine their willingness to participate in the trials and the key issues that the trials will focus on. For three of the sites, Shared Responsibility Agreements have also been finalised.

In meetings and correspondence about the trials, I have noticed an air of enthusiasm and optimism among government departments about the potential of the trials. Government departments are embracing the challenge to re-learn how to interact with and deliver services to Indigenous peoples. There are no illusions among government departments that the trials are as much about building the capacity of governments as they are about building the capacity of Indigenous communities.

Through the active involvement of Ministers and secretaries of federal departments in the trials, a clear message is being sent through mainstream federal departments that these trials matter and that government is serious about improving outcomes for Indigenous peoples. Even at this preliminary stage, this is a significant achievement for the trials. ATSIC have stated that to date 'there has been clear success through improved relationships across governments at trial sites'.[92]

Governments have not turned up in Indigenous communities with pre-determined priorities and approaches. This has been of great symbolic value. The ICCT has noted that much of the initial stages have involved building up trust between governments and Indigenous peoples. This has in turn had an impact on relationships within Indigenous communities in some of the trial sites, with an increased focus from Indigenous communities on organising themselves in ways that facilitate dialogue with governments.[93]

It is too early to determine whether the trials will have a positive impact in improving government service delivery to communities in each trial region in the longer term or whether transferable lessons will be learnt which are able to more broadly benefit other Indigenous communities. At this stage, I have the following observations and concerns about the conduct of the trials and their potential.

First, it appears that the Indigenous Communities Coordination Taskforce is inadequately funded and supported to complete its ever-expanding role in coordinating federal government involvement in the trials.

As the trials have progressed, the ICCT has become an integral, indeed the central, coordinating agency for the trials. While the day to day operation of governmental activities in each of the trial sites is the responsibility of the respective lead federal government agencies, the ICCT has taken on a vital role in oversighting developments in each trial. This has allowed lessons from

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92   Quartermaine, L, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner on COAG trials*, 15 January 2004, p4.
93   Discussions with ICCT, November 2003.

individual trial sites to be applied to other trial sites and ensured a level of consistency in the approach of different federal agencies to the trials.

Examples of how the ICCT has fulfilled this role is the development of a template Shared Responsibility Agreement from which negotiations can commence in each trial site (and be customised to local circumstances), the development of a information database on the indicators for each trial, and a performance and monitoring framework for the trials. The role of the ICCT continues to evolve, and expand, as the trials develop.

At present, the federal government appears to be equivocal as to the longer term future of the ICCT. It is not clear that the ICCT will exist for the full five years of the trials and if it does, in what form.

This uncertainty is compounded by the recommendations of the report of the ATSIC Review team. While the review does not explicitly consider the role of the ICCT, it recommends that the Office of Aboriginal and Torres Strait Islander Affairs (currently located within DIMIA) be replaced by a small office within the Department of Prime Minister and Cabinet to provide a whole-of-government approach to Indigenous issues.[94] The proposed roles of this group would include progressing COAG initiatives, achieving the cooperation of all spheres of government in addressing Indigenous needs and achieving whole-of-government approaches to addressing Indigenous needs.[95] These are roles that the ICCT fulfils specifically in relation to the COAG trials. It is not clear whether implementation of this recommendation would involve disbanding or substituting the role of the ICCT.

Related to this uncertainty in the future of the ICCT for the full five year period are uncertainties in staffing of the ICCT. It is my clear impression that the ICCT is understaffed to complete the large task that it has been set. In part this is because the role of the ICCT has evolved and expanded as the trials have developed. It is understandable that no one envisaged the full extent of the resources required to implement the trials, nor the central role that the ICCT would assume in the trials.

There is a clear need for the Commonwealth to commit to the existence of the ICCT for the full five years of the COAG trials and to increase staffing levels to ensure that the ICCT is able to be fully responsive and continue to make high quality contributions to the COAG trials. I note that, currently, officers are placed in the ICCT's Secretariat from a variety of federal departments who are participating in the trials. The costs of these officers are met by the participating departments as a contribution to the trials. It is feasible that the cost of expanding the number of staff on the ICCT, perhaps by doubling it, could easily be absorbed within existing departmental budgets.

From discussions with the ICCT, it was noted that despite the eight trial sites having already been announced, they continue to receive requests from other departments as to whether there will be an expansion of the trials beyond the eight sites or for assistance and advice in new initiatives that these departments

94 Hannaford, J, Huggins, J and Collins, B, *In the hands of the regions – A new ATSIC. Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra 2003, Recommendation 32, p55.
95 *ibid*, p51.

are considering. An increased staffing capacity would contribute greatly to the ability of the ICCT to provide advice and assistance more generally on approaches to improving government coordination across government. The cost of this increased capacity would be insubstantial, particularly in light of the potential for transferring the lessons learnt from the trials more broadly across government.

It is also notable that there is no coordinating taskforce similar to the ICCT for coordinating state and territory involvement in the trials. In part this is a reflection of the fact that there is only one trial in each state or territory and hence that each government is not involved in more than one trial. State and territory involvement in the trials could, however, benefit from a regular forum of departmental officials across trial sites to share experiences, best practice and to trouble shoot. The existing processes for involving state officials – i.e., meetings of heads of state departments ahead of COAG meetings, and through the Ministerial Council of Aboriginal and Torres Strait Islander Affairs – are held at an extremely high level and do not engage officers engaged in the trials on a day to day basis. Consideration should be given to mechanisms to facilitate such exchange between state and territory governments based on the success of the ICCT in coordinating federal government involvement.

On the basis of these concerns, I make the following recommendations.

Recommendations 6-7 on reconciliation: COAG Whole-of-government community trials

6.   That the federal government, through the Department of Immigration, Multicultural and Indigenous Affairs, commit to the existence of the Indigenous Communities Coordination Taskforce for a minimum of the five year duration of the COAG whole-of-government community trials and accordingly commit resources to the Taskforce until 2007.

7.   That federal government departments participating in the COAG whole-of-government trials increase their staffing commitments to the Indigenous Communities Coordination Taskforce by placing additional officers in the Taskforce's Secretariat.

Second, there are concerns relating to the use of the Flexible Funding Pool that has been established to support the trials. This Funding Pool consists of $3million for each of the 2003-04 and 2004-05 years. The ICCT have explained the purpose of this funding pool as follows:

> The idea of this flexible funding pool was that it would only be a short term mechanism to kick-start some whole-of-government activity on the basis that the whole-of-government or joined-up activity had to come from mainstream and big Indigenous specific programs already in operation. The government was not trying to create a superficial mechanism to take the place of joining up existing programs and services… The trials were not about new money. The COAG decision

was actually more about more effective use of existing government expenditure.[96]

There is no commitment to any funding pool for the final two years of the trials. The ICCT expects that funding will ultimately be provided in 'a more informal way'[97] through the joining up of existing programs and changes to program approaches. This is an important goal for the trials and a way of ensuring that the outcomes of the trials are sustainable and able to be more broadly applied to other Indigenous communities. There will, however, need to be close attention paid in the implementation of the trials to the reality of this goal and a degree of flexibility from the government to allocate funding to the ICCT for the final two years of the trials should such funding ultimately prove necessary.

ATSIC has expressed concern about how funding from this Funding Pool is allocated.[98] They state:

> Generally, proposals to use the Flexible Funding Pool [FFP] are developed by Lead Agencies and should be consistent with the relevant Regional Council plan. However, concerns remain regarding the manner in which the requirement for FFP proposals take account of, and are informed by, Regional Council plans. Greater engagement of Regional Councils in the submission and evaluation of FFP proposals will provide valuable opportunities to progress ATSIC's involvement in the FFP process at a regional and national level.[99]

Third, there is concern from ATSIC that it is not being sufficiently engaged in the trials. The matching of the use of the Flexible Funding Pool with ATSIC Regional Council plans is a specific example of this concern. More broadly, the acting Chairman has stated that:

> While the Commission believe that the most important level of Indigenous engagement in this initiative is the local community, it should be recognised that the Commission and ATSIC Regional Councils have significant responsibilities to these particular communities and, for this reason, have sought to improve their involvement in the initiative. As the initiative has enormous relevance and potential implications for all Indigenous communities across the country, the Commission does not want its roles and responsibilities in this regard overlooked or ignored. In particular, Commissioners are concerned that Indigenous representation is both welcomed and supported especially in political interaction at the most senior levels.[100]

The acting Chairman has noted that ATSIC-ATSIS are considering ways to strengthen their engagement in the trials to promote national discussions, informed by an Indigenous perspective, regarding the utility of the trials. The acting Chairman identifies the following issues as needing to be addressed:

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96   Hawgood, D, *Hansard – Senate Legal and Constitution Legislation Committee*, (Estimates), 4 November 2003, p8.

97   *ibid.*

98   As noted in Appendix 2, ATSIC has contributed $1million (of the $3million total) per annum to this Flexible Funding Pool.

99   Quartermaine, L, *op.cit p6.*

100 *ibid*, p5.

- the fragmented involvement of Regional Councils in both the signing of Shared Responsibility Agreements and selection of trial sites;[101]
- the status of relationships between Commissioners, ATSIC Regional Councils, ATSIS staff, Lead Agencies and the ICCT; and
- a lack of engagement of and by Regional Councils with Lead Agencies and other government partners.[102]

The next chapter discusses proposed reform to ATSIC, which includes greater support and emphasis on regionalisation and regional planning processes. At this point, it is important to note that many ATSIC Regional Council Plans are not developed at a sufficient level of detail to lead trial processes. There is a need for developing the capacity of many Regional Councils, including their capacity to develop targeted regional planning documents that can form the basis of inter-governmental coordination and service delivery approaches.

Fourth, it is not clear at this stage that the performance monitoring framework for the trials will be sufficiently rigorous. It is anticipated that the first two years of the trial will be reviewed in mid-2004 and a further review conducted at the end of the 5 year trial phase. It is not clear at this stage how these reviews will be conducted, by whom or whether the results of the reviews will be made public.

The lack of a clear evaluation strategy is of great concern. It may be that the uncertainty in this regard is largely the product of the evolving nature of the trials and that there will be much greater clarity during 2004. I have previously, however, expressed concern at reliance by COAG on internal monitoring and evaluation strategies. In particular, I have expressed concerns about the lack of information that is publicly reported about such evaluations (thus limiting government accountability), the lack of appropriate consultation with Indigenous peoples and lack of independence in the monitoring process.[103]

My concern about such processes is reinforced by the failure in recent years of the Ministerial Council on Aboriginal and Torres Strait Islander Affairs to complete two significant evaluations on COAG's behalf and in a timely manner. The first is the review of progress by all levels of government in implementing the recommendations of the *Bringing them home* report. The second is an audit of family violence programmes to guide the response of COAG to this crisis issue. Approximately three years after these reviews were announced, neither has been presented to COAG nor made public.

ATSIC has also expressed significant concern about the monitoring framework for the trials. It states:

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101 ATSIC note that 'the involvement of the Commission and Regional Councils in the selection of the trial sites has varied from none to limited, with the exception of the Murdi Paaki Regional Council, which nominated its region as a trial site and since its announcement has been integrally involved in the development of the trial': *ibid*, p6.

102 *ibid*.

103 *Social Justice Report 2001,* p201; and Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Legal and Constitutional References Committee inquiry into the stolen generation*, HREOC Sydney 2000, online at: www.humanrights.gov.au/social_justice/senate_submission/index.html.

> The Commission is particularly concerned that a comprehensive national evaluation strategy is not in place. This is likely to lead to unclear judgements later on, as the starting point for assessing change has not been clearly established. In addition, the Commission is concerned that there is no commitment to an independent evaluation of the initiative. The reliance on a systems-based internal evaluation strategy might not provide the most objective perspective on the successes and failures of the initiative, and may produce an inadequate basis upon which to make long term policy and program reforms.[104]

A related issue is the existence of adequate data to contribute to the monitoring and evaluation process.

In the initial stages of the trials, there has been a significant focus on developing local level priorities, outcomes and benchmarks. The 'Indigenous Communities Coordination Taskforce Database' has been developed to capture this information across the eight trial sites. A number of government agencies have informed me that it is intended that this local level information will be able to be aggregated into a national level analysis. The intention is that this information will be able to be aligned with the headline and strategic change indicators developed by the Steering Committee for the Provision of Government Services, and that data will able to be compared 'against existing portfolio budget statements and other cross-government frameworks at the national level'.[105]

It is not, however, clear how the local level data will be able to be matched up to the national level in these ways. There is very little ability to disaggregate, on a regional or local basis, the statistics which form the basis of the headline indicators and strategic change indicators in the national reporting framework. The emphasis of the trials to date has also, quite rightly, not been on improving data collection at this local level. Hence, existing systems of data collection are very poor at identifying the status of Indigenous people in a particular locality or region across a broad range of social and economic indicators. Accordingly they are also ill equipped to measure change in such indicators.

It is quite likely that it will not be possible to match up local level indicators with the national reporting framework, other than through the provision of case studies which can illustrate links between particular types of policy interventions and outcomes. This will, of itself, be valuable information. The concern is that the trials have set objectives for data analysis and performance monitoring that will not be able to be achieved because of the existing limitations in data quality and collection.

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104   *ibid*.
105   Indigenous Community Coordination Taskforce, *Shared responsibility shared future – Indigenous whole of government initiative: The Australian government performance monitoring and evaluation framework, DIMIA Canberra 2003,* p3. See Appendix 2 of this report for further information.

On the basis of these concerns, I make the following recommendations.

Recommendations 8-9 on reconciliation:
COAG Whole-of-government community trials

8. That COAG request the Productivity Commission (as Chair of the Steering Committee for the Review of Government Service Provision) to provide advice on aligning the benchmarks and outcomes agreed at the local level with COAG's National Framework for Reporting on Indigenous Disadvantage. This advice should include any recommendations for adapting the Indigenous Communities Coordination Taskforce Database to enable reporting of outcomes against this National Framework.

9. That COAG agree and fund an independent monitoring and evaluation process for the whole-of-government community trials initiative. The Productivity Commission, Commonwealth Grants Commission or ATSIC's National Office of Evaluation and Audit would be suitable agencies to conduct this review.

Fifth, it is not clear how the lessons learnt from the trials will be transferable and contribute to broader reform of program design and service delivery for Indigenous peoples. The adequacy of the performance monitoring framework, as discussed above, will be one of the key determinants of such lessons.

ATSIC have expressed some preliminary concerns about the conduct of the trials and the transferability of lessons learned. Their concerns relate to three broad factors. The first is limited experimentation of new approaches by Lead Agencies in the trials. ATSIC argue that to date:

> there has been little progress in doing 'business' differently… Silos continue to characterise government relationships and the way in which funds are provided and accounted for, leading to restrictions in the experimentation of interventions. Lead Agencies are struggling to balance different priorities with trial partners leading to difficulties in progressing joined-up projects on the ground. As little obvious progress has been made in re-engineering programs, Lead Agencies are tending to use existing programs in the trial sites with little flexibility or creativity.[106]

They note, significantly, that 'programs that are used more flexibly tend to be Indigenous-specific rather than mainstream'.[107]

The second concern identified by ATSIC is that there has been a blurring in some instances of Commonwealth and state responsibilities, 'attracting the possibility of cost shifting between parties' compounded by the 'inexperience of Lead Agencies and their personnel when engaging with Aboriginal and Torres Strait Islander communities'.[108] ATSIC sees a need for 'clearer mechanisms…

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106 Quartermaine, L, *op.cit*, p4.
107 *ibid*.
108 *ibid*.

to facilitate a more cohesive joined-up approach accompanied by greater flexibility in the availability of fund to improve outcomes' combined with 'effective and timely evaluation'.[109]

The third concern identified by ATSIC relating to transferability of outcomes is a perception that initiatives in one trial are not being identified as having potential application in other trials. They state:

> One of the strengths of the initiative is the opportunity to develop locally based solutions to meet locally identified needs. It seems reasonable therefore, that where a Lead Agency has proceeded to implement a program differently, such as increasing the provision of housing to one of the communities in the trial site, then that initiative should be considered for the other trial sites. This would address basic needs that are common to most of the sites.[110]

It is clear that there are many common issues across trial sites that could be advanced more quickly if each trial can work from the experiences in other trial sites. This has been identified as a critical issue by the ICCT. As noted earlier, a mechanism for coordinating state and territory activity could also be of great value in addressing this significant issue.

Ultimately, the transferability of outcomes from the trials in the longer term will depend on whether the trials are able to more broadly change the status quo of service delivery and program guidelines. A significant challenge will be ensuring that the adoption of more holistic, whole-of-government approaches is not a transient feature and that departments do not simply slip back into their usual ways of doing things once the trials have ended. Factors that will need to be addressed to ensure that this is not the case include the following:

- *Continued engagement of mainstream departments and programs:* It is clear that a significant factor in the early success of the trials has been the high level involvement and commitment of ministers and departmental secretaries at the federal level in taking responsibility for particular communities (as the lead agency) and harnessing the services and programs of mainstream departments. The lead agency approach is not sustainable beyond a limited number of communities in its current format. Mechanisms such as the Minister's group and the Secretaries group may be more sustainable, so long as departments continue to have a significant investment in promoting improved coordination of services.

- *Coordinating funding of proposals in non-trial sites:* Similarly, the identification of a region or community as a trial site has naturally elevated the priority with which the service delivery needs of that community or region are dealt with. Governments and departments have been able to look to how they can relax program guidelines or join up funding from different programs and areas for more holistic solutions. A significant challenge is identifying how proposals in non-

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109   *ibid*, p5.
110   *ibid*, p5.

trial sites can also benefit from this approach where such proposals do not enjoy such priority attention.

- *Resource constraints:* While the emphasis of the trials is not on new money but on better coordinating and getting value from existing money, there is a broader context of significant under-funding of key areas of Indigenous disadvantage. The focus on a limited number of communities, and the availability of a short term funding pool, shields the trials from this broader issue. Funding restrictions will become a significant issue when seeking to more broadly implement the lessons learnt from the trials. This will be complicated further by an emphasis on addressing relative need and reallocating funding towards those areas and issues of greatest disadvantage.

- *Capacity development of Indigenous communities:* Each of the trials has built on local Indigenous initiatives that were already under development to improve service delivery to their communities. For example, processes such as the ATSIC Murdi Paaki Regional Council initiatives of community working parties, the incorporation of the Tharmarrurr Regional Council under local government legislation in the Northern Territory, and the Cape York Partnerships in Queensland were relatively developed when the decision was made to make each of these areas a trial site. The trials have undoubtedly greatly advanced processes that were previously underway in these and other trial areas.

   However, the broader concern is how transferable lessons will be drawn from the trials for those communities which experience a high degree of dysfunction and which are not, at least at this stage, capable of organising themselves so that they can better interact with governments.[111] In other words, how do we avoid the situation where governments focus their attention on improved coordination of service delivery to those communities that are relatively organised? Even in the trial sites, where there has been a great deal of activity by communities to address these issues, it has taken a long time to develop the capacity of the communities to the point where they can determine what the priorities of the community are and the approaches that should be adopted. It is critical that in the longer term other communities do not get left behind because they do not have such capacity.

There are also a number of processes available to ATSIC and Indigenous peoples to build on the achievements of the trials and more broadly inform policies and programs.

There are three significant processes which ATSIC currently utilises which provide ATSIC with some leverage for advancing inter-governmental coordination and improved service delivery.

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111   It is the interaction of these factors that is critical – many of the communities in the trial sites would describe themselves as experiencing high levels of dysfunction. It is the determination, and in most cases simply the ability, to address this that is missing in some other communities.

First, ATSIC has entered into a number of partnership agreements with states and territories. An overview of these agreements was provided in Appendix 1 of the *Social Justice Report 2002*. As an example, the *Statement of commitment for a new and just relationship with Aboriginal Western Australians* was signed by ATSIC, the Western Australian government and other Indigenous representative organisations in October 2001. This commits the parties to the agreement to a whole-of-government approach with the negotiation of regional agreements based on an acknowledgement of shared responsibility, as well as the negotiation of framework agreements in areas such as health, housing, essential services, justice and native title.

ATSIC has also negotiated agreements and compacts with federal government departments such as the Department of Workplace Relations (DEWR), the Department of Education, Science and Training (DEST) and the Department of Health and Ageing.[112]

Second, is through the operation of ATSIC's Regional Councils and the development of their regional plans. As ATSIC have stated about their approach to the COAG trials:

> ATSIC-ATSIS' approach has been to promote the Regional Councils as the pre-eminent source of Aboriginal and Torres Strait Islander advice in all trial sites. This is easier in regions where Regional Councils are the main source of leadership but it has proved difficult where other organisations compete for this role or the trial boundary differs from the Regional Council boundary.[113]

The better utilisation of ATSIC Regional Councils and the capacity of ATSIC's regional planning process is discussed in detail in the next chapter. Regional plans offer a significant opportunity for coordinating government activity within regions. Recent agreements between ATSIC, DEWR and DEST, for example, commit these departments to using the regional planning process to better coordinate their activities regionally.

As noted earlier, however, some regional plans may not be of sufficient quality and depth to guide some of the trials at this stage. There is a significant challenge to build the capacity of Regional Councils over the coming decade. It is possible that a further benefit of the trials will be improvements in the development of regional plans, combined with greater engagement of mainstream agencies in identifying key priorities for communities through the planning process.

Third, ATSIC leads the Community Participation Agreements (CPA) initiative under the *Australians Working Together* package. The CPA process provides ATSIC with a significant tool for advancing the objectives of Indigenous communities or regions as they relate to aspects of government service delivery.

The CPA initiative was announced in the 2001-02 Federal Budget, with $30.5 million allocated to ATSIC over four years to develop and implement agreements in remote Aboriginal and Torres Strait Islander communities. The agreements involve the community identifying practical ways people can contribute to their

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112 See comments on this approach by the CEO of ATSIC in Aboriginal and Torres Strait Islander Commission, *Annual Report 2002-03*, ATSIC Canberra 2003, pp15-16.
113 Quartermaine, L, *op.cit*, p4.

families and communities in return for their income support payments. To date, ten CPA initiatives have commenced in the Northern Territory, Queensland, South Australia, Western Australia and New South Wales. These ten processes cover a mix of individual communities and regional negotiations, and involve the following 27 communities:

- Mutitjulu (NT);
- West Macdonnell Ranges (NT) – covering the communities of Papunya, Ikuntji, Kintore and Mt Leibig;
- Tennant Creek (NT) – involving the communities of Ali Curung, Elliot and Mungkarta;
- Canteen Creek (NT) – involving the communities of Kunlinjara, Canteen Creek, Epenarra and 10 Mile communities;
- Barrow Creek (NT) – involving the communities of Tara, Barrow Creek and Wilora;
- Coen (Qld);
- Aurukun (Qld);
- Tjurabalan (WA) – involving the communities of Yagga Yagga, Billiluna, Mulan, Ringers Soak and Balgo;
- New South Wales – involving the communities of Bourke, Brewarrina, Walgett and Wilcannia; and
- Oodnadatta (SA).

CPA initiatives are under negotiation in a number of COAG whole-of-government trial sites. This includes Tjurabalan (WA) which corresponds to the west Kimberley trial, and a number of specific communities in the Murdi Paaki region and Cape York respectively. CPA negotiations are occurring on a community-by-community basis and in remote COAG regions their potential is being explored as a subsidiary measure to support the COAG shared responsibility approach. In addition to the aforementioned COAG sites, preliminary discussions are occurring in Wadeye (NT) and the Anangu Pitjantjatjara (AP) Lands in South Australia about their interest in implementing a CPA agreement.

Progress in advancing Community Participation Agreements has been slow to date. It is hoped that there will be significant progress in implementing these agreements over the coming year.

A further tool which is available to Indigenous communities to build on the advances of the COAG trials are the Indigenous Land Use Agreement provisions of the *Native Title Act 1993* (Cth). In discussions with government officers concerning the trials it was noted that there are similarities between the issues raised in some native title agreement negotiations and the negotiation of Shared Responsibility Agreements in the COAG trials. It was noted that while native title issues have not emerged as central issues in the initial stages of the trials, it is anticipated that these issues will become more prominent in some trial sites as the trials progress.

My *Native Title Report 2003* provides a detailed analysis of how federal, state and territory government policies and approaches to native title negotiations promote the utilisation of native title as a tool for economic and social

development within a cultural context. It suggests that the full potential of native title as contributing to these processes is not being utilised and in many instances is being actively prevented by the approaches of governments. The report states:

> In many cases the role of native title is glaringly absent from States' policy responses to the reconciliation process. Native title negotiations and agreements are not seen as part of the State's policy toolbox directed towards transforming the conditions of Indigenous people's lives…

> The two important policy responses to emerge from the reconciliation process as necessary to facilitate the economic and social development of Indigenous people are, firstly, a whole-of-government approach to Indigenous policy and secondly, partnerships between government and Indigenous communities… [A] whole-of-government approach, which requires government to integrate the responsibilities and policies of all the agencies concerned with providing services to Indigenous communities, is a very important element of achieving the sustainable development of these communities. However the application of this approach is very limited and fails to ensure that Indigenous policies in all their manifestations are underpinned by consistent objectives. In particular it fails to ensure that native title programs are brought within or are consistent with strategies for achieving economic social and cultural development.

> The second policy response to reconciliation, the establishment of partnerships between Indigenous communities and governments, is also an important element of sustainable development ... government plays an important role in the group achieving its development objectives: it facilitates the group in identifying its development goals; it assists the group to build upon its assets, skills and knowledge so as to achieve its development goals; it assists the group to identify which aspects of its asset skills and knowledge base may need to be supplemented, and it facilitates the group to monitor and evaluate the strategies it adopts to achieve its goals. This policy framework can be summed up as a partnership approach. It is a partnership, however, with special characteristics.

> First, for the approach to achieve sustainable development of the community, the dominant partner is the Indigenous side. It is the community that must determine its policy objectives and strategies and control the way they are achieved. Decisions to this effect must be conducted through processes and institutions which the community respects and which reflect the group's cultural values… native title provides a framework to ensure decisions are made in this way.

> Second, the government's role in this partnership directed to the sustainable development of the group is to facilitate and assist the group to achieve its goals. The government should not take over the control of the process. Indigenous leader Gerhardt Pearson has put the situation thus:

> It is easy for government bureaucracies to accept so-called "whole-of-government" approaches, coordinated service delivery and so on. It is much harder for them to let go of the responsibility. On one hand we have the almost complete failure on their part to lead and facilitate social

and economic development in Indigenous Australia. On the other hand, our experience is that the government bureaucracies are resistant to the transfer of responsibility to our people.[114]

Despite the limitations in the way the whole-of-government and partnership approaches have been applied these two responses to reconciliation have provided an important foundation for economic and social development to occur in Indigenous communities. Yet in many cases States have not included native title in their response to reconciliation.[115]

Overall, the COAG whole-of-government community trials have advanced significantly during 2003 and offer much potential for reforming inter-government and whole-of-government approaches to service delivery to Indigenous peoples. There have already been a number of achievements from the process. There remain a number of challenges and some structural issues (particularly relating to monitoring and evaluation) that remain to be addressed. The long term success of the process will, however, depend on how the trials promote structural change in the way that governments go about delivering services to Indigenous peoples. A number of challenges and options for this have been identified in this section of the report.

Conclusion – Government accountability for reconciliation

During 2003, the government's approach to reconciliation has continued to be restricted to measures that fall within its 'practical' reconciliation approach. The government has rejected the introduction of measures (such as those recommended by the Senate Legal and Constitutional References Committee and contained in the *Reconciliation Bill 2001*) to progress issues that fall outside the parameters it has set. This has the consequence of there being a partial framework for progressing reconciliation with significant issues of unfinished business left in abeyance.

The focus of this chapter has largely been on processes for government accountability for 'practical' reconciliation. It has sought to evaluate progress of the government on their own terms. It establishes that progress in advancing 'practical' reconciliation over the course of the year has been variable.

The statistical data indicates that there has been limited progress over the past five years in achieving the central purpose of practical reconciliation, namely improved Indigenous well-being. Of particular concern is the fact that the disparities that exist between Indigenous and non-Indigenous Australians have remained substantially the same, or have widened over the past five and ten years. Indigenous Australians also presently endure health standards worse than those in some so-called 'third world' countries. The lack of progress in achieving substantial improvement in Indigenous well-being is also in marked contrast to outcomes in similar settler countries such as the United States of America, Canada and New Zealand.

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114 Pearson, G, *Man Cannot Live By Service Delivery Alone,* Conference Paper, Opportunity and Prosperity Conference, Melbourne November 2003, online at www.capeyorkpartnerships.com, (14/11/2003).

115 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2003*, HREOC Sydney 2004. Note: this quote is from the draft report.

The *Social Justice Report 2000* set out a human rights approach for progressing reconciliation. It identified five integrated requirements to ensure sufficient government accountability for addressing Indigenous disadvantage from a human rights perspective. These five requirements are:

1) Making an unqualified national commitment to redressing Indigenous disadvantage;

2) Facilitating the collection of sufficient data to support decision-making and reporting, and developing appropriate mechanisms for the independent monitoring and evaluation of progress towards redressing Indigenous disadvantage;

3) Adopting appropriate benchmarks to redress Indigenous disadvantage, negotiated with Indigenous peoples, state and territory governments and other service delivery agencies, with clear timeframes for achievement of both longer term and short-term goals;

4) Providing national leadership to facilitate increased coordination between governments, reduced duplication and overlap between services; and

5) Ensuring the full participation of Indigenous organisations and communities in the design and delivery of services.[116]

The year 2003 saw the development of significant measures for advancing reconciliation within the framework of the Council of Australian Governments. The national reporting framework on Indigenous disadvantage and whole-of-government trials under COAG have contributed to meeting aspects of the second, fourth and fifth of these requirements. These initiatives are in fledgling stages and there are a number of issues that remain to be addressed before success is assured.

These initiatives have not, however, been backed up by a range of other commitments and processes that are necessary to ensure the long term sustainability of improvements in the well-being of Indigenous peoples. There remains an absence of an appropriate national commitment to redressing Indigenous disadvantage, sufficiently rigorous monitoring and evaluation mechanisms, and benchmarks with both short term and longer term targets agreed with Indigenous peoples. There are also critical issues relating to the depth of inequality experienced by Indigenous people, the size and growth of the Indigenous population and under-resourcing of services and programs to Indigenous peoples that cannot continue to be ignored if there is to be any genuine improvement in Indigenous peoples' circumstances.

Ultimately, the process of practical reconciliation is hampered by its lack of a substantive action plan for overcoming Indigenous disadvantage in the longer term, with short term objectives to indicate whether the rate of progress towards this goal is sufficient.

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116 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC Sydney 2000, p100.

Chapter 2

The failure of the government to address these factors as part of its practical reconciliation approach reflects a fundamental flaw in the process. By committing to provide full access to citizenship entitlements and nothing more, practical reconciliation is a 'blank cheque' and amounts to a commitment into the foreseeable future to pay the increased economic and social costs associated with Indigenous disadvantage. In relation to employment alone, this cost is estimated by the Centre for Aboriginal Economic Policy Research to rise to the vicinity of 0.5 to 1% of gross domestic product within the decade.

At this stage, it is not possible to foresee a time when 'record levels of expenditure' of the Commonwealth on Indigenous services will not be necessary. It is also not possible to foresee a time when a continuation of the current approach will result in significant improvements in the lives of Indigenous peoples. Practical reconciliation does not have a plan for *overcoming* rather than simply managing Indigenous disadvantage.

Ultimately, deficiencies in monitoring and evaluating processes for reconciliation indicate that there are problems of accountability of governments for their contribution to reconciliation. This lack of accountability allows governments to unilaterally establish the boundaries of issues that they will address in the first place and then to avoid public scrutiny when material improvements in Indigenous well-being are not achieved and sustained. A number of recommendations have been made throughout the course of this chapter to address this situation.

The focus of this chapter has been on government accountability. This is, however, only half of the story. The next chapter examines initiatives over the past year relating to the role of Indigenous communities and organisations. It also builds on the analysis in this chapter by considering how Indigenous people can play a more meaningful role in setting the priorities of governments in achieving sustainable improvements in Indigenous well-being and in monitoring and evaluating their performance.

Chapter 3

Indigenous participation in decision making – Transforming the relationship between government and Indigenous peoples

The twin pillars of the government's approach to Indigenous policy in 2003 continued to be practical reconciliation, with its emphasis on service delivery in core areas of disadvantage, and mutual obligation, with its emphasis on reciprocity and individual responsibility. Through both of these policies, the government has identified moving Indigenous people beyond welfare dependency and enabling Indigenous participation in program delivery and design as key features of its approach.

Within this framework, there has been increased attention over the past year to the nature of the relationship between government and Indigenous peoples. There has been a lot of talk from governments about the need to change the way they interact with and provide services to Indigenous peoples and communities. This has largely occurred as a result of the significant policy focus of Indigenous peoples and governments on capacity building and governance reform in recent years, and progress in 2003 in advancing the whole-of-government community trials by the Council of Australian Governments. It has also been influenced by the conduct of a number of significant inquiries during the year, including parliamentary inquiries into national progress towards reconciliation and capacity building in Indigenous communities, as well as the conduct of the Indigenous business review, and the review of the role of the Aboriginal and Torres Strait Islander Commission (ATSIC).[1]

Debates during the year about the relationship of Indigenous peoples and government have identified three key, inter-connected, issues. First, the need to change the way government interacts with Indigenous peoples. For governments, the emphasis here has been on the need to change the way services are provided to Indigenous peoples, including through improved coordination between governments and among government agencies. Second, the need to build the capacity of Indigenous communities, coupled with demands

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1   Of these inquiries and reviews, only the ATSIC Review and the inquiry into national progress towards reconciliation released final reports in 2003.

for improved corporate governance among Indigenous organisations. Third, the need to review the structures and operations of ATSIC, such as through introducing improved corporate governance mechanisms and by making ATSIC more representative and participatory.

Indigenous peoples and governments alike have focused on the importance of these issues during the past year. There are, however, differences on how to best address these issues. This chapter examines current debates about the nature of government service delivery, building the capacity of Indigenous communities, and ATSIC reform. Ultimately, a key focus of the chapter is on the role of ATSIC as a critical agent in facilitating change to the relationship of Indigenous peoples and government. It makes proposals for a changed relationship between Indigenous peoples and governments by ensuring the effective participation of Indigenous peoples in decision making and addressing Indigenous issues within a framework of promoting sustainable development.

A relationship of dependence – Challenging the existing service delivery approach

Indigenous peoples seek to challenge the underlying basis of their relationship to governments in Australia. Indigenous peoples have increasingly come to realise that the current system perpetuates a cycle of dependency and is also not contributing to or promoting sustainable improvements in Indigenous communities and individual well-being.

As ATSIC noted in 2002, 'it is now widely recognised that Indigenous programs have perpetuated dependence, not development. Our communities have had to face arbitrary, complex, inconsistent and inflexible demands from program providers'.[2]

From the 1970s through to the present, a particular operational environment has been established which has consisted of governments funding Indigenous organisations to provide services to Indigenous people. Despite criticising the failure of this community development model (and of the self-determination principle that underpins it) there has been virtually no change in the underlying basis of this relationship since the current government came into power in 1996, and a continuity in government approaches since the 1970s.[3]

ATSIC have described this operating environment as a 'directed community services' model:

> Current funding arrangements for Indigenous organisations are… directed in that it is the various Commonwealth, State and Territory government agencies that decide the functional areas and guidelines for expenditure. The agencies determine also whether particular applicants' proposed projects are of high enough priority within those guidelines to warrant funding and, if funded, they hold the grantees accountable for the

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2   Aboriginal and Torres Strait Islander Commission, *Annual Report 2001-02*, ATSIC Canberra 2002, p33. NB: The Commission is herein referred to as ATSIC.

3   For an analysis of this approach and the government's position on self-determination see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC Sydney 2002, Chapter 2, especially pp8-11. (Herein: *Social Justice Report 2002*).

expenditure of funds according to those guidelines. The current arrangements constitute a directed community services model in at least two other senses. First, the arrangements envisage that the major purpose of the funding is the provision of services to people within the community and, second, when the arrangements direct resources to incorporated bodies they conceive of those bodies as non-government community service organisations…[4]

This approach has created 'a model of dependency on two levels – from government to organisation, and from organisation to clients'.[5] The first level of dependency in the existing approach to Indigenous service delivery is of Indigenous organisations to government agencies:

> A very significant proportion of Australian Indigenous organisations are service delivery agencies that are totally dependent on annual grant funding arrangements from one or more of a range of government departments and agencies. Even though some of the larger organisations have been in existence for at least ten years their continued existence, and functioning, are dependent on changing government priorities and budget allocations. The primary activity of many of the organisations is the delivery of government services in accordance with government programs and priorities. Few of the Indigenous organisations have clearly defined service or other responsibilities other than those set out in their often limited and outdated constitutions. Very few have the legal authority to exercise any governmental responsibilities apart from those delegated through the terms of their grant…[6]

The Royal Commission into Aboriginal Deaths in Custody identified changing this relationship of dependence – which disempowers Indigenous people through governmental control – as integral to achieving the equal enjoyment of rights by Indigenous peoples.[7]

While Indigenous organisations have become dependent on government agencies under this approach, governments have also become dependent on such organisations as agents for service delivery. This is also problematic. In its 1996 review of the *Aboriginal Councils and Associations Act 1976* (Cth), the Australian Institute of Aboriginal and Torres Strait Islander Studies identified the following structural problems with the present system of funding service delivery:

- being application based, the initiative for program design rests largely outside the authority of the funding agency;
- furthermore, the funding agency generally cannot directly influence in advance the nature and composition of the applicant groups;
- it follows that matters of critical importance to the equitable, effective and efficient delivery of publicly-funded services (such as

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4   ATSIC, *Resourcing Indigenous development and self-determination – A scoping paper*, Australia Institute, Canberra 2000, p4.

5   ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, ATSIC Canberra 2001, p4.

6   ATSIC, *Resourcing Indigenous development and self-determination – A scoping paper*, *op.cit,* p21.

7   Royal Commission into Aboriginal Deaths in Custody, *National Report – Volume 1*, AGPS Canberra 1991, pp9-10.

representativeness, consultation and staff engagement) cannot be built into the planning for service provision at an early stage;

- accordingly, the planning and implementation of service provision is compromised by the need to accept the groups intended to provide the service in the form in which they have already incorporated themselves;

- accountability controls are then applied via the conditions of grant and enforcement of compliance with the incorporation law concerned;

- but this is largely ex post facto accountability (by grant acquittance and audited financial statements) and cannot cure basic defects which might exist in the group's suitability and capability as the service provider, stemming from its manner of incorporation;

- thus handicapped in its capacity to plan for service provision, the funding agency's efforts to ensure performance of funding objectives are frustrated;

- service provision by existing corporations is less than satisfactory so new corporations are established – and the whole process begins again.[8]

The second level of dependency is of Indigenous people to Indigenous organisations. The activities of Indigenous organisations are substantially defined and controlled by government decision making processes over which Indigenous peoples exercise minimal, if any, control. As a result, such organisations are based on non-Indigenous models of governance and do not necessarily reflect the priorities and needs of Indigenous communities. As stated by ATSIC:

> [T]he overall legal frameworks within which Indigenous organisations operate do not adequately provide for the establishment of Indigenous models of governance. Few Indigenous people can exercise any substantive jurisdictional responsibilities over matters of the most direct concern to them. They are almost totally dependent on government funding arrangements designed to deliver programs and services based on non-Indigenous models of governance. Commonwealth, state and local governments do not share any of their substantive jurisdictional responsibilities, few are prepared even to consider negotiations with Indigenous peoples. As a result, Indigenous people's governance structures… have not developed beyond the establishment of incorporated associations.[9]

This operating environment continues today. In the words of ATSIC, it 'has in many cases replaced one form of dependence with another. Not the welfare dependency of the Pearson theory, but the dependence on permanent service delivery by external agencies'.[10]

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8   Australian Institute of Aboriginal and Torres Strait Islander Studies, *Final Report of the Review of the Aboriginal Councils and Associations Act 1976*, AIATSIS, Canberra 1996, Volume 1, pp145-146 as cited in *ibid*, pp27-28.

9   ATSIC, *Resourcing Indigenous development and self-determination – A scoping paper*, *op.cit*, p22.

10   ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, *op.cit*, p4.

Concerns about dependency on permanent government service delivery are accompanied by concerns that this service delivery model is not delivering long term and sustainable improvements in Indigenous communities.

The current approach reduces the idea of development 'to one of 'community development' devoid of any economic dimension' and provides 'little encouragement to Indigenous economic development since the resourcing of Indigenous organisations does not increase with increases in economic activity in their local area'.[11] Service delivery of itself brings few economic benefits.

The discussion in Chapter 2 and the statistics provided in Appendix 1 illustrate this. They show that there is no evidence that the existing service delivery model is achieving sustained improvements in Indigenous well-being. There is no consistent forward trend in reducing inequalities compared to the broader Australian population and there is a very real prospect of a worsening in the situation of Indigenous peoples over the next decade.

As a consequence of these factors, Indigenous people seek to move from a position of dependency on government service delivery to being active participants in governing their own communities. This requires a changed approach by governments and Indigenous organisations and communities.

Overall, it requires two main but inter-related changes. First, it requires changes to the approach of government to funding in order to increase Indigenous participation and control.

Twelve years ago the Royal Commission into Aboriginal Deaths in Custody made recommendations for longer term, more flexible funding arrangements which would ensure increased Indigenous participation and control. In particular, it recommended the introduction of triennial block grant funding for Indigenous organisations and that this funding be allocated through a single source with one set of audit and financial requirements combined with maximum devolution of power to the communities and organisations to determine the priorities for allocating such funds.[12]

These and similar recommendations have been reiterated time and again over the past decade. This includes through the landmark report of the Commonwealth Grants Commission on Indigenous Funding in 2001. As the discussion in Chapter 2 and Appendix 2 of this report demonstrates, addressing these issues is also a key priority of the COAG whole-of-government trials through the concepts of shared responsibility and of a 'joined up' approach to government activity and pooled funding.

Second, it raises challenges for Indigenous people to develop structures that are capable of interacting with governments while also being representative of and accountable back to Indigenous communities and people. This requires building the capacity of Indigenous communities to be self-determining as well as reforming the structures of ATSIC to provide effective representation within

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11   ATSIC, *Resourcing Indigenous development and self-determination – A scoping paper*, *op.cit,* p5.
12   Royal Commission into Aboriginal Deaths in Custody, *National Report – Volume IV*, AGPS Canberra 1991, p21.

government at the regional, state and national levels. It is this second set of challenges that this chapter focuses on.

In ATSIC's Annual Report for 2002-03, the acting Chairman describes the challenge facing Indigenous communities and ATSIC as follows:

> A central issue is how to empower people at the community and regional levels, so that policies and service delivery are driven by the people and the communities themselves. In this vision of the world as it should be, service delivery by governments and agencies is driven by the needs of the community rather than by one-size-fits-all policies and models which are imposed from above and afar. We want Indigenous people and communities to drive change and shape their own futures. But that means we have got to get two things right:
>
> • the capacity of community members and the community as a whole to make good policy and to campaign and negotiate for the outcomes they want; and
>
> • the good governance and self-management of Aboriginal and Torres Strait Islander people at national, regional and local levels.
>
> 'Capacity building' and 'good governance' are buzz words around at the moment. But the issues that they cover are fundamental. Basically, they mean building the skills of all Indigenous people to improve ourselves, to shape our own lives, to run our own affairs, and to take our rightful place as a unique part of Australian society.
>
> Whichever way you look at it, capacity building and good governance lie at the heart of our [i.e., ATSIC's] current agenda. How we deal with them will determine our future. Our focus must be to build the framework of capacity and governance within which we can develop relevant, well-researched policy reflecting what Indigenous people want, and oversee the delivery of effective programs flowing from those policies. Aboriginal and Torres Strait Islanders need a renewed, reinvigorated, focused and high performing ATSIC. Dare I say it: the nation needs 'a new ATSIC'.[13]

Facilitating Indigenous participation and moving beyond welfare dependency – The government's approach

A key focus of the government, in implementing its practical reconciliation and mutual obligation policies, has been on processes for fostering Indigenous participation and moving Indigenous people beyond welfare dependency.[14] The central element of the government's approach to these issues has been a focus on the need for partnership and shared responsibility between government

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13   Acting Chairperson's review in: ATSIC, *Annual Report 2002-2003*, ATSIC Canberra 2003, p9.

14   Note: The government's approach places considerable emphasis on achieving outcomes in employment in order to address Indigenous welfare dependency. The *Social Justice Report 2001* provided a detailed analysis of the government's mutual obligation approach to welfare reform and employment issues. See: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, HREOC Sydney 2001, Chapter 2 and Chapter 3 (Herein: *Social Justice Report 2001*). It set out and analysed the key role of the Indigenous Employment Policy and Community Development Employment Projects Scheme and the then newly commenced trial of Community Participation Agreements. While it is acknowledged that mutual obligation and employment form a key part of the government's overall approach to Indigenous issues, this chapter is not focussed specifically on these issues.

and Indigenous peoples. As the Minister for Immigration, Multicultural and Indigenous Affairs stated in August 2003:

> [There is a] need to recognise that there is a partnership of shared responsibility between governments and Indigenous people. Governments and outsiders alone cannot effect the necessary changes.
>
> • Indigenous Australians have rights like all other Australians – rights to education, health services and the like. Governments therefore have obligations to provide those services in a fair, reasonable and appropriate way.
> • But rights and responsibilities are inseparable, and there is a view, well founded I believe, that the responsibility of the individual has not been given sufficient attention.[15]

Recent developments in the government's position on fostering Indigenous participation and the objective of moving Indigenous people beyond welfare dependency can be briefly summarised as follows.[16]

In 2002, the Minister for Immigration, Multicultural and Indigenous Affairs set out a five point plan for Indigenous affairs which consists of:

• implementing a shared responsibility approach between Government and indigenous people that recognises that each side has rights and obligations;

• shifting the emphasis of policy towards the needs of individuals and families, with a focus on 'empowering individuals as members of families and communities rather than viewing the Indigenous world through the construct of community', and considering 'the functioning of Indigenous organisations to identify whether they are providing services that can demonstrate tangible outcomes';[17]

• tackling substance abuse, particularly alcohol, as a major health priority and 'as a absolute necessity in terms of breaking the shackles of family violence, welfare dependency and the like';[18]

• pursuing English literacy and numeracy as the most basic foundation to securing the long-term economic self-sufficiency of Indigenous people; and

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15   Ruddock, P, 'ATSIC and its future', Speech, Bennelong Society Conference – An Indigenous Future? Challenges and Opportunities, 29 August 2003, online at www.bennelong.com.au/, <20 October 2003>, p2.

16   See further: Ruddock, P, 'ATSIC and its future', *ibid.*; Ruddock, P, 'Agreement making and sharing common ground', Speech, ATSIC National Treaty Conference, 29 August 2002; Ruddock, P, 'Changing direction', Speech, ATSIC National Policy Conference – Setting the agenda, 26 March 2002; Department of Immigration, Multicultural and Indigenous Affairs, *Government response to the Commonwealth Grants Commission Report on Indigenous Funding*, DIMIA Canberra 2002; and Department of Immigration, Multicultural and Indigenous Affairs, *Submission – House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' inquiry into capacity building in Indigenous* communities, DIMIA Canberra 2002. These documents (except the Bennelong society speech) were considered in detail in: *Social Justice Report 2002*, Chapters 2 and 3.

17   Ruddock, P, 'ATSIC and its future', *op.cit*, p2.

18   *ibid.*

- ensuring that mainstream funding caters to Indigenous needs to enable better targeting of Indigenous specific resources.[19]

In responding to the Commonwealth Grants Commission's report on Indigenous funding, the government also committed to a series of guiding principles for equitable provision of services to Indigenous people. These principles seek to identify the basic requirements and parameters for effective and equitable approaches to service delivery to address Indigenous disadvantage. They include:

- flexibility in the design and delivery of services, and the importance of developing partnerships and shared responsibilities with Indigenous peoples;
- developing a long term perspective in funding, design and implementation of programs;
- improving access to mainstream services for Indigenous peoples and access to services being based on need and equity;
- improving coordination of service delivery within and between governments;
- improving community capacity in order to achieve sustainable outcomes for Indigenous communities; and
- improving data collection to enable performance reporting of outcomes and better alignment of resources to need.[20]

Two processes are also seen as central to the government's 'shared responsibility' approach. First is building the capacity of Indigenous communities and governance reform. As stated in the government's submission to the parliamentary inquiry into capacity building in Indigenous communities, the government's overall approach is to 'locate capacity building firmly at the heart of policy and programme design… An emerging policy challenge for governments… is to actively support Indigenous people in their efforts to develop the individual and community capacity necessary to achieve self-management and self-reliance'.[21]

Second, agreement making processes were identified as the mechanism for implementing the government's shared responsibility and partnership approach. In August 2002, the Minister stated that 'we need agreements that are a two-way undertaking that change the relationship from one of passive welfare dependency to a much more equal relationship' based on empowerment.[22] Such agreements, he stated, should be guided by principles of involvement of the local Indigenous community in decision making; shared responsibility; flexibility to meet local circumstances; and an outcomes focus with clear benchmarks to measure progress.

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19   Ruddock, P, 'Changing direction', *op.cit*, pp7-8.
20   Department of Immigration, Multicultural and Indigenous Affairs, *Government response to the Commonwealth Grants Commission Report on Indigenous Funding*, *op.cit*, p3.
21   Department of Immigration, Multicultural and Indigenous Affairs, *Submission – House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' inquiry into capacity building in Indigenous communities*, *op.cit*, p20.
22   Ruddock, P, 'Agreement making and sharing common ground', *op.cit*, p3.

As noted in Chapter 2, the government has also made a series of commitments through the communiqués of the Council of Australian Governments. These include investing in community leadership initiatives and promoting links between Indigenous people and the private sector to increase economic independence. The whole-of-government community trial initiative has also been discussed at length in Chapter 2 and Appendix 2 of this report.

The government has also initiated a number of inquiries and reviews in 2002 and 2003 on matters that are related to these priorities and this approach. These include:

- Inquiry into capacity building in Indigenous communities, commenced by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs in July 2002 and still underway;
- Review of the Aboriginal and Torres Strait Islander Commission, which delivered its final report in November 2003 and which will form the basis of legislative proposals for reforming ATSIC in 2004;
- The Indigenous Business Review, which is due to report shortly; and
- Review of the *Aboriginal Corporations and Associations Act 1976* (Cth) in 2002, with the government recently announcing that it would introduce legislative amendments to the Act in 2004 to improve the effective of Indigenous organisations.[23]

In the *Social Justice Report 2002*, I examined the approach of the government in some detail. I sought to establish whether government activity and programs backed up the weighty commitments that they make or whether the broader approach of the government to Indigenous issues, particularly through the confines of practical reconciliation, constrained the enabling environment in which such directions were to be implemented.

Overall, I have noted the significance of the government's commitments to improved coordination and efficiency in service delivery, on focusing on building the capacity of Indigenous communities and in seeking to enter into partnerships of shared responsibility with Indigenous peoples to promote economic development. The commitments of the government offer significant potential for making real advances in the situation of Indigenous peoples.

I have also expressed concern, however, that the government appears reluctant to relinquish any control over decision making or resource allocation and accordingly, that they have set a narrow basis for the relationship with Indigenous peoples.[24] As noted in the previous chapter, the absence of any benchmarking and agreement of targets in the short, medium and longer terms also means that the government's approach lacks a longer term perspective to issues of funding, program design and implementation.

There are a number of implications that flow from the government's approach that are relevant in considering developments in fostering Indigenous

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23   Minister Vanstone, 'Indigenous organisations to benefit from reforms', Press Release, 15 January 2004.
24   For details, see: *Social Justice Report 2002*, Chapters 2 and 3.

participation in decision making processes and seeking to move Indigenous peoples beyond welfare dependency.

First, the government's approach is a narrow one in that it is primarily directed to improving the existing service delivery framework. While the government seeks to engage Indigenous people in making this system more responsive to their needs, the primary focus of the government is not on transforming the current approach. The focus is on addressing the needs of Indigenous people (at the individual, family and community level) as disadvantaged citizens and on improving their access to citizenship entitlements. Distinct cultural attributes of Indigenous peoples are secondary concerns in this framework.

Second, as a consequence, the process of re-drawing the boundaries of the relationship between Indigenous peoples and government through partnerships and agreements does not contemplate a change in the relationship based on acknowledgement of distinct Indigenous identity and cultures or recognition of the distinct status and inherent rights of Indigenous peoples. It is not based on recognising Indigenous jurisdictions or on sharing power. This distinguishes the government's approach from a treaty process and from the broader comprehensive agreement making approach proposed by ATSIC in the mid-1990s in negotiations on a social justice package.[25]

Third, the government's focus in on achieving greater efficiency and outcomes for Indigenous peoples from within the existing service delivery framework. The government is not, for example, contemplating radical change to existing financial commitments and approaches to addressing Indigenous disadvantage. Instead it is focused on improving the performance and accessibility of existing mainstream programs and services; freeing up Indigenous specific services to address issues that cannot be addressed through these mainstream services; improving the allocation of existing funding on the basis of need; and addressing fragmentation of service delivery that exists across government departments and between governments. These are important issues to focus on, but without a broader frame of reference they confine the scope of the relationship between government and Indigenous peoples.

Ultimately, these factors suggest that the government's approach, and their efforts to date to engage Indigenous peoples, do not seek to *transform* the existing model of service delivery to Indigenous peoples. Instead, they focus on *improving* the effectiveness of the existing approach and consequently, the outcomes achieved by it in relation to Indigenous disadvantage.

The government's approach is not, however, completely closed. Their commitment to capacity building in Indigenous communities and governance reform of Indigenous organizations offers much potential to unshackle the constraints that exist through the current service delivery approach and has the potential to lead to more radical transformation in the relationship into the future.

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25   For the relevance of this approach see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC Sydney 2000, Chapter 4 (Herein: *Social Justice Report 2000*).

Capacity building in Indigenous communities and governance reform

In setting out a human rights framework for reconciliation, the *Social Justice Report 2000* noted the pivotal importance of building the capacity of Indigenous peoples and supporting Indigenous governance structures. Such a focus, the report suggested, provides 'the potential for a successful meeting place to integrate the various strands of reconciliation' by tying together 'the aims of promoting recognition of Indigenous rights with the related aims of overcoming Indigenous disadvantage and achieving economic independence'.[26]

The *Social Justice Report 2001* then provided an overview of developments in relation to community capacity building and governance reform, and provided some detailed case studies of current developments.[27] That report referred to capacity building and governance as follows:

> **Capacity building** relates to the abilities, skills, understandings, values, relationships, behaviours, motivations, resources and conditions that enable individuals, organisations, sectors and social systems to carry out functions and achieve their development objectives over time.[28]

> **Governance** concerns the structures and processes for decision making, and is generally understood to encompass stewardship, leadership, direction, control, authority and accountability.[29]

There is currently an emerging consensus among governments and Indigenous peoples in Australia about the importance of supporting governance reform and capacity building of Indigenous communities. These terms are now reflected in the policy approaches of all Australian governments and commonly appear in debates about Indigenous policy.

There are four main features of developments over the past few years relating to capacity building and governance reform that I highlight in this chapter.

a) The existence of significant capacity in Indigenous communities

The first is that the significant attention paid over the past three years to issues of governance and capacity building in Indigenous communities has demonstrated that there already exists much capacity at the community level.

There are numerous examples of the ingenuity and initiative of Indigenous peoples in developing solutions to meet their local needs. These range across all areas of life for Indigenous people as well as all areas of government activity. They include justice related issues, health, education, employment and training, through to business development, dealing with substance abuse, healing,

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26   *Social Justice Report 2000*, p107. See also *Social Justice Report 2001*, Chapter 3.

27   *Social Justice Report 2001*, Chapter 3. The focus of that chapter was on the necessary requirements for capacity building to be effective and contribute to sustainable improvements in the well-being of Indigenous peoples, as well as case studies of recent governance and capacity building initiatives.

28   *Social Justice Report 2001*, p67, citing: ATSIC, *Discussion paper on ATSIC's approach to community capacity building,* Unpublished paper, ATSIC Canberra 2001, p1.

29   *ibid*, citing: ATSIC, *Regional autonomy for Aboriginal and Torres Strait Islander communities – Discussion paper*, ATSIC, Canberra 1999, p22.

processes for applying customary law and improved community coordination. As an example, Figure 1 over the page provides a case study of the approach of the Murri School in Queensland in addressing Indigenous educational achievement in a culturally appropriate and community controlled environment.

Figure 1: Case study: The Aboriginal & Islander Independent School ('The Murri School'), Acacia Ridge, Queensland

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The Murri School in Acacia Ridge, Queensland, has been in operation since 1986. The aim of the Murri School is to 'promote the development of Indigenous students as independent and skilled people who are culturally, morally, and socially responsible, employable, capable of self-fulfilment and of contributing to society'.[30]

The Murri School is the only Independent Aboriginal owned and controlled school in Queensland.[31] The Murri School is fully registered with Education Queensland, the Association of Independent Schools Queensland and the Commonwealth. The Murri School is governed by an eight member board comprised of Indigenous Elders, Indigenous professional/business people, Indigenous academics and a school staff representative. The community-controlled nature of the Murri School allows it to be truly reflective of its students and community's needs.

17 years on, the Murri School has a total of 54 teaching and non-teaching staff (the majority being Indigenous) and now provides schooling to approximately 250 Indigenous students from years one through to year 11 as well as adult students through its skills share centre, *Kulkathil*. In 2004, the Murri School will be equipped for preparatory school and year 12 enrolments.

The Murri School provides a range of programs to students designed to support their learning. These support programs include the nutrition program where all children are supplied with breakfast, morning tea and lunch; tutoring assistance; and speech therapy to assist children with their speaking and literacy.

Its community-controlled nature makes the Murri School accessible to children in care (of which are 30 per cent of the enrolled students) and children who have been in detention or who been involved in the juvenile justice system. In some cases, these are children who have been excluded from the mainstream education system. In addition to providing education to Indigenous young people involved in the juvenile justice system, the Murri School also maintains a detention centre visitation program for the families of detainees.

With approximately one third of children commencing year one at the Murri School not having attended kindergarten, the school has formed a partnership with the University of Queensland to provide its Occupational Therapy students to get these children 'school ready' by developing their gross motor skills. In addition to this partnership, Education Queensland will fund a Preparatory Years Trial, to further assist children to become 'school ready'.

In addition to the standard school curriculum, the school has a Family Support Worker and a Child and Family Worker on site as well as a weekly medical and dental service. The school has also engaged the local CDEP in maintaining the school grounds.

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30   Aboriginal and Islander Independent Community School, *Handbook*, p2.
31   Examples of Aboriginal community controlled schools and colleges in other states and territories include Papunya School (Northern Territory), Institute for Aboriginal Development (Alice Springs, Northern Territory); Tranby College (Glebe, New South Wales); Tauondi College (Port Adelaide, South Australia); and Batchelor College (Batchelor, Northern Territory).

In terms of its curriculum, the Murri School has adapted the standard school syllabus to incorporate culturally appropriate methods of teaching and culturally appropriate subject matter. For example, Elders are encouraged to join classroom activities and share stories with the students. The Murri School also teaches history from the perspective of Indigenous Australia, including the points in time before and after colonisation.

Students from the Murri School have made significant achievements academically, culturally and in sports. Children who attend the Murri School perform at a rate 5-10 per cent higher than Indigenous children in mainstream schools. In 2002, years three, five and seven students performed with distinction in the state-wide numeracy and literacy tests. Further, the Murri School Dance Troupe performed traditional dance and song during the Olympic Torch Ceremony in Brisbane in 2000.

Students and families of the Murri School are not required to pay fees. Funding for the Murri School comes from a range of sources including the Commonwealth's Indigenous Education Strategic Initiatives Programme (IESIP) and one of it's component programs, the National Indigenous English Literacy and Numeracy Strategy (NIELNS), as well as block grants from the Queensland Government and the schools own fundraising initiatives.

The Murri School now owns the land on which the school is located as well as the school building itself. The ownership of the land and premises further adds to the schools ability to be self-managed and controlled.

Unfortunately, despite the gains and successes the Murri School has achieved, it continues to be under-funded. This means, for example, the level of professional development that teaching staff can access is limited. As the teaching staff are employed independently by the Murri School, they are unable to access professional development and training which is provided by Education Queensland. The inaccessibility of professional development to these teachers within a school which specifically educates Indigenous children seems to contradict the guiding principles of the National Aboriginal and Torres Strait Islander Education Policy (NATSIEP) and Partners for Success policies which both place particular emphasis on the employment of Indigenous teachers and their professional development.

However, on a positive note, the Murri School has recently been identified by Education Queensland as being a potential partner in learning how to increase Indigenous participation in the education system. To this end, it is hoped by both parties that a formal partnership agreement will be developed in the future. This agreement may result in teachers of the Murri School having access to Education Queensland's professional development program, among other things.

Overall, the Murri School is a positive example of how an holistic approach to education based on community control and establishing partnerships can contribute to addressing the inequality gap which exists in Indigenous participation in education.

Not only is the Murri School an outstanding example of the benefits of culturally appropriate teaching methods, curricula and schooling environment, it is also a model example of how to involve the community, with respect to recruitment of local Indigenous people to the day-today operations and management of the school. It could be said that the Murri School is a model for balancing the mainstream expectations and outcomes of education with the cultural needs of its students and community.[32]

32   Further information on the Murri School can be obtained by emailing info@murrischool. bigpond. I would also like to express my gratitude to the Murri School for the assistance they provided HREOC staff in compiling this case study.

Examples of community initiatives such as this have predominately been brought to the attention of governments, policy makers and Indigenous communities through the following events and processes over the past two years:[33]

- The first national Indigenous governance conference convened by Reconciliation Australia, ATSIC and the Australian Institute of Aboriginal and Torres Strait Islander Studies in 2002;[34]
- The Northern Territory's Indigenous economic forum of May 2003;[35]
- The Northern Territory's Indigenous governance conference ('Building effective governance') of November 2003;[36] and
- The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into capacity building in Indigenous communities, which commenced in July 2002 and is due to report in the first half of 2004.[37]

These conferences, forums and inquiries have revealed that activities currently taking place in Indigenous communities all across Australia encompass a startling variety of processes and cover an enormous range of activities. While these activities achieve varying levels of success and generally operate under difficult conditions, their mere existence provides an antidote to the regular public image of Indigenous people which almost entirely defines our people as victims and according to the disadvantage that many of us suffer, and which presents our communities as dysfunctional and riddled with problems.

As Reconciliation Australia notes, 'the *Building Effective Governance* conference in the Northern Territory in November (2003) for example, uncovered multiple positive initiatives unknown even to other Territorians'.[38] The identification of positive stories about Indigenous peoples 'having a go' and seeking to change the circumstances that exist in communities, has two main benefits. It suggests that problems that exist in Indigenous communities are not insurmountable and can be challenged; and it chips away at the negative portrayal of and misconceptions about Indigenous peoples.

The realisation that there is already a significant accumulation of capacity and skills in communities also provides a platform for reform. As the Centre for Aboriginal Economic Policy Research note:

> The capacities of individual Indigenous community members can certainly be increased, through education, training, and experience … However, it should also be noted that in our experience it is often the case that many

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33 For an overview of research on capacity building and governance in Indigenous communities in Australia, see Dodson, M and Smith, D, 'Governance and sustainable development: Strategic issues and principles for Indigenous Australian communities' Discussion Paper 250/2003, Centre for Aboriginal Economic Policy Research, Canberra 2003, pp3-4. Available online at: www.anu.edu.au/caepr/discussion2.php.

34 See: www.reconciliation.org.au/media/speeches.asp.

35 See: www.indigenousforums.nt.gov.au/

36 See: www.governanceconference.nt.gov.au/

37 See: www.aph.gov.au/house/committee/atsia/indigenouscommunities/inqinde.htm

38 Reconciliation Australia, *2003 Reconciliation Report*, Reconciliation Australia, Canberra 2003, p11.

Indigenous community members have enormous capacities, acquired from past experience and training, but they are somewhat reluctant to use those capacities in difficult organisational environments. Community members get burnt out in such environments and end up withdrawing from them, either as employees or active members of governing bodies.[39]

A key challenge is therefore to identify existing capacity in Indigenous communities and to understand and deal with the circumstances that prevent this capacity from being fully utilised.

b) The importance of capacity building in building a more effective service delivery framework

The second feature of the attention to capacity building and governance reform in Indigenous communities in recent years is the growing realisation of the integral role that these issues play in addressing the deficiencies of the existing service delivery approach.

Building community capacity and promoting good governance in Indigenous communities is increasingly being seen as necessary to developing a more effective service delivery framework that can contribute to sustainable development in Indigenous communities.

In a discussion paper released in 2003, Mick Dodson and Diane Smith explore the linkage between capacity building and sustainable development. They sought to consider in the Australian context one of the main findings of the Harvard Project on American Indian Economic Development, namely, that there is a vital link between governance and sustainable development.[40]

They approached the issue by identifying the key ingredients for sustainable development and examining these according to the level of local control that Indigenous communities presently have over them. They state:

On the evidence available, many Indigenous communities and their organisations have been going about development backwards, getting caught up in issues over which they have little or no control. The most common way communities and organisations proceed is to focus all their energy on:

- starting up a never-ending variety of new business projects that are uninformed by wider 'whole of community' needs and realities;
- responding to externally driven development proposals and other people's economic agendas;
- chasing transitory opportunities, usually single major development projects;
- chasing transitory grant funding, and tying their scarce local expertise into whatever repackaged programs are on offer from government and the private sector; and

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39   Centre for Aboriginal Economic Policy Research, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities,* CAEPR,Canberra 2002, p4.

40   Dodson, M and Smith, D, *op.cit*, p1.

- focusing on short-term outcomes where success is usually measured by immediate economic impacts such as money and jobs (neither of which seem to last).

    Given local conditions of socioeconomic disadvantage and great need, this approach is both tempting and understandable. But the result is that the overall direction of development in communities is usually haphazard.[41]

They describe this approach as a 'tatslotto approach' to economic development which 'produces the inevitable outcome – the odds are against winning and most of the time communities lose their money'.[42] They argue that international best practice and research suggests that instead of this focus, Indigenous communities should focus on issues over which they exert a high level of control:

    [T]he key ingredients over which Indigenous communities can currently exercise the greatest degree of control are their own local processes and structures for governing themselves, and their local development policies and strategies. Communities and their representative organisations can create the local conditions for more legitimate and broadly representative rule, more effective decision-making, capable delivery of services and collective action.

    Arguably then, the best approach for communities to follow in trying to achieve sustainable economic development would be to focus initially on those key ingredients over which they have the greatest degree of local control: that is, their governance arrangements…[43] [T]hey should concentrate on building up stable, capable and legitimate governing institutions, structures and processes.[44]

Dodson and Smith suggest that based on international evidence, 'it is only when effective governance and holistic development strategies are in place that economic and other development projects have the chance of becoming sustainable'. Or put differently, 'sustainable development is – fundamentally – a governance issue'.[45]

This creates a challenge for Indigenous communities and organisations:

    Communities do not have to suspend all development initiatives until they get their governance in order, but neither should they embark on new development initiatives without also commencing the harder work of building effective governance. For many communities and their organisations this may mean having to create a whole new mindset; and it will be hard not to fall back into reactive mode.[46]

It also creates challenges for government in supporting the building of such capacity and appropriate governance. These include not locking Indigenous communities into a service delivery model that is not responsive to their needs and which distracts or dilutes the focus of Indigenous peoples from establishing

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41   *ibid,* p11.
42   *ibid*, p12.
43   *ibid*, p11.
44   *ibid*, p12.
45   *ibid*.
46   *ibid*.

and pursuing their own priorities, as well as providing appropriate recognition of the role of Indigenous people in setting priorities and developing processes for allocating funds on this basis.

c) The importance of corporate governance standards

The third, related, feature to emerge from the focus on capacity building and governance reform in recent years is an identified need to improve corporate governance in Indigenous communities and of Indigenous organisations.

This issue has received extensive public coverage during the past year in relation to the operations of ATSIC and prompted the introduction of a 'separation of powers' within ATSIC by the Minister for Indigenous Affairs in early 2003. As ATSIC's Chief Executive Officer notes, there was also a significant level of 'negative reports on ATSIC published in the media that intensified from February 2003, and which drew strength from a widespread public acceptance that ATSIC had not been vigorous in pursuing problems of accountability'.[47] The issue of improved corporate governance for ATSIC is discussed in the next section of this chapter.

Corporate governance is an issue that has also been prominently reflected in the media following allegations of fraud and mismanagement among some Indigenous organisations. In Western Australia, for example, a parliamentary committee inquiry was established during the year into the handling by the WA Health Minister of allegations of financial impropriety relating to a peak Indigenous representative body.

The most recent review of the *Aboriginal Councils and Associations Act 1976* (Cth), conducted in 2002, highlights a range of challenges for Indigenous communities and government relating to corporate governance standards.[48]

It is estimated that there are nearly 3000 associations incorporated under the *Aboriginal Councils and Associations Act*, fulfilling a range of diverse functions in relation to Indigenous communities. Associations incorporated under the act play an integral role in delivering services to Indigenous communities at the federal, state and territory level. A vast majority of these associations are non-profit organisations delivering services to Indigenous communities, such as health, housing, employment and legal services. There is great fragmentation of service delivery through the vast range of corporations that exist in communities, with a loss of economies of scale and lack of focus on the holistic needs of communities.

As the Review notes, 'the formation and regulation of corporations is a very prominent feature of Indigenous social and economic life'.[49] While this is very much a reflection of the level of dependency of Indigenous people on government services, the prominence of regulatory systems in Indigenous communities comprises a level of intrusiveness into Indigenous lives that is experienced by no other group of people in Australian society.

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47 ATSIC, *Annual Report 2002-03*, ATSIC Canberra 2003, p10.
48 Corrs Chambers Westgarth Lawyers, Anthropos Consulting, Dodson, M, Mantziaris, C, and Rashid, S, *A Modern Statute for Indigenous Corporations: Reforming the Aboriginal Councils and Associations Act*, Office of the Registrar of Aboriginal Corporations, Sydney, 2002.
49 *ibid*, p7.

The reliance of governments on Indigenous organisations to deliver government services creates a high level of dependency for Indigenous peoples on these organisations. The consequence of this is that 'whole Indigenous communities may be dependent on the services provided by a corporation. When such corporations fail, there may be no alternative service providers'.[50] The standard of corporate governance thus has a major impact on service delivery and accessibility of programs for Indigenous peoples.

As the Review notes, the *Aboriginal Councils and Associations Act* has been in operation for more than 25 years and has not been amended in the past decade. Since the act was introduced, however, there have been 'significant changes in the circumstances of Indigenous peoples and in the uses which Indigenous people make of corporations' as well as in corporate governance standards.[51]

These changes range from broader Indigenous involvement in program delivery, legal recognition of Indigenous rights (such as native title), and significant changes to the approach to corporate regulation.

As a consequence of this, the Review concludes that the Act is now out of date, suffers from a series of technical shortcomings and that successive amendments to the act prior to 1992 have meant that it has drifted from its original legislative purpose. This legislative purpose, the provision of a statute of general application to provide Indigenous people with a simple and flexible mean of incorporation, also reflects an outmoded conception of corporate governance and does not reflect changes that have taken place in the relationship of Indigenous peoples and governments.[52] As a consequence, 'the incorporation statute has now itself become a source of disadvantage for Indigenous people'.[53]

Despite this, incorporation of Indigenous organisations under the act is often 'involuntary' in the sense that Indigenous organisations are required to incorporate to comply with legislative provisions and government policy. Under certain circumstances, for example, Indigenous organisations are required to incorporate under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and *Native Title Act 1993* (Cth). Similarly, governments have 'adopted policies of 'self-management' which give the responsibility for the delivery of a wide range of essential services… to Indigenous communities themselves. Government funding bodies often require the communities to form corporations before they are eligible to receive the funding to perform these services'.[54]

There are consequences to such 'involuntary' incorporation, including:

- People who would not have otherwise formed a corporation, and who may not understand the consequences or technical requirements of incorporation are required to do so.
- The requirement for incorporation can force together Indigenous groups which would not otherwise have joined together, and which might not share the same views or goals, making the corporation vulnerable to destabilising competition between groups.

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50   *ibid*.
51   *ibid*, p1.
52   *ibid*, p2.
53   *ibid.*
54   *ibid*, p6.

- The requirement for the establishment of community–based organisations to perform community services can result in confusion between the membership of the community or group and the membership of the corporation itself.[55]

ATSIC have similarly noted concerns about the incorporation of community-based organisations that has occurred over the last thirty years which has occurred through a 'reactionary' process with 'no real strategy underpinning the proliferation of incorporated bodies'. They note that the culturally inappropriate structures of these organisations have led to organisations being 'dominated by larger families'. Ultimately, this process 'commonly did not contribute to social capital and, in fact, often undermined existing capacities' with the consequence that 'the effects of this history now have to be 'undone'.'[56]

In essence, government policy and legislative requirements have foisted on Indigenous peoples regulatory frameworks that contribute to an absence in Indigenous organisations of what the Harvard Project on American Indian Economic Development refers to as a 'cultural match'. As Dodson and Smith explain:

> Underlying… principles of good governance is the issue of legitimacy and mandate. Each community and region will have to find some degree of match or 'common ground' between the types of governing structures and procedures it wants to develop, and the culturally based standards, values and systems of authority of community members. For example, common ground must be found about issues such as who should hold power, how power should properly be exercised, how decision making and disputes should be handled, and about the respective rights and responsibilities of different members and leaders. The more a governing body finds some cultural 'fit' or 'match' in these matters, the more it will secure the ongoing mandate of its members…

> Cultural match is not simply a matter of importing romanticised views of traditional Indigenous structures or authority, and expecting them to handle economic development decisions, financial accounts and daily business management. Creating a cultural match is more about developing strategic and realistic connections between extant cultural values and standards, and those required by the world of business and administration… [W]hile Indigenous governance arrangements need to be informed by local cultural standards if they are to be regarded as legitimate by community members, the governing arrangements also have to work – governing bodies have to be practically capable of responding and taking action in the contemporary environment.[57]

The Review of the *Aboriginal Councils and Associations Act* concluded that, on the basis of the concerns expressed about the Act, there is a pressing need for reform to the corporate governance regulatory framework for Indigenous organisations. The Review recommended two main aspects to this reform: the

55   *ibid*.
56   ATSIC, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities,* ATSIC, Canberra 2003, p5.
57   Dodson, M and Smith, D, *op.cit*, pp18-19.

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provision of 'special regulatory assistance' for Indigenous peoples, through the provision of measures for the corporate regulator (currently the Registrar of Aboriginal Corporations) to assist and encourage directors of corporations to develop the skills and good governance practices necessary for long term viability of corporations; and significant reform to the *Aboriginal Councils and Associations Act*, but maintenance of an Indigenous specific incorporation approach.[58] Accordingly, the Review proposes the introduction of a new *Indigenous Corporations Act*.[59]

On 15 January 2004, the Minister for Immigration and Multicultural and Indigenous Affairs announced that the government was shortly to introduce proposed legislative reforms to the *Aboriginal Councils and Associations Act*. These proposed amendments are intended to:

- rationalise the number of corporations through a focus on pre-incorporation scrutiny and support for alternatives to incorporation;
- provide conferencing opportunities to encourage agencies to resolve co-ordination issues;
- provide accredited training for Directors and members of corporations;
- expand assistance for dispute resolution; and
- establish a 'rolling program of 'healthy corporation' checks tailored to Indigenous corporations, coupled with more streamlined responses to critical problems'.[60]

The provision of greater support for addressing corporate governance issues in Indigenous organisations and amending the *Aboriginal Councils and Associations Act* are vital components in seeking to build the capacity of Indigenous communities. The government's proposed legislation should be treated as of the highest priority. This should be reflected in the treatment of the draft legislation in the legislative programme in Parliament. The draft legislation must also be subject to broad consultation, given the necessity that any legislative reform should facilitate rather than obstruct the development of Indigenous organisations that achieve an appropriate 'cultural match' between cultural legitimacy and corporate governance requirements.

d) Definitions of capacity building and a reform agenda

The fourth main feature to emerge from the focus on capacity building and governance in Indigenous communities over recent years is that, despite the convergence of views on the need for capacity building and governance reform, there is no commonly agreed definition of what capacity building is, nor an agenda for progressing capacity building and governance reform in a whole-of-government and holistic manner.

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58 Corrs Chambers Westgarth Lawyers, Anthropos Consulting, Dodson, M, Mantziaris, C, and Rashid, S, *op.cit*, pp8-13.
59 See: *ibid*, pp16-30.
60 Minister for Immigration, Multicultural and Indigenous Affairs, *Indigenous organisations to benefit from reforms*, Media Release, 15 January 2004.

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Submissions to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into capacity building in Indigenous communities (herein referred to as the parliamentary inquiry into capacity building) reveal that there are significant differences in the understanding of what the terms capacity building and governance reform mean to different governments, service delivery agencies and Indigenous peoples and organisations.[61] The Australian Institute of Aboriginal and Torres Strait Islander Studies comment in their submission to the Inquiry on the widespread and uninformed use of the term capacity building and it's permeation across all levels of public policy and research.[62]

Submissions reveal that different organisations apply the term capacity-building to refer to anything from political processes, self-determination, Indigenous rights, citizenship rights, corporate governance, self-governing community structures, regional autonomy, government service delivery reform, education and training, partnerships, economic development to sustainable development. Some of these descriptions equate potential outcomes of capacity building with the process of capacity building.

The lack of a common understanding of what capacity building and governance reform entail promotes policy confusion. It is a significant problem that has the potential to render commitments by governments to support such processes meaningless. As ATSIC have stated:

> In this country the rhetoric of capacity building has been adopted by state governments and by Commonwealth agencies… What is missing is an agreed setting for the programs and activities which, these agencies claim, incorporate capacity building or capacity development processes. Each agency derives its own view of capacity building and development, and there is a danger that this reinforces the stovepipe program environment.[63]

A potential consequence of this policy confusion is the adoption of an extremely limited approach to capacity building that equates developing the capacity of Indigenous organisations and communities with improving the delivery of government services. This has the potential to co-opt the process of capacity building so that it reinforces the characteristics of the existing system, with all the structural problems noted earlier in this chapter. As I discuss in Chapter 4 in relation to developments on the Anangu Pitjantjatjara Lands, this raises the concern that the emphasis of governments on capacity-building could amount to nothing more than a bureaucratisation of what was formerly called community development.

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61 The submission of the Western Australian government to the House of Representatives inquiry into capacity building is a good illustration of this. It is a collection of statements and policies from different agencies and departments of the government and reveals different understandings and approaches between these agencies.

62 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities*, 28 August 2002, pg 4 & 5.

63 ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, *op.cit*, p6.

This limitation is implied in the terms of reference of the parliamentary inquiry into capacity building which requires the Committee to examine 'strategies to assist Aboriginals and Torres Strait Islanders better manage the delivery of services within their communities'.[64] The Committee has, however, been presented with arguments from many witnesses and in many submissions urging that it not make the mistake of confining discussions about capacity development to the realm of service delivery.

ATSIC Commissioner Kim Hill referred to the need for capacity development to be applied outside a formal service delivery framework by the Committee as follows:

> The terms of reference are limited to service delivery only. If the aim of the inquiry is to overcome disadvantage and failing policies then we have to look beyond just service delivery. I believe the inquiry should be based on the human element of the problems which we face and not on service delivery. It should be about how our people can become full and active partners with agencies as part of our participation in the economic, political and social environment of Australia. So capacity building should concentrate on the participation of people, with human and citizenship rights, rather than on organisations, which are only deliverers of such services to the communities. In terms of access and equality, I think governments have a responsibility to provide services. The inquiry should not just be looking at ways to hand over this responsibility to communities; it has to take a broader view of capacity building—or capacity development, which is the term I prefer to use.[65]

In their submission to the inquiry, the Fred Hollows Foundation emphasises the importance of acknowledging the broader structural environment within which capacity building strategies take place:

> [C]apacity building and service delivery must take place in a broader context of policy and funding arrangements which are likely to constitute significant barriers to these approaches.[66]

They note the following seven structural issues relating to the approach of governments that impacts on the successful implementation of capacity development initiatives:

- The current socio-economic and health status of remote communities and their members;
- Lack of basic infrastructure in which 'capacity-building' can occur;
- The lack of availability of services and lack of funding equity;

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64   House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Terms of reference – Inquiry into capacity building in Indigenous communities*, online at: www.aph.gov.au/house/committee/atsia/indigenouscommunities/inqinde.htm, 11 November 2003.

65   Hill, K, *Hansard – House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into capacity building in Indigenous communities*, 27 November 2002, p209.

66   Fred Hollows Foundation, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities,* Fred Hollows Foundation, Sydney 2002, p1.

- The complexity of Government funding arrangements and lack of coordination of services at various levels of Government;
- Lack of sustainability in Government programs – the impact of electoral and funding cycles;
- The lack of accountability of Government departments to achieve measurable outcomes in the delivery of services; and
- The lack of Indigenous control of decision-making.[67]

Failure to acknowledge and address these features of the existing service delivery model will result in any benefits from capacity building only ever being marginal or short-term. This is also illustrated by the case study of infrastructure provision in remote communities provided in Figure 2 below.

Figure 2: Case study: Achieving sustainable improvements in the provision of water and sanitation services to remote Indigenous communities

In 1994, the Race Discrimination Commissioner at HREOC published a report on the state of water and sanitation systems in ten remote Aboriginal and Torres Strait Islander communities.[68]

The report identified significant problems in the supply of water and sanitation services to these communities, and made a number of recommendations relating to community control in service provision, training and employment opportunities, and developing sustainable solutions to infrastructure needs. One of the recommendations of the report was for HREOC to return to the ten communities considered in the report after five years to evaluate progress in addressing the recommendations.

In 2001, the acting Race Discrimination Commissioner published the findings of this evaluation (which had been undertaken for HREOC by the Centre for Appropriate Technology).[69] The Review identified improvements in services in the ten case study communities. It specifically noted improvements in technical delivery, consultation processes and the cultural appropriateness of service delivery processes. The review found, however, that the delivery of water and sanitation services to these communities had not addressed the core issues and recommendations of the 1994 water report.

The Review identified the difficulty of sustaining meaningful Indigenous community involvement within a service delivery framework that is not linked to longer-term institutional or strong local or regional frameworks. As a result, 'resources revolve around the project' and projects become 'one-off, isolated interventions instead of being one stage in a longer process of community development and planning'. Community involvement in the project 'becomes an event within the project rather than one part of a strategic, long term process for community improvement'.[70]

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67   *ibid*, p4.
68   Race Discrimination Commissioner, *Water report*, HREOC Sydney 1994.
69   Race Discrimination Commissioner, *Review of the Water report*, HREOC Sydney 2001. See also: Grey-Gardner, R and Walker, B, 'What lies beneath: Sustainable groundwater management for communities of Indigenous people', Speech, International Association of Hydrogeologists, International Groundwater conference – Balancing the groundwater budget, Darwin 2002; Centre for Appropriate Technology, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities*, CAT, Alice Springs 2003.
70   Race Discrimination Commissioner, *Review of the Water report*, *op.cit*, p61.

The Review also concluded that Indigenous people in the ten communities could not be confident that their water and sanitation services would be sustainable and made the following comments on developing a sustainable development approach to infrastructure provision to remote communities:

> The Review also finds that, as with international experience, programs delivering infrastructure development mainly in response to poor health, disadvantage and system failure, can foster a supply paradigm of service delivery. Internationally such service delivery models are found to be locally unsustainable without maximum Indigenous participation, and levels of investment matched to local willingness and ability to pay for and manage the level of services provided.

> Government has a responsibility to facilitate services that directly address disadvantage and poor health through programs that enhance human capacity and well-being. While there is always pressure to address or relieve immediate and obvious disadvantage, such a rationale for major infrastructure works has been questioned in international experience.

> While there are significant differences between the international and the Australian experience there is sufficient evidence to warrant further examination of the implications of the current direction of service delivery for remote Indigenous communities and the rights that members of those communities may seek to exercise…

> Overseas experience has shown that programs have more chance of succeeding when infrastructure, service levels and cost are matched to local consumer realities. Sustainable solutions take account of the economic, social and human development of the community, including skills, knowledge and organisational capacity. The success of these processes directly influences whether services are used, sustainable and have an impact on quality of life and health.

> Such a process is only beginning to become a reality in Australia today. Many solutions currently 'applied' continue to view recipients as beneficiaries, often using urban or peri-urban solutions and standards without holistic consideration of remote social, economic and environmental realities and resources. To move towards sustainable development, a conceptual shift needs to take place whereby the notion of 'beneficiaries' is replaced by that of 'consumers of services'. When services are 'consumer driven', demand has reached a point where there is significant appreciation and understanding from consumers about what they can and cannot afford, and how the system *they have* chosen works.

> As with the Water Report, this review concludes it is imperative that the design and implementation of systems that deliver water to Australia's Indigenous communities reflects a cooperative process of negotiation, community education, forward planning and cultural awareness. Factors influencing the process might include affordability, technical appropriateness, current service delivery structures and the level of skills and resources available in the community. Clearly the involvement of Aboriginal and Torres Strait people as 'empowered consumers' is paramount to sustainable water

provision, regardless of the capital outlay or the necessity for external technical expertise.[71]

The Centre for Appropriate Technology, drawing on the findings of this review as well as those of a 20 year study on international water and sanitation systems in 49 countries, have also argued that the failure of current service delivery approaches is based on communities being approached as passive recipients of services rather than active participants. It believes that to address this failing, service delivery needs to be reformed from a 'supply-driven' mentality to one that is 'demand-responsive' and cognisant of the needs of Indigenous peoples:

> For people to be "active consumers", i.e. actively involved in service delivery, they need to have the capacity to make the decisions about the kinds of services they need. To make decisions about these services people first of all need for these issues to be high enough up their priority list to think about them. They also need to be able to access the resources and support to work on their own agendas.[72]

They argue that the definition of successful service provision must undergo a radical shift from being the technical perfection of a project to whether services are used, sustainable and have an impact on health and quality of life.[73] Success cannot be measured by a well-administered program that is not utilised by the people it is meant to serve. CAT note:

> Capacity building in this sense is about people developing the ability to take action and make change according to their own agenda. It is essential that space is created for community's agendas to emerge. Driving a project according to an external agenda does not support the development of self-reliance.[74]

It is essential that capacity building be properly understood as complementary to reforming government approaches to service delivery and not as a substitute for such reform. As ATSIC state:

> ATSIC believes that appropriate service delivery and a developmental approach [that incorporates capacity building] are different and that these differences need to be understood by everyone involved in service delivery in Indigenous communities. Both are required, and the best outcomes are obtained when there is a synergy between the two.[75]

To address the lack of an agreed framework for advancing capacity building, ATSIC has developed an integrated framework for progressing capacity building and promoting sustainable development in Indigenous communities. ATSIC have recommended to the parliamentary committee into capacity building that this framework be adopted through the Council of Australian Governments and

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71   *ibid*, pp71-72.
72   Centre for Appropriate Technology, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into Capacity Building,* CAT, Alice Springs 2003, p10.
73   *ibid*, p11.
74   *ibid*, p14.
75   ATSIC, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities, op.cit*, p5.

form the platform from which all governments would work with Indigenous communities. ATSIC have also entered into a partnership with OXFAM International to provide technical assistance within ATSIC to pilot this approach. This framework is an important initiative and is considered in more detail in the next section.

ATSIC's framework for capacity building and sustainable development

ATSIC's framework for capacity building and sustainable development has its origins in a number of reports and discussion papers that have been prepared by or for ATSIC over the past six years. These include the discussion paper and report on greater regional autonomy;[76] scoping paper on resourcing self-determination;[77] the Dillon report on service delivery in Doomadgee and Palm Island;[78] discussion papers on capacity building;[79] and other documents.[80] Each of these documents reveals a continual engagement by ATSIC, and one that has generally not been acknowledged, on finding new and improved ways to exert its leverage and utilise its functions to achieve lasting improvements in Indigenous communities. As the 2001 discussion paper *Changing perspectives in ATSIC* states:

> More than ten years after the establishment of ATSIC, more than twenty five years after the establishment of the Department of Aboriginal Affairs, socio-economic indicators for many of the Indigenous peoples of this country are still a source of shame. The question being asked both internally and externally is whether there are some aspects of the way ATSIC does business which do not have a positive impact on these indicators…[81]

> The history of our structure (ie, ATSIC), and the history of our programs and program priorities, tend to enshrine the 'service delivery' approach to community development. Service delivery is of course an agreed function of government. But, in the words of Paul Streeton, 'we know very little about how to transform social services, adequate food and certain institutional arrangements into long, healthy, productive, creative, enjoyable lives'. The continued adherence to a service delivery model – at the expense of seeking additional approaches to dealing with endemic social and economic issues confronting some Indigenous communities – means that this transformation is still some way in the future.[82]

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76   ATSIC, *Report on greater regional autonomy*, ATSIC Canberra 2000; and ATSIC, *Regional autonomy for Aboriginal and Torres Strait Islander communities – Discussion paper*, *op.cit*.

77   ATSIC, *Resourcing Indigenous development and self-determination – A scoping paper*, *op.cit*.

78   ATSIC, *Review of Indigenous communities of Doomadgee and Palm Island*, ATSIC Canberra 2000 (Herein *Dillon report*).

79   ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, *op.cit,* and Gerritson, R, *Community capacity building: An ATSIC Discussion paper,* Unpublished, ATSIC 2001.

80   For example: ATSIC, *Directions for change – ATSIC 2001/02 Budget outlook*, *op.cit.*.

81   ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, *op.cit,* p3.

82   *ibid*, p13.

As ATSIC notes in its submission to the parliamentary inquiry into capacity building, they have made 'a concerted effort' over the past three years to understand the limitations of the current service delivery model[83] and to identify ways of overcoming them. They emphasise international trends in development practice, which has moved from 'the needs-based approach (needs determined by external experts) of the 1970s to activities based on theories of participation, capacity building and capacity development'.[84] Their integrated framework for capacity building and sustainable development is the product of this consideration.

The focus of ATSIC's integrated framework is on *capacity development*, involving the active participation of Indigenous peoples in decision-making processes. Capacity is defined as 'the abilities, skills, understandings, values, relationships, behaviours, motivations, resources and conditions that enable individuals, organisations, sectors and social systems to carry out functions and achieve their development objectives over time'.[85] The focus on capacity *development* rather than capacity *building* emphasises two things – that considerable capacity already exists at the community level; and that the emphasis is on a continual process rather than on completing an activity.

This approach is characterised by broad based participation and a locally driven agenda; building on local capacities; ongoing learning and adaptation; long term investment by government agencies; integration of activities at various levels to address complex problems; and a systems approach to problem solving. It aims to enhance skills, abilities and resources; strengthen understandings and relationships; and address issues of values, attitudes, motivations and conditions in order to support sustainable development.[86]

In accordance with this, there are three defining features of ATSIC's approach. The first is that it is a *people-centred* developmental approach focused on building the human and social capital necessary for Indigenous participation in planning, organising and administering programs. As stated in the *Dillon Report*:

> [C]ommunity development[87] is about people development, not service delivery. It is participatory in nature, specific and not focused on compliance. It is about process. It is about engagement of people of their well being. No amount of… programs will bring about development in people unless (the programs)… are linked to a community development process… (Such a process)… is supplementary to the service delivery function of governments.[88]

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83 ATSIC, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities, op.cit*, p5.
84 ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, *op.cit,* p5. Note: developments in theories relating to development and sustainability since the 1970's are discussed in detail in the *Native Title Report 2003*, Chapters 1 and 2.
85 *ibid, p7*. This was the definition adopted by the *Social Justice Report 2001* and discussed earlier in this chapter.
86 *ibid*, p9.
87 Note: There are slight variations in the terminology used by ATSIC over the past three years as their approach has evolved.
88 ATSIC, *Dillon Report, op.cit*, p2.

Second, it emphasises process elements such as access to choice, participation in planning, and access to decision making. ATSIC states:

> What distinguishes capacity development from service delivery is its holistic nature, and its suggestion that individuals, families, and organisations have a definite and active part to play in the process – rather than as passive recipients of services… if the program is simply delivered to passive recipients, dependency is reinforced and capacity is not strengthened… [C]apacity development recognises the importance of thinking about individuals, organisations, programs, policies, etc, as part of a broader whole rather than as discrete, or loosely connected concerns. It requires change in the way 'problems' are addressed. The traditional service delivery mode, which breaks a large issue into separate chunks… does not necessarily deal with the 'whole' – or the space between the inter-related elements.[89]

The third is that a capacity development approach incorporates a focus on sustainability, continually re-assessing whether a program or project can become self-sustaining or how to maintain the impact of a program intervention in a community over time. ATSIC see this as involving a subtle change form the current service delivery approach, which focuses on the following key stages:

- Where are we now? (current situation);
- Where do we want to be? (vision, goals);
- How do we get there? (planning, strategies);
- Did we get there? (monitoring, evaluation);
- Where are we now? (current situation);
- and so forth.[90]

By contrast, the capacity development approach introduces a new element to this cycle as follows:

- Where are we now? (current situation);
- Where do we want to be? (vision, goals);
- How do we get there? (planning, strategies);
- Did we get there? (monitoring, evaluation);
- *How do we stay there? (sustainability);*
- Where are we now? (current situation);
- and so forth.[91]

ATSIC's integrated framework for capacity building and sustainable development is reproduced in figure 3 on the next page.

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89 ATSIC, *Changing perspectives in ATSIC – from service delivery to capacity development*, *op.cit,* pp7-8.
90 *ibid*, p10.
91 *ibid*, p11.

Figure 3: ATSIC's integrated capacity building framework for sustainable development[92]

LEVEL OR TIER OF ACTIVITY	METHODOLOGY "HOW TO"
COMMUNITY	**Focus on Empowerment:**
Individuals Families Extended Families/Clans Small Groups Non-Incorporated Organisations (with private Interests)	Traditional Community Development methodologies such as: ABCD Asset Based CD (Kretzmann) NGDO Best Practice *These are essentially participative interventions.*
ORGANISATIONS	**Focus on Governance:**
Community-based Organisations (Incorporated, with public interests) Resource Agencies Native Title Representative Bodies Local Government Authorities Land Councils	Harvard Project – American Indians (First Nations Approach) NGDO Best Practice Community Participation Agreements (ATSIC/ATSIS) ORAC Legislative reforms and initiatives *These align organisations structures to Indigenous decision-making processes.*
GOVERNMENT (INCLUDING STATUTORY BODIES)	**Focus on Integration:**
Regional Commonwealth Agencies Regional/State/Territory Agencies State Governments Commonwealth Government Commonwealth Agencies Council of Australian Governments (COAG) ATSIC Board of Commissioners ATSIC Regional Councils S13 Committees (SAC)	Whole-of Government • ICCT Community Trial Sites • DoTARS Sustainable Regions Bilateral or other agreements based on regional/community plans. ATSIC/ATSIS Corporate Plan *These will lead to homogenous, policies programs driven by joint strategic planning rather than submission based interventions.*

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92   ATSIC, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities, op.cit*, p8.

This framework highlights that there are three levels of interventions for capacity development – the community level; Indigenous organisations; and government level (including ATSIC). There are different approaches needed for each level. The focus of capacity building strategies for individuals and community members is on empowerment, with interventions to be essentially participative. For Indigenous organisations the focus is on governance and aligning organisational structures to community-based Indigenous decision-making processes. At the government level, the focus is on integration and whole-of-government coordination and cooperation.

As ATSIC Commissioner Kim Hill noted at a public hearing for the capacity building inquiry:

> all three (levels or tiers of activity) have to embark on a new relationship with capacity building as a key focus. Concentrating on communities will not make any significant changes. Agencies have to change the way they deal with and interact with communities and community people. For communities, I believe, the aim is empowerment. For organisations, the aim is appropriate government systems. For agencies, the aim is to have a whole-of-government approach with community aims in mind.[93]

ATSIC's framework suggests that by reforming and improving the way Indigenous organisations and government undertake their obligations and responsibilities to individuals, families and small groups, the resulting space will reinvigorate the strengths and creativity of Indigenous people and communities. Indigenous community capacity will be given the opportunity to emerge and be supported if the surrounding structures reform (and develop) their existing practices. Community-based organisations can do this by seeking to align their organisations structures to Indigenous decision-making processes and government can integrate and coordinate their policies and programs to facilitate strategic planning (at the regional and community level) rather than submission based interventions.

ATSIC describes the different focus and emphasis at each level as follows:

- *Community level:* A focus on empowerment using participative community asset development techniques. 'Family/clan panning could also include participation in situational analyses, demographic projection and feasibility assessment of economic development aspirations. These approaches mean local responses to local issues and active involvement in identifying problems and contributing to solutions'.[94]

- *Community organisations:* A focus on good governance. 'ATSIC recognises and endorses the broader role of Indigenous community-based organisations, and believes that (this) integrated framework… will reinvigorate community-based organisations in a way that will build human

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93   Hill, K, *Hansard – House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquiry into capacity building in Indigenous communities*, 27 November 2002, p210.

94   ATSIC, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities, op.cit*, p9.

and social capital, as well as capacity'.[95] 'The *potential* of community – based organisations as vehicles for community capacity building depends on good governance, including how representative they are of individuals, families and small groups (with their *private* interest) that make up 'community'. Negotiation of roles and responsibilities between organisations, and between organisations and kinship based groupings, is a critical aspect of organisational reform. Changes to legislative and regulatory frameworks are required to enable culturally appropriate forms of governance'.[96]

■   *Government:* A focus on whole-of-government approaches. 'The diversity and complexity of contemporary Indigenous societies and cultures point to the need for *location specific* responses by service delivery agencies in all jurisdictions. Such location specific responses should be driven by local and regional perspectives, through community and regional plans, and by formalising a shared partnership arrangement through agreement making, based on those plans'.[97] 'Whole of government engagement with whole-of-community would build on the emerging capacities within communities and constituent groups, as well as government agency representatives, and allow flexible service delivery across coordinated agencies in all jurisdictions. Agencies would deal with communities in structured planning environments (Sec. 13 and Sec 94 of the ATSIC Act, 1989 are critical in the application of this strategy)'.[98]

In their submission to the parliamentary inquiry into capacity building, ATSIC highlight two crucial issues to drive change across each of these levels.

The first is concentrating on local level planning processes that 'can better match 'vertical' sectoral resource supply systems with local development planning so as to build integrated 'horizontal' environmental, economic, social and governance *systems*'.[99] ATSIC intends to develop a model of local level planning that has the following features:

- is participative, raises awareness and empowers;
- incorporates or is consistent with principles of mutual obligation and sustainable development;
- supports the development of greater economic self-reliance which working to reduce passivity and dependency;
- can be part of the process of program and service delivery reform by better matching planning and coordination to local level need; and
- integrates community planning with ATSIC Regional Council planning processes.[100]

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95   *ibid,* p3.
96   *ibid*, p9.
97   *ibid*, p4.
98   *ibid*, p9.
99   *ibid*, p7.
100 *ibid*.

The second is building the internal capacity of ATSIC (and in its present form, ATSIS) as well as the wider bureaucracy to support and manage a developmental approach with communities. To this end, ATSIC/ATSIS signed a Memorandum of Understanding (MOU) with OXFAM International in early 2003 to undertake joint development activities aimed at building the capacity of ATSIC/ATSIS officers.

The first activity under the MOU is a capacity building training program being trialled with ATSIC/ATSIS staff in three regional offices (Cairns (Qld), Kalgoorlie (WA) and Bourke (NSW)). There are two stages to the training – the first stage and level is staff in regional offices to understand and implement a developmental approach; and the second stage and level for regional managers and more senior staff to manage staff and programs in undertaking a developmental approach.[101] The purpose of the training is not to turn ATSIC/ATSIS staff into development workers but instead to institute within the agency an understanding of capacity development principles to apply within a service delivery environment. The trial is managed by the Community Development and Education branch of ATSIS, working in conjunction with the ATSIC Board. An advisory committee is oversighting the initiative and will evaluate its progress.

Capacity building and governance reform – an agenda for change

Overall, it can be seen that there have been significant advances in the past three years in relation to capacity building initiatives. There is a broader acceptance of the need for capacity building and governance reform within Indigenous communities and to changing the way that governments go about delivering services. There is also a broader acknowledgement of the breadth of initiatives currently underway to address the overall circumstances of Indigenous peoples. This is let down, however, by the lack of a consistent understanding of what capacity building entails which promotes a more limited focus purely on the operations of existing service delivery mechanisms.

The proposal of an integrated capacity development approach by ATSIC demonstrates the *potential* for transforming the relationship of Indigenous peoples and government through a focus on governance reform and capacity building. It provides a holistic, whole-of-government approach that serves as an agenda for change. The adoption of this framework would not only provide a long term framework and vision for improving Indigenous well-being, it would also ensure that all governments proceed in addressing capacity development issues with a consistent understanding of the goals and objectives of such a process. Many current initiatives of governments – such as the COAG whole-of-government trials, proposals to reform corporate governance standards relating to Indigenous corporations, and agreement making with ATSIC – fit within or is consistent with this integrated framework.

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101 For details of OXFAM's approach see: OXFAM Community Aid Abroad, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs – Inquiry into Capacity Building in Indigenous Communities,* OXFAM, Melbourne 2003.

On the basis of the issues discussed in this section, I have chosen to make the following recommendations to advance progress on capacity building in Indigenous communities.

Recommendations 10-12 on capacity building and governance reform

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10. That COAG adopt ATSIC's *Integrated framework on capacity building and sustainable development* as a central component of its Reconciliation Framework.

11. That COAG also provide funding for research into best-practice models of governance reform and capacity building relating to Indigenous peoples in Australia. Such research should be based on overseas models such as the Harvard Project on American Indian Economic Development, and build on the findings of existing work on governance reform in Australia.

12. That the Minister for Aboriginal and Torres Strait Islander Affairs (Cth) ensure that reform of the *Aboriginal Councils and Associations Act 1976* (Cth) is treated as a high priority of the federal government and ensure extensive consultation is undertaken with Indigenous peoples about proposed amendments to the legislation. Any proposed legislative reforms should be in accordance with the recommendations of the 2002 review of the Act's operation. In particular, proposed amendments should recognise the need for special regulatory assistance for Indigenous organisations and maintain a distinct legislative framework for regulation outside of the Corporations Act as a special measure.

Strengthening the role of the Aboriginal and Torres Strait Islander Commission

This chapter and the previous chapter have highlighted a number of positive developments as well as deficiencies in the current approach of the government to Indigenous policy. Both the positive initiatives currently underway and outstanding concerns point to the need to strengthen the role of ATSIC as a way of facilitating increased and improved Indigenous participation in decision making processes. On this basis, I have chosen to conclude this chapter by presenting an agenda for reforming the role and functions of ATSIC. Such reform is needed to extend ATSIC's influence and to support ATSIC in adopting an expanded leadership role within government, as well as to facilitate greater Indigenous participation in the processes of government.

I particularly focus on the challenges of greater regionalisation and strengthening the influence and leadership role of ATSIC at the national level.[102] These are

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102 The discussion in this section is based on: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the ATSIC Review*, HREOC Sydney 2003 (Herein: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to ATSIC Review*). Available online at: www.humanrights.gov.au/social_justice/submissions/

crucial issues for advancing capacity building in Indigenous communities, improving accountability of governments to Indigenous peoples and ultimately, in creating a new relationship between Indigenous peoples and governments. They are also issues which will in all likelihood dominate debates about Indigenous issues in 2004, with proposals for legislative reform to ATSIC likely to be debated in Parliament in the first half of the year.

a) Developments in 2003 – Corporate governance issues and the ATSIC Review

Much of the focus on Indigenous issues in 2003 centred on the performance of ATSIC and proposals for reforming its structure and functions.

During the year, the Minister for Immigration, Multicultural and Indigenous Affairs issued directions to ATSIC aimed at preventing conflicts of interest in funding decisions by ATSIC's elected officials.[103] These directions prevented ATSIC from making grants or loans, or offering contracts or guarantees to organisations in which ATSIC full-time office holders were directors or in which they had a controlling interest. The purpose of the directions was to address both 'the perception of conflicts of interest in ATSIC' and 'the potential for serious conflict of interests when an ATSIC officeholder is also a director of a body seeking ATSIC funding'.[104]

These concerns about conflicts of interest led the Minister to announce on 17 April 2003 that the government had decided to strip ATSIC of over \$1 billion in funding by creating a new executive agency to manage ATSIC's programs in accordance with the policy directions of the ATSIC Board.[105] The basis of this decision was to promote good governance and accountability; address the 'current breakdown in community confidence in ATSIC'; allow ATSIC to refocus its attention on 'more significant policy issues' rather than be distracted by 'the micro-management focus on ATSIC's own spending'; and to enable the Board and Regional Councils to take 'a more strategic approach in future so that their influence is extended – not only with regard to the programs for which they are directly responsible, but also by enabling them to engage with mainstream agencies with greater credibility and authority'.[106]

The newly created Aboriginal and Torres Strait Islander Services (ATSIS) commenced operations on 1 July 2003. The Minister issued directions to ATSIS on 1 July 2003 requiring it to:

- take all reasonable steps to ensure that ATSIS conforms to the policies and strategic priorities established by ATSIC, and reflects the priorities set by ATSIC Regional Councils in their regional plans;
- facilitate linked approaches with other government agencies and coordinate its activities to achieve 'effective synergies with overall

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103 The Directions were issued on 24 December 2002 and amended on 3 February 2003.
104 Ruddock, P, 'Directions to ATSIC concerning conflicts of interest', Press Release, 24 December 2002, www.minister.immi.gov.au/atsia/media/ruddock_media02/r02080.htm, 12 December 2003.
105 For an overview of the directions see: ATSIC, *Annual Report 2002-03*, *op.cit*, pp10-11, 17-18.
106 Ruddock, P, 'Good governance and conflicts of interest in ATSIC', Press Release, 17 April 2003, www.minister.immi.gov.au/atsia/media/ruddock_media03/r03028.htm, 12 December 2003.

Government policies and priorities' as well as have 'appropriate regard to overall Government policies and priorities';

- take all reasonable steps to allocate resources on the basis of relative need, taking account of the availability of alternative services, as well as the supplementary nature of ATSIS funding and the priorities for addressing relative need spelt out by the ATSIC board;

- ensure best practice in its relationship with service providers, for example through adopting outcome-based funding and performance-based contracts;

- ensure compliance with the conflict of interest directions described above; and

- work in partnership with the ATSIC Board and Regional Councils, including by providing support for regional planning and policy development.[107]

The Minister declared that the creation of ATSIS was to be an 'interim' measure pending the outcomes of the review of ATSIC announced in 2002.

This review of ATSIC produced a discussion paper in June 2003 expressing significant concerns about the way ATSIC currently operates.[108] In November 2003 it released its final report, titled *In the hands of the regions – a new ATSIC*, with recommendations for reform. The final report of the Review Team acknowledges the importance of ATSIC:

ATSIC should be the primary vehicle to represent Aboriginal and Torres Strait Islander peoples' views to all levels of government and to be an agent for positive change in the development of policy and programs to advance the interests of Aboriginal and Torres Strait Islander Australians.[109]

Ultimately, however, they conclude that ATSIC:

is in urgent need of structural change. ATSIC needs the ability to evolve, directly shaped by Aboriginal and Torres Strait Islander people at the regional level. This was intended when it was established, but has not happened. ATSIC needs positive leadership that generates greater input from the people it is designed to serve. One of its most significant challenges is to regain the confidence of its constituents and work with them and government agencies and other sectors to ensure that needs and aspirations are met. ATSIC also has to operate in a fashion that engages the goodwill and support of the broader community.[110]

The report of the Review Team particularly emphasises the need to improve the connection between ATSIC's regional representative structures and national policy formulation processes. The Review Team state that:

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107 ATSIC, *Annual Report 2002-03*, *op.cit*¸ p11.
108 Hannaford, J, Huggins, J and Collins, B, *Review of the Aboriginal and Torres Strait Islander Commission*, Public Discussion Paper – June 2003, Commonwealth of Australia, Canberra 2003, online at: www.atsicreview.gov.au.
109 Hannaford, J, Huggins, J and Collins, B, *In the hands of the regions – Report of the Review of the Aboriginal and Torres Strait Islander Commission*, Commonwealth of Australia, Canberra 2003 (Herein ATSIC Review Report), p24 and Recommendation 2.
110 *ibid*, p5.

> As it currently operates, the review panel sees ATSIC as a top down body. Few, if any, of its policy positions are initiated from community or regional levels. The regional operations of ATSIC are very much focused on program management. To fulfil its charter, engage its constituency and strengthen its credibility, ATSIC must go back to the people. The representative structure must allow for full expression of local, regional and State/Territory based views through regional councils and their views should be the pivot of the national voice[111] …

In terms of capacity building, this identifies a challenge to develop a 'cultural match' between the structures of ATSIC and Indigenous peoples at the local level to ensure that ATSIC is representative and participative.

Significantly, the Review Team note that public perceptions of how ATSIC have performed have been burdened by unrealistic expectations, with the organisation blamed for failures which lie outside its control. They have noted that:

> In the wider public arena, perceptions of ATSIC's performance have been influenced by a number of factors totally beyond its control. It is true that most Australians had not appreciated the extent of inequality and injustice suffered by Aboriginal and Torres Strait Islanders until the Royal Commission into Aboriginal Deaths in Custody started making its findings public… Similarly, the inquiry into the separation of children from their families, which report in 1997, uncovered a period of history and ongoing pain that Australian society had swept under the carpet… Some of the initial goodwill extended to ATSIC began to fade when these factors kept creating an impression that little progress was being made on the difficult issues.[112]

Similarly, they note that ATSIC has also not lived up to unrealistic expectations of what it can achieve:

> [I]n many eyes ATSIC has not lived up to expectations… ATSIC was intended to be a supplementary funding body and was never intended, or funded, to be the provider of all programs and services to Aboriginal and Torres Strait Islander people. Its establishment did not absolve mainstream agencies from their responsibility to meet their obligations to Indigenous citizens. The hopes pinned on the organisation – that it could and would effect instant change were not realistic.[113]

They state that these unrealistic expectations have also operated to shield governments from being accountable:

> mainstream Commonwealth and State government agencies from time to time have used the existence of ATSIC to avoid or minimise their responsibilities to overcome the significant disadvantage of Aboriginal and Torres Strait Islander people. Because public blame for perceived failures has largely focused, fairly or unfairly, on the Aboriginal and Torres Stair Islander Commission, those mainstream agencies, their ministers and governments have avoided responsibility for their own shortcomings. This avoidance of accountability and responsibility must be overcome with the new ATSIC…

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111 *ibid*, p32.
112 *ibid*, p30.
113 *ibid*.

Accordingly, they approach the issue of reform of the role of ATSIC pragmatically, stating that:

> A more realistic recognition that ATSIC cannot be the vehicle to serve all Indigenous needs for government services is the starting point for defining the areas where ATSIC can work and make a difference. This means that ATSIC 's role must be more positive, focused and clearly defined.[114]

b) The ATSIC Review's proposal for a 'new ATSIC'

The report of the Review Team outlines the Review Team's vision of what a reformed ATSIC should look like. They consider that ATSIC reform should result in an organisation that:

- Enables Aboriginal and Torres Strait Islander people to build a future grounded in their own histories and cultures within the broader Australian framework;
- Represents and promotes the views of Aboriginal and Torres Strait Islander people, including their diversity of opinion;
- Vigorously pursues the interests of Aboriginal and Torres Strait Islander people through partnerships with Aboriginal and Torres Strait Islander communities, governments and other sectors of Australian society;
- Influences priorities, strategies and programs at the national, State/Territory and regional level;
- Minimises and streamlines the government interface with Indigenous communities;
- Promotes good Indigenous governance;
- Recognises the complexity of relationships between Aboriginal and Torres Strait Islander individuals, communities, organisations and governments and the values and limitations created by this;
- Is an equal partner in all negotiations, resourced adequately to achieve this equality, and commands goodwill and respect;
- Increases women's participation and expression of views;
- Ensures that there is transparent accountability of all organisations that are funded to provide services for Aboriginal and Torres Strait Islander people;
- Maintains its unique status;
- Recognises that ATSIC is a key player, but not the only player, that seeks to advance the interests of Aboriginal and Torres Strait Islander Australians with government and others.[115]

To achieve this vision, the Review Team recommends a revised structure for ATSIC that includes the following features:

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114   *ibid*, p30.
115   *ibid*, p25.

- The retention of ATSIC's 35 Regional Councils;
- The replacement of the ATSIC Board, which is currently constituted of 18 zone commissioners, with two new structures – a national body and a national executive;
- The new 'national body' would be the governing body of ATSIC and determine ATSIC policy, primarily through the development of a national plan which would be drawn from ATSIC Regional Council plans and ultimately form the basis of the policies and programs of all governments;
- The 'national body' would meet at least twice every four years;
- The new 'national body' would have 38 members and be comprised of the 35 elected Regional Council chairs, the chair of the Torres Strait Islander Advisory Body and the chair and deputy chair of the new 'national executive';
- The new 'national executive' would be delegated by the 'national body' the role of leading ATSIC and advocating on behalf of ATSIC on a day to day basis;
- The new 'national executive' would have up to 10 members, comprised of 8 people elected by the 'national body' including a chair and deputy chair, as well as up to 2 people appointed by the Minister from elected regional councillors;
- A series of national committees would be established to provide policy input to the 'national body' to ensure the incorporation of regional priorities into national planning, with membership drawn from the 'national body' and 'national executive';
- The Regional Council planning process would be accorded higher status in establishing ATSIC's priorities; and
- The elected and administrative arms of ATSIC (and presently ATSIS) would be reunified in one organisation with a clear delineation of roles incorporated into the ATSIC Act.[116]

The ATSIC Review Team observes that this proposed 'new ATSIC' is underpinned by a number of principles. These include that:

- ATSIC should be the peak State/Territory and national body, which advocates for the development of Aboriginal and Torres Strait Islander communities;
- The regional councils (and relevant members of the national body) should provide the State/Territory policy interface with the governments co-coordinating regional activities;
- Representatives from each State/Territory should then constitute the national body, achieving a direct relationship between the regional, state and national levels;

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116 *ibid*, pp7-8, 14-15.

- The national body should provide the policy interface for the Australian Government setting and advocating a national strategic direction and monitoring progress against ATSIC's national plan to reinforce the accountability of program and service providers;

- ATSIC's primary focus should be on building strong local communities through development and implementation of a needs-based regional plan;

- State/Territory and national programs should be informed by, and undertake activities consistent with, regional plans;

- All government funded programs should be subject to an independent assessment of outcomes; and

- The role of elected officials should be clearly delineated from that of the administration.[117]

Overall, the ATSIC Review Team made 67 recommendations which broadly address issues of the relationship between ATSIC and Indigenous peoples, the federal government, the states and territories, and between its elected and administrative arms.[118]

c) Responding to the ATSIC Review's proposals and the conflict of interest directions

There are a number of important findings and recommendations made by the Review Team in their final report that provide a starting point for developing a renewed ATSIC. In particular, I support the Review Team's recommendations to retain ATSIC's 35 Regional Councils; accord higher priority to the Regional Council planning process as the basis of national policies; and reunify the elected and administrative arms of ATSIC in one organisation with a clear delineation of roles incorporated into the ATSIC Act.

In supporting the reunification of ATSIC and ATSIS, I support the retention of the conflict of interest directions within ATSIC by which ATSIC's elected representatives would continue to set policy priorities and to decide the broad program allocation of funding but not have any involvement in making individual funding decisions. The reunification of ATSIC's structure would overcome a potential tension that has been created through the creation of ATSIS whereby it is required to 'take all reasonable steps to ensure that ATSIS conforms to the policies and strategic priorities established by ATSIC' on the one hand, and 'coordinate its activities to achieve effective synergies with overall Government policies and priorities as well as have appropriate regard to overall Government policies and priorities' on the other hand.

Despite supporting these recommendations, however, I also have reservations about the Review Team's proposals for the creation of a national body and national executive in the format that they propose. I also consider that the Review Team's model does not provide adequate support to ATSIC's national structure and consequently would not provide ATSIC with sufficient leverage or powers

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117 *ibid*, p26.
118 See: *ibid*, pp8-13.

to undertake a broader role of monitoring performance by other government agencies (at all levels) and in setting priorities to apply across government.

I am also concerned that there are also significant gaps in the Review Team's analysis which overlook issues relating to the broader service delivery environment in which ATSIC operates, as well as deficiencies in the model that it proposes.

In August 2003, I made a submission to the ATSIC Review Team following the release of its discussion paper. In that submission it was noted that the Review Team 'does not appropriately contextualise ATSIC's role within the broader framework of government policy making and delivery of services relating to Indigenous peoples'.[119] There are two aspects to the concern that I had initially expressed to the Review Team in this regard that have not been addressed in their final report.

First, is that the Review Team had on the one hand acknowledged that ATSIC has wrongly been used as a scapegoat for failures by governments in addressing key areas of Indigenous disadvantage yet on the other hand replicated this scape-goating itself. In their final report, the Review Team acknowledge that ATSIC is not primarily responsible for service delivery to Indigenous people and that its funding is of a supplementary nature. Despite this, they also set out the following test for determining the accountability of ATSIC:

> The Review Panel believes that the real test of accountability within ATSIC is whether, at the community level, Aboriginal and Torres Strait Islander Australians are actually getting the outcomes that the investment by agencies at all levels of government is designed to achieve.[120]

As quoted above, the expectations on which such a test of accountability is based were described by the Review Team itself as 'not realistic'. Such a test also does not provide the 'more positive, focused and clearly defined' role for ATSIC that is needed, based on a 'more realistic recognition that ATSIC cannot be the vehicle to serve all Indigenous needs for government services'.[121] This test of accountability wrongly conflates ATSIC's accountability (as demonstrated through normal auditing requirements which apply to all government agencies and through which ATSIC has demonstrated a high level of accountability) with effectiveness in improving Indigenous peoples' lives.

It is one thing to suggest that ATSIC should strive to improve Indigenous peoples' lives – something that they undoubtedly do. But it is entirely a different thing to hold them accountable for the failure of successive governments to address the consequences of history *and* to do so within a system in which ATSIC exercises a marginal role.

The second related concern is that the Review Team's report does not acknowledge the broader framework of government policy making and service delivery in which ATSIC operates. This includes recognition of the significant

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119 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to ATSIC Review,* p3.
120 *ATSIC Review Report, op.cit,* p69.
121 *ibid*, p30.

under-funding in key areas of Indigenous marginalisation, which is a key factor in preventing needs-based funding from being implemented (as the Commonwealth Grants Commission's inquiry into Indigenous funding clearly demonstrated).

This is also reflected in the failure of the ATSIC Review Team to acknowledge a number of recent initiatives undertaken by ATSIC to reform the way that it operates and to advocate for changes to the way the existing service delivery environment operates. A number of these processes have been referred to earlier in this chapter (culminating in ATSIC's *Integrated framework for capacity building and sustainable development*). Ironically perhaps, one of its criticisms of ATSIC's current approach is that it is a 'top down body' where its regional operations 'are very much focused on program management' – the very criticism that ATSIC has made about the constrained environment in which it operates.

Perhaps the most disappointing feature of the Review Team's final report, however, is the lack of detailed discussion and recommendations relating to supporting more flexible structures at the Regional Council level. The Review Team's discussion paper devoted significant attention to proposed reforms to strengthen ATSIC's Regional Council structure. It identified three models for strengthening Regional Councils which they termed the regional authority, regional council and devolution models. In the final report, the Review Team note that:

> At Regional council meetings and in discussions with the panel, Aboriginal and Torres Strait Islander people expressed their desire to build their personal capacities and those of their organisations. While many supported a model for great regional autonomy and for regional councils to be replaced by regional authorities, they indicated a need for more capacity building and resources in order to achieve this goal.[122]

On this basis, the Review Team's final report contains no recommendations relating to including provisions in the ATSIC Act to allow regional council structures to evolve over the longer-term in accordance with the aspirations of Indigenous peoples within the various council regions. Such proposals have now been under discussion since the conduct of ATSIC's *Section 26 review* in 1998 and the regional autonomy consultations of 1999 and 2000 without result.

ATSIC have also responded to the Review Team's final report by stating that the proposal for a new 'national executive' and 'national body' is flawed and unacceptable on the basis that it extinguishes the right of Regional Councillors to vote directly for their full-time national representatives and drastically reduces the full-time Indigenous representation at the national level.[123] They state:

> While seeking to improve representation the report proposes to:
> - extinguish the right of Regional Councillors to have a direct vote for their full-time national representatives;
> - have a two-tiered structure of national-level Indigenous decision-making, with one tier comprising 41 members;

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122 *ibid*, p36.
123 ATSIC, 'A stronger ATSIC regionally *and* nationally', Press Release, 5 December 2003, p1.

Chapter 3

- establish an executive structure that is likely to disadvantage small States and rural and remote communities;

- reduce the level of full-time Indigenous representation at the national and regional level from the current 53 positions to 39 and increase the current levels of responsibilities of Regional Council Chairs with no apparent additional support; and

- reduce the level of full-time national Indigenous representation from 18 to 2.

This… is about the capacity of Indigenous Australians to be properly represented at the national, State and regional levels. This (proposed structure) would impose an intolerable burden on the proposed new executive, particularly as it and the new national body over time would be increasingly held responsible for the ongoing crisis in Indigenous communities by the Indigenous community as well as by mainstream Governments seeking to identify a convenient scapegoat for their own shortcomings. It would be impossible for two full-time representatives – a Chair and Deputy Chair – to carry out all the many national tasks and responsibilities which are required to represent effectively the interests of Aboriginal people and Torres Strait Islanders, nationally and internationally.

The national body of 35 Regional Chairs which would elect most members of this executive would be dominated by those States with the most regional councils. With the best will in the world, genuine national representation from all States and Territories could not be guaranteed.[124]

ATSIC have also noted that the Review Team's proposed model for a 'national body':

would set ATSIC up to fail because the larger 'national assembly' would meet only once every two years while the national executive was too small a body which could not faithfully represent Indigenous people nationally and would be greatly under-resourced with only two full-time members.[125]

In the alternative, ATSIC have proposed that ATSIC Elections be extended so that ATSIC Commissioners are directly elected at the same time as ATSIC Regional Councillors, and that subsequently, all Regional Councillors then elect the Chair of the Commission (rather than the current approach where the Regional Councillors elect the Zone Commissioner, and the Zone Commissioners elect the Chairperson).[126]

I join with ATSIC in its concerns about the proposals for a 'national body' and 'national executive'. I note however that in general, there is much potential in the Review Team's proposal that there be a new mechanism such as the proposed 'national body' to involve Regional Council Chairs in establishing national priorities and policies. It is desirable that such a 'national body' determine ATSIC policy, primarily through the development of a national plan which would be drawn from ATSIC Regional Council plans.

It is fanciful, however, to suggest that a national body comprised of such a membership and charged with such responsibilities could effectively acquit

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124   *ibid*.
125   ATSIC, 'A new ATSIC – in the hands of the people', Press Release, 8 December 2003, p1.
126   *ibid*.

their responsibilities to Indigenous peoples through the national body, particularly when the national body would only be meeting once every two years.

The infrequency of meetings of the proposed 'national body' combined with the reduced size of the national board (or new 'national executive') could significantly impact on the ability of ATSIC to advocate for reform at the national level, and on its ability to develop national policies. This would consequently affect its ability to influence the approach of other government departments and different governments. As I noted in my submission to the ATSIC Review's discussion paper:

> ATSIC's current powers must be enhanced at the each of the national, state/territory, and regional levels. Crucially, what is required to make ATSIC more effective is *not* a redistribution of ATSIC's current powers from the national to the regional level but instead an *enhancement* of the existing powers at both levels.[127]

Consideration could, however, be given to an intermediate position whereby the ATSIC Board of Commissioners or equivalent 'national executive' is retained and charged with the day to day responsibilities of advocating ATSIC's position at a national level. Such a body would need to address issues of representativeness. Such a body could then be supported by a national congress or 'national body' made up of all Regional Council Chairs which meets with the Board of Commissioners on a regular basis (perhaps 3 to 4 times per year) to determine ATSIC's national policies and priorities.

d) Proposed features of a 'new ATSIC'

Having identified a number of concerns with the ATSIC Review Team's proposed reforms to ATSIC, it is important to identify ways in which ATSIC could be reformed to meet the key objectives identified by the ATSIC Review.

ATSIC has appropriately identified the starting point for any discussion of program design and service delivery for Indigenous peoples in its 2001 budget advocacy document titled *Directions for change.* ATSIC stated that for all programs and policy proposals 'the values and aspirations that are meaningful to, and express priorities of, Australia's Indigenous peoples must be the basis for the policy approaches being taken.' Accordingly, the question that they saw as being the central one was:

> Will this activity enhance Indigenous people's capacity to achieve what is important to them and, in its development and implementation, contribute to the empowerment of Indigenous peoples and the achievement of *their* objectives and priorities?[128]

Proposals for reform of ATSIC should be considered in light of this overall objective for all government service delivery to Indigenous peoples. This requires that ATSIC be representative at the regional level and must be able to reflect the objectives and priorities identified at this level up to the state/territory and national levels. It also requires that ATSIC must have the capacity to set the

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127   Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to ATSIC Review, op.cit*, p1.
128   ATSIC, *Directions for change, op.cit*, p1.

agenda and subsequently evaluate the performance of other government agencies at both the federal and state/territory level in achieving this objective.

To achieve this, ATSIC's current powers must be enhanced at the each of the national, state/territory, and regional levels. As noted above, what is required to make ATSIC more effective is *not* a redistribution of ATSIC's current powers from the national to the regional level but instead an *enhancement* of the existing powers at both levels. It should also be noted that at present, ATSIC does not fully utilise its existing powers at either the national or regional level. There remains much potential for ATSIC to achieve many of the objectives identified in the ATSIC Review within its existing structures and powers.

In my submission to the ATSIC Review Team, I identified the following proposals for strengthening ATSIC at the national, state/territory and regional level.

■ Reform to ATSIC at the national level

There must be sufficient attention paid to the importance of ATSIC maintaining a strong voice at the national level. Any diminution of ATSIC's role at the national level will ultimately affect its ability to influence the national policy agenda and will lead to less effective advocacy for Indigenous peoples. This will be the case even where a diminution of the national focus is accompanied by an enhanced role for regional councils.

In my submission to the ATSIC Review, I proposed a number of mechanisms to enhance ATSIC's powers at the national level to provide increased ability to set national objectives and to monitor and evaluate the performance of other government departments in addressing the service delivery needs of Indigenous peoples. It is noted that ATSIC has extensive powers which could be used for this purpose under Section 7 of the ATSIC Act but that these powers are not fully utilised at present.

In particular, I have suggested that ATSIC's existing powers should be enhanced by strengthening the scrutiny role of ATSIC over service delivery and program design by other government departments. This could be achieved through amendments to the ATSIC Act which:

- empower ATSIC to set the objectives and guiding principles for service delivery to Indigenous peoples across all issues (which they can do under the present legislation), but also to empower them to be able to develop legally binding directions for service delivery agencies that accord with these principles;
- require the Minister to table in Parliament all such directions set by the ATSIC Board;

- provide that all directions issued by the ATSIC National Board and subsequently tabled in Parliament have the status of legislative instruments (or delegated legislation);[129]

- require all government departments to include in their annual reports to Parliament information as to how they implement the directions of the ATSIC Board in delivering relevant services and programs;

- empower ATSIC to evaluate how government departments and agencies (at all levels) comply with these directions in delivering services. Consequent to this would be providing powers to ATSIC to request documents from government agencies at all levels (the Social Justice Commissioner has such a power under the *Human Rights and Equal Opportunity Commission Act 1986)* and to require government officials (including secretaries of departments) to appear before the ATSIC Board to inform the Board of the department or agency's approach and any action that they are taking to address deficiencies in their department's performance or compliance;

- provide for regular scrutiny of compliance with these directions by the Australian National Audit Office or through an enhanced Office of Evaluation and Audit within ATSIC; and

- provide for scrutiny processes by the Parliament, including through ATSIC reporting to Parliament about deficiencies in department's complying with directions and for parliamentary committees to scrutinise the actions of departments through specific inquiries or senate estimate processes.

Legislative instruments remain subject to the scrutiny of the Parliament and may be disallowed on the passage of a motion by one of the houses of parliament. Providing ATSIC with the power to issue legally binding directions would create a direct relationship between the ATSIC Board, the elected representatives of Indigenous peoples, and the federal Parliament, the elected representatives of the whole Australian community. Such recognition of ATSIC would be appropriate.

ATSIC should also have an enhanced monitoring role at the inter-governmental level. Current processes at this level, such as through COAG commitments and Ministerial Councils including the Ministerial Council on Aboriginal and Torres Strait Islander Affairs, have provided an *ineffective* monitoring framework. For example, I have previously expressed concerns in relation to the monitoring of *Bringing them home* by MCATSIA on behalf of COAG due to the insufficient information that is publicly reported which limits the accountability of governments, as well as the lack of consultation with Indigenous peoples and

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129 Legislative instruments are governed by the *Acts Interpretation Act 1901* (Cth), see section 46A. For an overview of delegated legislation and the scrutiny role that is exercised over it by the Parliament see *Odgers' Australian Senate Practice*, 9th Edition, Department of the Senate Canberra 1999, Chapter 15. An example of a similar legislative instruments process is Public Service Commissioner Directions. There are many other variations of such instruments, see for example disability standards issues under section 31 of the *Disability Discrimination Act 1992* (Cth).

lack of independence in the evaluation of governmental progress.[130] ATSIC's national role should be enhanced by ensuring that it has a permanent role in the COAG and MCATSIA processes.

■ **Reform to ATSIC at the state/territory level**

I also support enhancing the structure of ATSIC for interface with state and territory government through improved support for ATSIC's State Advisory Committees (SACs). There are two key issues that must be addressed to achieve this goal.

First, ATSIC's governing legislation should provide for the organic growth of the relationship between ATSIC and state and territory governments. The ATSIC legislation should provide the minimum features of the State Advisory Committee structure by being extended to authorise SACs to enter into agreements with state and territory governments. The ATSIC Act should provide that the SACs are empowered to undertake any activity that falls within the terms of any such agreements between ATSIC and the relevant state or territory. This should extend to agreeing on funding arrangements whereby the SAC may pool state or territory funds with Commonwealth funds, and run state or territory programs. This may require that a mechanism is included in the ATSIC Act for agreements struck with state or territory governments to be scheduled to the Act, in order that it is clear what ATSIC's powers extend to in this regard.

Second, there remains a significant problem of accountability for service delivery to Indigenous peoples at the state and territory level. Very few parliaments in the states and territories have extensive audit and parliamentary committee structures to hold state departments and agencies accountable for their service delivery. The distribution of state and territory funds for Indigenous service delivery is also the area where there exists the least transparency and greatest cost shifting. It is crucial that ATSIC's role in monitoring state and territory performance is addressed as a preliminary issue in expanding the role of ATSIC at the state/territory level.

It would be appropriate for ATSIC's Office of Evaluation and Audit (OEA) to have its role expanded to focus on state and territory level service delivery, with a particular view to developing recommendations for improving the relationship and interaction of ATSIC with the relevant government. ATSIC should seek to negotiate a funding contribution from the states and territories for such audits to be undertaken on a regular basis within their agreement making function. The additional benefit of this audit process being undertaken by ATSIC's OEA would be the capacity to tie this work into both the regional level and into the national policy framework. It would also facilitate comparative analysis on progress between different states and territories. This would facilitate the identification of best practice and of transferable models which could then be applied in other states and territories.

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130   See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Legal and Constitutional References Committee inquiry into the stolen generation*, HREOC Sydney 2000, http://www.hreoc.gov.au/social_justice/senate_submission/index.html.

■ **Reform to ATSIC at the regional level**

The ATSIC Review report rightly emphasises the need for enhanced powers at the regional level and for input from the regional and local levels to inform policy development and decision-making processes at the state/territory and national levels. The need for more effective regional structures for ATSIC that prioritise local needs and build greater community-capacity has long been recognised. This has in part been motivated by a desire for better representation of community interests, but also in response to the need to develop structures and arrangements to facilitate improved service delivery to Indigenous peoples. In regard to service delivery to Indigenous people, the following issues have been noted:

- Lack of planning and poor coordination or duplication of services;
- Lack of clear delineation of responsibility for service delivery at federal, state, territory and local government levels;
- Fragmented and inconsistent policies and programs across governments; and
- Failure to integrate Indigenous involvement into the planning and delivery of services.

Problems have also been identified in relation to the inflexibility and short-term nature of funding arrangements to Indigenous community organisations. The need for greater powers for regional councils in terms of setting funding priorities, determining outcomes, entering purchaser/provider agreements, developing more representative and effective regional governance arrangements that have the capacity to facilitate greater Indigenous participation and sustainable economic development are fundamental and significant issues that deserve serious consideration.

It is necessary for all levels of ATSIC to be enhanced in order to address policy and service delivery issues effectively at a regional level. The profile of ATSIC representatives, such as ATSIC Commissioners and Regional Chairpersons, has ramifications for their capacity to represent regional concerns adequately and to exert sufficient leverage at state and national levels. However, an outstanding issue that needs to be addressed is that of the level of state and territory governments' accountability to their Indigenous constituents, and the need to have greater transparency in monitoring the funds and services directed to Indigenous people. Without effective external evaluation of the states and territories' performance, and the capacity for regional planning to identify and to target services towards specific outcomes at a state level, the potential to address community needs adequately at the regional level will be greatly limited.

In addition, longer-term commitments at the level of planning and funding are fundamental to addressing the outstanding deficits in Indigenous service delivery and the entrenched nature of Indigenous disadvantage.

Accordingly, in my submission to the ATSIC Review I supported the transition to what the Review Team described as a devolution model, with some qualifications. Implementation of the devolution model must address the following issues effectively:

- The provision of the ability for regional councils to enter into agreements. This includes:
    - the capacity to seek more flexible funding arrangements, including purchaser/provider agreements; and
    - enhanced regional planning processes that target funds more effectively – for example, through an outcomes-based funding approach and longer-term funding frameworks.

- The need to enhance the profile of ATSIC representatives at the state level to ensure that regional needs are prioritised. This should include consideration of:
    - Capacity to monitor funds directed to Indigenous needs at the state/ territory level, for example, through review of specific purpose payment arrangements;
    - Empowerment of State Advisory Committees to enter agreements with state/territory governments; and
    - Strengthening of the profile and support for State Advisory Committees at state/territory level, including potential parliamentary representation.

- The creation of flexibility for regional councils to adapt to their local needs through developing alternative governance arrangements. This would include:
    - The capacity to represent a range of local interests, including those of traditional owners;
    - The ability to address service delivery needs more efficiently and appropriately within a designated region; and
    - The time-frame and capacity to develop an appropriate regional model from the ground up.

Consideration of alternative governance arrangements must not be restricted to one model, such as the regional authority structure adopted in the Torres Strait. The need for flexibility in developing new forms of governance and the unworkability of a 'one-size-fits-all' model should be recognised. In addition, the limited applicability of the regional authority model in meeting the needs of Indigenous people in certain areas, particularly metropolitan and urban centres, must be taken into account.

e) The challenge of ATSIC reform

Overall, the acting Chairman of ATSIC identifies the challenges that currently face ATSIC as follows:

> The challenge for ATSIC is to become the core organisation which:
> - develops the policies and programs to deliver what Aboriginal people and Torres Strait Islanders need and want;
> - play a key role to ensure that they are implemented across government; and

- holds governments, agencies and service providers – including ATSIC itself – accountable for achieving outcomes.[131]

The ATSIC Review goes part of the way to identifying an agenda for change to ATSIC to meet these objectives. There is, however, a need to go beyond what the Review Team have proposed and ensure that there is no relative weakening in ATSIC's national structure while also increasing the focus on supporting innovation at the regional level.

Reform of ATSIC is a critical aspect in achieving the effective participation of Indigenous peoples in decision making processes and supporting sustainable development. The extent to which the government supports ATSIC over the coming year to more effectively drive an agenda for change, including by providing it with sharper legislative powers, will be the litmus test of their commitment to achieving sustainable improvements in Indigenous communities.

Conclusion

This chapter has highlighted the increased attention over the past year to the nature of the relationship between government and Indigenous peoples. There is clear dissatisfaction with the way that the current service delivery model operates to reinforce Indigenous dependency on government services rather than promote sustainable development. Capacity building in Indigenous communities and governance reform of Indigenous organisations is increasingly being seen as a panacea for overcoming the limitations of this approach.

Despite this, capacity building initiatives are progressing within the existing service delivery model and with little reform to this system. There is also a lack of agreement on an agenda for change into the future, which again operates to restrain reform to within the strictures of the existing approach of governments. This needs to change. As ATSIC have outlined in their *Integrated framework for capacity building and sustainable development*, there needs to be reform at the governmental, organisational and community levels simultaneously if there is to be any transformation in the relationship of Indigenous peoples to government. The focus needs to be broader than improved efficiency of Indigenous organisations. No amount of change at one level of the system will result in sustainable improvements for Indigenous peoples if it is not accompanied by reform at the other levels.

A key challenge in this is reforming the role of ATSIC so that there is an appropriate cultural match between ATSIC's organisational structure and its constituents, Indigenous peoples at the local level. ATSIC also needs to be strengthened so that it is equipped to exercise a more pivotal role in policy making at all levels of government – particularly through strengthening its ability to monitor the performance of government.

In committing to an approach defined by partnerships and agreements, capacity building and a more targeted role for ATSIC in the broader policy framework, the government has opened up the *potential* for significant and lasting reform in the relationship of government with Indigenous peoples. There are clear limits

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131   ATSIC, *Annual Report 2002-2003*, ATSIC Canberra 2003, p2.

in these commitments – it is not, for example, underpinned by any recognition of Indigenous rights or distinct cultural attributes of Indigenous peoples; and it is not clear that these commitments envisage much change to existing forms of service delivery.

Whether this potential is realised will depend on the legislative reform program that the government embarks on in 2004; their willingness to be increasingly innovative and flexible with service delivery arrangements; and the commitments that they are prepared to make at the inter-governmental level. Realising this potential will also, of course, depend on the efforts of Indigenous peoples and ATSIC as they seek to define a new relationship with government.

Chapter 4

Responding to petrol sniffing on the Anangu Pitjantjatjara Lands: A case study

In September 2002, the South Australian Coroner brought down his findings in the inquests into the deaths of Kunmanara[1] Ken (who died on 3 August 1999), Kunmanara Hunt (who died on 27 January 2001) and Kunmanara Thompson (who died on 26 June 2001). Each of these young Anangu was a chronic petrol sniffer (they had been sniffing for at least ten years) in their mid to late twenties living on the Anangu Pitjantjatjara Lands (AP Lands). All three were found to have died as a result of inhalation of petrol fumes.[2]

Indigenous community organisations on the Pitjantjatjara lands had lobbied hard for the inquests to take place in order to bring public attention to the devastating impact that petrol sniffing was having on the AP Lands and to the lack of government action in addressing the situation. The Coroner identified that socio-economic factors such as hunger, poverty, illness, low education levels, almost total unemployment, boredom and general feelings of hopelessness 'form the environment in which such self-destructive behaviour takes place'.[3] He stated: 'That such conditions should exist among a group of people defined by race in the 21st century in a developed nation like Australia is a disgrace and should shame us all'.[4]

The Coroner identified the failure of governments (both federal and state) to provide adequate services on the AP Lands to address these factors as contributing to the problems associated with and leading to petrol sniffing. The findings and recommendations of the inquests provide a blue print for action in addressing issues relating to petrol sniffing on the AP Lands within a systemic and long term framework.

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1   It is a custom of the Anangu people to avoid using the first name of the deceased during the period of mourning. Instead, the Pitjantjjatjara word 'Kunmanara' is used.

2   Chivell, W, *Findings of the South Australian State Coronial Inquest into the Deaths of Kunmanara Ken, Kunmanara Hunt and Kunmanara Thompson*, 6 September 2002, http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_ken.finding.htm

3   *ibid*, p2.

4   *ibid*, p2.

In this chapter, I examine progress in implementing the recommendations of the Coroner in the year since they were released. It is critical for the South Australian and federal governments to respond in a coordinated and timely manner to this most difficult, entrenched and devastating issue. An analysis of how they have approached this task and the processes that they have committed to is also of broader relevance for addressing chronic substance misuse and petrol sniffing issues in other Indigenous communities across Australia. The chapter commences with an overview of research on the extent of petrol sniffing in Indigenous communities across Australia and its impact on Indigenous communities. It then discusses issues relating to petrol sniffing on the AP Lands and the Coroner's findings, as well as considers the adequacy and appropriateness of governmental responses and processes that are currently in train on the AP Lands to deal with petrol sniffing issues.

Petrol sniffing and Aboriginal and Torres Strait Islander communities

a) The impact of petrol sniffing on Indigenous communities

There are two main ways that petrol sniffing impacts on Indigenous communities. First, at an individual level it can be life-threatening and poses significant risks to health. It can also result in increasing levels of disability. Second, it has disruptive and destructive effects on the functioning of families and communities.

The impact of petrol sniffing on a person's health has been described as follows:

> Petrol is a mixture of C4 to C12 hydrocarbons, the relative amounts of the various constituents depending on the origin and preparation of the petrol. The unsaturated hydrocarbons have mild anaesthetic properties while the saturated hydrocarbons have a narcotic effect. The principle additive is tetraethyl lead which also has intoxicant properties. Tetraethyl lead and its metabolites are highly neurotoxic.
>
> Fifteen to 20 inhalations of petrol will cause euphoria and intoxication for three to six hours. Prolonged inhalation or rapid inhalation of a highly concentrated vapour, such as when petrol-soaked cloth is held to the nose, may lead to violent excitement followed by a loss of consciousness, coma or death. Organic lead toxicity is regarded as the major long term health hazard of petrol sniffing, although some other components (toluene, n-hexane) may contribute to neurological damage…
>
> Other long term sequelae of chronic sniffing include nutritional disturbances, anaemia, and cardiac, liver and renal effects. Cognitive functioning may also be impaired and there is evidence that some of these changes are irreversible.[5]

The South Australian Coroner also describes the risks to the health of sniffers as follows:

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5   Western Australian Task Force on Drug Abuse 1995, quoted in Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into the inhalation of volatile substances: Final report*, DCPC, Parliament of Victoria, Melbourne 2002, fn 156, p139.

Individuals who sniff petrol are at a high risk of pneumonia and chronic lung disease; trauma; burns and injury. In addition there have been some deaths in which sudden death has clearly occurred during acute episodes of inhalation. These deaths may be related to cardiac arrythmias, respiratory arrest because of acute effects on the brain stem or cerebral oedema…

Lead toxicity of the brain is clearly well established in the literature and has been a major cause of brain damage related to petrol sniffing. However there are significant data now suggesting that aromatic hydrocarbons (eg benzene) are also responsible for neurotoxicity.[6]

Petrol sniffing can also be a significant cause of physical disablement, necessitating full-time attendant care. The Northern Territory Parliament's Select Committee on Substance Abuse in the Community noted earlier this year that:

The direct impact of inhalant abuse is usually contained to the sniffer and family and immediate community. However, it has implications for the broader community also. The end result of petrol sniffing other than early death is brain damage which leaves the sniffer in a vegetative state. A conservative estimate of the cost to the NT of maintaining an ex-sniffer in this state is $150,000 pa. While there are presently 15 such persons in central Australia, it is estimated that this could escalate to upwards of 60 in the near future, an ongoing (and growing) cost of $9m per annum. These figures argue strongly for action to curb the practice and stem the damage now.[7]

In his findings of the coronial inquests on petrol sniffing on the AP lands, Coroner Chivell outlines the social impacts of petrol sniffing, specifically on the Anangu population, as follows:

Petrol sniffing poses a range of problems to sniffers, their families, communities and to the wider society. Among the problems which have been associated with petrol sniffing are: serious health consequences including death or long-term brain damage, social alienation of sniffers, social disruption, vandalism and violence, increased inter-family conflict and reduced morale on communities, incarceration of sniffers and costs to the health system in terms of acute care and providing for the long-term disabled…[8]

In her earlier work, Maggie Brady states that: 'it is not possible to provide an unequivocal answer to the question of whether "Aboriginal people" define petrol sniffing to be a problem.'[9] However, evidence to the recent Coronial Inquests

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6   Chivell, W, *op.cit,* p4.

7   Legislative Assembly of the Northern Territory, Select Committee on Substance Abuse in the Community, *Interim report of the committee to date – issues of alcohol abuse, cannabis use and inhalant abuse*, Parliament of the Northern Territory, Darwin 2003, p13.

8   Chivell, W, *op.cit*, p14. In an internet forum on petrol sniffing Andrea Mason argued that 'many AP communities experiencing problems with petrol sniffers experience a kind of cultural suffocation. Petrol sniffers are slowly but surely suffocating and snuffing out the cultural vitality and cultural norms and traditional authority structures in their communities. They incite violence and inflict pain for purely selfish gain'. *The Australian*, Online Forum, 25 November 2001, www.theaustralian.news.com.au/printpage/0,5942,5061578,00.html, accessed 29 July 2003.

9   Brady, M, *Heavy Metal: the Social Meaning of Petrol Sniffing in Australia*, AIATSIS, Canberra, 1989, p10.

on the AP Lands makes clear that the Anangu certainly perceive petrol sniffing as a devastating contemporary problem facing their communities. One community member commented at the Inquest:

> …they create endless trouble for us and it just goes on and on. What I would really like to do is to help them stop but – I love them and would care for them but the problem is with their sniffing they start to not be able to understand properly so I can't even intervene because they can't understand what I am on about anyway.[10]

In his findings the Coroner also stated that:

> Many attempts over the years to combat petrol sniffing [on the AP Lands] have been unsuccessful. Anangu continue to try and care for sniffers even when they continue to sniff, and even after they are violent and disruptive to their families and the community. Some Anangu are concerned that if they try and stop sniffers they will harm them, or that the sniffers may harm themselves. They look to the broader community to help them deal with a problem which has no precedent in traditional culture.[11]

b) Recent concern about petrol sniffing in Indigenous communities

In the year since these Coronial inquests, there has been significant concern expressed about petrol sniffing in Aboriginal and Torres Strait Islander communities at the national level. In October 2003, the Senate Legal and Constitutional References Committee made the following recommendation in the report of its inquiry into national progress towards reconciliation:

> The Committee recommends that during the Spring sitting 2004 the Senate refer to it an inquiry on progress in addressing the problems surrounding petrol sniffing in the Anangu Pitjantjatjara lands, including progress as it relates to the COAG whole-of-government trial conducted there.[12]

The Dissenting Report of Government members of the Committee questioned such a distinct focus on addressing the issue on the AP Lands. Instead, their Dissenting Report proposed that recommendation 20 of the committee (quote above) be amended to:

> provide at a later date the Senate refer to it an inquiry on progress in addressing the problems surrounding petrol sniffing in remote Aboriginal communities. Government members believe that petrol sniffing is a problem in many regions of Australia and any inquiry should be able to review strategies employed in different regions to assess their effectiveness.[13]

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10   South Australian Coroners Court, Pitjantjatjara Lands, *Before Mr W Chivell – State Coroner, Inquest into the Deaths of Kunamanara Ken, Kunmanara Hunt and Kunmanara Thompson*, Transcript of Proceedings, No.11/2002,. Inyika XN (Mr Goetz), p309.

11   Chivell, W, *op.cit*, p2.

12   Senate Legal and Constitutional References Committee, *Reconciliation: Off track*, Parliament of Australia, Canberra, October 2003, pxiv, Recommendation 20.

13   *ibid*, pp135-6.

In its submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs' Inquiry into Capacity-building, the Aboriginal Land Rights Movement (ALRM) of South Australia recommended that the Social Justice Commissioner monitor the implementation of the recommendations of the recent coronial inquests on the AP Lands:

> It is submitted that a recommendation should be made that the Human Rights & Equal Opportunity Commission, Social Justice Commissioner should monitor the progress of the State and Federal governments in implementing the recommendations flowing from the inquest into the deaths of three petrol sniffers.[14]

In March 2003, the House of Representatives Standing Committee on Family and Community Affairs also released the report of its inquiry into substance abuse in Australian communities. It noted that the use of inhalants such as petrol and aerosols was relatively rare in the Australian community, but nevertheless was a matter of concern to the committee due to the serious impact of inhaling and its prevalence among particularly disadvantaged groups such as Indigenous people.[15] The Committee recommended that:

> the Commonwealth government take a leading role as a matter of urgency in establishing a national committee to coordinate policy and programs to prevent the use of inhalants and treat dependent users.[16]

The issue of petrol sniffing in Indigenous communities has also been raised as an issue in recent parliamentary inquiries in Victoria and the Northern Territory (discussed further below).

c) Information about petrol sniffing by Indigenous people

These processes have identified the need for greater attention to be paid to petrol sniffing, including at the national level, and for more urgent responses to it where it exists. The phenomenon of petrol-sniffing is, however, not well-understood and there is no reliable national data on the number of people involved and the extent of resulting damage to individuals and communities.

Peter d'Abbs and Maggie Brady have noted that:

> The situation today remains in many respects little different to what it was thirty years ago. There are still practically no clear policies at any levels of government; there is no accumulated body of knowledge about the nature and causes of sniffing, or even about the efficacy or effectiveness of different kinds of interventions, and most initiatives are forced to rely on short-term project funding, the continuance of which rarely has anything to do with program effectiveness.[17]

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14 ALRM, 'Supplementary submission of Aboriginal Legal Rights Movement Inc, Adelaide,' Australian Senate Legal and Constitutional References Committee Inquiry on Progress Towards National Reconciliation, 24 June 2003, p14.

15 House of Representatives Standing Committee on Family and Community Affairs, *Road to recovery: Report on the inquiry into substance abuse in Australian communities*, Parliament of Australia, Canberra 2003, pp 198-199.

16 *ibid*, Recommendation 71, p200.

17 d'Abbs, P, and Brady, M, 'Other drugs, other people, other places: the policy response to Indigenous petrol sniffing in Australia', Conference paper, Inhalant Use and Disorder Conference, Australian Institute of Criminology, Townsville, 7-8 July 2003, p2.

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In fact, petrol sniffing in Aboriginal and Torres Strait Islander communities continues to occupy a marginal position as a drug issue at the national level:

> As an issue for Australian drug policy, indigenous petrol sniffing is all but invisible. The National Drug Strategic Framework 1998-99 to 2002-03, endorsed by the Ministerial Council on Drug Strategy in November 1998, makes just two references to the issue. The first is to tell us that we don't know anything about its prevalence (among Indigenous Australians)… The second reference, in effect, states that petrol sniffing is not good for you…

> Similarly, the National Action Plan on Illicit Drugs 2001 to 2002-03, endorsed by the Ministerial Council on Drug Strategy in July 2000 skirts around the issue of inhalants by stating that they would be covered by a separate 'complementary' strategy… for Aboriginal and Torres Strait Islander drug issues. A background paper prepared to accompany the National Action Plan includes a section titled 'Illicit drug use among Aboriginal and Torres Strait Islander peoples' which makes no reference to inhalants, volatile substances or petrol sniffing.[18]

Compared to the information available on other categories of substance misuse, d'Abbs and Brady suggest that "the vast untapped pool of professional expertise" [on petrol sniffing] looks somewhat shallow…'[19] Paul Torzillo has commented that 'the lack of any sustained institutional interest in petrol sniffing among government agencies is matched by a dearth of high quality research'.[20] Consistent with this, there is a lack of systematic and comprehensive data on the extent, location and changes over time in petrol sniffing in Aboriginal and Torres Strait Islander communities.

There are, however, reported instances of petrol sniffing as a significant issue in several Indigenous communities across Australia. In its recent report into the inhalation of volatile substances, the Drugs and Crime Prevention Committee of the Victorian Parliament summarised some published materials as follows:

> Petrol sniffing occurs in some Indigenous communities and not others. In 1989 it was reported as occurring mainly in Arnhem Land in the Northern Territory, in central Australia… and in the Riverina region of New South Wales. In 1994, Brady and Torzillo argued that patterns had changed:

> It appears that the intensity of sniffing has increased over the past 20 years, with more users sniffing over longer periods, which has resulted in an increase in reported morbidity and mortality from the 1980s onward.

> However, since 1994 a further shift in patterns and prevalence of petrol sniffing seems to have occurred. A little-publicised but positive development of recent years has been the move by many Indigenous communities to use aviation fuel rather than petrol for vehicles. In several communities where a long and established history of petrol sniffing has existed, sniffing has been reduced or even stopped.

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18   *ibid*, p6.
19   *ibid.*, p10.
20   Torzillo, P, 'Petrol sniffing on the AP Lands: Report to the Coroner', Nganampa Health Council, 2002, p11.

Conversely, some communities which had previously been free of petrol sniffing are now reporting the practice. It has been reported in the Katherine region of the NT, Cape York in Queensland, south-west Queensland, western NSW and Northern Victoria.

There is also evidence that Indigenous children are turning to the use of other volatile substances. Although petrol sniffing remains the primary form of volatile substance misuse among young Indigenous children, there are increasing reports of other forms (particularly glue and aerosol paint sniffing) in urban areas.[21]

The Victorian parliamentary committee report also refers to studies identifying petrol sniffing by Indigenous youth as an issue in Perth. While acknowledging that there is very little research on the situation in Victoria, it also states that 'it is believed that chroming is a far more prevalent form of volatile substance abuse in Victoria, including among Indigenous Victorians, than petrol sniffing. It may be that this is an erroneous assumption'.[22]

Petrol sniffing has also been identified as a 'major problem' among young Aboriginal people in recent years on Cape York Peninsula in the communities of Kowanyama, Aurukum, Napranum and Lockhart River; and as existing 'periodically and to a lesser extent' in northern Cape York towns such as Mapoon, Injinoo, Umagico, Bamaga and New Mapoon.[23] The Queensland government has also stated that 'petrol and aerosol sniffing are two of the most common kinds of substance abuse in Torres Strait Islander communities… For some families, petrol and aerosol sniffing is an even bigger issue than grog abuse'.[24]

There are also reports that petrol sniffing is periodically an issue faced in remote Aboriginal communities in Western Australia. Concern was recently expressed that petrol sniffing may have been a contributing factor in three deaths in the past two years at Balgo;[25] and the Shire of Ngaanyatjarraku and community of Warburton have also recently expressed concerns about 'chronic substance abuse' and difficulties in law and justice responses to it.[26]

In its interim report on issues of alcohol abuse, cannabis use and inhalant abuse, a Select Committee of the Northern Territory Parliament noted in February 2003 that:

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21   Parliament of Victoria, *op.cit.*, pp139-140.

22   *ibid*, pp137, 139.

23   James, M, *Petrol sniffing on Cape York Peninsula*, <http://www.boysfromthebush.org.au/ PETROLSniffingPaper.DOC>, accessed 20 November 2003, p1.

24   Queensland Government, *Kainedbiipitli – A new dawn. Torres Strait Island crime prevention resource manual*, online at: http://www.premiers.qld.gov.au/About_the_department/ publications/crime/kainedbiipitli/, accessed 20 November 2003.

25   ABC Online News, 'Government agencies promise schemes to fight petrol sniffing', 30 September 2003, www.abc.net.au/message/news/stories/ms_news_956496.htm, accessed 20 November 2003.

26   Ngaanyatjarraku community, *Law and justice submission to the Attorney-General of Western Australia*, Shire of Ngaanyatjarraku, Kalgoorlie, April 2002, p1.

> Petrol sniffing and other inhalant substance abuse is known to affect up to 30 remote communities in the Northern Territory. Inhalant substance abuse is most entrenched in the Central Australian region and the Tri State border region of the Northern Territory, South Australia and Western Australia… [i.e, the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara lands]...
>
> In remote Central communities it is estimated that there are up to 350 'sniffers'. Sniffing is an endemic practice in at least six remote Central Australian communities.[27]

The limited research also suggests that there are different patterns of use of petrol and other volatile substances by Indigenous people compared to non-Indigenous people. The Drugs and Crime Prevention Committee of the Victorian Parliament notes the following findings of several studies:

• A survey of Indigenous and non-Indigenous students in Perth showed that Indigenous users of volatile substances tended to use much more regularly, often on a daily basis and over a longer period of time than non-Indigenous users; and that petrol was one of the predominant solvents used (unlike for non-Indigenous youth);

• Other studies have found that Indigenous youth are likely to use inhalants more intensively and for a longer duration than non-Indigenous urban youth, with one study reporting a mean duration of eight years for petrol sniffing (compared with only a brief period of experimentation for most non-Indigenous youth); and

• a further study has argued that there are differences in inhalation culture and practices for Indigenous people depending on locality/remoteness. Relevant factors which influence this include the degree of community cohesion, local traditions, customs and the degree of cultural identification, the number of volatile substance abusers, access to resources and support, and other local factors.[28]

In 2001, the Australian National Council on Drugs published a report examining the structural determinants of substance abuse. It states that petrol sniffing and volatile substance abuse by young Indigenous people, while clearly having some similarities with non-Indigenous people, must be viewed as part of a broader picture of Indigenous disadvantage:

> When combined with an environment stressed by poverty, racism and frequent bereavement, some remote Aboriginal communities have been beset by petrol sniffing among their young people. Indigenous communities with a history of involvement in the cattle industry were found by Brady to have resisted solvent-sniffing problems. This resilience was attributed to the independence, self-esteem and outlet for risk-taking afforded by involvement in the cattle industry. Individuals who had adopted

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27   Legislative Assembly of the Northern Territory, *op.cit.*, pp12-13. There are also communities that have overcome significant petrol sniffing problems in recent years, such as Yuendumu: see further, Siegel, N, 'The interaction between petrol sniffers and bush court in Aboriginal communities', Conference paper, Inhalant Use and Disorder Conference, Australian Institute of Criminology, Townsville, 7-8 July 2003.

28   Parliament of Victoria, *op.cit*, pp138-139.

Christianity or who valued other activities such as sport or fishing were also found to be resilient to sniffing solvents. Brady concluded that social and cultural factors are paramount in solving youth health problems such as solvent sniffing in Aboriginal communities.[29]

d) Defining petrol sniffing in Indigenous communities as a public policy issue

In her landmark 1989 publication *Heavy Metal: the Social Meaning of Petrol Sniffing in Australia*, Maggie Brady raises the question of how petrol sniffing is defined as a problem. She observes that while '[p]etrol sniffing by young people, often in groups, constitutes a threat, both physically and metaphorically to the social order', it is one among 'many behaviours that lead to impaired health and social functioning'.[30] Certainly other forms of addictive behaviour such as tobacco and alcohol addiction constitute more widespread sources of death and disease across Indigenous populations.

With Peter d'Abbs, Maggie Brady has recently commented on how petrol sniffing makes its way onto the public policy agenda:

> Petrol sniffing erupts periodically into the living rooms or onto the breakfast tables of the public through highly sensational media exposes… The media portrayal of Aboriginal petrol sniffing is worthy of a study in its own right; in particular, one might ask why acts of petrol sniffing are implicitly – and sometimes explicitly – represented not merely as instances of individual self-harm, but as evidence of a broader community social disintegration in a way that heroin use, for example, is never portrayed.[31]

d'Abbs and Brady argue that this is indicative of structural problems in the way governments address issues of petrol sniffing in Indigenous communities. They argue that because of the lack of reliable data and the 'absence of any powerful lobby groups or other agencies with the capacity to ensure that petrol sniffing remains on the public agenda in anything more than a transient manner', petrol sniffing as a public issue 'owes almost everything to media outbursts… what pressure for action that exists as a result is for quick, short term action'.[32]

They argue that due to pressures to deal with other, chronic health issues in Indigenous communities combined with petrol sniffing not being a major contributor to indigenous morbidity or mortality, bureaucrats are more often than not pre-occupied with other health priorities. When there is media attention to the issue, they 'find themselves caught in a crossfire: pressured from outside … to take action in response to a problem that is not, from where they sit, among their most critical challenges'.[33] d'Abbs and Brady see three inter-related consequences of this:

- first, the agency will take some action but not be willing to divert resources from other areas that are seen as ongoing priorities;

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29   Australian National Council on Drugs, *Structural determinants of youth drug use*, ANCD Canberra 2001, cited in Parliament of Victoria, Drugs and Crime Prevention Committee,*ibid*, p140.
30   Brady, M, *op.cit*, p14.
31   d'Abbs, P, and Brady, M, *op.cit*, p3.
32   *ibid,* p4.
33   *ibid*, p5.

- second, the pressure to return to what are seen internally as more important priorities provides an incentive to make a one off gesture and refocus on other issues; and

- third, there is unlikely to be within the agency or department much experience or networks of people with an ongoing interest in keeping petrol sniffing high on the agenda of priorities.[34]

Petrol sniffing is therefore unlikely to become the subject of a long-term, sustained policy focus:

> [B]ecause petrol sniffing is not seen as a genuine on-going priority issue that falls neatly into any one department's or even one government's scope of responsibility, governments have tended not to engage in direct service provision, but rather to fund community-based groups and other non-government organisations to provide services. This, of course, also fits with the view of petrol sniffing as a community responsibility…. [I]n light of petrol sniffing's low ranking as a priority, most initiatives have been funded on an ad hoc, short term basis, with virtually no commitment to rigorous evaluation or to providing ongoing funding to those programs that demonstrate successful outcomes.[35]

In these circumstances, it is difficult to consolidate an evidence base, to build and sustain links with existing expertise, or to maintain extensive corporate knowledge on the subject. By identifying petrol sniffing as an 'Indigenous problem' it has also been marginalised as a policy issue, with the result that it has not received the attention and resourcing that it may have if it had been positioned within mainstream substance misuse policy frameworks. Accordingly, D'Abbs and Brady comment that governments have tended to establish interagency committees as the main response to petrol sniffing:

> [I]n the absence of an evidence base, and because petrol sniffing where it occurs straddles political jurisdictions as well as departmental "silos", governments have tended to respond to petrol sniffing crises by convening high level inter-governmental committees involving commonwealth and state/territory officials. In no instances to date, however, have these committees succeeded in implementing a co-ordinated, sustained approach to the prevention or treatment of sniffing.[36]

Petrol sniffing on the Anangu Pitjantjatjara Lands: A case study

a) Why a case study of the AP Lands?

In the second half of 2003, the Social Justice Commissioner's unit of the Human Rights and Equal Opportunity Commission (HREOC) conducted a research and consultation project into progress in addressing the Coronial recommendations on petrol sniffing on the AP Lands. HREOC staff visited the AP Lands as part of this project in September 2003. Interviews and meetings were conducted in Adelaide and across the AP Lands with various government

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34   *ibid*.
35   *Ibid*, p9.
36   *ibid,* p10.

agencies (including those involved in the Council of Australian Government's whole-of-government community coordination trial on the AP Lands),[37] Aboriginal organisations,[38] and community members and elders on the lands.[39] HREOC also received a whole-of-government response from the South Australian government to the issues being considered.

The decision to conduct a case study specifically on petrol sniffing on the AP Lands was based on a number of factors. The Social Justice Commissioner's office had been considering for some time ways that it might best be able to assist communities on the AP Lands to address problems associated with petrol sniffing. This was largely the result of concerns raised with HREOC by organisations such as the NPY Women's Council about petrol sniffing.[40]

Similarly, the inquests conducted on the AP Lands in 2002 had provided much impetus for addressing petrol sniffing issues. The recommendations of the Inquests provide 'a blueprint for government to consider as the means best able to address the problems and provide the most likely long-term solutions'.[41] There is a clear need for expediency in following up the recommendations. This is particularly so given that the tardiness of government and other players in addressing petrol sniffing to date has been identified by the Anangu themselves, as well as by the Coroner, as a contributory factor to the escalation and embeddedness of the situation on the AP Lands.

In the absence of systematic and comprehensive data on the extent and nature of petrol sniffing by Indigenous people, there is also much potential value in provide a discrete focus on the AP Lands in order to secure a higher policy profile for the issue of petrol sniffing. The AP Lands are also one of the areas across the country where there is some data on petrol sniffing and a history of dealing with the issue, as Nganampa Health Council has collated such information since 1984.

As a case study, the AP Lands Coronial Inquest also has currency in light of recent policy debate about the need to address urgent problems in communities (drug and alcohol misuse, violent behaviour) versus the need to focus on the underlying causes of family and community dysfunction (inter-related social, economic, cultural and psychological factors) in overcoming Indigenous disadvantage. While the Coronial Inquest endorses a systematic, concerted approach to the AP Lands situation, indications are that interventions into petrol sniffing will need to be adapted to meet the needs of specific contexts:

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37   Agencies and Departments included the Office of Aboriginal and Torres Strait Islander Health (Cth); Department of Correctional Services (SA); Department of Aboriginal Affairs and Reconciliation, SA; Department of Human Services (SA); South Australian Police (SAPOL); and the Sheriff's Office.

38   Including the Aboriginal Legal Rights Movement; Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council; Ngannyatjarra Council Aboriginal Corporation; and Nganampa Health Council.

39   Including at Fregon, Waturra, Wantinna Homestead and Warburton.

40   In fact, one of the first events that I attended as Social Justice Commissioner was a conference convened in Alice Springs in 1999 to discuss the use of aviation gas as a substitute for petrol in order to address the problem of sniffing on the AP Lands. See further: NPY Women's Council, *AVGas / COMGas conference*, 28-39 July 1999, Alice Springs.

41   ALRM, *op.cit*, p17.

An important aspect of the Coroner's findings and recommendations is his recognition that petrol sniffing is such a complex problem or indeed series of problems to be faced by outback communities, that no individual measure will 'fix it', rather there needs to be a series of measures all operating synergistically together to have any prospect of long term success. For that reason alone progress should be monitored.[42]

The AP Lands experience may also have ramifications for addressing other forms of addiction and at risk behaviour in communities (such as cannabis use, which is believed to have dramatically increased over the last five years on the AP Lands).[43] In previous Social Justice Reports, the Social Justice Commissioner has taken an interest in developing a human rights framework for monitoring and evaluating progress in addressing Indigenous disadvantage.[44] Given the Coroner's contextualisation of his recommendations in regard to underlying socio-economic factors and disadvantage, the use of benchmarks based on human rights standards could provide a framework for monitoring progress in addressing the AP Lands situation.

Ultimately, the considerable poverty and socio-economic marginalisation identified as incubating and precipitating endemic petrol sniffing in Indigenous communities raises significant human rights concerns about the lack of equality in the provision of government services to Indigenous people on the AP Lands. It raises concerns regarding rights to adequate food, the highest attainable standard of health, education, decent work and adequate housing, and the lack of reasonable access to police services, in particular protection from self harm or harm to others in the community (rights to personal security, and to equal access to justice).

There are also concerns regarding protection of the right of children. The Convention on the Rights of the Child affirms the right of children and young people to protection against drug abuse and other forms of abuse and neglect; and protects the enjoyment of the right to a reasonable standard of living, health and basic services; the right to education and the right to leisure. Under CROC, children and young people with special circumstances, such as those suffering disabilities or orphaned must be provided for, and there are also requirements concerning cultural sensitivity to Indigenous and other minority groups, and rehabilitative care for children suffering from deprivation. The disadvantage experienced by the Anangu is indicative of the ongoing failure to provide the full measure of human rights to which all Australians, including Indigenous peoples, are entitled. It is worthy of detailing the current situation for this reason alone.

b) The extent of petrol sniffing on the AP Lands

[I]t's the biggest shame that young people today in this part of the world are dying from petrol sniffing. And the neglect that I think has happened, has been going on for some time and that there is a reluctance for the wider community in Australia to take any responsibility or concern about

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42   *Ibid*, p15.
43   Torzillo, P, *op.cit*, p9.
44   See for example: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC Sydney 2002, Chapter 4.

it… well let's be honest, there's been 30 years of neglect from government in this region across the whole board, not just petrol sniffing. But I do believe that if you address the issues of petrol sniffing, you're addressing the wider issues of the problems on the communities. It goes hand in hand. And you know, we have documented time and time and time again – communities have, the women have – that what is needed. We don't need more reports, we don't need more enquiries, we don't need more meetings with the government to say, 'What do you want'. Anangu have written it down time and time again.[45]

The Anangu Pitjantjatjara Lands (AP Lands) cover an area of 160,000 square kilometres in the far north-west of South Australia. The area comprises one fifth of the state. The AP Lands were handed back to the traditional owners, the Anangu, under the *Pitjantjatjara Land Rights Act 1981* (SA). They form part of the larger remote cross-border region of Western Australia, South Australia and the Northern Territory known as the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara lands.

It is thought that petrol sniffing emerged as a problem on the AP Lands during the late 1960s. The recent Coronial Inquest found that the extent of petrol sniffing on the AP Lands had diminished in the early 1990s. However, there was also a 'reduction in effort towards tackling the problem' in the mid-1990s. This has led to a resurgence of petrol sniffing from at least 1998, with little achieved since then to restore the situation on the AP Lands to its pre-1995 position.[46]

Data collected by Nganampa Health Council in 2000 indicates that the number of people engaged in petrol sniffing has increased from 1999 to 2000 (from 111 to 166 people). This represents approximately 6% of the Anangu population and 12% of the population aged between 10 and 35 years of age.[47]

This is a similar number to that observed on the AP Lands in 1984. This suggests a decline in the proportion of this age group engaged in petrol sniffing, given the overall growth in the total population (from approximately 1,700 in 1984 to 2,800 by the year 2000).[48]

Available data also indicates that despite the increasing number of new recruits to petrol sniffing in the late 1990s, the total number of sniffers and people recruited to sniffing over the decade declined over the course of the decade. The data also reveals 'a fairly dramatic cohort effect since the 1980s':

> [T]he median age of petrol sniffers has increased markedly over this time and that in many communities the number of petrol sniffers over 25 years of age are in the majority. This means that a number of those who took up petrol sniffing 10, 15 or 20 years ago are still sniffing. This cohort effect has major implications for understanding the breadth of problems that occurs as a consequence of petrol sniffing and the different interventions that would be required.[49]

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45   Maggie Cavanagh, former coordinator of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council in evidence at the Coronial Inquest. Quoted in Chivell, W, *op.cit,* p32.

46   *ibid*., p1.

47   Torzillo, P, 'Petrol sniffing on the AP Lands: Report to the Coroner', Nganampa Health Council, 2002, p2.

48   *Ibid.*

49   *ibid*, p2.

One of the implications of an increase in the number of long-term or chronic sniffers is a greater degree of visibility of the problem and a higher level of impacts on the public order and functioning of communities. It also indicates a need for intervention at both ends of the problem, in addressing the increase in recruitment of sniffers as well as the issues associated with long term or chronic sniffers, such as rehabilitation and harm minimisation.

c) The findings of the Coronial Inquests into petrol sniffing, September 2002

Coroner Chivell concluded in the Coronial Inquests conducted on the AP Lands that the situation in 2002 is that:

> Petrol sniffing is endemic on the Anangu Pitjantjatjara lands. It has caused and continues to cause devastating harm to the community, including approximately 35 deaths in the last 20 years in a population of between 2,000 and 2,500. Serious disability, crime, cultural breakdown and general grief and misery are also the consequences.[50]

The first recommendation of the Coroner in the inquest reflects the serious contemporary impact of petrol sniffing on the community:

> 1. That Commonwealth, State and Territory Governments recognise that petrol sniffing poses an urgent threat to the very substance of the Anangu communities on the Anangu Pitjantjatjara Lands. It threatens not only death and serious and permanent disability, but also the peace, order and security of communities, cultural and family structures, education, health and community development.[51]

A summary of the findings of the Coroner and his recommendations for action have been extracted as an appendix to this report (see Appendix 3). A key finding of the Coroner was that the recommendations of the Royal Commission into Aboriginal Deaths in Custody have not been complied with by the Commonwealth or state governments, and that this 'will, if it is not addressed, lead to severe disability and further deaths, not to mention continuing social dislocation, crime, loss of culture and general community degradation and loss'[52] on the AP Lands. The concerns of the Coroner regarding this are also extracted in Appendix 3.

The findings and recommendations of the Coroner can be grouped into the following two key issues:

- *i) Coordination, funding and action by Government:* Concerns were expressed about the failure of governments to consult appropriately and significant delay in implementing programs, with a need for governments to move beyond the 'information gathering' stage. The Inquest highlights the need for governments to re-assess their coordination of policy and funding approaches to service delivery on the AP Lands;

- *ii) Specific interventions for addressing petrol sniffing:* The Inquest identifies the need to adopt a combination of primary, secondary and tertiary interventions relating to health and justice issues in order to combat petrol

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50 Chivell, W, *op.cit,* p1.
51 *ibid*, Recommendation 1, p65.
52 *ibid*.

sniffing, combined with strategies to address the significant disadvantage and lack of services on the AP Lands, which forms the environment in which petrol sniffing takes place.

The Coronial Inquest recognised the need for broader government and community responsibility, and made a series of recommendations (Recs 1-7; 8.14, 8.15) urging re-assessment of current Commonwealth and State funding and policy strategies in finding solutions to the problem of petrol sniffing in the AP Lands. The recommendations directed towards the Commonwealth, State and Territory governments included the need to:

- recognise the threat which petrol sniffing poses to Anangu communities on the AP Lands (Rec 1);
- recognise the role played by broader socio-economic factors in causing petrol sniffing on the AP Lands (Rec 2);
- recognise the responsibility of government and the broader Australian community to address petrol sniffing (Rec 3);
- move existing intergovernmental approaches beyond the information-gathering stage and to utilise existing knowledge and expertise to find solutions to petrol sniffing on the AP Lands forthwith (Rec 4);
- address existing fragmentation of service delivery through improved inter-governmental coordination (Rec 5);
- establish a more substantial Commonwealth and state government presence on the AP Lands and develop more stable relationships with Anangu, including greater certainty of funding arrangements (Rec 6);
- recruit qualified and experienced staff to the AP Lands (Rec 8.11);
- recognise the interdependent nature of program interventions and adopt a longer term, multi-faceted approach to addressing petrol sniffing (Rec's 7, 8.14); and
- assess initiatives against the recommendations of the Royal Commission into Aboriginal Deaths in Custody (Rec 8.15).

The remaining recommendations address more specifically the different levels of interventions needed from prevention and deterrence through to rehabilitation. Recommendations which have become the responsibility of health agencies include:

- appointing four youth-workers and a youth-work coordinator (Rec 8.1);
- Assessing petrol sniffers on a neurological and neuro-physical basis for rehabilitation and disability services (Rec 8.2);
- Establishing a culturally appropriate Homelands/Outstations Programme (Rec 8.3);
- Continuing funding for the Commonwealth Avgas initiative (Rec 8.4);
- Evaluating the role of the Department of Families and Youth Services (SA) in relation to children at risk on the AP Lands, including considering the adoption of a more proactive community development approach (Rec 8.8); and

- Urgent upgrading of the level of services for disabled victims of petrol sniffing (Rec 8.9).

Justice issues covered by the recommendations relate to strengthening of the police presence in the AP Lands and the need for greater deterrence of petrol sniffing and related disruptive behaviours. They include:

- Increasing the range of sentencing options available to courts sitting on the AP Lands, resourcing non-custodial options such as outstations and a secure care facility, as well as increasing the presence of Correctional Service supervisors to ensure that undertakings, bonds and community service orders can be enforced (Rec 8.5);
- Amending the *Public Intoxication Act* to extend its application to the AP Lands and declare petrol or hydrocarbons a drug for the purposes of the Act (Rec 8.6);
- Canvassing support for the establishment of night patrols as part of an overall crime prevention strategy on the AP Lands (Rec 8.7);
- Planning for the establishment of secure care facilities on the AP Lands, to fulfil a range of roles including detention, detoxification, treatment and rehabilitation (Rec 8.10);
- Immediate establishment of a police presence on the AP Lands, through implementation of the recommendations of the SAPOL review of the Community Constable Scheme (Rec 8.12); and
- Improvement to existing levels of policing on the AP Lands, through addressing issues relating to staffing at Marla (Rec 8.13).

Progress in responding to the recommendations of the Coronial Inquest into petrol sniffing on the Anangu Pitjantjatjara Lands

In this section, progress in addressing the recommendations of the Coronial Inquest is considered in relation to the following four themes:

- Inter-governmental and inter-agency coordination;
- Resourcing issues;
- Health related issues; and
- Justice related issues.[53]

a) Inter-governmental and Inter-agency coordination

Fundamental to the recommendations made by the Coroner is the observation that government agencies have been stuck for too long in the information-gathering stage at the expense of taking action to address longstanding service delivery issues confronting the AP Lands:

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53 Note: This analysis of the adequacy of response to the Coronial recommendations includes processes or initiatives that may not have been developed or undertaken by governments directly in response to the Coronial recommendations.

> There is no need for further information gathering, and there is a vast untapped pool of professional expertise to be utilised. What is missing is prompt, forthright, properly planned, properly funded action.[54]

The Coroner recognised that properly planned and funded action is reliant on the development of an '[i]nter-Governmental coordination of approach … in order to avoid the fragmentation of effort and confusion and alienation of service-providers'.[55] He also stipulated that the support of the broader community be enlisted in addressing petrol sniffing on the AP Lands:

> The fact that the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture, is clear. Governments should not approach the task on the basis that the solutions must come from Anangu communities alone.[56]

The need for interagency coordination or holistic or whole-of-government approaches, and the need to avoid duplication of services and to target Indigenous disadvantage more effectively, have become familiar themes in policy debate on Indigenous service delivery. The necessity of changing the ways in which governments do business with Indigenous communities has particular pertinence in light of the recent focus of Indigenous policy on capacity-building and governance.[57]

Since the Coronial Inquest, one of the most consistent comments made about the inter-agency approach to the Coroner's recommendations by those whom HREOC consulted with is that it has continued to be piecemeal rather than systematic and has been characterised by a reluctance to take action. In the words of one community organisation member, 'there have been many references to the Coroner's recommendations but a failure to act'. In response, government officials often highlight the difficulties in making progress on petrol sniffing-related issues on the AP Lands, given the long-standing and intractable nature of the problems, and the need to consult properly and effectively with Anangu.

This section of the chapter will address concerns in regard to the question of the degree of responsibility to be exercised by both Anangu and government in responding to the Coronial recommendations.

■ Government coordination of policies and programmes

It is necessary to begin with some background on the history and composition of the coalitions of government agencies responding to petrol sniffing and related service delivery issues on the AP Lands. Recommendation 4 of the Coronial Inquest identifies the major government avenues for coordination of services and action in addressing petrol sniffing:

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54   Chivell, W, *op.cit*, pp32-3.
55   *ibid*, p64.
56   *Ibid*.
57   See, for example: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, HREOC Sydney 2001, Chapter 3.

> The Commonwealth Government, through the Central Australian Cross Border Reference Group [CBRG], and the South Australian Government through the Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee [APLIICC], should accelerate their efforts to find solutions to these issues and get beyond the 'information gathering' phase forthwith. They should use the extensive knowledge, published material and professional expertise that is already available.[58]

The Coroner had acknowledged that the establishment of bodies such as the Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee (or APLIICC Tier One & Tier 2 committees) and the Central Australian Cross Border Reference Group (or CBRG) was met with a generally favourable response.[59] He noted, however, that there were concerns that resources are not making a significant difference to the lives of people on the AP Lands. The APLIICC (also known as 'Tier One') was established in August 2000 by the previous South Australian state government in order to facilitate a cross-portfolio commitment of senior executives at State and Commonwealth levels to respond to disadvantage in the region, particularly issues such as the persistence of poor health and impoverished conditions on the AP Lands despite the level of expenditure on services.[60]

Tier One of the APLIICC comprises a core group of chief executives from the state government, APY Land Council, Nganampa Health Council and the Commonwealth Department for Health and Ageing. Originally, there was a second tier of working groups composed of senior project and policy officers from state and commonwealth agencies based in Adelaide who were responsible for implementing the directives of Tier One. This has since been replaced by a series of task forces that are to implement projects and activities identified as Tier One priorities. There was also a Petrol Sniffing Task Force (PSTF), established in November 2001 by the previous SA Minister for Aboriginal Affairs to tackle petrol sniffing specifically, which has since been subsumed into the activities of the Tier One Committee.

There are two further groups with Commonwealth and state representation to address issues emerging from the Ngaanyatjaraa Pitjantjatjara Yankunytjatjara cross border region which straddles the Northern Territory, South Australia and Western Australia. The Central Australian Cross Border Reference Group on Volatile Substance Abuse (CBRG) was established in response to the findings of a review of Commonwealth Aboriginal and Torres Strait Islander Substance Misuse Programs in 1999. A cross-jurisdictional forum was held in Adelaide on 20 March 2001, which agreed to address the issue of improving coordination in the delivery of volatile substance use through the establishment of a tri-state reference group (the CBRG), who would have carriage of the implementation and monitoring of the framework to address volatile substance abuse in the area.

The NPY Lands Tri-Jurisdictional Justice Group was established in early 2003 to examine legislation and policies that will enable the courts and police to

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58   Chivell, W, *op.cit*, p64.
59   *Ibid*, pp32-3,.
60   *ibid,* p23.

operate across borders in order to establish collaborative mechanisms and infrastructure to police the NPY Lands. The working group includes representatives from police, justice, health, education, Aboriginal Affairs agencies and local government. In addition to commissioning a study on the demographics of the region (population breakdown, movement patterns, offending and prison population data, language profiles and so forth), the group aims to develop a coordinated approach to shared facilities and programs, including culturally appropriate early release and rehabilitation programs (including community detention options), the potential establishment of a low security detention/alternative facility in Alice Springs or on the Lands, and the possible use of the Alice Springs Correctional Centre by WA and SA.

Since the Coronial Inquest, the AP Lands have also been designated as the South Australian trial site for the Council of Australian Government's (COAG) whole-of-government, whole-of-community trials. The APLIICC has been chosen to provide the interface between government and the communities on the AP Lands. In the joint media release announcing the nomination of the AP Lands as a trial site, the SA Minister for Aboriginal Affairs and Reconciliation Terry Roberts states:

> This trial will build on positive initiatives already under way on the AP Lands, such as the work of the AP Lands Inter-government Inter-agency Collaboration Committee (Tier One), of which the South Australian Government, the Commonwealth, ATSIC and AP Council are all members.[61]

The AP Lands were identified by the South Australian government as an appropriate focus for the COAG trial because of the level of need in the area, the existence of the APLIICC as a structure to facilitate the trial and the compatibility of its aims with those of COAG.

In early September 2003, there was a meeting (the 'Shared Responsibility' workshop) in Alice Springs of government and community representatives which sought to set priorities for the COAG trial. The two priorities which were nominated for action were *Mai Wiru*, a stores policy program addressing issues of nutrition, pricing and stores management training, and rural transaction centres, a project to establish permanent facilities in each major community for banking, government agencies and service providers.

Another significant decision included agreement that an Allocation Committee consisting of nominees from Community Councils, Homelands Groups, Nganampa Health and APY Women's Group be established. This fifteen member committee is to be chaired by the Chairperson of the APY Land Council and is to assist in the disbursement of funds. This decision aims to ensure that all stakeholders will have a clear understanding of the funding situation for the AP Lands, as well as a say in the distribution of monies on the Lands. The Allocation Committee will also work in conjunction with the State Government in considering

61 Ruddock, P, (Minister for Immigration and Multicultural and Indigenous Affairs), Patterson, K, (Minister for Health and Ageing), Roberts, T, (SA Minister for Aboriginal Affairs and Reconciliation) and Lewis, G, 'Anangu Pitjantjatjara (AP) Lands Communities to Work Together with Federal-State Partnership', *Joint media release*, 22 May 2003, p1.

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budget bids for future years. The APY Land Council will be given additional financial support for their role in assisting the Allocation Committee.

To support these new arrangements an Office of the APY Lands has been established within the SA Department for Aboriginal Affairs and Reconciliation, which will include a liaison person on the Lands to work with the APY Executive and then to develop relationships with Aboriginal communities. This initiative responds to Recommendation 6 from the Coronial Inquest which directed Commonwealth and State Governments to establish a presence in the region, 'if not on the Anangu Pitjantjatjara Lands then at least in Alice Springs, of senior trusted officials',[62] and to criticism made by the Coroner that too much of the bureaucratic activity was Adelaide or Canberra-based. The liaison person is to be well-briefed in order to deal with a range of issues. There is a perceived need to discuss with APY Land Council Executive what appropriate liaison with communities would constitute – to take a partnership approach rather than to impose a structure.

Canberra and Adelaide-based bureaucrats from the Cross-Border Reference Groups have also made attempts to spend time defining their relationship with the APY Executive. Officials also acknowledged the need to learn how to work with local Indigenous governance structures, time frames and ways of doing business, and that maintaining continuity of staff over time was a significant issue, as well as the development of longer-term relationships and processes in order to bring about lasting change on the AP Lands. They noted the need to consult appropriately with Anangu and the need for adequate time in which to conduct culturally-appropriate consultations:

> While an appropriate consultation process takes time and can be seen to delay the introduction of urgently needed resources, it is considered vital to successful work in the APY Lands.[63]

The South Australian government also has allocated funds to support a series of initiatives on the AP Lands, including $76,000 towards implementing an improvement in road planning projects with ongoing planning assistance; $155,000 to commence a three-year program for redeveloping the arts centres in the region; $200,000 to support programs for the removal of feral animals from Indigenous owned protected areas and to enhance native plants and animals; and programs aimed at developing mining activity on the Lands, particularly in working with traditional owners from APY to identify exploration opportunities on the land, and in facilitating opportunities such as a youth geotechnical traineeship scheme.

It is also anticipated that the allocation of $2 million over four years for the Department of Administrative and Information Services to provide staff housing on the AP Lands will assist in responding to the establishment of a state and commonwealth government presence in the region. Options for duplex style housing have been recommended to the Tier One Committee and have been approved for tender.

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62 Chivell, *op.cit*, p64.
63 Roberts, T, 'Re: South Australian Government response to the findings of the State Coronial Inquest into the deaths of Kunmanara Ken, Kunmanara Hunt and Kunmanara Thompson', *Correspondence to HREOC*, 14 November 2003, p4.

A critical issue for the APLIICC/COAG trial process as the major interface between government and AP Lands communities is whether it will have the capacity to overcome some of the previous issues of coordination facing the various committees (i.e, Tier One, CBRG and PSTF) in order to facilitate a more effective approach to tackling the problem of petrol sniffing. That is, whether these interagency structures and processes will be able to provide a different way of working with Anangu.

Related to this question are issues concerning the representation of the Anangu and their level of participation in identifying and progressing solutions. Consideration also needs to be given to the question of whether it is possible to change the way governments do business with communities or whether policy-making and bureaucratic processes inevitably foreclose the potential to make progress on an issue such as petrol-sniffing on the AP Lands.

■ A different way of doing business?

The COAG whole-of-government trials, of which the AP Lands are a trial site, are being piloted to develop a whole-of-government, whole-of-community approach to capacity-building and governance issues in designated areas across the country. *Shared Responsibility, Shared Future*, the information pamphlet for participating communities, describes the purpose of the COAG trials in the following terms:

> Many people are saying that the relationship between the community and the governments has got to change. It is clear that some of the ways that governments and communities approach their responsibilities needs to be done differently if we are going to move forward together.
>
> Recently, Commonwealth and State and Territory governments have agreed to improve their approach. They have agreed to work together…. And they have agreed to work in partnership with Indigenous communities to support them find and manage sustainable solutions to local problems.
>
> This means government have agreed to learn new ways of doing business with Indigenous communities.[64]

Similar comments were made at the Inquest by Albert Barelds, the Executive Manager of the Anangu Pitjantjatjara Lands Project Team, who said that both commonwealth and state governments have acknowledged that there is:

> A need for a different way of working with Anangu; there is a clear understanding that what government has undertaken to date has not led to the lifestyle, the improvements that were anticipated. In order to do so, it was felt that a different way of working with Anangu is needed and therefore a number of initiatives were taken to talk with both the Anangu Pitjantjatjara and elected members of all the community councils, as well as the service providers, to communicate directly with the Anangu to see how a new relationship between government and Anangu could be built to improve their situation.[65]

64 Indigenous Communities Coordination Taskforce, *Towards better outcomes for Indigenous Australians*, DIMIA Canberra 2003, www.icc.gov.au/publications?MySourceSession =6c119361b7d1a3a6cffc8b581a0eba82, accessed 15 November 2003.

65 Chivell, *op.cit*, p31.

The broader policy context for the COAG trials is the federal government's emphasis on mutual obligation and the responsibility of all players (government, communities, families and individuals) to address issues of social and economic participation that has featured in its welfare reform package and practical reconciliation approach to Indigenous issues. It is also aligned with an emphasis on self-empowerment and self-management in contrast to the perceived 'failure' of self-determination and the rights agenda to bring about change to Indigenous peoples' socio-economic circumstances.

One of the challenges for this policy framework is achieving an appropriate and equitable balance of responsibilities between all participating parties. The federal Minister for Indigenous Affairs in 2002 described this challenge as follows:

> The key to this initiative is that neither governments nor Indigenous communities can do it all on their own. We must work together, work in partnership and share responsibility for improving outcomes and building the capacity of people in communities to manage their own affairs.[66]

Government departments participating in the COAG trial on the AP Lands have emphasised their need to develop culturally-appropriate structures and processes, and to learn how to work with local Indigenous governance arrangements, time-frames and ways of doing business. As discussed above, the APLIICC Tier One / COAG process has given a substantial role to the APY Executive as the gateway to local Indigenous communities and groups in consultation and decision-making processes, including those relating to the allocation of funds for activities on the Lands. This approach has been taken in the interests of supporting Indigenous self-empowerment and participation, with joint agreement to be reached with the APY Executive on outcomes, and support for Anangu by the bureaucracy with grants and services through this structure.

However, concerns have been raised about the appropriateness of representative structures for Anangu to date in this process, particularly in regard to the level of responsibility given to APY Executive. While government departments and agencies present the APLIICC Tier One / COAG process as a means of self-determination, the perception of community-controlled organisations with a longstanding history of involvement in the AP Lands (such as Nganampa Health Council and NPY Women's Council) is that this process has shifted the focus away from Anangu and how they do business.

These organisations suggest that in marrying the APLIICC Tier One process to the COAG Trial, the intergovernmental approach to addressing problems on the AP Lands has become increasingly bureaucratic, impeding the possibility of responding effectively to substance misuse and other issues. There are also continuing complaints about the distance of bureaucrats from the AP Lands, their level of experience and corporate knowledge in dealing with AP issues, especially those of volatile substance misuse.[67]

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66   Ruddock, P, *op.cit*, p2.
67   For example, the convening of the COAG 'Shared Responsibility' workshop in Alice Springs, rather than on the AP Lands, and the venue's proximity to the casino was cited by some as highly inappropriate.

Community-controlled organisations claim that better use could be made of their corporate knowledge and established networks with the Anangu. The response from government officials to this criticism is that APLIICC Tier One was limited to representation by key executives from Indigenous organisations and government agencies in order to be more streamlined in their processes.

The appropriateness of the APY executive as an appropriate representative body for liaison with the Anangu communities has also been raised as a matter of concern. At the Inquest, John Tregenza, a consultant with a background in community development on the AP Lands, commented that there was a general lack of understanding by government about Anangu forms of representation. Whereas governments tend to identify a boss for liaison and negotiations with a community, the concept of democratic representation is alien to Anangu culture — you represent yourself and your family. Additional issues relate to the capacity of APY Executive to represent Anangu on matters other than those relating to its traditional core business, that of land management.

In his *Review of delivery of services to people with disabilities on Anangu Pitjantjatjara lands*, Tregenza articulates the case for extending representation beyond the networks of the APY Executive to include those of other organisations as follows:

> From time to time a misconception seems to arise among policy-makers and funding agencies that AP [Anangu Pitjantjatjara Executive] is the peak body in all matters. While it is true that AP have responsibility for all matters relating to the administration of the Lands on behalf of all the traditional owners of the lands (all Anangu), responsibility for the delivery of many other services has always been in the hands of other Anangu regional organisations.

> The administrative structure on the AP Lands does not parallel State or Commonwealth governments. AP is not the 'parliament' and only decision making forum, and, every other service organisation is not a department tof [sic] AP. AP Council is one of a group of independent, community controlled organisations with their own governing Boards of Management (Councils) elected by the same group of traditional owners. Currently these organisations are Nganampa Health Council (which came into existence at the same time as AP and well before AP Services), NPY Women's Council (1980), Pitjantjatara Yangkuntjatjara Education Council (PYEC). Each of the organisations was established, and has a separate elected governing body, because Anangu considered that the area covered by each was so complex that no single organisations could do all the issues justice….

> It is therefore essential that any consultation and discussions of issues with Anangu representatives from the Lands must include representatives from all the Anangu community-controlled organisations, and not just from AP Council and/or AP Services. Failure to include all the stakeholders in the consultative, planning and decision-making processes will only ensure the long term failure of regional programs and projects.[68]

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68   Tregenza, J, *Review of delivery of services to people with disabilities on Anangu Pitjantjatjara lands – an Anangu perspective*, SA Department of Human Services, Adelaide 2002, pp35-6.

The existence of serious governance and service delivery issues in the Executive Board of the Anangu Pitjantjatjara and the Pitjantjatjara Council executive were also identified in a report by Dr Mick Dodson. In August 2002 the Dodson Report found problems with the administration of the *Pitjantjatjara Lands Rights Act* and the Anangu Pitjantjatjara Board, with Dr Dodson observing that:

> I think there are some serious governance issues that need to be addressed. At the moment, it is my strong view that the AP Executive Board is unrepresentative, undemocratic, unaccountable, and seriously confused about its role and future role. I also have had numerous anecdotal commentaries on the possible misuse of Board funds to suggest at the very least it should be explored. From what I have been told I suspect the problem is a systemic one…[69]

The SA Minister for Aboriginal Affairs and Reconciliation has since headed a Parliamentary Select Committee inquiry into the *Pitjantjatjara Lands Rights Act*, with an administrator now having been appointed to administer the Act. The APLLICC Tier One Committee has also focused intensively on issues of governance and service delivery with the APY Executive over the last twelve months. However, Mr Tregenza's and Dr Dodson's comments would seem to corroborate concerns about the capacity of the APY Executive to represent Anangu effectively and the need to access broader networks of representation beyond its structures.

A further expressed concern is that government is setting the communities up to fail, partly through over-reliance on the APY Executive as a gateway, but more particularly through the expectation that the communities should address their own problems, especially those relating to volatile substance abuse. This is frequently framed not only in the discourse of shared responsibility but also that of self-determination. In their article recent article on the policy response to Indigenous petrol sniffing in Australia, d'Abbs and Brady observe:

> Central to these changes in the domain of governing Indigenous Australians is the strategy of enlisting "communities" to the work of governance. Under this strategy, Aboriginal communities are expected to articulate desires and aspirations which are then taken as authentic manifestations of "self-determination" – as long as they accord more or less with what the state wants them to choose.[70]

A kind of 'moral panic' has emerged in the emphasis on responsibility in the public discourse on Indigenous policy and the expressed need for Indigenous individuals and communities to address problems such as violence, drug and alcohol abuse. This predominantly moral perspective has the effect of narrowing the focus of Indigenous policy debate to obscure the broader systemic factors contributing to the marginalisation and disadvantage experienced by Indigenous families and communities.

It is undoubtedly empowering for individuals and communities to exercise control over and to participate in finding solutions to problems that threaten their security

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69   Dodson, Dr M, cited in Roberts, T, 'Report reveals serious problems in Anangu Pitjantjatjara lands: Minister welcomes parliamentary inquiry', *media release*, 29 August 2002.

70   d'Abbs, P, and Brady, M, *op.cit*, p7.

and survival. While there is some evidence that strong governance in communities can have a role to play in addressing substance abuse, as the success of zero tolerance policies in petrol sniffing in communities such as Watarru and Ngaanyatjarra indicates, there are limits to what good community governance can achieve. The level of responsibility by government in providing services and resources, particularly when there is an outstanding history of the failure to provide access to services commensurate with the mainstream population, needs careful evaluation.

In the case of volatile substance abuse on the AP Lands, it seems problematic to suggest that the Anangu through the auspices of the APY Executive (an organisation with a background in land management), should assume responsibility for the carriage of programs and services relating to problems such as the rehabilitation of sniffers – that is, beyond consultation about and participation in determining solutions to these problems. d'Abbs and Brady pose the following question: 'How, one must ask, can communities said to be wracked by disempowerment and social deterioration be expected to "originate and control" actions in response to petrol sniffing?'[71]

The Coronial Inquest emphasised the Anangu's need for outside assistance in addressing issues of volatile substance abuse, which has no precedent in their traditiional culture. At the inquest, the father of Kunmanara Thompson likened the introduction of petrol sniffing to the imposition of the Maralinga bomb tests:

> There has been petrol sniffing since the 1950s. Who is responsible? The petrol doesn't belong to us. It is not part of Anangu law. It was introduced to the Lands by white people. It is important that Anangu revive their culture and hold on to their culture. The problem with petrol comes from outside, it's like the Maralinga bomb tests, the solution should come from the outside too.[72]

As Dr Paul Torzillo, the Medical Director of Nganampa Health Council, points out, mainstream communities with higher living standards and more available services and resources would not be expected to solve their own substance abuse problems:

> [T]here seems to be a widespread view within government… that this is a problem which the community should solve, this is their responsibility. This is a community with less resources and ability to control a tough problem than any mainstream community… that's not a demand that's put on any other community in the country. No-one, no politician and no bureaucracy expects that a suburb like – so the people of Cabramatta are not told that they have to solve the heroin problem and it's up to them to do it. No-one makes that demand of them and they don't make that demand of them because it's a stupid thing to do, it's clearly not possible.[73]

The implicit danger of the current government discourse on shared responsibility in Indigenous policy is that it will not provide resources which are adequate or even commensurate with those it provides to the non-Indigenous population in addressing the problems surrounding volatile substance abuse.

71 *ibid,* p8.
72 Chivell, W, *op.cit*, p20.
73 *Ibid*, pp23-4.

■ **The bureaucratisation of community development?**

There is a conflict of opinion about whether these governmental and bureaucratic processes are appropriate for pursuing self-determination on the AP Lands, and moreover, whether they might in fact impede progress in petrol sniffing-related issues. It is sometimes suggested that the government's current emphasis on capacity-building, which is a feature of the COAG trials, merely amounts to the bureaucratisation of what was formerly called community development.

One concern that has been commonly expressed to HREOC is that the alliance with the COAG trial will merely contribute to an unnecessary degree of bureaucratisation already implicit in the APLIICC Tier One committee process and that an adequate response to the Inquest might be overlooked in giving carriage to the business of the COAG trial and the other priorities nominated for address on the AP Lands.

Despite these reservations about the bureaucratically top-heavy way of doing business that capacity-building and inclusion in the government's COAG trials might represent, there is also some optimism that the involvement of the Commonwealth might be a source of greater leverage to achieve some effective outcomes where the actions of states and territories have been ineffectual in the past.

Responsibility for tackling petrol sniffing lies across several government agency portfolios and as an issue, Indigenous petrol sniffing has a tendency to fall through the gaps in public policy. The COAG trial could have the capacity to make a more concentrated effort in addressing the problems facing the AP Lands as a discrete area, and provide greater impetus for Commonwealth and state governments to make a coordinated and consolidated effort in addressing petrol sniffing. In addition, the national spotlight of the COAG trials has the potential to engender a greater degree of accountability from all levels of government.

b) Resourcing issues

There were three main areas of comment about funding issues in the findings of the Coronial Inquest. The Coroner perceived the need for a greater injection of funding and resources; funding of programmes on a triennial basis, as recommended by the Royal Commission into Aboriginal Deaths in Custody; and the provision of funding for interventions into petrol sniffing, including continued Commonwealth funding of the Avgas initiative through the Comgas scheme (this final issue is discussed in relation to health related issues later in this chapter).

■ **An inadequate level of resourcing**

Information presented to the Coronial Inquest indicated that the combined Commonwealth and State funding for the AP Lands is:

> approximately $60 million per year for around 3,000 people of whom 2,500 are Anangu, making a per capita funding rate of about $20,000 per year….

When the CDEP and Centrelink funds ($16 million) are excluded, the figure drops to around $15,000 per capita.[74]

Very substantial increases in government funding are required to deal with problems relating to remoteness, such as access to mainstream services, and, more specifically in regard to petrol sniffing, to achieve the continuum of care from prevention to treatment and rehabilitation.

The issues surrounding Indigenous funding needs, and equity and access to services particularly in remote areas were canvassed by the Commonwealth Grants Commission's *Report into Indigenous Funding 2001* (the CGC Report). A significant aspect of the terms of reference set by the federal government for the CGC Report was an approach based on redistribution of funding according to the principle of relative need (that is, between regions) as opposed to absolute need (that is, in contrast to the rest of the population), with the intention of considering redistribution of funds to favour remote areas. However, the CGC's final report found that this approach was flawed in terms of addressing the inequity in this area. It commented that:

> Indigenous people in all regions have high needs relative to the non-Indigenous population. An important question is whether new methods of distribution should be applied to existing programs and funds. Any change in methods of distributing existing resources means that some regions would lose funding and others would gain. Large redistributions risk losing the benefits of investments made over long periods of time, including those in developing organisational capacity and people. The real costs of redistribution may be high.[75]

A further dimension of the funding issue is the significant problem of accountability for service delivery to Indigenous peoples which remains at the state and territory level. There is a longstanding need for clear agreement among the states and the federal government about their respective responsibilities to Indigenous peoples, how they will act to meet these responsibilities and the resources to be committed by all parties. The distribution of state and territory funds for Indigenous service delivery is also the area where there exists the least transparency and greatest cost shifting.

In July 2003 the South Australian government announced a series of additional funding commitments totalling almost $12 million over four years for initiatives on the AP Lands in its 2003-04 budget. In doing so, it 'acknowledged the longstanding social problems created by petrol sniffing on the AP Lands … and the recommendations of Coroner Chivell's report'.[76] The four main areas of commitment are:

- $8.163 million over four years for Department of Health Services health and wellbeing initiatives that impact directly on petrol sniffing, and for regional office and respite initiatives;
- $1 million over four years for policing and justice initiatives on the Lands;

74   *ibid,* p23.
75   Commonwealth Grants Commission, *Report on Indigenous funding*, Commonwealth of Australia, Canberra 2001, p xvii.
76   Roberts, T, 'State government action on petrol sniffing', *Media release*, 23 July 2003.

- $797,000 over four years to the Department of Aboriginal Affairs and Reconciliation for the introduction of legally licensed electrical operators; and

- $2 million over four years for the Department of Administration and Information Services to provide staff housing on the Lands.

Some of the questions that emerge from AP Lands situation concern not only what would be a sufficient injection of funds to address petrol sniffing and its attendant problems, but what kind of funding arrangements, commitments and time-frames could be implemented, in conjunction with the Commonwealth, to do so?

In an article that appeared earlier this year in the *Adelaide Review*, Chris Charles commented that the findings of the CGC Report could be used by the SA govt to secure a greater share of per capita Commonwealth funding by highlighting the funding needs of the Anangu.[77] Working with an assumption that the cost difference for delivering services to the AP Lands as a whole will be greater than the 212% difference between NSW and the NT, they put forward the following hypothetical calculation to support their argument for greater funds for the AP Lands:

> NT is dominated by Darwin and so lets say delivery to remote areas such as the AP Lands is twice the difference, translating to a dollar figure of $4890 per head. The relative capacity to pay for these services can be estimated from data presented by Mr Chivell which show that personal per capita income of Anangu people is around $7000 per capita (mainly from CDEP, the Aboriginal peoples work-for-the-dole scheme which provides $16 million to 2,500 people). If we add to that some of the value of services delivered to the AP Lands and already under Anangu control, we might double the per capita income, making it 63% of the average South Australian income of about $22000. When the adjustments are made, this comparison says that to bring education, health, law and order and welfare of the 3000 people on the AP Lands up to the standards the rest of us enjoy, we need to spend at least $22 million more, each year, on an accrual basis. Of course, before we spend the money a proper plan and an itemised costing needs to be done but we know that more than the $12.4 million is justified and that more than $12.4 million will be needed.[78]

It appears that the current allocation of funds by the South Australian and Commonwealth governments combined is not enough to address the needs of the petrol sniffers in terms of intervention and service delivery needs. The SA government's allocation of the $12.4 million will not be sufficient if it is to be a one-off allocation, and continuous assessment of these funding issues is necessary in any future budgetary arrangements in order to make inroads on the issues confronting the AP Lands.

One interesting possibility raised by the choice of the AP Lands as a COAG trial site is whether this may provide leverage for negotiating a greater injection of funds in the future. While the COAG Trials are not primarily a source of funding

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77   Quoted in Chapman, P, 'The budget for petrol sniffing' (2003) 238 Adelaide Review 3, p4.
78   *ibid.*

in themselves, the emphasis on finding better ways for government agencies to work with Indigenous communities, including improvement of service delivery coordination and outcomes, should have the potential to negotiate more targeted funding arrangements.

Another strategy might be the use of the COAG trial to set and ensure compliance with performance conditions on grants to states and territories (for example, specific purpose payments) affecting service delivery to the AP Lands. Given that the COAG Trials have the potential to support sustainable development in Indigenous communities, they could also provide a forum for exploring the implementation of some of the longer-term and more flexible funding arrangements recommended by reports such as the Royal Commission into Aboriginal Deaths in Custody and the Commonwealth Grants Commission.

■ **More flexible, long term funding arrangements**

In 1991 the Royal Commission into Aboriginal Deaths in Custody made recommendations for longer term, more flexible forms of funding arrangements which would ensure increased Indigenous participation. In particular, it recommended that Commonwealth, State and Territory governments introduce triennial block grant funding for Indigenous organisation, and that wherever possible this funding be allocated through a single source with one set of audit and financial requirements but with the maximum devolution of power to the communities and organisations to determine the priorities for the allocation of such funds.

In part, Coroner Chivell's rationale for recommending the funding of programmes on a triennial basis relates to the difficulties of implementing bureaucratic parameters in a remote area:

> Many of the people in the field complained of the remoteness of bureaucracies, and their incessant demands for written reports on performance outcomes and so forth. It would be better if the bureaucracies appointed trusted representatives who could monitor and evaluate projects and programmes for themselves, rather than insisting that dedicated professionals in the field continue to spend valuable time and resources preparing reports in order to ensure continued funding.[79]

The implementation of funding on a triennial basis would also have greater potential to make significant inroads into the problems surrounding petrol sniffing, an opportunity that is not available within the pilot project funding paradigm.

The over-reliance of governments on pilot project funding was singled out for particular criticism in the Coronial Inquest. Anne Mosey, a community development consultant, observed that:

> [C]ommunities were very tired of pilot project funding. I think it is still pretty evident that there is still a tendency for governments to rely on pilot project funding. Again, because it is very difficult for them to access recurrent funding for new positions, so the tendency is on government departments to be able to put it in a pilot project because they are able to

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79   Chivell, W, *op.cit*, p3.

provide that kind of funding a lot more readily, but they are not able to access recurrent funding in terms of being able to provide ongoing support for that project, so it falls over. It then takes x number of years to get the funding up again, and, often state bureaucrats are as frustrated by that as community organisations are. They would like to be able to provide recurrent funding, they have a great deal of difficulty with the fact that they are so constrained by budgetary processes and by their… annual accountability processes'.[80]

Unreasonable expectations often accompany short-term funding allocations such as pilot projects in Indigenous Affairs, particularly in relation to a complex issue such as petrol sniffing. Torzillo comments:

[T]here is a widespread view that if funds are expended the problem should be solved. That is, we gave you people some money but petrol sniffing still exists, therefore you didn't fulfil the requirements of the program. I mean, I'm not aware of any reasonable government anywhere in the world who has that sort of expectation in social policy elsewhere. No-one expects that funds expended on heroin addiction in Australia will cease heroin addiction… in fact, a consequence of that is that when that doesn't happen there tends to be a response from government that somehow the population has failed to deliver and that sets up a hostile relationship between service agencies out here and government, which is not a productive one if we are going to tackle this problem.[81]

In short, there is a need to give concerted and focused attention to the issue of coordinating long-term funding arrangements effectively at state and commonwealth government levels to engender the necessary 'prompt, forthright, properly planned, properly funded action' identified by the Coroner.

It is understandable if government departments do not wish to commit to time-frames without appropriate consultation, negotiation and the agreement of Anangu at this stage. However, there remains a pressing need for a long-term commitment from governments to address petrol sniffing on the AP Lands. Such a commitment needs to extend beyond the government's four-year budget cycle, and include a time-frame for progressing issues, including with projected outcomes that enable equitable participation by Anangu and ensure the progressive realisation of their rights. It is disturbing that there remains an absence of a clear commitment from all levels of government to do whatever it takes to address the endemic petrol sniffing issues on the AP Lands.

Community participation agreements, an initiative introduced in the 2001 federal budget and administered by ATSIC, offer much potential from a capacity-building perspective for achieving this. They may ultimately provide the appropriate framework for locking down government commitments alongside directions established by Anangu communities. As I observed in the *Social Justice Report 2001* about community participation agreements:

Equitable participation by all partners should be further reinforced by ensuring that the model is applied to meet assessable goals and objectives over a prescribed time-frame.... There would need to be clarity

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80   *Ibid*, pp30-1.
81   *Ibid*, p31.

about what form of commitment various partners are prepared to make, particularly in regard to the implementation of the model over a period of time and the level of resources required, and careful monitoring of all partners' participation as well as the flexibility to make any necessary re-adjustments to the model.[82]

A long-term framework would provide the structure to ensure that the response to Indigenous petrol sniffing is targeted and that adequate resources channelled within APLIICC Tier One / COAG process. Greater evaluation of the resourcing of the responses by government is also necessary, and links should be developed with existing knowledge bases and expertise on petrol sniffing to inform this. The COAG Trial should also be viewed as an opportunity for piloting more flexible, longer-term approaches to funding commitments, as recommended by both RCIADIC and the CGC Report, and as a lever for increasing the level of state accountability on service delivery to the AP Lands.

c) Health-related issues

Part of the South Australian government's commitment to funding initiatives for the AP Lands over the next four years included an allocation of $7 million to the Department of Health Services (DHS) for health and wellbeing initiatives that will directly impact on petrol sniffing and $1.163 million to provide regional office and respite initiatives. $100,000 has been allocated to Nganampa Health Council for supplementary funding for the patient transport scheme. Discussions are currently taking place with key Anangu stakeholders and APY Land Council representatives regarding preliminary proposals by the DHS for improving primary health and safety. At the Shared Responsibility workshop in Alice Springs, Anangu confirmed petrol sniffing programs, nutrition, child health and safety as priority areas.

Representatives from government health departments emphasised the degree of difficulty in responding to the health issues surrounding petrol sniffing, given that the problem is multi-faceted and has become entrenched over several decades. Quick-fix solutions are clearly not possible, and interventions need to be progressed at several levels. Importantly, the Coroner recommended the following to address this concern:

> Recommendation 7: Many of the strategies for combating petrol sniffing which have been tried in the past should not be discarded simply because they failed to achieve permanent improvements. Some of them might be regarded as having been successful for as long as they were extant. For any strategy to be successful will require broad Anangu support. Most strategies fail unless they are supported by others as part of a multi-faceted approach. Strategies should be aimed at primary, secondary and tertiary levels, as I have outlined in these findings.[83]

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82   Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, HREOC, Sydney, 2001, p89.
83   Chivell, W, *op.cit*, p66.

The three necessary levels of intervention have the following goals:

- *Primary interventions* – to reduce recruitment into substance abuse (targeted at occasional and non-sniffers);
- *Secondary interventions* – to seek to achieve abstinence and rehabilitation (aimed at those who have been sniffing for some time and may be responsive to intervention); and
- *Tertiary interventions* – to provide services to the permanently disabled (chronic sniffers and those who may have sustained brain damage).[84]

Forms of intervention that could be implemented at the various levels include:

- *Primary interventions* – programs to reduce recruitment to sniffing, such as the provision of sports and recreation activities, and the employment of youthworkers;
- *Secondary interventions* – programs aimed at harm minimisation or cessation including policing, neuropsychological assessment, outstations/homelands, the Avgas scheme, legal sanctions, night patrols, programmes for children at risk, and crime prevention; and
- *Tertiary interventions* – disability services including hospital care, chelation therapy and custodial care.

Paul Torzillo has grouped petrol sniffers on the AP Lands into the following three categories:

1. 25-40 year olds who are long-term chronic sniffers, often with sustained and irreversible damage, sociopathic tendencies and disability issues: disability services are the response to this issue;
2. an unknown number of young people established on sniffing who might be rehabilitated and need a mixture of interventions; and
3. new recruits who need sustained, long-term, flexible adaptable activities on an ongoing basis.[85]

The view of the Nganampa Health Council is that strong support is needed for both youth activities and disability services. This section will examine the responses led by health agencies to these areas of intervention against relevant recommendations by the Coroner.

■ Primary interventions

At the time of the Coroner's report, matters on the agenda of the APLIICC Tier One Committee relating to petrol sniffing on the AP Lands included the immediate placement of four youth-workers, development of alternatives to incarceration for young offenders, and residential disability services, all of which were highlighted for attention in the Coronial recommendations

Recommendation 8.1 of the Coronial Inquest was that the proposal before the APLIICC Tier One Committee to appoint four youthworkers and a coordinator be implemented immediately. At the time of the Inquest, there was $300,000

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84   *ibid,* p50.
85   Torzillo, P, *op.cit*, p3.

($246,000 was recurrent) set aside by the Aboriginal Service Division within the South Australia Department of Human Services to fund these positions on the AP Lands, initially for a period of twelve months. There have been complaints about the length of time taken to implement this proposal of two-years standing from the previous government, although an Anangu youthwork coordinator was appointed in late 2003.

Some service providers see prevention of the recruitment of new sniffers as the most crucial level of intervention in avoiding escalation of the problem. They also argue that there is more chance to make an intervention at an earlier age. Recruitment into petrol sniffing is perceived to stem from the boredom and futility experienced by young people in response to the degree of poverty and marginalisation on the AP Lands.

The youthworker proposal has been seen as the most substantial form of intervention at the level of primary intervention, including as a basis from which to access other youth programs and funds for Anangu and for the provision of after-school and holiday programs and activities. However, there have been comments made about the lack of adequate planning and consultation that preceded the proposal, as there are issues about its implementation that required more careful thought. For example, no real operational money has been provided to establish a youth council or youth groups, or to set up an office. There have been suggestions that some of the youthworkers be paid on a part-time or casual basis via the CDEP scheme in order to free up some of the funding for these purposes.

The basis of employment is another issue in itself: part-time employment may suit Anangu youthworkers better (particularly women), because of difficulties in factoring their other family and community commitments within a standard 'nine to five' hour day. Other relevant considerations include difficulties working with people from other moiety systems, in travelling into other areas and sometimes also a lack of support for women working beside their husbands. It has been suggested that funding needs to be as local as possible, with a number of workers employed across families on a part-time basis.

There is also a role for longer-term interventions, such as case management. Potentially schools could play a role in terms of working with youthworkers to provide preventative education programs and resources for afterschool activities. If school counsellors were appointed, there would be scope for them to liaise with youth-workers in managing youth at risk where appropriate. Previously, community elders have provided preventative activities, such as taking young people to herd camels or to outstations, but it is hardly a role for which they can assume total responsibility, given their range of other community commitment, including dealing with chronic and disabled sniffers. The reliance on the CDEP Scheme to support interventions such as youthworkers and night patrols is also questionable, especially on a long-term basis, and proper funding for part-time and casual positions and development of potential career pathways should be considered.

■ Secondary interventions

In accordance with recommendation 8.2 of the Coronial Inquest regarding neurological assessment, an assessment team with a multidisciplinary approach visited the lands and assessed a group of people in terms of the extent of brain damage. In certain individuals, there is no hope of reversing the effects of brain damage; the question now is how to treat them. Options are being considered in terms of how their counterparts in Adelaide would be treated and whether these options would be appropriate in the AP Lands.

In relation to recommendation 8.3 of the Coronial Inquest regarding the establishment of outstations/homelands, the success of outstation programs such as Mt Theo near Yuendumu in providing a 'venue for community respite, recreation, skills training education and the like in the context of abstinence from petrol sniffing' was noted by the Coroner.[86] During the 1980s, homelands were utilised with some success by community elders on the AP Lands in running diversionary activities for petrol sniffers.

While they provide a significant avenue through which community members can intervene in petrol sniffing and do so in culturally-appropriate ways, they tend to be short-term measures (a reflection of available funding), often personality-driven and difficult to sustain as a long-term intervention. They are not suitable for dealing with petrol sniffers with a high level of security or rehabilitation needs. Outstations and homelands nevertheless provide a valuable option as a harm minimisation strategy and have a place within a multi-faceted approach to petrol sniffing on the AP Lands.

Recommendation 8.4 of the Coronial Inquest calls for the continuation of Avgas (aviation fuel) under the Comgas scheme as a successful harm minimisation strategy. Avgas is supplied to about thirty Aboriginal communities under the Comgas Scheme administered under the Commonwealth's Aboriginal and Torres Strait Islander Substance Use Program in the Department of Health and Ageing. The Scheme ensures that communities using aviation fuel do so at no additional cost. Avgas is not permitted otherwise for use in motor vehicles as it does not meet several of the fuel specifications under the *Fuel Quality Standards Act 2000.*

Data collected by Nganampa Health Council in the mid-1990s demonstrates:

> an unequivocal and marked reduction in petrol sniffing as a consequence of the introduction of Avgas to all communities. Not only was there a significant decline in the number of petrol sniffers for the following three years but there seemed to be a marked decline in fitting among petrol sniffers, probably as a consequence of less frequent sniffing being possible because of limited access to petrol.[87]

The Avgas scheme is currently being evaluated. It is anticipated that a successful application will be made for a continued exemption under the *Fuel Quality Standards Act 2000* before the end of the 2003.

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86   Chivell, W, *op.cit*, p65.
87   Torzillo, P, *op.cit*, pp3-4.

In relation to recommendation 8.8 of the Coronial Inquest regarding the evaluation of the role of the Department of Family and Youth Services (FAYS) in relation to children at risk, a common statement from FAYS, teachers, and health service providers was that just about every child on the AP Lands could be classified as 'at risk'.

More specifically, the lack of employment and education opportunities, and also of sport and recreation facilities and other forms of entertainment and activity, are contributory factors here. Although there is some opportunity to attend a boarding school near Adelaide, there is little incentive to pursue an education or a career on the AP Lands, and a perception that you can always get CDEP later [i.e. The 'lifetime destination']. Afterschool employment of the kind available to youth in mainstream communities (such as packing supermarket shelves) is scarce, and there are limited career paths within service delivery to the communities (for example, healthworker) and many of these positions are filled by non-Indigenous people. A further aspect of this problem is disability employment, the need to provide meaningful employment for youth (and adults) with acquired brain damage from petrol sniffing.

In 26 March 2003 FAYS released *Our Best Investment: A State Plan to Protect and Advance the Interests of Children,* the Report of the Review of Child Protection in South Australia, which has a chapter on children and youth on the AP Lands. The Review endorses the recommendations of the Coronial Inquest and urges that they be implemented quickly.[88]

Child intervention and protection is important in regard to volatile substance abuse in terms of protecting children at risk of self-harm or harm by others (such as violent or abusive behaviour by sniffers or others). The current system for responding to children at risk on the AP Lands requires the notifier to contact the Child Abuse Report Line in Adelaide; it was asserted to the Review that in some cases, there were as many as twenty-five notifications but no outcomes.[89] Visits by FAYS workers to remote areas are infrequent, the caseload for FAYS workers is high, and FAYS is seen as reluctant to use its statutory authority in regard to child protection. There is a perceived need for Anangu ownership and participation in the issue of child protection to give FAYS' work credibility.[90]

The Coronial Inquest recommended that FAYS' role be expanded into one of proactive community development (and noted in this context service delivery issues such as the need for early childhood centres, after-school activities and holiday programs). Similar comments that have been made in relation to other government agencies were also made of FAYS, such as the lack of corporate knowledge, continuity of staff and skilled workers addressing the issues on the AP Lands, their need for a holistic, regional plan with planned outcomes, and the need to move beyond pilot programs and inflexible service arrangements.

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88   Layton QC, R, *Our best investment: A state plan to protect and advance the interests of children*, Government of South Australia: the Review of Child Protection in South Australia, 23 March 2003, [http://www.dhs.sa.gov.au/childprotectionreview/cpr-report.asp, para 8.35.

89   *Ibid*, para 8.34.

90   *ibid*.

An issue specific to FAYS on the AP Lands is that of child protection and intervention. It is said that FAYS is often reluctant to act in cases of children at risk because of the history of enforced removal, leaving children in situations of abuse and neglect. It is also suggested that the desire to respond to the legislative requirement that Indigenous children be placed within their own culture takes precedence over the wellbeing of the child, as well as concerns about being seen to satisfy the recommendations from *Bringing them home*. The situation needs to be circumvented through consultation and participation with Anangu in working out solutions for children at risk that may not involve removal from families.[91]

The Review states that FAYS has recognised that levels of community education and community development with the Aboriginal community has diminished over recent years, and that they could take on key roles with Aboriginal families and communities in this regard, particularly in developing programs that incorporate education and awareness about child protection.[92]

■ Tertiary interventions

In relation to recommendation 8.10 of the Coronial Inquest regarding the need to urgently upgrade services for disabled victims of petrol sniffing, an appropriate response to the need for disability services and facilities for petrol sniffers who have incurred a serious degree of disability is currently under review. While the Coroner's report recommends the establishment of secure care facilities with a potentially multifunctional role that might include rehabilitation, the issue being canvassed at present concerns the most appropriate model for treatment and rehabilitation.

d'Abbs and Brady make the following comments about the need to clarify whether elements of the mainstream paradigm, such as the construction of rehabilitation facilities, are correct for Indigenous petrol sniffers:

> Calls from various community groups and others for money to be allocated to residential rehabilitation facilities for petrol sniffers owe more to a widespread faith in the efficacy of this form of intervention than to any evidence supporting such faith.[93]

There are a series of questions concerning the location of the facility on the AP Lands, its potential long-term use, its relevance to other groups of people at risk, and the necessary level of security and its potential enforceability. The South Australian Police and the Department for Correctional Services argue that rehabilitation of disabled sniffers is not appropriate as a function of a secure care facility as intensive personal care is needed, and that it is more appropriately the province of health agencies and disability service providers.

Another suggestion has been the development of disability services across the AP Lands, probably to be located at six centres. The *Review of delivery of services to people with disabilities on Anangu Pitjantjatjara lands* found support for the provision of disability care in communities across the AP Lands:

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91   *ibid.*
92   *ibid.*
93   d'Abbs, P, and Brady, W, *op.cit*, p5.

- The Anangu preferred position is to have Anangu disability care workers based in their own communities supported and trained by a regionally based community controlled professional team.

- Given the situation in all the communities across the Lands, and while some communities may be able to deliver services in the short term, none are able to maintain effective and ongoing services to the aged and disabled. They do not have the infrastructure and resources nor capable, qualified and dedicated staff to deliver such services.

- While people may prefer to have everything delivered close to home, unless services are delivered by one of the regional agencies it is an impossible task. NPY Women's Council, Nganampa Health Council and AP Council through AP Services for housing and community infrastructure, are the current functional organisations.[94]

Planning for the proposed petrol sniffing rehabilitation facility is being led by DHS. As part of this planning process, the CBRG has reached agreement on the terms of reference for a feasibility study on different models for treatment. Letters of request have been sent to health agencies (Commonwealth and state / territory jurisdictions), and it is expected that the study will start by the end of 2003 or in early 2004, and will be finalised by September 2004. Agreement on the terms of reference has taken longer than expected because of the number of stakeholders involved and the complexity of the issues. The terms of reference include a survey of the available data on volatile substance abuse, an analysis of the efficacy of available models of detoxification, rehabilitation and treatment, and examination of what approaches are most likely to be successful on the AP Lands.

A further consideration is the need for consultation with communities at the local level to inform a regional response, and the likelihood that different models may suit different communities, requiring a more flexible approach to the issue. The feasibility study is also seen to be of value in collecting data that will assist in understanding the dimensions of the problem and in developing appropriate responses to the situation. The findings of this study are to be fed back to the CBRG, with the APY Executive to make the final decision over the allocation for disability services.

d) Justice-related issues

In 2003 the APLIICC formed two new sub-committees to review the Justice response to last year's Coroner's recommendations and to more recent criticisms from Magistrate Hiskey who convenes the court circuit on the AP Lands. The Department of Justice has allocated $1 million over four years for policing and justice initiatives on the AP Lands.

The justice issues that the Coroner identified as requiring redress fall largely in the category of secondary interventions and relate to:

- the range of sentencing options available to the courts sitting in the AP Lands (recommendation 8.5);

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94 Tregenza, J, *op.cit*, p37.

- amendment to the Public Intoxication Act (receeommendation 8.6);
- establishment of night patrols (recommendation 8.7);
- planning for the establishment of secure care facilities on the AP Lands (recommendation 8.10);
- implementation of the recommendations of the SAPOL review into the Community Constable Scheme, particularly the establishment of a permanent police presence (recommendation 8.12); and
- further measures by SAPOL to ensure that staffing at Marla is at full strength (recommendation 8.13).

Significant issues relate to the provision of deterrence to petrol sniffing and some of the disruptive and harmful behaviour that accompanies it, and the risks this behaviour presents to both the individuals involved and to the rest of the community. This situation could be alleviated through the provision of deterrence in the form of a strengthened police presence in the area and the capacity for courts to have a range of sentencing options and to direct court orders to higher-tariff options.

Currently there are problems with providing appropriate supervisors to implement community service orders or to direct orders at rehabilitation facilities, as there is not an adequate level of personnel or facilities. Without significant penalties and disincentives, destructive behaviour continues, threatening community order and stability. However, it is imperative that any justice measures be factored into an overall, multi-faceted strategy: it is not the responsibility of the police to compensate for the lack service delivery and infrastructure otherwise available on the AP Lands. It has also been suggested that other service providers sometimes use the lack of a police presence on the Lands as an excuse for inadequate service provision.

The Coronial Inquest frames the lack of security on the AP Lands specifically as a human rights concern. The Coroner highlights the observations of Ann Mosey in this regard:

> It seems to me that in the Lands there is actually a human rights issue here. Everywhere else in Australia communities are able to feel a certain level of security in the knowledge that they have access to reasonably rapid police services, and the fact that at a minimum it takes two hours for the police from Marla to get to most communities, that is not including the ones that are a lot further away, to me this is really an issue of basic human rights and not being able to be accessed by the community members in the Lands, and I believe they have a right to a range of government services in terms of say health, education and so on and somewhere along the line there seems to have been a decision made that they don't have the right to the protection of the community itself from people who may be at risk of either harming themselves or harming other people in the community …[95]

The United Nations High Commissioner for Human Rights and United Nations Development Programme has developed Draft Guidelines on Poverty Alleviation, which incorporate existing human rights standards on economic, social and cultural rights. These make particular recommendations concerning the right to

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95   Chivell, W, *op.cit*, p62.

personal security which are especially pertinent to the issue of access to police services and protection on the AP Lands. Guideline 11: Right to Personal Security states that:

> 174. Poor people usually suffer from various forms of insecurity. As well as experiencing financial, economic and social insecurity, they are often homeless, marginalized, discriminated against and subject to physical violence by State and non-State actors. Accordingly, efforts to strengthen the right of poor people to personal security shall have a crucial place in poverty reduction strategies…

> 178. Police protection should be provided in poor areas particularly affected by violence, harassment, intimidation and discrimination. Poverty reduction strategies should identify the worst affected areas, such as slums, and provide them with a sufficient number of specially trained law enforcement personnel.[96]

In relation to recommendation 8.5 of the Coronial Inquest regarding the availability on non-custodial options, Court circuits are held on the AP Lands every two months where approximately twenty to thirty good behaviour bonds are imposed. It is not possible to make treatment orders or other orders directed at rehabilitation because there are no facilities available. The maximum penalty for possessing petrol for the purpose of inhalation is a $100 fine; by contrast, within the Shire of Ngaanyatjarra (in Western Australia, under different state legislation) fines up to $5,000 can be imposed.

Recommendation 8.5 stipulated that the 'SA Department for Correctional Services must provide supervisors so that bonds, undertakings and community service obligations can be enforced.' Since the Coronial Inquest, the Department for Correctional Services has increased the number of Community Correctional Officers servicing the AP Lands by changing the operational boundaries of the Officer at Cooper Pedy to complement the work already being carried out from Marla. There are also plans for a mobile Community Service team to visit the AP Lands three times a year, enabling greater opportunity for offenders to work off their hours.

In August 2003 the main obstacle preventing this initiative was lack of funding; it was only partly affordable under internal reallocations. It is anticipated that these initiatives will result in an increase of up to five Community Correctional Officers assigned to duties on the AP Lands, culminating in a weekly presence from the beginning of 2004.

The Department for Correctional Services also emphasised the need for a multi-agency approach, highlighting the need for community constables to play an increased role in collecting offenders for supervision. They stressed that they were not necessarily able to provide an appropriate level of supervision for offenders, particularly in the case of chronic petrol sniffers:

> People with severe petrol-sniffing behaviour require a form of supervision more akin to attendant care, familiar in the disability service system, than

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96   United Nations High Commissioner for Human Rights and United Nations Development Programme, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies,* UNHCHR Geneva 2002, www.unhchr.ch/development/povertyfinal.html, accessed 15 November 2002, paras 174, 178.

to the periodic supervision we offer, hence the need for multi-agency based solutions.[97]

The potential for these arrangements to increase the range of options for sentencing, and to an appropriate level, will need serious evaluation. Magistrate Hiskey, one of the two magistrates on the court circuit for the AP Lands, recently expressed his frustration with current arrangements in sentencing remarks relating to a twenty-seven year old man charged with petrol sniffing.

In his comments in *Police v Yakiti*, Magistrate Hiskey drew attention to the fact that while a bond with supervision was the appropriate penalty, DCS was unable to offer appropriate supervision and intervention services in such matters: 'The advice given to the court by the department is not acceptable. This defendant, Casper Yakiti, deserves the benefit of a supervised bond'.[98]

He further observed that he was under obligation 'when sentencing offenders to impose whatever penalty is most appropriate in law', and that the court expects and requires supervision to be provided in this case and others where required.[99] While neither the court or DCS could be held responsible for conditions on the AP Lands, they were not absolved from implementing the recommendations.

In relation to recommendation 8.6 of the Coronial Inquest regarding amending the Public Intoxication Act, the Coroner recommended that the *Public Intoxication Act 1984* be introduced onto the AP Lands, with petrol and hydrocarbons recognised as drugs and the police empowered to apprehend petrol sniffers, remove their petrol cans and take them into custody. Some see this amendment as crucial intervention in terms of deterrence and in offering families respite from sniffing. They advocate that it should be implemented immediately, particularly in light of the success of sanctions in the Shire of Ngaanyatjarra, where petrol sniffing is an offence under local by-laws (the *Aboriginal Communities Act)*.[100] However, others query the value of such legal sanctions in the absence of safe or adequate places to hold sniffers, such as 'sobering up' places or a secure care facility. At present, people can only be detained at the police lock-up. This is not an appropriate option, especially following the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody. The availability of an appropriate facility for drying-out would be significant in terms of protecting the offender from harming themselves or other members of the community.

In relation to recommendation 8.7 of the Inquest regarding the establishment of night patrols and a crime prevention strategy, the Inquest noted the success of

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97   Severin, P, Chief Executive, Department for Correctional Services, 'Re: Findings of the State Coronial Inquest into the Deaths of Kunmanarra Ken, Kunmanarra Hunt and Kunmanarra Thompson', Correspondence with HREOC, 20 August 2003, p2.
98   Hiskey, G, *Police v Yakiti*, cited in '"These people can't be allowed to die": Magistrate speaks out on petrol sniffing', *Koori Mail*, 30 July 2003, p5.
99   *ibid.*
100 Offenders can be fined up to $5,000 under the Act. Similarly, under the Young Offenders Act children can be ordered to do community service activity or required to go at a community substance abuse facility for up to one week. There is, however, criticism of changes to sentencing legislation from 1995 which meant that the option of sentencing offenders for up to three months in a rehabilitation centre was no longer available has seriously undermined the success of addressing petrol sniffing problems: See further, Shire of Ngaanyatjarra, *op.cit.*

night patrols in other communities. While night patrols have been mooted for some time on the AP Lands as a potential crime prevention strategy, they are yet to be implemented. At the time of the Inquest, there was also no overall crime prevention strategy for the AP Lands (the 'Office of Crime prevention' within the Attorney General's Department and 'Crime Prevention Section' within SAPOL are both responsible for addressing petrol sniffing) from which, for example, night patrols could be coordinated. Since the Inquest, the Marla Action Plan has been revisited as the basis for a crime prevention strategy. Police officers have been assigned to work in partnership with individual communities and Community Council to develop Community Safety action plans. This is conceived as a long-term capacity-building exercise as well as a community safety one, which to aims to build on community structures, to enhance leadership and to engender a greater sense of responsibility among community measures.

Support for the establishment of night patrols has been offered by the police as part of this process, but to date, only Mimili has shown an interest in this option. It should be noted that the resources of the CDEP Scheme as well as the police can be deployed to support such a program. The implementation of night patrols, however, is dependent on the existence of commitment and capacity in the communities to such a program.

In relation to recommendation 8.10 regarding the establishment of secure care facilities on the AP Lands, the Tri-Jurisdictional Justice Group is considering the Coroner's recommendation. They have acknowledged that the Northern Territory government is building a new prison in Darwin. More appropriate to the AP Lands, however, are the existing medium to low term facilities at Alice Springs. While this option is closer than the Port Augusta prison, it still may not be close enough to obviate concerns expressed by Anangu about the distance of offenders from family and the potential for offenders to re-offend on their release or to become itinerants. Once again, those working in the justice area express concern about dealing with offenders with rehabilitative needs, and while the Tier 2 committee originally discussed the development of a bilateral bid for a co-located DCS/SAPOL facility to service the AP Lands, this has been shelved in respect to the DHS-led discussions of a feasibility study of rehabilitation services.

The ALRM has commented on the situation as follows:

> It is of concern for instance that the latest 2003-4 budget bids have not included provision for a small correctional facility on or near the APY Lands, of the kind that was recommended by the Coroner. ALRM understands that budget bids for such a facility have not been made or have not been successful for the last several years, because of lack of necessary provision in recurrent funding. If the State of South Australia does not have the necessary resources, outstanding needs should be identified and met by the Commonwealth, perhaps through specific purpose payments in the areas of health, housing infrastructure and education.[101]

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101   ALRM, *op.cit*, p17.

In regard to the Coroner's recommendations on the implementation of the recommendations of the SAPOL review into the Community Constable Scheme, particularly the establishment of a permanent police presence on the AP Lands (recommendation 8.12) and further measures by SAPOL to ensure that staffing at Marla is at full strength (recommendation 8.13), there is no permanent police presence on the AP Lands. Historically, the AP Lands have been policed from Oodnadatta and are now policed from Marla. It is difficult to police the Lands effectively from this town, which is situated just outside the border as 'in good conditions it can take six to seven hours to travel from Marla to Pipalyatyara or Watarru communities, and in adverse conditions it may not be possible to get through at all'.[102]

The community constable scheme was introduced in the late 1980s and early 1990s to employ local Anangu as police aides, and in doing so, increase the police presence. There are now Community Constables in each of the major communities who are supervised by the police at Marla (twelve positions) – but 'no sworn police officers stationed to support, train and supervise them'.[103] The Coroner recommended that non-Anangu police officers be reintroduced into the AP Lands, as there are cultural problems with Community Constables: 'if a Community Constable had [a] difficulty with a family member in his community, then a Community Constable from another community might be called upon, or mainstream police may come in and try to handle the situation'.[104] The Coroner stated that:

> It seems to me that to rely on Aboriginal police officers in communities is a great failure of the South Australian government to provide those sort of services to people on the Lands and I think that at the very least there needs to be a well equipped police station with say protective custody facilities in it which would be possibly placed either at Umuwa or one of the other major communities and it may be that there needs to be two or three police stations set up and they need to be provided with adequate staffing levels so that the police themselves feel that they are able to carry out their duties and that they feel safe and that their families feel safe in the environment that they are in.[105]

In addition, the Coroner noted the positive effects of the short but targeted Operation *Pitulu Wantima*, run during January to February 2002, where sniffers were to be identified, and where possible, the contents of their cans emptied and crushed. The operation involved the presence of four police officers, together with all the community constables, every day. The report found that the community response to the operation was largely positive and that sniffers became more cooperative over time.

> Communities appreciated the increased police presence and communicated that their needs were better addressed. This manifested in an increase in inquiries made to police and resulted in some officers completing very lengthy shifts…

102   Chivell, W, *op.cit,* p51.
103   *Ibid*, p53.
104   *Ibid*, p54.
105   *Ibid*, p60.

This information suggests that there is considerable under-reporting of crime on the Anangu Pitjantjatjara Lands when police are not so available. The additional police officers deployed resulted in improved reporting of crimes which were resolved usually straight away. Response times improved and Community Constables performed at a higher level with the support they received from the additional patrols. Break-ins continued to occur, but the incidence of these crimes lessened, as did the incidence of violent crimes normally attributed to petrol induced rages.[106]

Since the Inquest, the South Australian Police Department (SAPOL) has implemented Operation Safe Lands, which is aimed at increasing police presence, improving safety and reducing public disorder on the AP Lands. The operation, which initially ran from October 2002 to January 2003, has recommenced and will run until June 2004 as an interim measure pending the implementation of a longer term strategy. Operation Safelands involved bringing five officers on to the AP Lands for discrete periods of time to make a concentrated effort in targeting problems such as violence, theft, cannabis use and petrol sniffing, and develop a greater intelligence base regarding crime prevention.

A further initiative has been SAPOL's partnership with NPY Women's Council targeting family violence on the AP Lands. At the time of the Inquest, the Coroner noted that there was very little protection under existing arrangements, for example, for community members who might be the subjects of violence as a result of substance-abuse related behaviour, because of the prohibitive distances the police had to travel. As a result, police response times to violence and other issues had improved, and it has been agreed that the partnership should be adopted on a permanent basis.

In 1998 a review of the Community Constable Scheme recommended that two officers be stationed at Umuwa and a further two at another centre on the AP Lands. In late August 2003 the provision of two extra police officers per week was facilitated through the Marla Support Plan; under these arrangements, the extra police are rotated through Marla to patrol the Lands for week-long blocks. This is an interim arrangement and there is general agreement with the Review of the Community Constable Scheme that a minimum of four, maybe six, police officers need to be permanently stationed in the Lands, two operating out of Umuwa and at least two out of another community centre. Discussions are under way concerning the infrastructure and housing needs for stationing the officers. The possibility of establishing multi-jurisdictional facilities on the AP Lands has also been discussed by the Tri-State Jurisdictional Justice Group.

While communities express some frustration with the 'stop/start' nature of police interventions over the past two years, there is also optimism that these initiatives will lay the basis for a long-term police presence and will increase the capacity of communities to provide a safe environment for their members.

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106   *Ibid*, p59.

e) Summary of key issues and concerns in responding to the Coronial Inquest and petrol sniffing on the AP Lands

In summary, the Coronial Inquest has identified the need for 'prompt, forthright, properly planned, properly funded action' and the importance of effective inter-governmental coordination to achieve this and sustain it into the longer term. In the year since the Coronial Inquest, there has been some movement in this direction but overall not enough.

There is no lack of inter-departmental and inter-governmental forums for tackling issues relating to petrol sniffing, with the existence over the past few years of the APLIICC (Tier One Committee and Task Forces), CBRG, Petrol Sniffing Task Force (now submerged within APLIICC Tier One Committee) and Tri-Jurisdictional Justice Group. The COAG whole-of-government community trial is also now super-imposed over these structures.

There have been some positive initiatives emerging from these committees, such as the agreement to conduct a study of demographics on the AP Lands and to explore coordination and sharing of facilities and programs across the NT, SA and WA; the creation of an Office of the APY Lands within the South Australian Indigenous affairs department; the allocation of additional funding by the SA government to address related issues on the AP Lands; and the creation of an Allocation Committee to coordinate funding on the AP Lands. The decision to conduct the COAG trial on the AP Lands is also a positive acknowledgement of the urgent needs of the area and of the importance of governments changing the way they work with the Anangu.

The establishment of these committees has also been met favourably by communities on the AP Lands in general. However, communities on the AP Lands have expressed concerns about the continuing piecemeal approach to petrol sniffing and a reluctance to act by governments in the twelve months following the Coronial Inquest. Governments cite the intractable nature of the issue and the need for appropriate consultation as reasons for the slow progress to date.

There is significant concern that the discrete focus on petrol sniffing is potentially being obscured by the level of bureaucracy. There is concern that petrol sniffing will be submerged within a sea of other significant issues and not receive the focussed attention called for by the Coronial Inquest and communities on the AP Lands.

Concerns that have emerged in the initial twelve months since the Coronial Inquest include that the COAG trial might, in the name of being more 'streamlined', in fact be distancing key representative bodies on the AP Lands from service delivery and decision making as it relates to substance misuse. This is particularly due to concerns about the over-reliance on the APY Executive as the 'gateway' and peak body representing all Anangu interests. This seems to extend beyond its community acceptance and expertise. Significant concerns about its corporate governance and service delivery performance have also been raised as related concerns.

There are also concerns that the emphasis of the COAG Trial and these processes on community ownership obscures the bigger picture of a lack of

adequate and appropriate service delivery and funding. The expectations that appear to be placed on the APY Executive to take carriage and responsibility for issues, beyond coordinating consultations and participating in priority setting, is indicative of this. The Coronial Inquest makes clear the need for outside assistance and improved government performance. This may be being obscured by the emphasis on joint responsibility.

There is also, however, optimism that the COAG trial may ultimately breakthrough and achieve improved inter-governmental and inter-agency coordination where it has not been achieved in the past, and that it may result in greater accountability for all levels of government. There is also hope that the involvement of the Commonwealth may also provide greater leverage and ultimately achieve more effective outcomes. It is, however, too early to say whether these potential benefits will be realised.

A barrier to achieving such results remains the clear under-resourcing of service delivery on the AP Lands. The allocation of nearly $12 million by the SA government specifically to petrol sniffing related issues over the next 4 years is a welcome announcement. Concerns have been expressed that this quantum may not be enough. There is a need for ongoing assessment of the resourcing need, and for funding to be ongoing beyond the 4 year budget cycle. In particular, there is concern at the failure to date to fund projects beyond the pilot stage. The Coroner's suggestion of moving to block funding on a triennial basis is aimed to addressing this concern.

It remains of great concern that alongside the establishment of the various committees and inter-governmental forums, there is no clear, long term commitment to do whatever it takes to overcome the petrol sniffing problem or movement towards establishing benchmarks and targets towards this end. It may be that the Commonwealth government's community participation agreement process (coordinated by ATSIC) may provide a way forward in this regard.

At a practical level, there has been variable progress in implementing initiatives at the primary, secondary and tertiary intervention stages, relating to both health and justice issues. There have been practical problems in placing youth-workers and a youth work coordinator, with differing views as to the potential role of the CDEP scheme, where such workers are placed and whether more part time appointments would be more appropriate to the needs of communities. Significant issues relating to homelands / outstations, a changed approach to child protection issues and the provision of appropriate disability services and a secure care facility for offenders remain under consideration or subject to feasibility studies.

There have been positive developments relating to service delivery with an increased presence of correctional services officers, police and expansion of the community constable scheme as an interim measure. This has resulted in an improved response time from police. These issues require much greater attention, but there is greater optimism about the ability of police to have a more effective presence on the AP Lands, with consequent benefits for community safety.

The police continue, however, to face pressures of being heavily relied upon in the absence of other necessary forms of service delivery. Overall, there also remains a significant challenge of balancing law and order responses with adequate provision of services, particularly those which are health related. The dilemma relating to the proposed application of the Public Intoxification Act, in absence of detoxification and other support services, is an example of this ongoing, longer term problem.

Conclusion – a blueprint for action

When Australia appeared before the United Nations Committee on the Elimination of Racial Discrimination in 2000, the committee's country rapporteur made the following comments and asked the following question:

> I think we all have to welcome the increase in government resources going into what seem to be a multiplicity of programs and activities to address the social and economic disadvantage within the Aboriginal community…
>
> Now I note that you said today that there's been great improvement over a short period of time, and I'm sure there has been, but you know it's interesting to me, and again I will say this because I come from a country myself where there is a disadvantaged community and a lot of government programs et cetera, it's of serious concern the extent of the dramatic inequalities that are still being experienced by these population groups when they represent only, you know, no more than 2% of the population of a highly developed, industrialised state, and … it makes me wonder about things like the effectiveness of the programs, monitoring, benchmarking, what are the standards, is anybody watching this to see whether or not they really are designed to meet the disadvantages that are real in the communities, you know the real history of systemic discrimination, institutional racism?[107]

The same questions could be posed in relation to the issue of petrol sniffing on the AP Lands and the underlying socio-economic circumstances. Namely, given the smallness of the Anangu population, and the proportion of petrol sniffers within it, why has there been so little progress in addressing these problems, despite the plethora of governmental service delivery agencies and committees already in existence? Magistrate Hiskey recently put this issue more directly: 'People cannot be allowed to die when intervention and assistance may save them. The communities upon the Pitjantjatjara lands need assistance'.[108]

Given the history of neglect of petrol sniffing and its attendant problems on the AP Lands, the Coronial Inquest has provided an opportunity to focus on these issues. They should not be allowed, like the recommendations of so many other reports, to drift away unheeded. Instead, Coroner Chivell's recommendations should be capitalised on as the basis for a blueprint for a

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107 McDougall, G, *CERD Transcript 21-22 March 2000*, 1393rd meeting, Part II, p4; quoted in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC Sydney 2000, p58.

108 Cited in '"These people can't be allowed to die": Magistrate Speaks out on petrol sniffing', *op.cit*.

long-term sustained, comprehensive strategic plan for tackling these issues – even if some aspects of his recommendations are ultimately superseded by better alternatives decided at the local level.

The issue of addressing Indigenous petrol sniffing on the AP Lands should be recognised in terms of the specific challenge it presents to governments and bureaucracy in terms of changing the way in which they do business with communities and in developing effective whole-of-government approaches. The designation of the AP Lands as a COAG Trial adds particular impetus to this challenge for governments to show that they are genuine about reforming their relationship to communities.

The uncomfortable question which Indigenous petrol sniffing on the AP Lands raises is whether the structures of bureaucracy and the ways governments do business need to be radically altered: if not, will serious human rights issues such as petrol sniffing confronting Indigenous people keep on falling through the cracks? d'Abbs and Brady comment as follows on the respective level of responsibilities on both sides of the government and community partnership: '[W]hile communities must be partners in any program to address petrol sniffing, the notion that government agencies can sit back and insist that communities take "ownership" of the problem, and that all governments need to do is provide intermittent project grants to community groups, needs to be exposed and rejected'.[109]

HREOC has advocated a progressive realisation approach in which incremental steps are taken to address aspects of Indigenous disadvantage with a specified time-frame. Most of the responses to the Coroner's recommendations in the past year have been both thoughtfully considered and incremental. The series of interventions that the Coroner has advocated target all levels of the problem, from potential through to chronic sniffers, and from precipitating causes through to situational and underlying factors. However, in order to keep the momentum of the response to Coronial recommendations going, there needs to be long-term, bipartisan agreements put in place in regard to Indigenous petrol sniffing that will withstand changes in governments and bureaucracies, their agendas and personnel. Attention also needs to be given to developing the capacity of people across all sectors – government, NGO and communities – to address petrol sniffing-related problems on the AP Lands. Capacity-building of this nature must necessarily be allied to the development of evidence bases relevant to petrol and other inhalants, including strategic approaches and best practice examples, so that a corporate knowledge base can be maintained. Frameworks for progressing a long-term strategic plan for eradicating petrol sniffing must also be negotiated in consultation with the Anangu.

Given the limits on information which exists in relation to petrol sniffing and other substance misuse problems in Indigenous communities, the AP Lands situation also presents a significant opportunity to road-test strategies and solutions that may be applicable to other regions of Australia. Of particular interest are the models and the implications for Indigenous Australia that might emerge from the meeting of petrol sniffing as a public policy issue and the

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109   d'Abbs, P, and Brady, W, *op.cit*, p12.

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COAG trial as an interagency, inter-community challenge. Whether such initiatives as the COAG whole-of government trials ultimately prove to be more of a hindrance, obscuring and obstructing an effective response to issues such as Indigenous petrol sniffing, or whether its role might be pivotal in reforming service delivery at the Commonwealth and state level is a question that remains to be answered.

Chapter 5

Addressing family violence in Indigenous communities

There is no issue currently causing more destruction to the fabric of Indigenous communities than family violence. This has been acknowledged by all levels of government in recent years, with a number of significant inquiries and initiatives undertaken or commenced at the federal, state and territory level to address its impact. The intensive scrutiny and public awareness of this issue has not, however, led to sufficient commitments of resources and effort to date. Nor has it led to continuous support for innovative, community led solutions to address the violence or the adoption of an holistic, coordinated approach to it. Overall, there is still not enough action being taken to address this issue with the priority and urgency that it requires.

In light of the significant attention being devoted to this issue in public debate and the need for a more far reaching response, I asked Professor Judy Atkinson and Caroline Atkinson to prepare an overview of the existing approaches of governments to addressing issues relating to family violence in Indigenous communities. Both are respected Aboriginal researchers with a history of conducting research and advocating for improved responses to family violence issues within Aboriginal communities. This chapter is based on the report on current approaches to family violence in Indigenous communities that they prepared for me in the second half of 2003.[1] I thank them and the students of Gnibi – the College of Indigenous Australian Peoples at Southern Cross University – for their contribution to this report.[2]

This chapter provides a broad overview of the current situation regarding family violence in Indigenous communities in Australia from both a statistical and policy and program perspective. It provides an Indigenous specific perspective on family violence. An examination of the western traditional approach to domestic

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1   Atkinson, C, Atkinson, J, and Students of Gnibi – the College of Indigenous Australian Peoples, Southern Cross University, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities – Final Report*, Unpublished paper prepared for the Human Rights and Equal Opportunity Commission, 2003. (Herein referred to as Atkinson, C, and Atkinson, J, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities).*
2   I also, of course, accept full responsibility for the contents of this chapter and its accuracy.

violence, including its narrow interpretation, and the limitations of this approach in addressing violence in Aboriginal communities is presented. Alternative models for addressing family violence in Indigenous communities are also considered. There is a particular focus on restorative justice models and healing approaches, as well as consideration of the vital role of community control, capacity building and governance reform in restoring health and wellbeing to Indigenous communities.

Recent initiatives such as the Prime Minister's family violence roundtable in July 2003 and subsequent commitment of $20 million as a 'down payment' to address family violence issues, the response of the Western Australian government to the Gordon Inquiry's findings, and the focus on family violence issues in several of the COAG whole-of-government community trials, demonstrate a genuine commitment from governments to address family violence issues. This chapter is intended to build on the significant goodwill and commitment of governments to addressing family violence in Indigenous communities. It is intended to promote an understanding of the wide-ranging and multi-faceted issues that contribute to, or affect the responsiveness of government interventions relating to, family violence in order to improve policy responses to it.

Professor Judy Atkinson vividly demonstrates and reminds us of the urgency for identifying and implementing such improvements:

> When I started my PhD in 1993, seeking to understand the context of this violence, and find a healing way forward, I was asked by an academic to find words that would explain what I saw as I sat with people who had experienced violence, as children and young people, as adult men and women and as elders.
>
> The word I chose was *pain*. Layers and layers of pain, and in the unresolved pain the anger and grief that ensures its continuation. We carry this pain across generations, and we pass it down to others in our families and communities.
>
> I came to understand that the pain of a child or a woman, or a man, is the pain of us all. Often we deny the pain we experience in others because it mirrors our pain. Some of us numb ourselves with alcohol and other drugs and other addictive forms of behaviour and some with work. Work that in no way begins to address our needs.
>
> Any Aboriginal person who works in the field, and chooses not to close their eyes and hearts, is haunted by the immensity of the pain.
>
> While government demands statistical evidence, we do not need to count the dead and wounded as data for institutional archival files. We daily bury our dead and are so shell-shocked we can neither fully grieve our losses nor properly tend our wounded.
>
> What is important now is we truthfully name the pain in its many shapes and forms, and make the connections between the feelings and the behaviours that ensure, if we do not get about the work of healing, that it will continue across the generations.[3]

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3   Atkinson, J, *Foreword* in Atkinson, C, and Atkinson, J, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities*, p5.

Indigenous perspectives on family violence

> Violence is undermining our very life's essence, it is destroying us, and there are very few Aboriginal families that are not struggling with the debilitating effects of trauma, despair and damage resulting from their experiences with violence.[4]

Indigenous concepts of violence are much broader than usual mainstream definitions of domestic violence.[5] For Indigenous peoples, the term *family violence* better reflects their experiences.

Family violence involves any use of force, be it physical or non-physical, which is aimed at controlling another family or community member and which undermines that person's well-being. It can be directed towards an individual, family, community or particular group. In *Tjunparni: Family Violence in Indigenous Australia* family violence is defined as behaviours and experiences including:

> beating of a wife or other family members, homicide, suicide and other self-inflicted injury, rape, child abuse and child sexual abuse. When we talk of family violence we need to remember that we are not talking about serious physical injury alone but also verbal harassment, psychological and emotional abuse, and economic deprivation, which although as devastating are even more difficult to quantify than physical abuse.[6]

Family violence is not limited to physical forms of abuse. It also includes cultural and spiritual abuse:

> People get hurt physically – you can see the bruises and black eyes. A person gets hurt emotionally – you can see the tears and the distressed face – but when you've been hurt spiritually like that – it's a real deep hurt and nobody, unless you're a victim yourself, could ever understand because you've been hurt by someone that you hold in trust.[7]

Family violence in Indigenous communities also takes place in the broader context of violence committed at a systemic level:

> It is violence to move people forcibly from their place of birth and to dump them in strange places... It is violence to separate family members by policy or by designed economic hardship and necessity. It is violence to classify people by race in order to deny privileges to some and heap privileges on others. It is violence to systematically deny the most basic human rights in the service of such a system. The obvious physical violence that reaches wide attention is the merest tip of the iceberg of such ignored, routinized, structural violence.[8]

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4   Dodson, M, *Violence Dysfunction Aboriginality*, Speech, National Press Club, 11 June 2003, p2.

5   Bennett, B, 'Domestic Violence', (1997) 21(4) *Aboriginal and Islander Health Worker Journal* 11, p11.

6   Mow, K E, *Tjunparni: Family Violence In Indigenous Australia*, Aboriginal and Torres Strait Islander Commission, 1992, p10.

7   Atkinson, J, *Beyond Violence: Finding the Dream*, National Domestic Violence Education Program, Office for the Status of Women, Canberra, 1990, p7.

8   Simpson, M A, 'Bitter Waters: Effects on Children of the Stresses of Unrest and Oppression', *International Handbook of Traumatic Stress Syndromes*, Eds Wilson J P, & Raphael, B, Plenum Press, New York, 1993, p603.

Hence, it is crucial to acknowledge the impact of broader systemic violence when considering the impact of family violence in Indigenous communities. It is vital that definitions of violence incorporate not only physical dimensions, but also emotional, social, economic, spiritual and institutional dimensions. The expansive framework of family violence is imperative in developing and implementing broad, holistic, prevention/intervention strategies at various levels of critical need.

Such a frame of reference brings into focus the interconnecting and trans-generational experiences of violence within Indigenous families and communities. As Caroline and Judy Atkinson state:

> The term Family Violence is more suitable as it brings focus to the trauma of the interconnecting and trans-generational experiences of individuals within families, to show the continuity between how Indigenous peoples have been acted upon and how in turn they may then act upon others and themselves.[9]

Further, family violence embraces the historical nature of violence occurring in Indigenous communities, including the violence perpetrated by non-Indigenous people. As Harry Blagg states:

> [F]amily violence… represents an historical narrative about the collective suffering of a people, rather than a simple term demarcating a discrete social problem or one specific set of power relationships.[10]

A critical aspect of this broader conception of what constitutes family violence is that it recognises the centrality of Indigenous culture in framing the experiences, choices and ultimately the responses to violence, of Indigenous women:

> In understanding Aboriginal world views in relation to Family Violence, it has to be understood that an Aboriginal woman cannot be considered in isolation, or even as part of a nuclear family, but as a member of a wider kinship group or community that has traditionally exercised responsibility for her wellbeing as she exercises her rights within the group.[11]

This factor is often overlooked by current policies and other intervention strategies aimed at addressing violence against women which are primarily guided and directed by a liberal feminist framework. The major criticism of western feminist based intervention strategies for dealing with violence against Indigenous women is that they have evolved from the very structures that served to subordinate and oppress Indigenous peoples. Moreover they embody white middle class women's experiences. Indigenous women, however:

> do not have a purely gendered experience of violence that renders them powerless. They, along with their men, experienced and continue to experience, the racist violence of the State. Aboriginal women do not

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9   Atkinson, C, and Atkinson, J, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities*, p10.

10   Blagg, H, *Crisis Intervention in Aboriginal Family Violence: Summary Report,* Partnerships Against Domestic Violence, Canberra, 2000, pp2-3.

11   Judy Atkinson quoted in Atkinson, C, and Atkinson, J, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities*, p11.

share a common experience of sexism and patriarchal oppression, which binds them with non-Aboriginal women in a unified struggle…

The notion of patriarchy is foreign to traditional Aboriginal communities, which were relatively separate but equal in terms of male/female roles. While Aboriginal societies were gendered, women were not victims of men's power, but assertively affirmed their place and role in the community. According to Berndt & Berndt (1964) this provided both independence yet an essential interdependence between gender groups.[12]

Accordingly, Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender. Strategies for addressing family violence in Indigenous communities need to acknowledge that a consequence of this is that an Indigenous woman 'may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners'[13] as a solution to the violence.

As Harry Blagg notes, choosing to leave the family 'with all its complexly embedded ties of mutual responsibility and obligation, and connection with country and culture – is not an option'. These 'considerable limitations on the ability of Aboriginal women to abrogate responsibilities to family' must be accepted as 'the starting point – rather than the problem – in victim support'.[14]

A practical example of how this manifests is the different way that Indigenous and non-Indigenous women use refuges and shelters. The latter tends to use them as an exit point from abusive relationships, whereas Indigenous women use them as a temporary respite.[15]

Liberal feminist approaches to domestic violence also tend to emphasise the experience of the victim, as opposed to the experiences of the perpetrator. This differs from an Indigenous community-based perspective, which includes the issues of both perpetrator and victim. Indigenous women are saying that men's issues must also be addressed if real solutions are to be found and lasting changes are to happen.

Overall, these factors point to the need to recognise that:

The unique dimensions of violence against Aboriginal women are a result of complex factors and socio-historical and contemporary experiences and must be considered when attempting to provide solutions that are relevant to the specific situations and needs of Aboriginal women. Solutions to problems, no matter how well-intentioned, can create further problems for subordinated groups within a society, particularly when the 'solutions' are based in a systemic structure that has functioned abusively on the subordinated group.[16]

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12 *ibid*, p12.

13 Bennett, B, 'Domestic Violence', *Aboriginal and Islander Health Worker Journal*, 1997, p14.

14 Blagg, H, *Crisis intervention in Aboriginal family violence – Summary report*, Office for the Status of Women, Canberra 2000, quoted in Northern Territory Law Reform Committee, *Aboriginal communities and Aboriginal law in the Northern Territory* Background Paper 1 – Inquiry into Aboriginal Customary Law, NTLRC Darwin 2003, p18.

15 Blagg, H, *Intervening with adolescents to prevent domestic violence: phase 2 the Indigenous rural model*, National Crime Prevention, Canberra 1998.

16 Atkinson, C, and Atkinson, J, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities*, p14.

Of particular concern in this regard is that the typical 'western' response to family violence is to criminalise such behaviour through specific domestic violence legislation, with the strong possibility of imprisonment being the outcome for those convicted of offences. As Caroline and Judy Atkinson note, however, 'tighter controls from the criminal justice system in dealing with violence against Indigenous women can in fact make their situation worse'.[17] They argue:

> Aboriginal women say that when their men go to jail, they emerge more violent, and their voices are ignored. Because of this, and despite having no real option apart from the criminal justice response, these women are still hesitant to use the legislation to its full intent. Whilst it is important to acknowledge that violence against women is an offence, the question that needs to be asked in relation to Aboriginal perpetrators, is how can we also recognise that their behaviours have been influenced by the violence of the State against Aboriginal communities, while at the same time holding perpetrators accountable and providing programs whereby the perpetrators are able to change their behaviour?

> What has been revealed is that using Western law in isolation is not necessarily a viable option due to issues of access, particularly for women in isolated and rural communities, and a general reluctance to use the criminal justice system based on past and present experiences of abuse…[18]

An emphasis on criminal justice responses to family violence poses two main concerns for Indigenous women. The first is that the system is generally ineffective in addressing the behaviour of the perpetrator in the longer term. The effect of imprisonment is to remove them from the community and then, without any focus on rehabilitation or addressing the circumstances that led to the offending in the first place, to simply return them to the same environment.

The second is that there are a range of barriers in the accessibility and cultural appropriateness of legal processes which discourage Indigenous women from using the criminal justice system in the first place. Such barriers include an historic distrust of the police and legal processes which has developed due to factors such as an historically high level of police surveillance of Indigenous peoples[19]; a negative relationship with police due in part to the over-representation of Indigenous peoples, including Indigenous women, in public order and other petty offences; as well as experiences of inaccessible and culturally inappropriate court processes.[20]

It is not being suggested that incidents of family violence in Indigenous communities should be condoned or that responsibility of perpetrators be diminished. Instead, these barriers, highlight a failure to acknowledge the unique

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17   *ibid*.
18   *ibid*, p17.
19   For further discussion see Royal Commission into Aboriginal Deaths in Custody, *National Report* , AGPS, 1991; Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia,* AGPS, 1991*; also* Aboriginal and Torres Strait Islander Commissioner, *Indigenous Deaths in Custody 1989 to 1996*, A report prepared for Aboriginal and Torres Strait Islander Commission, October 1996.
20   For further details see NSW Department for Women, *Heroines of Fortitude – Experiences of women in court as victims of sexual assault*, 1996.

characteristics of Indigenous family violence has the potential to render approaches for dealing with this violence ineffective, with the consequence that Indigenous women ultimately do not enjoy the protection of the law.

Accordingly, responses to family violence in Indigenous communities need to be cognisant of these broader issues and responsive to them. I return to current initiatives and proposals for making the criminal justice system more responsive in protecting Indigenous women from family violence later in this chapter.

The extent of family violence in Indigenous communities

There are significant deficiencies in the availability of statistics and research on the extent and nature of family violence in Indigenous communities. Data that is available tends to be confined to situations where there has been a criminal justice or welfare intervention, and also significantly under-counts the true extent of family violence due to under-reporting by Indigenous peoples.

Recent reports such as the Gordon Inquiry in Western Australia and the Cape York Justice Study in Queensland, for example, have relied on the limited available data rather than gather new quantitative evidence. The 2001 report *Violence in Indigenous Communities*, commissioned by the Commonwealth Attorney-General's Department, provides the most recent and comprehensive analysis of the available data and is consistently cited by other reports on the subject.[21] It is anticipated that the Indigenous General Social Survey, conducted by the Australian Bureau of Statistics in 2002, will provide some new information when it is published in mid-2004.

Despite this dearth of statistics, numerous inquiries have concluded that rates of family violence are significantly higher among Indigenous peoples than for other Australians. Statistics and research dating back to the 1980s also reveal that this situation has existed for at least the past two decades with no identifiable improvement.[22]

At the national level, the Steering Committee for the Review of Government Service Provision's national report on key indicators of Indigenous disadvantage for 2003 notes higher rates of substantiated child protection notifications for Indigenous children, as well as higher rates of deaths from homicide, hospitalisation for assault and of being a victim of murder, assault, sexual assault and domestic violence for Indigenous peoples than for non-Indigenous peoples.[23] The report identifies that in Western Australia the rate for substantiated child protection notifications is eight times higher than for non-Indigenous children. Caution must be taken in interpreting these figures in terms of rates of

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21   Memmott, P, Stacy, R, Chambers, C & Keys, C, *Violence in Indigenous Communitie – Full Report*, Commonwealth Attorney General's Department, Canberra, 2001.

22   For an overview of statistics in the late 1980's and early 1990s see: Atkinson, C, and Atkinson, J, *Review of Programs and Policies Addressing Family Violence in Indigenous Communities*, pp27-31. See, for example: National Committee on Violence, *Violence: Directions for Australia*, Australian Institute of Criminology Canberra 1990, Family Violence Professional Education Taskforce, *Family violence: Everybody's business somebody's life*, Federation Press Sydney 1991; and Queensland Domestic Violence Task Force, *Beyond these walls*, Department of Family Services and Welfare Housing, Brisbane 1988.

23   Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous disadvantage – Key indicators 2003*, Productivity Commission, Melbourne 2003, pp3.44-3.57.

violence however. For instance, there is a clear trend for Indigenous children to be substantiated on the basis of neglect rather than abuse.

Significantly, there are real variations in the pattern of substantiations for Indigenous and non-Indigenous. For example, sexual abuse is reported at a higher rate among non-Indigenous children, although this may simply reflect a lack of reporting in Aboriginal and Torres Strait Islander communities. Similarly, the over-representation of Indigenous children in the reporting statistics may be due to over-monitoring of some Indigenous communities.

A further key concern highlighted in the Steering Committee's report was the high rates of hospitalisation experienced by Indigenous Australians. Data collected by the Australian Institute of Health and Welfare (AIHW) revealed that per 1000 Indigenous people entering hospital 13.3 were admitted due to an assault, whereas the figure is only 1 in 1000 for non-Indigenous people. The figures for Indigenous females were highest in Western Australia (27.2 per 1000) and the Northern Territory (25.7). These rates are approximately 10 times higher than those of the non-Indigenous female population. These figures may, however, reflect a number of factors of which family violence is but one.[24]

The available statistics for the Indigenous adult population equally presents a grave picture. The Australian Institute of Criminology analysis of Indigenous and non-Indigenous homicides in Australia found that between 1989 to 2000 Indigenous persons comprised 15.1% of all homicide victims and 15.7% of all homicide offenders, even though Indigenous people make up only 2.1% of the total population of Australia.[25] In relation to family violence 54.2% of Indigenous homicides occurred between family members, in contrast with 38.1% of non-Indigenous murders occurring between family members.

Available statistics also suggest that there is a clear link between alcohol and drug misuse and violence within Indigenous communities, with between 70 and 90 percent of all assaults being committed while under the influence of alcohol or drugs.[26]

In Queensland, the Aboriginal and Torres Strait Islander Women's Violence Task Force Report on violence in Indigenous communities (the Robertson report) from 1999 identifies the following statistics which relate to Queensland Indigenous communities:

- In 1988, the Queensland Domestic Violence Task Force estimated that domestic violence affects 90 per cent of Indigenous families living in Deed of Grant in Trust (DOGIT) communities;[27]

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24 Steering Committee for the Review of Government Service Provision, *Overcoming indigenous disadvantage – Key indicators 2003,* Productivity Commission, Melbourne 2003, pp3.51-3.53

25 Mouzos, J, 'Indigenous and non-Indigenous homicides in Australia: A comparative analysis', *Trends and Issues in Crime and Criminal Justice*, no2, Australian Institute of Criminology, Canberra, 2001, pp1-6

26 Atkinson, J, 'Making Sense of the Senseless Feeling Bad, Being Mad, Getting Charged Up!, *Having it Both Ways: Dual Diagnosis, Alcohol, Drugs and Mental Illness ,*Conference Proceedings, Melbourne University, 1998, p5.

27 Queensland Domestic Violence Task Force, *ibid*, pp198-256 as cited in Robertson, B, *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, Queensland Department of Aboriginal and Torres Strait Islander Policy, Brisbane 1999, p97.

- Barber, Punt and Albers reported over 70 per cent of all assaults on Palm Island were committed against females, and most of these involved 'boyfriends or husbands who were said to be drunk at the time';[28]

- In another North Queensland community, with a total female population of 133 women over 15 years of age (107 were over 20 years of age), there were 193 cases of injuries due to domestic assault in a twelve-month period to 30 June 1990;[29]

- The *Study of Inquiry in Five Cape York Communities* in 1997 found that 86 per cent of domestic violence injuries affected people in the 16-44 years age group and that 91 per cent of these injuries were suffered by women;[30] and

- The Queensland Office of the Director of Public Prosecutions (DPP) 1997 report *Indigenous Women within the Criminal Justice System* found sufficient evidence to suggest that the degree of violence being experienced by Indigenous women was much higher than the statistics recorded.[31]

The key findings of the Robertson report into violence in Indigenous communities in Queensland concluded that:

- Dispossession, cultural fragmentation and marginalisation have contributed to the current [family violence] crisis in which many Indigenous people find themselves;

- A more rigorous understanding of the impact of high unemployment, poor health, low educational attainment and poverty on the incidence of family violence is warranted;

- Family violence in Indigenous communities has a critical issue for many years which is continually recognised by Indigenous communities as being a problem;

- At times, government representatives appeared to regard violence as a normal aspect of Indigenous life, therefore, interventions were dismissed as politically and culturally intrusive in the newly acquired autonomy of Indigenous communities;

- Violence in all its forms, whatever its locale and in any circumstances, is unacceptable, and both Indigenous and non-Indigenous peoples must work together to help in its eradication;

28   Barber, J, Punt, J and Albers, J, 'Alcohol and Power on Palm Island', (1988) 23(2) *Australian Journal of Social Issues* 87 as cited in Robertson, B. *ibid*, p97.

29   Miller, B, 'Crime Prevention and Socio-legal Reform on Aboriginal Communities in Queensland', in McKillop, S and Vernon, J, (eds.), *The Police and the Community: Conference Proceedings, M*onograph 5, Australian Institute of Criminology, Canberra 1989, as cited in Robertson, B, *ibid*, pp97-98.

30   National Injury Surveillance Unit, *Study of Inquiry in Five Cape York Communities*, Australian Institute of Health and Welfare and Queensland Health, Brisbane 1997, pp43-45, as cited in Robertson, B, *ibid*, p98.

31   Department of Public Prosecutions Queensland (DPP), *Indigenous Women and the Criminal Justice System Report*, DPP, Brisbane 1997, as cited in Robertson, B, *ibid*, p99.

- While governments have made funding available to address the issues pertinent to violence in the lives of Indigenous peoples, only minimal intervention has occurred to date;

- Violence in Indigenous communities must be stopped through proactive intervention as opposed to prevention alone; and

- A whole-of-government approach to tackling violence is required along with Indigenous people taking responsibility to repair the broken lives as a result of violence. [32]

The Cape York Justice Study similarly noted that up to 90% of families living in DOGIT communities are affected by violence. This Study also revealed that abuse of Elders is increasing:

> Research in the Rockhampton area concluded that abuse of older people is a relatively recent phenomenon in Aboriginal communities following colonisation, and is related to the loss of traditional culture and values, including respect for elders.[33]

In Western Australia, the Gordon Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities in Western Australia identifies the situation as follows:

> Family violence and child abuse occur in Aboriginal communities at a rate that is much higher than that of non-Aboriginal communities. The statistics paint a frightening picture of what could only be termed an epidemic of Family Violence and child abuse in Aboriginal communities. Aboriginal women account for 3 percent of the population but 50% of domestic violence incidents reports to police. Aboriginal children were the subject of substantiated child abuse at more than 7 times the rate of non-Aboriginal children. These figures stand within the context of under reporting.[34]

An earlier study on domestic violence in Western Australia concluded that:

> The rates of domestic violence amongst Aboriginal women were staggering. Although these women make up only 3% of the adult female population in WA, they accounted for half of the domestic violence incidence reported to the police in 1994. Based on police figures Aboriginal women are more than 45 times more likely than non-Aboriginal women to be victims of domestic violence.[35]

That study also noted that it was not only Indigenous men who were the perpetrators of violence against Indigenous women but increasingly Indigenous women are becoming violent against other Indigenous women.[36] It has also

32   Robertson, B, *ibid*, Executive Summary, ppx-xi.
33   Justice Fitzgerald, *Cape York Justice Study,* Queensland Government, Brisbane 2001, p93-94.
34   Gordon, S, *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, State Law Publisher, Perth, 2002, p424.
35   Ferrante, A, Morgan, F, Indermaur, D, and Harding, R, *Measuring the Extent of Domestic Violence,* University of Western Australia, Perth, 1996. See: www.law.ecel.uwa.edu.au/crc/publications/books/dv.htm.
36   *ibid.*

been suggested that the violence perpetrated by Indigenous women against Indigenous women, comes in part from the sexual and psychological violence they themselves have experienced.[37]

Statistical data from the NSW Bureau of Crime Statistics and Research (BOCSAR) shows that in New South Wales:

- Aboriginal females are four times more likely than other females to be a victim of murder;

- Aboriginal females are four times more likely to be a victim of an assault or domestic violence;

- Aboriginal females are seven times more likely to be a victim of grievous bodily harm;

- In 73 percent of sexual assaults where the victim was Aboriginal the offender was also Aboriginal;

- In 80 percent of assaults where the victim was Aboriginal, the offender was also Aboriginal; and

- In 85 percent of domestic violence related assaults, where the victim was Aboriginal, the offender was also Aboriginal.[38]

In a 2001 discussion paper, the NSW Aboriginal Justice Advisory Council (AJAC) also cited statistics compiled from BOSCAR which reveal that:

- Approximately 270 per 100,000 of alleged sexual assault offenders in NSW are Aboriginal and Torres Strait Islanders in comparison with only 90 per 100,000 of the general NSW male rate. That is, Aboriginal men are 3 times more likely than the general population to be sexual assault offenders.

- At least 130 per 100,000 Aboriginal and Torres Strait Islander men are alleged child sexual assault offenders compared to only 50 per 100,000 of the general population. That is, Aboriginal men are 2.6 times more likely than non-Aboriginal men to be child sexual assault offenders.

- Approximately 3400 per 100,000 Aboriginal and Torres Strait Islander men are alleged domestic violence assault offenders compared to 550 per 100,000 of the general population. That is, Aboriginal men are 6.2 times more likely than non- Aboriginal men to be the offender of (domestic) violence.[39]

The NSW Aboriginal Justice Advisory Council observe that:

> The facts indicate a significant level of over representation of Aboriginal males in the criminal justice system for family violence related offences and [in rates] of Aboriginal victimisation...[40]

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37   *ibid.*

38   NSW Bureau of Crime Statistics and Research, *Aboriginal Victimisation and Offending: The Picture from Police Records*, Crime and Justice Statistics, December, 2001.

39   Aboriginal Justice Advisory Council, *Holistic Community Justice – a proposed response to Aboriginal Family Violence,* AJAC, NSW Attorney-Generals Department, Sydney 2001, p6.

40   *ibid.*

The discussion paper further claims that:

- 68% of Aboriginal women surveyed said they had been abused as a child, and approximately 75% of those women said they were sexual assaulted as children. Over 82% of those women did not tell anyone what had happened. In some instances the women revealed that the survey was their first point of disclosure.
- Approximately 68% of women abused as children said they still need counselling and or support to deal with the abuse they had suffered as children.
- Over 73% disclosed that they were victims of abuse as adults. Of those women who were assaulted as adults, 42% had been sexually assaulted, 6% of those disclosed they were sexually assaulted by a relative, 79% were physically assaulted (including family/domestic violence).
- 61% of those women abused as adults said that they did not tell anyone what was going on at the time.[41]

The paper comments that:

> at least 80% of the women surveyed said that their experience of abuse was an indirect cause of their offending. Some women revealed that the underlying cause of their drug and criminal habits was to avoid dealing with, or because they had not been able to address, the abuse that they had suffered as a child, in particular child sexual assault. A significant number of women interviewed suggested appropriate ways to deal with abuse, nearly all which included Aboriginal healing programs, in particular involvement with Elders.[42] [11]

In 2003 AJAC conducted research into the experiences of Aboriginal women in New South Wales prisons which revealed that:

- 70% of the women participating in the survey said that they been sexually assaulted as children;
- Of this group 98% say they now have a drug problem;
- 78% said they had been victims of abuse as adults;
- 44% said they had been sexually assaulted as adults and 5% said they had been sexually assaulted by a family member; and
- Approximately four in five said they had experienced domestic violence. [43]

In 2000, the South Australian report *Reshaping Responses to Domestic Violence* detailed that:

- 90% of Aboriginal families are affected by family violence;
- Aboriginal men are four times more likely to die a violent death than non-Aboriginal men, and women are six and half times more likely to die a violent death than non-Aboriginal women;

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41 *ibid*, p7.
42 *ibid.*
43 AJAC (NSW), *Speak out speak strong: Researching the needs of Aboriginal Women in Custody*, AJAC, NSW Attorney-General's Department, 2003, p6, p54.

- The incident rate of domestic violence for Aboriginal women is 45 times higher than for non-Aboriginal women;
- Aboriginal women are more likely to be killed as a result of family violence as compared to non-Indigenous women – their rate of homicide is 10 times that of all Australian women; and
- South Australian Government statistics suggest that the instances of family violence are 'likely to be between seven and 16 times higher than rates among non-Aboriginal people'.[44]

The Northern Territory Law Reform Committee noted in 2003 that 'family violence is a major concern for Indigenous people, eclipsing issues such as property crime'.[45] They summarise research on family violence as follows:

- rates of violence in Aboriginal communities are significantly higher than in non-Aboriginal communities;
- improving the situation for Indigenous victims requires a whole-of-government approach;
- programs need to be delivered within a *cultural* framework as only Indigenous people can challenge the myth of Aboriginal male entitlement to violence;
- strategies must include recognising Aboriginal law as fundamental to the long term health of Indigenous communities;
- Aboriginal youth are the most vulnerable gourp in society to become the direct or indirect witnesses of violence.[46]

The 2002 Tasmanian report on family violence – *ya pulingina kani – Good to See You Talk* –documents in a narrative form the stories of experiences of Tasmanian Aborigines with violence. It demonstrates the devastation of family violence in Indigenous communities in Tasmania and most importantly, the desires of the community to take responsibility for it, work in partnership with government to address and to heal.[47] The report recommends:

- Reciprocity through the government forming an Indigenous Violence Working Party to enable healing of Indigenous Tasmanians, the provision of adequate funding to implement the strategies the community wants and that the stories contained within *ya pulingina kani* are protected;
- Healing by training Aboriginal participants in the grief and healing work;
- Partnerships between the Aboriginal community, government and community service providers; and

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44 Bagshaw, D, *et* al, *Reshaping Responses to Domestic Violence – Final Report,* University of South Australia, April, 2000, p123.
45 Northern Territory Law Reform Committee, *Aboriginal communities and Aboriginal law in the Northern Territory,* Background Paper 1 – Inquiry into Aboriginal Customary Law, NTLRC Darwin 2003, p18
46 *ibid*.
47 Pugh, R, *ya pulingina kani – Good to See You Talk*, Government of Tasmania, Hobart 2002.

Chapter 5

• Funding of Indigenous art, performance and culture to bring out the stories of *ya pulingina kani* to mainstream Tasmania.[48]

The findings of these reports, and of the available statistical data, indicate the existence of serious problems relating to family violence in Indigenous communities and the need for governments to address these issues as a matter of the highest priority, in partnership with Indigenous peoples.

Government Responses to Family Violence in Indigenous communities

Addressing family violence is a shared responsibility between all levels of government with prime responsibility resting with health and community service agencies in federal, state and territory governments. A list of recent inter-governmental, federal, and state/territory initiatives follows.

1) Commonwealth Initiatives

The main program at the federal level for responding to family violence issues is the Partnerships Against Domestic Violence (PADV) scheme administered by the Department Family and Community Services. This was launched in 1997 at the National Domestic Violence Summit. The federal government has allocated $50 million to PADV over the 1999-2003 quadrennium, including $6 million for the Indigenous Family Violence Grants Program.[49]

The Ministerial Council of Aboriginal and Torres Strait Islander Affairs (MCATSIA) Working Group on Family Violence established a set of principles for funding community-based organisations addressing family violence. These principles have now been incorporated into the design of the National Indigenous Family Violence Grants Program under the PADV.[50]

In 2000, 30 Indigenous organisations from across Australia received funding of $2.2 million for 31 projects addressing family violence. Three of these were funded through ATSIC, with the majority of the remaining initiatives funded through the Department of Family and Community Services.[51]

There was no new funding for Indigenous family violence in the 2001-02 or 2002-03 Budgets. It was revealed, however, that the Office for the Status of Women underspent by $4.3 million in administering its programs for domestic violence in 2001-02. ATSIC claimed they could easily have spent this funding on programs to improve community safety for Indigenous women and children.[52]

There was new funding in the 2003-04 Budget to ATSIC under its 'working for families' initiative. This funding was for the wages component of 1000 additional

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48   *ibid*, pp87-89.
49   Newman, J, Minister for Family and Community Services, Minister Assisting the Prime Minister for the Status of Women, 'Launch of New Partnerships against Domestic Violence Initiatives', Media Release, October 1999.
50   Commonwealth of Australia, *Working Together Against Violence: The first three years of partnerships against domestic violence*, Office of the Status of Women, Canberra, August 2001.
51   Herron, J (Minister for Aboriginal and Torres Strait Islander Affairs) and Newman, J (Minister Assisting the Prime Minister for the Status of Women), '$2.2 million for Indigenous communities to design solutions to family violence', Joint News Release, 14 August 2000.
52   Lawrence, C, House of Representatives, Hansard, 17 June 2002.

places in the CDEP program over 4 years[53] at a cost of $61.5 million to address family violence and substance abuse issues. ATSIC is providing on-costs components for the initiative from its existing budget allocation. The focus of the initiative is on remote Indigenous communities.

In July 2003, the Prime Minister held a national roundtable on Indigenous family violence. Following the roundtable, a working group was established to advise the Prime Minister on ways of advancing strategies to address family violence in Indigenous communities. ATSIC Commissioner Alison Anderson, Lowitjia O'Donoghue, Jackie Huggins and Ian Anderson were selected from the national roundtable to form this working group to draft a family violence strategy with the aid of government representatives.[54] At the time of forming the working group it was envisioned that the draft family violence strategy would inform the public about the violence crisis as well as be discussed and supported by COAG.[55]

Subsequent to the roundtable, the Prime Minister announced a commitment of $20 million as a 'down payment' to address the consequences of violence in Indigenous communities.[56] It is anticipated that there may be further budget announcements in the 2004-05 budget. The approach to addressing family violence in Indigenous communities proposed by the Prime Minister includes focussing on support for non-government organisations; diversion programme for alcohol and drugs; communities in crisis; and community initiatives to combat sexual assault.[57]

The Prime Minister advised the community that he will seek COAG's support for his approach to family violence. COAG has not yet endorsed his family violence approach. However, despite the absence of COAG's support, in December 2003, the new Minister for Immigration, Multicultural and Indigenous Affairs renewed the government's commitment to addressing family violence when she announced that in 2004 she will be focussing on Indigenous governance and family violence with a particular emphasis on harnessing women's leadership.[58]

2) ATSIC initiatives

As the peak advisory body for Indigenous affairs, ATSIC provides another major avenue for Commonwealth funding of Indigenous Family Violence programs and policy advice in this area. Historically, approximately 70 percent of ATSIC's budget has been quarantined, with the remaining discretionary funds to be spread across a range of social, cultural and economic programs, including family violence.

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53   ATSIC, 'Working for Families – 1000 extra CDEP places', at www.atsic.gov.au.
54   Aboriginal and Torres Strait Islander Commission (ATSIC), 'PM meets Indigenous leaders to discuss violence', ATSIC News, Winter 2003, p9.
55   *ibid*, p9.
56   Howard, J (Prime Minister), Media Release, 'Government Tackles Violence in Indigenous Communities', 28 August 2003.
57   Howard, J (Prime Minister), Media Release, 'Government Tackles Violence in Indigenous Communities', 28 August 2003.
58   Schubert, M, 'Vanstone plans year of black reform', The Australian, 23 December 2003.

In recent years, ATSIC's expenditure on family violence initiatives has increased from $4.9 million for the financial year 2001-02[59] to $8.2 million in the financial year 2002-2003.[60]

In 2002-2003 this included $4.69 million through its Legal and Preventative Program on 13 Family Violence Prevention Legal Services (FVPLS) to provide support to the victims of violence and sexual assault and to work with the families and communities affected by violence. The services provided by the FVPLS include:

- legal assistance;
- information and referral (eg medical help, food, clothing and accommodation);
- crisis counselling and ongoing support;
- court support and other support and awareness raising activities;
- community education, consultation and planning;
- production of publications and other resources; and
- advocacy.

These FVPLS are located in Kempsey, Moree and Walgett in NSW; Cairns (Cape York) and Mt Isa in Queensland; Port Augusta in South Australia; Kalgoorlie, Fitzroy Crossing, and Geraldton in Western Australia; Darwin, Katherine and Alice Springs in the Northern Territory; and Melbourne in Victoria. A further FVPLS will be established in 2003-04 in Victoria, and each service will also receive additional technical and administrative support, with an emphasis on specialised training to increase capacity in sexual abuse services.

$3.4 million was also spent on Regional Council family violence projects in 2002-03.[61] The type of initiatives supported includes alcohol restriction trials; family violence prevention/outreach workers providing support and referral to women escaping violence; safe houses for women and children; youth and children's services; men's and women's counselling and support groups; night patrols; men's, women's and youth conferences; service evaluation; and strategic planning.

During 2001-02, ATSIC also convened a series of roundtable meetings on family violence in accordance with commitments it had made to the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA).[62] These roundtables included separate men's and women's roundtables, in October 2001 in Adelaide and September 2001 on Palm Island respectively, as well as a combined roundtable to consider culturally appropriate responses to family violence.[63]

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59 Aboriginal and Torres Strait Islander Commission (ATSIC), *Annual Report 2001-2002*, Commonwealth of Australia, Canberra, 2002, pp154-155.

60 Aboriginal and Torres Strait Islander Commission (ATSIC), *Annual Report 2002-03*, Commonwealth of Australia, Canberra, 2003, p189.

61 Aboriginal and Torres Strait Islander Commission (ATSIC), 'Overcoming family violence: We must all do better', ATSIC News, Winter 2003, p7.

62 Aboriginal and Torres Strait Islander Commission (ATSIC), 'Indigenous Women's Roundtable meets to tackle family violence', Media Release, ATSIC, 11 September 2001; Aboriginal and Torres Strait Islander Commission (ATSIC), 'Overcoming family violence: We must all do better', *op.cit*, p7.

63 Clark, G (Chairperson), 'National Indigenous Group on Domestic Violence', Media Release, ATSIC, Canberra, 22 August 2001.

As a result of these roundtable meetings, ATSIC has created a National Indigenous Working Group on Violence to lobby for the coordination of programs and the resourcing of community-driven approaches to violence based on Indigenous self-determination. The NIWGOV operated from February to December 2002 and played an integral role in informing the development of the ATSIC Family Violence policy.[64]

The most significant development from ATSIC on family violence to date is the adoption by the ATSIC Board of a national family violence policy statement and action plan in March 2003. The ATSIC Commissioner's national statement is reproduced on the next page.

**Figure 1: Our Family – ATSIC Board of Commissioners Family Violence
        Policy Statement**

Family violence has a deep and lasting effect on us physically, mentally and spiritually.

All Indigenous people have the right to enjoy life and security in our own country, free from violence, fear and conflict. Our extended family as the basis of our culture is entitled to the widest possible protection and assistance in relation to family violence.

Indigenous people hold the key to stop family violence through self-determination, ownership and empowerment at the local, community and family level.

Urgent interventions must take place to ensure the well-being and safety of our children so that they can take their rightful place in Indigenous society.

This Board of Commissioners of ATSIC accepts its mandated responsibility to act against family and sexual violence and therefore as leaders we declare that:

- Family and sexual violence is not part of the Aboriginal or Torres Strait Islander culture.
- We will stand against it in our communities and personally commit to changing and reducing its escalating and unacceptable levels.
- We must help break the silence by empowering our peoples to speak out and at the same time protect them from reprisals.
- All interventions must focus primarily on the child and must be culturally appropriate.
- Women, children and men have the same rights before the law and their interests must be represented equally in public policy.
- At the national, community and state level we will advocate for action and monitor and report on progress to achieve a significant reduction in the elimination of family violence, in line with our statutory obligations.
- We will formally partner government, non-government and community in developing a responsible, coordinated and holistic approach to bring about change and healing for Indigenous family violence.
- We will place the highest priority on delivering locally appropriate strategies
- We will engage all levels of our communities through capacity building and collaboration, building on their strengths and resources in advocating action to eliminate the underlying causes of family violence.

ATSIC Board of Commissioners, 2003

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64   Aboriginal and Torres Strait Islander Commission (ATSIC), 'Overcoming family violence: We must all do better', *op.cit*, p7.

This policy includes a Family Violence Action Plan[65] which identifies the following three guiding principles:

- Interventions must focus on children and young people and provide protection;
- Women and children have the same rights as men before the law and their interests must be represented equally in public policy; and
- Adults deserve to be supported to break the pattern of violence by working with victims and perpetrators to prevent and reduce family violence.

The Action Plan also recognises that:

- All individuals have the right to be free from violence;
- All forms of family violence are unacceptable;
- Most forms of family violence are against the law and must be dealt with accordingly;
- The safety and wellbeing of those subjected to family violence must be the first priority of any response;
- Those who commit family violence must be held accountable for their behaviour;
- Those who commit family violence are in need of appropriate interventions; and
- The community has a responsibility to work toward the prevention of family violence and to demonstrate the unacceptability of all forms of family violence.

The Action Plan identifies four key areas for action to address family violence in Indigenous communities:

- Develop an overarching family policy framework that incorporates prevention of violence in families.
- Take a lead role in identifying and promoting new initiatives to reduce family violence.
- Engage with Commonwealth and State government agencies, non-government agencies and communities to work in partnership on family violence strategies.
- Support and strengthen the capacity of ATSIC Regional Councils to develop, implement and monitor family violence action plans.
- Enhance the capacity of ATSIC to develop and implement (appropriately resourced) initiatives at the national and local level.

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65   Aboriginal and Torres Strait Islander Commission (ATSIC), *Our Family*, August 2003 at www.atsic.gov.au/issues/Our_Family/Family_Violence_Information_Kit/Family_Violence_ Action_Plan/Default.asp.

Over the past six months various regional councils have endorsed the national family violence policy by announcing their region-specific action plans to combat family violence. In particular, the Yilli Rreung Regional Council in the Northern Territory, the Many Rivers and Kamilaroi Regional Councils in New South Wales and the Central Queensland Regional Council have all expressed support for the national policy and announced plans to address family violence in their respective regions.[66]

3) Inter-governmental initiatives

The Council of Australian Governments (COAG) has made a commitment to address family violence and other forms of social dysfunction in Indigenous communities in its communiqué on reconciliation of 3 November 2000. It committed itself to an approach based on partnerships and shared responsibilities with Indigenous communities, program flexibility and coordination between government agencies, with a focus on local communities and outcomes.

Family violence is to be considered within the priority action area of 'reviewing and re-engineering programs and services to ensure they deliver practical measures that support families, children and young people'.[67] As discussed in Chapter 2 of this report, COAG also agreed to take a leading role in driving changes, with the various Ministerial Councils to develop action plans, performance reporting strategies and benchmarks.

Reconciliation Australia stated in their *Reconciliation Report Card* for 2002 that progress had been slow in addressing family and community violence, despite the COAG commitment of November 2000.[68] Progress in responding to Reconciliation Australia's call for an audit of services, capacity-building and identification of best practice models for addressing violence had been particularly slow. COAG itself also reported that ministerial councils progress in developing action plans under the reconciliation framework has been slower than expected.[69]

In April 2002, COAG commissioned the Steering Committee for the Review of Government Services to produce a regular report against key indicators of Indigenous disadvantage. The finalised framework is discussed in detail in

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66   Aboriginal and Torres Strait Islander Commission (ATSIC), 'ATSIC takes strong stand against family violence in CQ', Media Release, Central Queensland Regional Council, 25 November 2003; Aboriginal and Torres Strait Islander Commission (ATSIC), 'Family Violence Plan for Many Rivers', Media Release, Joint statement by ATSIC NSW East Zone Commissioner Rick Griffiths and Many Rivers Regional Council Chairperson Stephen Blunden, 26 November 2003; Aboriginal and Torres Strait Islander Commission (ATSIC), 'Family violence – Kamilaroi Regional Council Priority', Media release, Statement by ATSIC Kamilaroi Regional Council Chairperson Lyall Munro, 31 October 2003; Aboriginal and Torres Strait Islander Commission (ATSIC), 'ATSIC Yilli Rreung Regional Council takes a tough stand against Family Violence', Media Release, Statement by Yilli Rreung Regional Council, 4 December 2003. All media releases can be found at: www.atsic.gov.au/News_Room/media_releases

67   Council of Australian Governments, Communique, Canberra, 3 November 2000 <http://www.pm.gov.au/news/media_releases/2000/media_release531.htm>

68   Reconciliation Australia, *Words, Symbols, Actions: Reconciliation Report Card 2002,* Commonwealth of Australia, Canberra, 2002, pp19-20.

69   Council of Australian Governments, Media Release, Canberra, 5 April 2002.

Chapter 2 of this report. Issues relating to family violence are included within the headline indicators and strategic change indicators of the framework.

In 2003, northern Tasmania was identified as a trial site for the COAG whole-of-government community trials. This trial is particularly focussing on family violence issues. This focus arose out of the report commissioned by the Tasmania government on Indigenous family violence, *ya pulingina kani – Good to see you talk*. The COAG trials are discussed in detail in Chapter 2 and Appendix 2 of this report.

On 28 July 2001, MCATSIA was addressed for the first time by an Indigenous delegation, which consisted of representatives from the ATSIC Indigenous Women's Roundtable. MCATSIA agreed to conduct an audit of existing Indigenous family violence strategies, and to a seven-point strategy for addressing Indigenous family violence by focusing on:

- reducing alcohol and substance abuse;
- child safety and well-being;
- building community capacity (including cultural strength);
- improving the justice system;
- creating safe places in communities;
- improving relationships (focusing on perpetrators and those at risk of offending); and
- promoting shared leadership.[70]

Two and half years after the commitment to conduct the audit of family violence strategies, MCATSIA has not finalised or released the audit.

4) Significant State and Territory initiatives

New South Wales

The New South Wales Aboriginal Justice Advisory Council and the New South Wales Attorney General signed an Aboriginal Justice Agreement on 13 June 2002. The overall aims of the Aboriginal Justice Agreement are to improve Aboriginal access to justice and improve the quality and relevance of justice that Aboriginal people receive.[71] It provides a framework for ongoing partnership in addressing justice issues and allows Aboriginal people to take leadership and make key decisions in solving their own justice problems.

The Justice Agreement includes among its key actions local community justice forums, which provide a mechanism for addressing local justice concerns through local solutions, the implementation of circle sentencing and Aboriginal community justice groups. These ensure Aboriginal communities can be actively involved in taking some control over local justice issues, especially for offenders and victims.

The NSW Aboriginal Family Health Strategy is a framework for immediate government action to family violence and sexual assault. This strategy:

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70   Ruddock, P, Minister for Immigration and Multicultural and Indigenous Affairs, 'Agreement on Indigenous Family Violence Welcomed', Media Release, 28 July 2001.
71   Debus, B (NSW Attorney General) and Aboriginal Justice Advisory Council, *Aboriginal Justice Agreement,* New South Wales Government, 13 June 2002.

is the first step in the Department's commitment to work in conjunction with Aboriginal communities to put in place a range of services and other resources to alleviate the factors leading to violence, the suffering occurring daily as a consequence of that violence and the long term effects of family violence on the wellbeing of Aboriginal communities.[72]

The strategy acknowledges that the success of any proposed solutions to family violence is hinged upon Aboriginal community control of responses to family violence.

In December 2001 and March 2002 the NSW Department of Aboriginal Affairs co-hosted two roundtable meetings which brought together a number of Aboriginal community workers from across the State and relevant government agencies to discuss appropriate ways toward addressing Family Violence. A committee has been established to manage the implementation of the roundtable actions.

Northern Territory

The Northern Territory government has committed to the development of Aboriginal Law and Justice Strategies in communities across the Territory. These aim to provide a whole-of-community and whole-of-government approach to addressing community justice issues within a law and justice planning process. This approach was originally implemented at Ali-Curung in 1996 and in Lajamanu in 1999 and emerged from initiatives of these communities. Representatives from both communities are engaged in peer modelling with the Yuendumu community.

The Tangentyere Night Patrol and Social Behaviour Project (Central Australia) has become a best practice example of community solutions for addressing substance abuse, public order issues and family violence in Indigenous communities. Funding for night patrols is now available from a mixture of Commonwealth and State agencies.

Queensland

The Aboriginal and Torres Strait Islander Women's Task Force on Violence (the Robertson report), established in December 1998 at the instigation of Aboriginal and Torres Strait Islander women, finalised its report in December 1999. The report made 123 recommendations regarding actions required by the government to address family violence in Indigenous communities.[73]

The Aboriginal and Torres Strait Islander Advisory Board (ATSIAB), formed in 1999 to advise the Queensland Government on Indigenous matters, was responsible for monitoring Queensland Government responses to the Robertson report. Part of the response was to include an audit of what the Queensland Government is currently doing to address issues associated with family violence.

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72   Department of Health (New South Wales), *NSW Aboriginal Family Health Strategy*, Preface, at www.health.nsw.gov,au/policy/aboriginal-health/afhs/

73   Robertson, B (Chair), *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report, Department of Aboriginal and Torres Strait Islander Policy and Development, op.cit.*

Family violence was identified as one of eight key priority areas under the Queensland government's *Ten Year Partnership* with Indigenous peoples, which aims to reduce the incidence of family violence in Indigenous communities over the next decade. It was also a significant focus of the *Cape York Justice Study* into alcohol and violence in Cape York.

In April 2002, the Queensland Government introduced a new whole-of-government policy called *Meeting Challenges, Making Choices* (*MCMC*) which is designed to address the alcohol and violence issues in Indigenous communities, such as those highlighted in the *Cape York Justice Study*.[74]

MCMC focuses on the key areas of alcohol intervention, economic development, healthier people, education and training and land and sustainable natural resource management. *MCMC* is hinged upon the premise that alcohol and violence are inextricably linked. Therefore, within this framework, strategies to combat violence in communities, concentrate on alcohol abuse intervention.

South Australia

The state vision for domestic and family violence prevention is set out in the State Collaborative Approach for the Prevention of Domestic Violence. Preventing domestic and Indigenous family violence has been identified as an area of core business of the Justice Portfolio planning documents, *Strategic Directions and Priorities for Action*. Prevention of domestic and Indigenous family violence has also been identified as a key result area for the Crime Prevention Unit in its Strategic Plan 2001-2004.

Victoria

An Indigenous Family Violence Task Force has been appointed to lead the *Victorian Indigenous Family Violence Strategy*, which aims to resource and support an Indigenous-led approach to prevent, reduce and respond to violence in Victorian Indigenous communities. The key components of the strategy are:

- establishment and operation of the task Force;
- establishment and resourcing of nine Indigenous family Violence Action Groups;
- employment of a state-coordinator and nine family violence support officers; and
- establishment of an Indigenous Family Violence Community Initiative Fund.[75]

This Indigenous community-led approach is endorsed by the Victorian Government and is part of a parallel and complementary whole-of-government approach.

The successful implementation of the strategy requires maintenance of a partnership between the Indigenous community and the Government through the establishment of appropriate structures to oversight implementation and to

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74   *Meeting Challenges, Making Choices: The Queensland Government's response to the Cape York Justice Study*, Queensland Government, Brisbane, April 2002.
75   Department of Justice (Victoria), *Victorian Indigenous Family Violence Strategy*, Government of Victoria, Melbourne, 1999.

monitor progress. The Victorian Aboriginal Justice Agreement, which formalised arrangements under the Aboriginal Justice Plan, is a likely model.

Western Australia

In December 2002, the Western Australian government tabled in Parliament – *Putting People First* – the Government's implementation plan in response to the findings of the Western Australian government's Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (the Gordon Inquiry).

The Gordon Inquiry was established as a direct result of a coronial inquest into the death of a 15 year-old Aboriginal girl in the Swan Valley, Western Australia. The coronial inquest found that the deceased girl had experienced sexual abuse, violence and drug and alcohol misuse, which led to her death despite government department intervention.[76] One of the aims of the inquiry was to examine how government departments could better deal with family violence and child abuse in Indigenous communities.

The Gordon Inquiry made 193 recommendations in relation to the prevention of violence, service delivery and development, alternative models for service delivery, best practice principles for addressing family violence as well as recommendations regarding the implementation of the report's findings.[77]

In June 2003, the WA government released its first progress report on implementation of *Putting People First*. This identified a range of specific priority initiatives which are designed to strengthen responses to child abuse and family violence; responses to vulnerable children and adults at risk; the safety of communities; and the governance, confidence, economic capacity and sustainability of communities.[78]

The Western Australian government has committed $75 million to implementing initiatives to address family violence. Examples of the specific priority initiatives include:

- Establishing an independent Child Death Review Committee;
- Employing 25 additional Child Protection workers;
- Developing culturally appropriate counselling services;
- Funding community-based initiatives to strengthen families and communities;
- Provision of remote policing services and multi-function facilities;
- Recruiting domestic violence liaison officers within the police service;
- Expanding Victim Support and Child Witness Services;
- Extending community based offender programs;
- Expanding Sexual Assault Resource Centre services; and

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76   Online at: www.gordonresponse.dpc.wa.gov.au/index.cfm?fuseaction=background. introduction, accessed: 10 November 2003.
77   Gordon, S, Hallahan, K, Henry, D, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, *op.cit*, 2002.
78   Western Australian Government, *First Progress Update on the Implementation of 'Putting People First' – Addressing Family Violence and Child Abuse in Aboriginal Communities*, Perth, June 2003, pp8-10.

- Developing the Community Futures Foundation to provide financial assistance to support creative initiatives to develop Aboriginal leadership.[79]

To date 15 out of the 25 new child protection workers, 8 of whom are Indigenous, have been employed as part of the government's commitment to implementing the recommendations of the Gordon inquiry.[80] Additionally, the government contributed $26,000 towards the development of a brochure which uses Aboriginal artwork to highlight the issue of family violence[81] and an educational video aimed at sending the message 'babies break if you shake them' to Indigenous parents which was launched in September 2003.[82]

Australian Capital Territory

In response to MCATSIA's request for States and Territories to assess their respective models for addressing family violence, the ACT government commissioned the *Report on the Extent of Family Violence in the Aboriginal and Torres Strait Islander Communities in the ACT*, which was completed in August 2001.

This report made 23 recommendations regarding the issues of funding, legal issues, men's programs, government agencies, training, housing and accommodation, community development and data collection with respect to family violence. The overall thrust of this report emphasised the importance of holistic approaches to addressing family violence which are determined by the community and supported by the government. Of these recommendations, the government supported 15, seven were given in principle support and one recommendation was not supported. Specifically, the government acknowledges the importance of working in partnership with the Indigenous community to address family violence in the ACT.[83]

During 2001-2003, in response to the supported recommendations, a number of activities to address family violence have been undertaken by a range of ACT Aboriginal and Torres Strait Islander service providers. These activities include a Boys to Men program, run by Gugan Gulwan Aboriginal Corporation, which deals with the impact of family violence on young Indigenous boys as well as a series of young women's, parenting and gambling programs, discussion groups and the development of young women's hostel and policy

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79   *ibid,* and Department of Indigenous Affairs, Media Release, 'PM failing to solve domestic violence and abuse in Indigenous communities', Perth, 24 July 2003.

80   McHale, S (Minister for Community Development, Women's Interests, Seniors and Youth, Disability Services, Culture and Arts), Media Release, 'Recruitment of child protection workers involves Aboriginal communities', 23 October 2003.

81   McHale, S (Minister for Community Development, Women's Interests, Seniors and Youth, Disability Services, Culture and Arts), Media Release, 'Aboriginal artwork raises family violence awareness', 25 September 2003.

82   McHale, S (Minister for Community Development, Women's Interests, Seniors and Youth, Disability Services, Culture and Arts), Media Release, 'New video alerts Aboriginal parents to the dangers of shaking babies', 9 September 2003.

83   Australian Capital Territory Government, *The Extent of Family Violence in the Aboriginal and Torres Strait Islander Communities in the ACT – ACT Governments response*, Act Government, Canberra 2003.

statement against family violence by the Winnunga Nimmityjah Aboriginal Health Service.

Tasmania

Recent developments in Tasmania were discussed above in relation to the COAG whole-of-government community trial.

Improving the programmatic responses to family violence in Indigenous communities – Future challenges

The range of recent initiatives identified in the previous section of this chapter reflects an increasing level of attention to addressing family violence in Indigenous communities at all levels of government. Despite this, there remain a number of challenges to be addressed to ensure that adequate and appropriate attention is paid to addressing family violence. The remainder of this chapter identifies concerns with the existing programmatic response of governments to family violence issues, and also identifies approaches which could be furthered to respond to family violence in an holistic, coordinated way.

Promoting greater coordination and an holistic approach to family violence programs

There are a patchwork of programs and approaches to addressing family violence in Indigenous communities among federal, state and territory governments. There remains a lack of coordination and consistency in approaches to addressing these issues between governments and among different government agencies. Significant gaps also exist.

Existing family violence programs that are available to Indigenous peoples are limited in number, *ad hoc* and often of limited duration. Due to the inter-connections between family violence and other issues faced by Indigenous peoples, work being done at a grass roots level may also be overlooked and programs may not necessarily be identified or identify themselves as violence prevention programs. Proposed programs may also have difficulty obtaining funding, on either a pilot or ongoing basis, due to the overlap in jurisdictional and departmental responsibilities.

In *Violence in Indigenous Communities*, Memmott, Stacy, Chambers and Keys identified 130 Indigenous family violence programs that had been implemented or were planned for implementation in Indigenous communities, in the 1990s.[84] They categorised these programs into the following broad areas of intervention:

- *Support programs* – including one-on-one counselling and advice services, Aboriginal and Torres Strait Islander Legal Aid Services and strategic advice for actual or potential victims to prevent or avoid violence, including referrals to other programs and centres.[85] Issues relating to the provision of legal advice and access to justice for

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84   Memmott, P, Stacy, R, Chambers, C, & Keys, C, *Violence In Indigenous Communities, op.cit,* p59.

85   *ibid*, pp64-65.

Indigenous women relating to family violence are discussed in more detail shortly.

Accessible and appropriate counselling is essential, not only for the victims and perpetrators of violence, but also for family and community members who not only deal with the issue of violence itself but to also provide post-violence counselling to family members who have lost someone as a result of violence, suicide, and more particularly for issues of female and male rape and child sexual assault.

■ *Identity programs* – Identity programs are those that are aimed to develop within the individual, family or community, a secure sense of self-value or self-esteem.[86] This can be achieved through diversionary programs such as, sporting, social and cultural activities, education and skills training aimed at youth and young adults and also through therapy based programs that focus on culturally specific psychological or spiritual healing. Examples of this approach include the Muramali project as well as the Social and Emotional Well Being Centres being established in the Northern Territory. All these programs may be accessed prior to, and after involvement with violence, and offer a longer-term response through attempting to change the situational factors underlying violence.

■ *Behavioural change (men and women's groups)* – as the majority of family violence is perpetrated by men, strong support for men's behavioural reform programs is required. These programs are described as Men's Healing Programs.[87] The Ending Domestic Violence Programs for Perpetrators study, undertaken by Keys Young, found that collaborative projects must be adopted that link Indigenous people and agencies with domestic violence services, to develop services appropriate to the community.[88] It is also important that complementary groups and support services for Indigenous women be run parallel to men's programs and complementary preventative/ intervention programs for youth be an integral part of the whole strategy. An example of this is the *Rekindling the Spirit* Program in Northern New South Wales which works with men, their partners, youth and children.[89]

■ *Night patrols* – which have the potential to build cooperation and mutual respect and support with local police.[90] As reported by the Australian

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86   *ibid*, pp65-66.
87   *ibid*, pp66-67.
88   Young, K, *Research/Evaluation of Family Mediation Practice and the Issue of Violence: Final report*, Legal Aid and Family Services, Canberra, 1996.
89   Ozols, E, *Rekindling the spirit: An appeal from the heart*, Paper presented at the Best Practice Interventions in Corrections for Indigenous People conference convened by the Australian Institute of Criminology held in Sydney, 8-9 October 2001, pp10-14, Australian Institute of Criminology website, < www.aic.gov.au/conferences/indigenous2/ozols.pdf > (Accessed 14th January 2003).
90   Memmott, P, Stacy, R, Chambers, C, & Keys, C, *Violence In Indigenous Communities*, *op.cit*, pp67-68.

Institute of Criminology, the Tangentyere Night Patrol (TNP) in the Northern Territory is a best practice example of a properly managed program that builds on the cooperation and mutual respect of local police.[91] TNP patrolled the Aboriginal town camps on a regular basis to help minimise violence using non-violent methods. TNP uses and strengthens Aboriginal mechanisms for social control, thereby ensuring that traditional methods are afforded a key role in the control of anti-social behaviour, minor criminal infractions and potentially serious criminal incidents in the Aboriginal community;

- *Refuges and Shelters* – while an important part of any family violence intervention strategy, are not a sufficient response to the difficulties produced by high levels of violence in Indigenous communities.[92] They represent a reactive strategy in addressing the underlying causes, thereby creating no possibility of a change in the pattern of violent behaviour. Refuges and women's shelters need to be coupled with other proactive strategies targeted at the perpetrators of violence and other situational factors. Indigenous specific shelters are essential. At the very least, Indigenous workers at shelters are vital.

- *Justice programs* – the roles of justice programs, which are characteristically aimed at the perpetrators of violence, are to mediate between people in conflict, designate appropriately cultural punishments for victims, for example through circle sentencing and the prevention of recidivism.[93]

  The NSW Aboriginal Justice Advisory Council and the NSW Judicial Commission have recently released a joint report *Circle Sentencing in New South Wales a Review and Evaluation*. The report reviewed the first twelve months of the operation of circle sentencing in Nowra in South East New South Wales. The report found among other things that circle sentencing helps to break the cycle of recidivism, introduces more relevant and meaningful sentencing options for Aboriginal offenders with the help of respected community members, reduces the barriers that currently exist between the courts and Aboriginal people, leads to improvements in the level of support for Aboriginal offenders, incorporates support for victims, and promotes healing and reconciliation and increases the confidence and generally promotes the empowerment of Aboriginal people in the community.[94]

- *Dispute resolution* – Anecdotal evidence suggests that flexibility within NSW Community Justice Centres, although not aimed at Aboriginal people specifically, has proven to be successful in certain Indigenous

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91 Australian Institute of Criminology, 'Tangentyere Night Patrol', in the *Australian Violence Prevention Awards 1993*, Canberra, 1998, pp.34-42.

92 Memmott, P, Stacy, R, Chambers, C, & Keys, C, *Violence In Indigenous Communities*, *op.cit*, pp69-70.

93 *ibid*, pp70-71.

94 Potas, I, Smart, J, Brignell, G, Thomas, B & Lawrie, R, *Circle Sentencing in New South Wales a Review and Evaluation*, New South Wales Aboriginal Justice Advisory Council and the New South Wales Judicial Commission, Sydney, 2003.

Chapter 5

communities in NSW.[95] Specifically, success has been achieved where impartial members of the Indigenous community are used as facilitators and traditional dispute-resolution techniques are incorporated into the overall mediation process.

■ *Education and awareness raising* – Education and training programs are vital to raise awareness about family violence prevention; as well as develop the skills within communities to resolve conflicts and identify the need for interventions with perpetrators.[96] The National Indigenous Legal Advocacy Courses, which are aimed at Indigenous peoples working in justice related fields including legal services and on community justice mechanisms, include competencies addressing awareness of family violence and conflict resolution.[97]

Gnibi, the College of Indigenous Australian Peoples at the Southern Cross University, has also developed undergraduate and postgraduate degrees that are specifically designed to address the educational needs of Indigenous Australians from an Indigenous theory and educational practice dealing with issues of violence, trauma and healing.[98]

Violence in Indigenous Communities reported that there were no educational programs targeted at young children for use in Indigenous pre-schools and schools. With the knowledge we now have about the detrimental effects of violence on children, or witnessed by children and the generational cycles by which violence is transmitted, it is essential to provide violence prevention education programs within pre-schools and schools. The Masters in Indigenous Studies (Wellbeing) program[99] at Southern Cross University has developed formal units of study for adults providing such services to children, however these have not yet been evaluated.

■ *Holistic composite programs* – Programs which are comprised of elements of the above categories. These operate to target different forms of violence in the community, target different categories of offenders or victims, or employ different methods of combating or preventing violence.[100]

There is also increasing recognition of the links between family violence and substance abuse, particularly alcohol. A number of recent initiatives, particularly in Queensland, have focused on restricting the availability of alcohol and introducing changes to canteen management to promote reduced alcohol consumption.

95 Memmott, P, Stacy, R, Chambers, C, & Keys, C, *Violence In Indigenous Communities*, *op.cit*, pp71-72.
96 *ibid*, pp72-73.
97 See: www.humanrights.gov.au/social_justice/nilac/.
98 See: www.scu.edu.au/schools/ciap/
99 See Southern Cross University website: www.scu.edu.au/schools/ciap/courses.html, (Accessed 16th January 2003).
100 Memmott, P, Stacy, R, Chambers, C, & Keys, C, *Violence In Indigenous Communities*, *op.cit*, pp73-74.

These programs function at different stages. Some are implemented during or immediately after the occurrence of a violent incident (early reactive programs); some are implemented some time after the incident and are aimed at resolving the negative impact of the violence (late reactive programs); some aim to counter any likelihood of violence at an early stage (early proactive strategies); and others are implemented prior to violence occurring but triggered by signs that violence may be imminent (late proactive strategies).[101] This additional form of classification of programs highlights the need for a holistic composite set of programs to be made available for communities to address the various dimensions of family violence.

Overall, Memmott observes in relation to existing programs and approaches that:

> The classification and review of violence programs indicated that there is a scarcity or under-representation of programs in certain key areas of violence, and that there is clearly a need to focus support resources into developing such programs for wider application.

> A number of omissions in the available literature on Indigenous violence and violence programs were detected, including (i) a failure of program designers to clearly define the forms of violence they were targeting, (ii) a lack of program evaluation studies, and (iii) a lack of objective studies on the nature of program failures. The review of violence programs was also accompanied by a general finding that there was a general lack of programs in many Indigenous communities.[102]

Memmott also states that a review of existing programs and approaches reveals three recurring strategic aspects that need to be present to address family violence in Indigenous communities, namely that programs be community-driven; that community agencies establish partnerships with each other and with relevant government agencies; and that composite violence programs are able to provide a more holistic approach to community violence.[103]

The report notes the importance of programs that adopt an holistic or broad approach to violence. These:

> often do not focus directly on any particular kind of violent behaviour, rather their efforts are aimed at either preventing at-risk people from falling prey to their vulnerability, or they attempt to heal the emotional and spiritual injury that is causing them to behave violently. Therefore, while the possibility of self-harming behaviour is reduced, rates of other forms of violence such as physical assault leading to homicide, spousal assault, rape and sexual assault and child violence might also be influenced…[104]

> The implementation of composite programs, particularly in communities displaying multiple forms of increasing violence, is shown to be an emerging and preferred approach that reflects a more systematic way of combating violence, combining both proactive and reactive methods which target different age and gender groups.[105]

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101 *ibid*, pp3-4.
102 *ibid,* p4.
103 *ibid*.
104 *ibid,* p76.
105 *ibid*, p4.

The report notes that a sensitive aspect of governments introducing services is how to best trigger such programs in communities where they are obviously needed while at the same time creating a climate whereby the programs are community-originating, motivated and controlled. Memmott recommends 'that government agencies take a regional approach to supporting and coordinating local community initiatives, and assisting communities to prepare community action plans with respect to violence'.[106]

This approach is consistent with the approach adopted in ATSIC's Family Violence Action Plan. The Plan, as previously outlined in this chapter, recognises the critical need to adopt an holistic approach to the problem of family violence and identifies the crucial importance of engagement with Commonwealth and State government agencies and communities to work in partnership on family violence strategies, as well as supporting and strengthening the capacity of ATSIC Regional Councils to develop, implement and monitor family violence action plans.

Ensuring access to justice for Indigenous women

A matter of great concern in relation to current debates about addressing family violence in Indigenous communities is the lack of attention paid to issues of access to justice for Indigenous women.

In their recent submission to the Senate Legal and Constitutional References Committee inquiry into legal aid and access to justice, ATSIC note that 'Indigenous women have been identified as the most legally disadvantaged group in Australia'.[107] A matter of particular concern is the limited ability of ATSIC/ATSIS, through its funding role of Aboriginal and Torres Strait Islander Legal Services (ATSILS) to provide access to justice for Indigenous women through legal representation and family violence services.

ATSIS note that:

> ATSILS are required to prioritise provision of services in accordance with ATSIS' National Program Policy Framework for ATSILS ("The ATSILS Policy Framework") affording priority assistance to those clients who potentially face custodial sentences. Accordingly, in face of sheer demand for assistance, ATSILS predominantly provide legal aid services for criminal matters (89% of case and duty matters in 2001-02; compared with only 2% family matters and 2% violence protection matters).[108]

This trend has, ATSIS state, 'discouraged Indigenous women from approaching ATSILS for assistance initially, particularly given the likelihood of ATSILS defending the perpetrator'. They note:

> The problem has often been attributed to the "first-in, first-serve" nature of ATSILS work. The lack of alternative service providers in many of the jurisdictions in which ATSILS operate means that even if the victim sought

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106 *ibid*.
107 Aboriginal and Torres Strait Islander Commission and Aboriginal and Torres Strait Islander Services, *Submission to the Senate Legal and Constitutional References Committee inquiry into legal aid and access to justice*, ATSIC/ATSIS, Canberra 2003, p6.
108 *ibid*, p7.

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ATSILS assistance first, if refused, they at least have the option of seeking police assistance. However were the ATSILS to turn away the perpetrator, he would have nowhere else to seek representation. ATSIS acknowledges that wherever possible LACs have attempted to represent indigenous women in cases of conflict where the partner is represented by the ATSILS. However it remains that in many instances the victim lacks any legal advice beyond that provided by the police.[109]

Indigenous women are further disadvantaged in the justice process by the Courts' (particularly the Bush Court) inadequate approach to dealing with domestic violence and violence against women. The need for expeditious process in domestic violence assault charges and restraining order applications, particularly concerning the victim's safety, is compromised due to the handling of such matters by inexperienced community police officers. Frequently a case may reach its fifth adjournment (five months after the original hearing date at most Bush Courts) without a plea still having been entered. It is a very challenging demand that inexperienced police officers are required to provide what is in effect, legal aid assistance.[110]

The effect of delayed access to justice for Indigenous women is even more severe given the cultural inhibitions in their own communities such as beliefs in the sanctity of kinship and fear of community retribution. If they overcome this threat and seek representation, only to be met with refusal by the under-resourced ATSILS the lesson can be devastating. These considerations have often led to reluctance in seeking legal advice by many women.[111]

As noted above, ATSIC have introduced the Family Violence Prevention Legal Service Program (FVPLS) as a response to Indigenous women's lack of access to Legal Aid services. However with only 13 services across Australia, they do not provide coverage to all regions. ATSIS notes that 'This relatively small and under-resourced program is unable to address the barriers Indigenous women face in accessing Indigenous Legal Aid services, nor to provide the range of legal services available through ATSILS'.[112] They express concern that:

There is an urgently growing demand for ATSILS to provide child protection, civil and family related, (including family violence) services. However, providing these services as well as continuing assistance in criminal matters will require additional resources or, alternatively a change in the priorities set for provision of legal aid services. If priorities are reset then this will simply postpone unmet demand that will be unlikely to be satisfied through referrals and alternative services.[113]

ATSIC/ATSIS note further that while they and the ATSILS that it funds are committed to stamping out family violence, the prioritising of scarce resources to criminal matters means that 'in practice, victims are not assisted while those responsible, are'. Accordingly, constraints of existing resources for legal support limits the capacity of ATSIC/ATSIS 'to give its own policies concrete substance.

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109 *ibid*, p14.
110 *ibid*, p15.
111 *ibid*, p16.
112 *ibid*, p14.
113 *ibid*, p10.

This contradiction will be overcome only through additional resourcing of ATSILS and Indigenous women specific legal service providers'.[114]

ATSIC's submission to the Department of Finance and Administration Pricing Review in 2001 found a $12 million annual funding shortfall of ATSILS compared to Legal Aid Commission benchmarks. An Office of Evaluation and Audit (OEA) evaluation in 2003, reported the following findings in relation to the performance of ATSILS:

- ATSILS are providing legal services at a cost that is significantly lower than that paid by mainstream LACs for legal work undertaken on a referral basis by private practitioners, and that it is achieved at a level of client satisfaction no different from that reported by LAC clients;
- The national shortfall in ATSIC funding to ATSILS, if their outputs are costed at the same level as LAC-paid legal work, is $25,605,598;
- There is low morale and high staff turnover among ATSILS practitioners; and
- Evidence suggests that ATSILS clients are more likely to plead guilty than mainstream offenders.[115]

In the context of the increased focus on family violence in recent years coupled with the lack of progress in reducing the over-representation of Indigenous people in custody in general, it is a matter of great concern that there is not a greater emphasis on the legal needs of Indigenous women.

There is an urgent need to ensure appropriate funding levels for ATSILS in order to provide a greater focus on the legal needs of Indigenous women as well as a greater focus on preventative action and community education. At the very least, there is also an urgent need for the federal government to allocate additional, quarantined, funding to expand the Family Violence Prevention Legal Service Program. Such funding needs to be new money as there is clearly no capacity for ATSIS/ATSIC, through its support for ATSILS, to re-allocate existing resources.

Community justice responses to family violence

The criminal justice system is extremely poor at dealing with the underlying causes of criminal behaviour and makes a negligible contribution to addressing the consequences of crime in the community. One of the consequences of this, and a vital factor that is often overlooked, is that Indigenous victims of crime and communities are poorly served by the current system.

Accordingly, the current system disadvantages Indigenous people from both ends – it has a deleterious effect on Indigenous communities through over-representation of Indigenous people in custody combined with the lack of attention it gives to the high rate of Indigenous victimisation, particularly through violence and abuse in communities. Reform to criminal justice processes, including through community justice initiatives, must be responsive to these factors.

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114   *ibid*, p16.
115   *ibid*, p10.

The past decade has seen an increased emphasis on restorative justice mechanisms for addressing criminal behaviour in Indigenous communities to address the needs of victims (including of family violence) as well as to make the system more meaningful to offenders.

The most accepted definition of restorative justice is that of Tony Marshall which states that it is 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'.[116] The Law Commission of Canada provides a useful commentary on restorative justice as:

> fundamentally concerned with restoring social relationships, with establishing or re-establishing social equality in relationships. That is, relationships in which each person's rights to equal dignity, concern and respect are satisfied… As it is concerned with social equality, restorative justice inherently demands that one attend to the nature of relationships between individuals, groups and communities. Thus, in order to achieve restoration of relationships, restorative justice must be concerned with both the discrete wrong and its relevant context and causes.[117]

This does not necessarily seek to return a relationship to the position prior to the commission of some wrongdoing, but instead to address the underlying issues. Restorative justice can thus incorporate concepts of restitution and healing, while focusing on the transformation of relationships.

There are numerous new initiatives in Australia developing community based justice mechanisms for Indigenous people which are based on restorative justice principles. Some of these processes, such as Law and Justice Committees in the Northern Territory and Community Justice Groups in Queensland incorporate an holistic response to family violence into strategies for addressing offending in communities.

■   **Community Justice Groups in Queensland**

The Community Justice Group project was started in Kowanyama, Hopevale and Palm Island in 1993 as a pilot project of the Queensland Corrective Services Commission. The Community Justice Group model aims to provide Aboriginal people with a mechanism for dealing with problems of justice and social control which is consistent with Aboriginal Law and cultural practices as well as utilising aspects of the Anglo-Australian legal system. The justice groups have no statutory authority. The source of authority for the group is based on the collective and personal authority of group members deriving from the place of individuals within kinship systems and the personal respect they are accorded by others. Ultimately the group's authority lies in Aboriginal Law and cultural practices.

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116   Marshall, T., 'Criminal mediation in Great Britain' (1996), 4(4), *European Journal on Criminal Policy and Research* , p37.
117   Llewellyn, J and Howse, R, *Restorative justice – a conceptual framework*, Law Commission of Canada, Ottawa 1999, p2. See: www.lcc.gc.ca/en/sr/rj/howse/index.html

The Community Justice Groups use traditional structures and cultural principles to develop and apply their own system of justice and social control. They seek to restore social order by curbing anti-social behaviour and by creating a more positive and supportive environment. Group actions that they handle within the existing legal framework include family-related dispute settlement, crime prevention and community development projects, co-ordination with government and community agencies and providing information and advice to the judiciary, Community Corrections Boards and other government decision making bodies.

Perceived positive outcomes for the model to date include: decline in crime rate and in the level of violence; an effective community corrections program at Palm Island that has kept people from appearing before court and from possible incarceration; dramatic decrease in juvenile crime at Kowanyama; changes in social patterns; more effective government service delivery, leading to savings in time and money for government and community agencies, courts, law enforcement agencies and correctional centres.

Perceived negative outcomes for the model include: harsh punishments; potential drain on the community's resources; acting without statutory authority; and a lack of indemnity for justice group members.

The Community Justice Panel (CJP) now works with clan groups on Cape York. The CJP model is an evolutionary process, with options at each stage to be trialled before the justice groups go on to the next stage.

The CJP model is supplemented by monthly programs run by the Department of Corrections and the Department of Family and Community Services in substance abuse and anger management. There are also women's shelters in all communities. Greater support is needed however for people on the alcohol management program in terms of counseling and support. Without better infrastructure, such programs will fail over the long-term.

- **The Kurduju Committee Law and Justice Strategy**

  The Aboriginal Law and Justice Strategy of the Northern Territory seeks to provide a whole-of-community and whole-of-government approach to addressing community justice issues within a law and justice planning process. It was originally implemented at Ali-Curung in 1996 and in Lajamanu in 1999. Both these communities now have their own law and justice plans and are engaged in peer modeling with Yuendumu community.

  In each community a law and justice committee has been established. These committees have a wide range of responsibilities and comprise key community representatives from the Tribal Council, Community Elders, Safe House Committee, women's group, traditional owners, outstation representatives and other community organisations. Representatives from the Ali-Curung, Lajamanu and Yuendumu communities also sit on the Kurduju Committee, which provides an opportunity for information-sharing and peer modeling, and also to address a perceived deficit in policy and

program knowledge, and expertise in regard to remote communities.

The aim of the law and justice plans was 'to facilitate the empowerment of the local community to assume a greater role in law and justice, and to address law and justice concerns through local dispute resolution where practical.' There was a perceived need for low-level intervention by Aboriginal communities in early crime prevention and more productive participation in the justice system.

At Ali-Curung, Lajamanu and Yuendumu, individuals and community organisations had largely lost their capacity to resolve their own law and justice issues through the introduction and consequential reliance on external dispute resolution. Subsequently, the Law and Justice Strategy sought to incorporate Aboriginal dispute resolution principles into community law and justice processes. This was not a straightforward revival of customary law but an innovative adaptation of traditional decision making in a contemporary situation through the merging of mainstream community based dispute resolution with mainstream law and justice. The process is negotiated and agreed to between community organisations and government agencies.

The Ali-Curung and Lajamanu law and justice committees are involved in diversionary programs, pre-court conferencing, victim offender conferencing, community service orders, and the operation of night patrols and safe houses. Ali-Curung, Lajamanu and Yuendumu have adopted an approach to family violence that involves local dispute resolution and healing methodology.

As in the case of the community justice panels in Queensland, the experience of the Law and Justice Strategy to date indicates that any initiatives seeking to formalise an interface between aspects of customary law and the western legal system should be organic, evolutionary and holistic. In order to be effective, any community justice initiatives will also involve a considerable investment in community consultation, participation and education: the emphasis should be on devolving power to the communities. A one-size-fits-all approach or the top-down application of a preconceived model is unlikely to yield long-term results and could even be counterproductive in resolving law and justice issues.

The last two years has also seen the development of community justice mechanisms for involvement of Indigenous peoples in sentencing. Examples include the Ngunga Court and Ngunga Youth Court in South Australia; the Murri Court in Queensland; the Koori Court in Victoria and circle sentencing in New South Wales.[118] Generally, these processes seek to incorporate an Aboriginal traditional customary law approach to the sentencing of Aboriginal offenders within the framework of existing legislation. While there are variations between the various models, they all involve Aboriginal Elders sitting alongside the

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118   For an overview of these processes see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Northern Territory Law Reform Committee's inquiry into recognition of Aboriginal customary law*, HREOC Sydney 2003.

magistrate to advise on sentencing options, with members of the offender's family, the victim, the victim's family and other interested community members participating in the sentencing process.

These processes have been extremely successful in their initial years. Currently, however, they are limited to dealing with particular non-violent offences. Accordingly, offences relating to violence and sexual offences cannot be addressed within these sentencing processes.

In a discussion paper titled *Holistic community justice,* the NSW Aboriginal Justice Advisory Council proposes that restorative justice approaches such as these sentencing options *should* be available for dealing with family violence.

Specifically, they have proposed the establishment of localised community controlled justice and healing centres combined with alternative sentencing processes for offenders which seek to establish formal links with local Aboriginal communities.[119] In this approach, community justice and healing centres would be established as a single point of contact for victims of family violence. They would assess their needs (such as emergency accommodation, financial assistance, health care, counselling or healing) and negotiate with appropriate service delivery agencies on their behalf. Should the victim wish to pursue their matter through the criminal justice system, the centre would also provide assistance with this. The centre would also be community controlled, and actively engage the local Aboriginal community with the consequence that it could assist the victim and provide 'a direct community sanction on the offender's behaviour and demonstrate the community's intolerance of family violence'.[120] Alternative sentencing processes, such as circle sentencing, would also be available 'to ensure that the causes and consequences of the offence are dealt with holistically'.[121]

AJAC argues that this approach:

> Provides an alternative model to address the serious matter of family violence in Aboriginal communities. The urgency of actually making an on the ground impact where communities can actually be involved directly in programs ensures a level of community re-empowerment. This approach also exposes family violence as an unacceptable crime in Aboriginal communities, but to actively ensure a service for victims whilst offenders take responsibility and deal with the underlying causes of their offending behaviours.

> It is argued that long term effects will be an overall reduction of family violence, and that communities can be positioned to actively heal the wounds of family violence according to their unique and local needs.[122]

There are similarities in this proposal with the Northern Territory Law and Justice Committee and Queensland Community Justice Group approaches, as well as similarities with the roles of services established under ATSIC's Family Violence Prevention Legal Service Program. It also provides what the Memmott report,

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119   Aboriginal Justice Advisory Council, *Holistic community justice, op.cit*, pp10-11.
120   *ibid*, p10.
121   *ibid*.
122   *ibid*, p11.

as discussed earlier, identified as an holistic composite set of programs for addressing family violence.

It also has similarities to Canadian models for addressing sex offending by Indigenous people. The Canadian approach emphasises the need for restorative justice, community-based initiatives beyond the justice system such as victim-offender mediation, family group conferencing, sentencing circles and formal cautioning. It also highlights the gaps that exist in addressing Aboriginal sex offender needs and the need for Aboriginal control of appropriately cultural services. The report *Aboriginal Sexual Offending in Canada* identifies four areas where action is necessary to address Aboriginal sexual offending: community development; program development; research and human resources.[123] The effectiveness of this model and whether aspects could be transferred to the Australian context, particularly in regard to community capacity-building and service coordination, is an avenue for further investigation.

These models and proposals suggest that the full potential of community justice mechanisms for addressing family violence has not been explored sufficiently, and may provide an appropriate way forward for addressing some aspects of need.

Conclusion

This chapter has identified a range of commitments and recent initiatives by all governments to address its impact. These commitments are welcome and long overdue. As yet, they are not sufficiently wide-ranging in their scope or effectively funded. There are also significant gaps in service provision, including through a general paucity of programs and lack of legal assistance to Indigenous women in many areas. As a consequence, there remains a need for ongoing, continuous support for innovative, community led solutions to address family violence and the adoption of an holistic, coordinated approach by governments. ATSIC's Family Violence Plan provides a platform for improving this situation, with the development of regionally targeted programs and action plans. The escalating and debilitating affects of family violence on Indigenous people and communities requires urgent attention.

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123   Hylton, J H, *Aboriginal Sexual Offending in Canada*, The Aboriginal Healing Foundation, 2002, p157.

Appendices

Appendix 1

A statistical overview of Aboriginal and Torres Strait Islander peoples in Australia

Introduction

This appendix is a collection of statistics chosen for their relevance in highlighting the key characteristics of the Indigenous population. It focuses on key areas such as health, education, employment, housing, and contact with criminal justice and welfare systems. Where possible, the data is presented in a way that identifies absolute and relative change in the situation of Indigenous peoples over the past five and ten years, and provides some international comparisons.

While reducing people and their experiences to percentages and numbers is problematic, statistics are useful as indicators of disparities and inequalities, and of similarities, between Indigenous and non-Indigenous Australians. The statistics reproduced are intended to be representative of the current situation, although not exhaustive or comprehensive.

The main source of information used is the Australian Bureau of Statistics (ABS) and the Census data, various surveys and data collection projects that it undertakes.[1] Recently, the Steering Committee for the Review of Government Service Provision has also released the first national report on key indicators for overcoming Indigenous disadvantage which draws together data collected across all levels of government.[2]

Compiling an accurate profile of Aboriginal and Torres Strait Islander peoples remains an ongoing task. There are a range of different limitations in current collections of census, survey and administrative data which must be borne in mind.

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1   For a description of other data collected on Aboriginal and Torres Strait Islander peoples, see the Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, cat no 4704.0, Commonwealth of Australia, Canberra, 2003, pp231-2.
2   Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key indicators 2003: Report*, Productivity Commission, Canberra, 2003.

Aboriginal and Torres Strait Islanders were first counted as citizens in the 1971 Census.[3] Since then, censuses have shown a significant increase in people identifying as Aborigines and/or Torres Strait Islanders. These increases cannot be accounted for by the birth rate alone. Between the 1991 and 1996 Census there was a 33% increase recorded in Australia's Aboriginal and Torres Strait Islander population, while between the 1996 and 2001 Census there was a 16% increase. In contrast, the total population in Australia increased by five per cent between 1991 and 1996 and four per cent from 1996-2001. The ABS attributes the increase to a growing propensity of people to identify as Aboriginal and/or Torres Strait Islander, and the greater efforts made to record Aboriginal and Torres Strait Islander people in the censuses.

Because of the recorded increases in the Aboriginal and Torres Strait Islander population, the ABS has warned that comparisons made between two censuses must be made with caution. They recommend comparing percentages from two censuses, rather than directly comparing counts or numbers.[4]

Despite the increases in people identifying as Aboriginal and Torres Strait Islander in censuses, however, there are still believed to be significant undercounts of Aboriginal and Torres Strait Islander people occurring. Identifying as Aboriginal and Torres Strait Islander, or any other group, is voluntary. In the 2001 Census, Aboriginal and Torres Strait Islander status is unknown for 767,757 people who completed the census questionnaire: that is 4.1% of the total population. Because some of these people will be Aboriginal and/or Torres Strait Islander the ABS calculates what it calls 'experimental estimates' to give a figure for the 'true' size of the Aboriginal and Torres Strait Islander population. It is important to distinguish actual counts from censuses from the experimental estimates.

Population figures

a) Size and growth of the Indigenous population

Table 1 below shows that 410,000 people identified as of Aboriginal and/or Torres Strait Islander origin in the 2001 Census. This was a 16% increase since the 1996 Census. The ABS estimate that three-quarters of this growth over the five years from 1996-2001 can be explained by demographic factors (births and deaths), with the remaining increase the result of other factors (such as improved Census collection methods and increased tendencies of people to identify as Indigenous).[5]

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3   Australian Bureau of Statistics, *op.cit*, p226.
4   *ibid*, p245.
5   *ibid*, p13.

Table 1:   Census count of Indigenous population, 1991-2001[6]

	1991	1996	2001
Recorded by the Census	265,500	353,000	410,000
Increase on previous census (per cent)	17.0	33.0	16.0
% of the total population (per cent)	1.6	2.0	2.2

Due to the undercount in Aboriginal and Torres Strait Islander people believed to occur in the census, the ABS has estimated that the Aboriginal and Torres Strait Islander population in 2001 was 458,500 people or 2.4% of the total Australian population.[7] There were approximately 409,729 people of Aboriginal origin and 29,239 of Torres Strait Islander origin. A further 19,552 people identified as of both Aboriginal and Torres Strait Islander origin.[8] There are slightly more women (231,000) than men (227,500) in the Aboriginal and Torres Strait Islander population. This is a similar distribution to the non-Indigenous population.[9]

The Aboriginal and Torres Strait Islander population is growing faster than the non-Indigenous population. The annual rate of growth for Indigenous people has been estimated at 2.3% compared with approximately 1.2% for non-Indigenous people.[10] It is estimated that the Indigenous population will grow to more than 550,000 by the year 2011.[11]

b) Age structure of the Aboriginal and Torres Strait Islander Population

Aboriginal and Torres Strait Islander peoples have a different population age structure to the rest of the Australian population. In common with many other 'western' nations, the non-Indigenous population of Australia is rapidly ageing, whereas the Indigenous population is facing increased growth in young age groups. Table 2 below demonstrates the different age structures of Indigenous and non-Indigenous Australians.

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6   Australian Bureau of Statistics, *Population characteristics: Aboriginal and Torres Strait Islander Australians 2001*, cat no 4713.0, Commonwealth of Australia, Canberra, 2003, p15.

7   *ibid*.

8   *ibid*, p19, Table 2.2.

9   *ibid*, p20.

10 Department of Immigration, Multiculturalism and Indigenous Affairs, *Indigenous people in Australia* (Fact sheet) Department of Immigration, Multiculturalism and Indigenous Affairs website, http://www.minister.immi.gov.au/atsia/facts/index.htm (2 December, 2003).

11 Hunter, Kinfu, Taylor, *The future of Indigenous work: Forecasts of labour force status to 2011*, CAEPR Discussion paper no. 251/2003, Australian National University, Canberra, 2003, p2.

Table 2:   Proportion of Indigenous and non-Indigenous population in specific age groups, 2001[12]

Age group	0-4	5-14	15-24	25-44	44-64	65+
Indigenous: % of population	13.1	25.8	18.4	28.1	11.8	2.9
Non-Indigenous: % of population	6.4	13.6	13.6	30.2	23.4	12.8

The Indigenous population is considerably younger than the non-Indigenous population. The median age for Indigenous people is 20 years, whereas it is 35 years for non-Indigenous Australians. There are also relatively fewer Aboriginal and Torres Strait Islander people aged 65 or over.

c)   Where Aboriginal and Torres Strait Islander people live

Almost 60% of Aboriginal and Torres Strait Islander population lived in two states in 2001: New South Wales and Queensland. Despite this, Aboriginal and Torres Strait Islander people make up a small minority of the total population of these States (2.1% and 3.5% respectively). As a proportion of the total population, Aborigines and Torres Strait Islanders constitute 28.8% of people in the Northern Territory.[13] Table 3 below details the percentage of the Indigenous population that lives in each state and territory, and the proportion of each state and territory that is Indigenous.

Table 3:   Location of Aboriginal and Torres Strait Islander Peoples – by State and Territory[14]

	Percentage of the Aboriginal and Torres Strait Islander population living in a State or Territory	Percentage of the Non-Indigenous population living in a State or Territory	Percentage of the State or Territory population that is Aboriginal and Torres Strait Islander
NSW	29.4	34	2.1
Vic	6.1	25.2	0.6
Qld	27.5	18.5	3.5
SA	5.6	7.8	1.7
WA	14.4	9.7	3.5
Tas	3.8	2.4	3.7
NT	12.4	0.7	28.8
ACT	0.9	1.7	1.2

12   Australian Bureau of Statistics, Population characteristics: Aboriginal and Torres Strait Islander Australians 2001, *op.cit*, p20, Table 2.3.
13   *ibid*, p19, Table 2.1.
14   *ibid*.

Most Torres Strait Islanders (86.2%) live on mainland Australia, with 13.8% living in the Torres Strait region. 58.4% of the Torres Strait Islander population live in the state of Queensland and a further 18.3% in NSW.[15]

d) Remoteness

While the majority of Indigenous people live in either major cities, inner or outer regional areas of Australia, the proportion of people that live in remote or very remote areas is much higher than for the non-Indigenous population. Table 4 below illustrates that 30% of Indigenous people live in major cities, as opposed to 67% of the non-Indigenous population; with over 26% of Indigenous people living in remote or very remote areas, which compares to just two per cent of the non-Indigenous population.[16]

Table 4: **Location of Aboriginal and Torres Strait Islander population by remoteness**[17]

	Aboriginal and Torres Strait Islander	Non-Indigenous
Major cities	30.2%	67.2%
Inner regional	20.3%	20.7%
Outer regional	23.1%	10.1%
Remote	8.8%	1.5%
Very remote	17.7%	0.5%

Indigenous households and families

An Indigenous household is defined by the ABS as being one in which an Indigenous person was resident and present on census night. These can be further classified as family, group or lone person households. There were approximately 145,000 Indigenous households recorded in the 2001 Census. Of these, the vast majority (78%) contained one family. Of the remaining 22%, five per cent were multi-family households and five per cent were group households. Approximately 13% of Aboriginal and Torres Strait Islander people live in lone person households.[18]

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15 *ibid*, p19, Table 2.2.
16 *ibid*, p22, Table 2.5.
17 *ibid*.
18 *ibid*, p27.

Couples with dependent children comprise 31% of Indigenous families, whereas 24% were one parent families (as opposed to 10% of non-Indigenous families) and 23% were couples without children (compared with 36% of non-Indigenous couples).

Aboriginal and Torres Strait Islander people are more likely to live in one or multi-family households than non-Indigenous people (82% compared with 70%) and less likely to live in lone person households (13% compared with 24%).

Living arrangements vary according to remoteness. For example, multi-family households increase with remoteness whereas one parent families tend to live in major cities.[19]

Language and culture

Aboriginal and Torres Strait Islander cultures today reflect both traditional elements and the influence of non-Indigenous cultures.

- 80% of Aboriginal and Torres Strait Islander people reported speaking only English at home, which is about the same as the non-Indigenous population.

- 12% of Aboriginal and Torres Strait Islander people reported speaking an Aboriginal and Torres Strait Islander language at home; with three quarters of those recording they were also fluent in English.

- Many Aboriginal and Torres Strait Islander people are bilingual; however, the pattern varies with geographical location. 55% of those living in remote areas reported speaking an Aboriginal and Torres Strait Islander language, compared withone per centin urban centres.

- Older Aboriginal and Torres Strait Islander people (over 45 years) are more likely to speak a language than younger people.

- Aboriginal and Torres Strait Islander languages are more likely to be spoken in the centre and north of Australia than in the south.[20]

In 1994, the NATSIS survey reported approximately 60% of Aboriginal and Torres Strait Islander people identified with a clan, tribal or language group.[21]

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19   *ibid*, p28-29.
20   *ibid*, p35-36.
21   Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Survey 1994 – Detailed Findings*, cat no 4190.0, Commonwealth of Australia, Canberra, 1995, p9, Table 8.

a) Life expectancy

During 1999-2001, the Australian Bureau of Statistics (ABS) estimated the adjusted life expectancy[22] of Aboriginal and Torres Strait Islander newborn males to be 56.3 years and 62.8 years for females.[23] Life expectation for Indigenous males is similar to the life expectancy rate for the total male population in 1901-1910. The rate for Indigenous females is similar to the rate for the total female population in 1920-22.[24]

For Indigenous females, the current life expectancy rate is lower than that given in the United Nations Human Development Index for India (63 years) and about the same as in sub-Saharan Africa with AIDS factored out (62 years) according to the World Health Organisation.[25] For Indigenous males, life expectancy is lower than the UN figure for Myanmar (57 years), Papua New Guinea (57 years) and Cambodia (57.4 years).[26]

There are issues relating to the quality of data collected about life expectancy which make comparisons over time difficult. Nationally such information is unobtainable because death certificate data from New South Wales, Victoria and Queensland is unreliable before 1997 and due to changes in methods for calculating Aboriginal and Torres Strait Islander life expectancy from 1997 onwards.[27] Table 4 and 5 below illustrate changes in life expectancy for Aboriginal and Torres Strait Islanders and the general population since 1997.

These figures indicate that in the period 1997-2001, life expectation for Aboriginal and Torres Strait Islander females decreased slightly from 63 to 62.8 years. For Aboriginal and Torres Strait Islander males it increased from 55.6 to 56.3 years.[28] The disparity in life expectancy between Aboriginal and Torres Strait Islander people and the general population in Australia increased over the period 1997-2001. For males, the gap increased from 20.6 to 20.7 years and for females, from 18.8 to 19.6 years.[29]

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22 The ABS produces two estimates for the life expectation of Aboriginal and Torres Strait Islander people. One is an 'observed' estimate, based directly on available data. However, because of problems with data, it also produces an 'adjusted' estimate, which it expects would be more accurate. Australian Bureau of Statistics, *Deaths* (2001), cat no 3302.0, Commonwealth of Australia, Canberra, 2002, p102.

23 *ibid*, p101.

24 Australian Bureau of Statistics, *Australian Institute of Health and Welfare, The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2001*, cat no 4704.0, Commonwealth of Australia, 2001, p121.

25 World Health Organisation, *World Health Report 2002: Overview*, WHO, Geneva, 2002, http://www.who.int/whr/2002/overview/en/index1.html (4 December, 2003).

26 United Nations Development Programme, UN Human Development Report 2003, Oxford University Press, 2003, p237.

27 Australian Bureau of Statistics, Deaths, *op.cit*, p102.

28 *ibid*, p101.

29 Comparing data from the following sources: *ibid*, p101 (unnumbered table: Experimental Estimates of Life Expectancy at Birth, Adjusted Life Expectancy) [Aboriginal and Torres Strait Islander data, 1997-1999 and 1999-2001]; p92, Table 6.51 [Aboriginal and Torres Strait Islander adjusted data for period 1998-2000]; p76, Table 6.32 [General population data].

Table 5: Aboriginal and Torres Strait Islander life expectation compared with that of the general population (males)

Period	1997-1999	1998-2000	1999-2001
General population	76.2	75.6	77
Aboriginal and Torres Strait Islander	55.6	56	56.3
Difference	20.6 years		20.7 years
Inequality gap		Increase of 0.1 year	

Table 6: Aboriginal and Torres Strait Islander life expectation compared with that of the general population (females)

Period	1997-1999	1998-2000	1999-2001
General population	81.8	82	82.4
Aboriginal and Torres Strait Islander	63.0	62.7	62.8
Difference	18.8 years		19.6 years
Inequality gap		Increase of 0.8 year	

b) Life expectancy – Comparison with other Indigenous peoples

Approximately thirty years ago, life expectancy rates for Indigenous peoples in Canada, New Zealand and the United States of America were similar to the rates for Aborigines and Torres Strait Islanders in Australia. However, significant gains in life expectancy have been made in the past two decades.[30] As shown on Graph 1 below, Australia has fallen significantly behind in improving the life expectancy of Indigenous peoples. Although comparisons should be made with caution (because of the way different countries calculate life expectation) data suggests Aboriginal and Torres Strait Islander males live between 8.8 and 13.5 years less than Indigenous males in Canada, New Zealand and the USA. Aboriginal and Torres Strait Islander females live between 10.9 and 12.6 years less than Indigenous females in these countries.

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30 Ring, I, Firman, D, *Reducing Indigenous mortality in Australia; lessons from other countries*, Medical Journal of Australia website, 1998, http://www.mja.com.au/public/issues/nov16/ring/ring.html (4 December 2003).

Graph 1:   Comparisons of life expectancy for Indigenous peoples in Australia, Canada, New Zealand and the United States of America[31]

Australian national average 1999-2001: 82

Canada, First Nations 2000: 76.3

USA, First Nations 1996-1998: 74.2

New Zealand, Maori 1995-1997: 71.6

Aboriginal and Torres Strait Islander 1999-2001: 62.8

Female: 76.6, 68.9, 67.4, 67.2, 56.3

Years

Male life expectancy

Female life expectancy
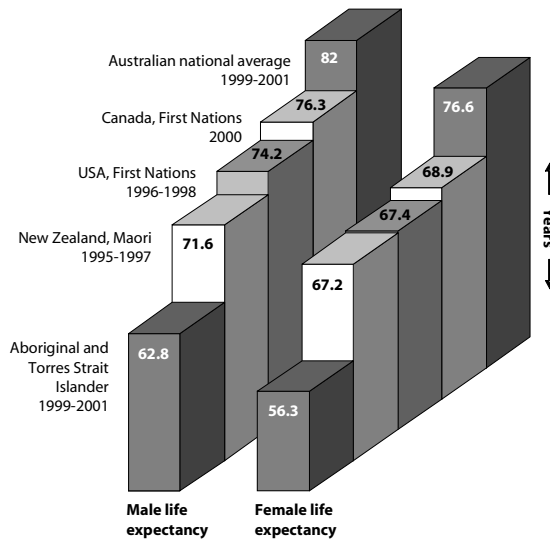
c)   Median age at death, 1990-2001

Median death age is the age at which half of a population group will have died. In 2001, the median death age of Indigenous people (male and female combined) was 54 years, around 24 years less than that in the general population.[32] Graphs 2 and 3 below show that while the median death age for the general population has increased steadily over the past decade, the Aboriginal and Torres Strait Islander age has fluctuated. This in part reflects data quality issues such as the smaller population samples involved and the changing proportion of people being identified as Indigenous on death certificates.

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31   Australian Bureau of Statistics, *Deaths*, *op.cit*, p 92, Table 6.51 [Data for Aboriginal and Torres Strait Islander people, New Zealand and the United States of America]. Statistics Canada, *A Statistical Profile of the Health of First Nations in Canada*, p16, Table 2.3.
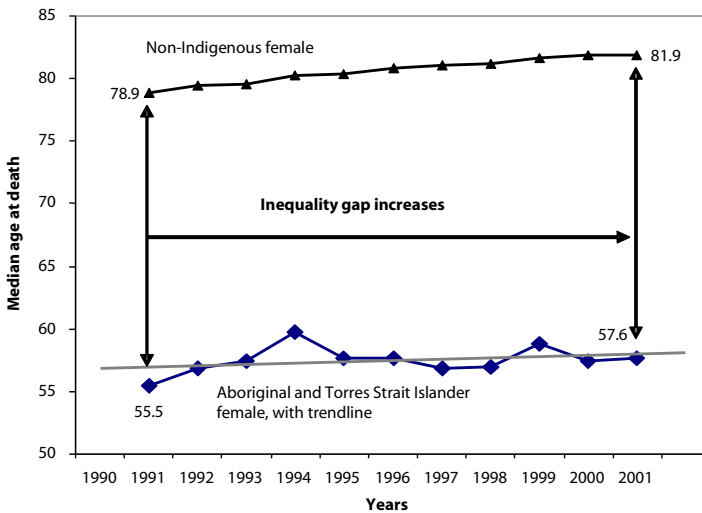32   Australian Bureau of Statistics, *Deaths*, *op.cit*, p20.

Graph 2:   Median age at death (male), 1990-2001[33]
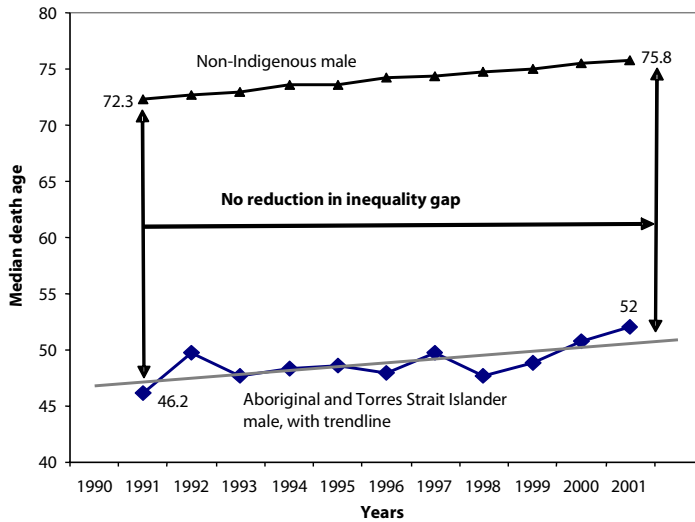
In 2001, Aboriginal and Torres Strait Islander males had a median death age of 52 years. It was highest in New South Wales (56 years) and lowest in the Northern Territory (45 years).[34]

Graph 3:   Median age at death (female) 1990-2001[35]

33   *ibid*, p79, Table 6.35. Note: Indigenous data for the period 1991-1997 excludes figures for NSW, Queensland, Victoria and Tasmania.

34   *ibid*.

35   *ibid*, p80. Note: Indigenous data for the period 1991-1997 excludes figures for NSW, Queensland, Victoria and Tasmania.

In 2001, Aboriginal and Torres Strait Islander females had a median death age of 58 years in 2001. It was highest in Victoria (64 years) and lowest in the Northern Territory (53 years).[36]

d) Infant health – Low Birth weight babies

A low birth weight baby weighs less than 2500 grams at birth.[37] Connections have been made between low birth weight and life-long health impacts including coronary heart diseases, type 2 diabetes, central obesity and hypertension. All of these are highly prevalent among Indigenous adults.[38]

Despite gains made in the 1980s, the number of low birth weight babies born to Aboriginal and Torres Strait Islander women has increased over the late 1990s. It is presently double the non-Indigenous average as set out in Graph 4.[39] In the same period, there have also been increases in low birth weight babies born to non-Indigenous women (from 6.2 to 6.5). Despite low birth weight worsening in both population groups, the disparity between them has increased slightly.

Graph 4: Low birth weight babies 1994-2000
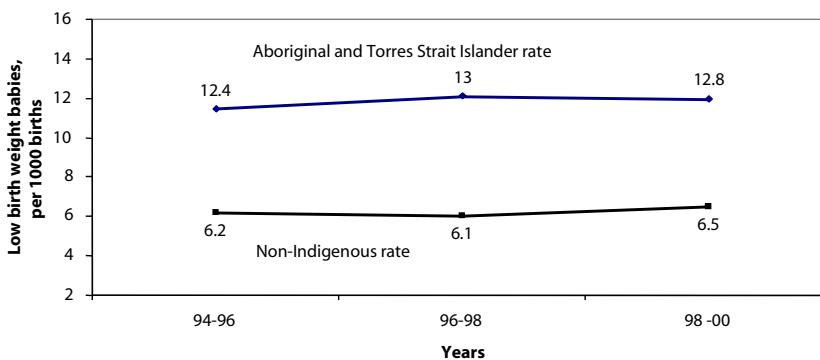
Aboriginal and Torres Strait Islander rates of low birth weight babies are greater than those in some low development countries according to the Human Development Index collated by the United Nations Development Program. Graph 5 shows how Aboriginal and Torres Strait Islander rates compare with those in the UN Human Development Index.
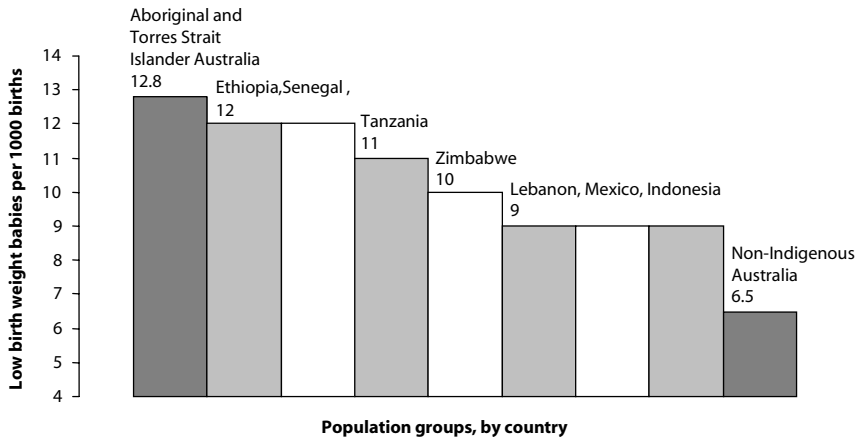
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36   *ibid*, p20.

37   Australian Bureau of Statistics, Australian Institute of Health and Welfare, *op.cit*, p125.

38   Gray, M, Hunter, B, Taylor, J, *Health Expenditure, Income and Health Status among Indigenous and Other Australians*, CAEPR Research Monograph No 21, Australian National University, Canberra, 2002, p38.

39   Australian Bureau Of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples* cat no 4704.0, Commonwealth of Australia, Canberra, 1999, p86, Table 6.6 [1994-1996 data]; Australian Bureau Of Statistics and Australian Institute of Health and Welfare: *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2001*, cat no 4704.0, Commonwealth of Australia, Canberra, 2001, p63, Table 5.5. [1996-1998]. Australian Bureau Of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003, op.cit*, p126, Table 6.5. [1998-2000].
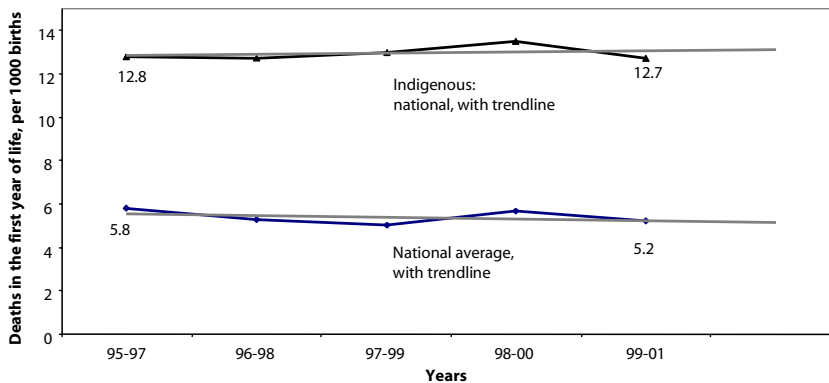
Graph 5: Low birth weight babies, international comparisons (2000)[40]

Aboriginal and
Torres Strait
Islander Australia
12.8

Ethiopia, Senegal ,
12

Tanzania
11

Zimbabwe
10

Lebanon, Mexico, Indonesia
9

Non-Indigenous
Australia
6.5

Low birth weight babies per 1000 births

Population groups, by country

e) Infant health – Infant mortality

Infant mortality is a death that occurs in the first year of life. It can reflect poor infant and mother health. Graph 6 shows that approximately 2.5 times as many Aboriginal or Torres Strait Islander infants die before their first birthday as non-Indigenous children. The infant mortality rate for Indigenous children in the Northern Territory is four times the national rate.

Graph 6: Infant mortality Australia, 1993-2001[41]

Deaths in the first year of life, per 1000 births

12.8

Indigenous:
national, with trendline

12.7

5.8

National average,
with trendline

5.2

95-97   96-98   97-99   98-00   99-01

Years

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40   Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, *op.cit*, p126 [Indigenous]. United Nations Development Programme, *op.cit*, pp171-3 [International comparisons].
41   Australian Bureau of Statistics, *Deaths*, *op.cit*, p 23, Table 3.7 [Indigenous national average]; p71, Table 6.27, [National averages]. Note: the ABS calculates the Indigenous figure over three year periods, whereas the national figure is calculated annually.

Because of the fluctuations in birth rate, no reliable trend is evident. However, the data suggests a widening in the disparity between the two groups since the mid 1990s as illustrated in Table 7. Note that the ABS calculates the Indigenous figure over three year periods, whereas the national figure is calculated annually.

Table 7:   Disparity in the infant mortality rate (IMR)[42]

	1995-7	1996-8	1997-8	1998-2000	1999-2001
Indigenous IMR	12.8	12.7	13	13.5	12.7
National IMR	(1996) 5.8	(1997) 5.3	(1998) 5.0	(1999) 5.7	(2000) 5.2
Disparity in IMRs	7	7.4	8	7.8	7.2

Approximately thirty years ago, Indigenous peoples in countries such as Canada, New Zealand and the United States of America suffered similarly high infant mortality rates. However, these countries have significantly reduced the rates of infant mortality in recent decades, as shown in Graph 7.

Graph 7:   Infant mortality and Indigenous peoples, international comparisons (selected years)[43]

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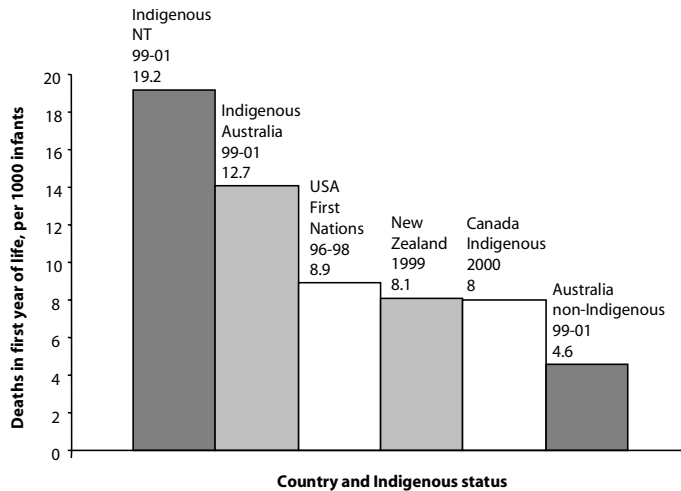
42   *ibid*.
43   *ibid*, Australian Bureau Of Statistics, *Deaths*, *op.cit*, p 93, Table 6.52 [Australia, New Zealand, United States of America]; p23, Table 3.7 [Northern Territory]. *ibid*, Statistics Canada, p22 [Canada].

Appendix 1

f) The six main causes of death of Aboriginal and Torres Strait Islander peoples

Table 8 sets out the six main causes of death for Aboriginal and Torres Strait Islander peoples in the period 1999 to 2001. These causes of death are presented as 'Standardised mortality ratios' (or SMRs). These are calculated by first determining the number of deaths per 1,000 head of population caused by a particular illness or disease, and then expressing this as a ratio of deaths from the same causes in a different population group.[44]

Table 7 shows that 11.7 times more Indigenous females (compared with non-Indigenous females) and 7.9 times more Indigenous males (compared with non-Indigenous males) die of endocrine, nutritional and metabolic diseases such as diabetes; and 4.8 times more Indigenous females and males die of diseases of the digestive system. Indigenous people are also significantly over-represented in deaths caused by respiratory diseases, neoplasms (such as cancers), diseases of the circulatory system (including heart disease), and external causes such as accidents and suicide.

Table 8: Standardised mortality ratios for the six main causes of death for Aboriginal and Torres Strait Islander people[45]

Cause	ATSI Female SMR	ATSI Male SMR
Diseases of circulatory system (inc. heart disease)	2.8:1	3.2:1
External causes (inc. accidents, suicide etc)	3.2:1	2.9:1
Neoplasms (inc. cancers)	1.6:1	1.6:1
Diseases of respiratory system	3.9:1	4.4:1
Endocrine, nutritional and metabolic diseases (inc. diabetes)	11.7:1	7.9:1
Diseases of the digestive system	4.8:1	4.8:1

The ABS has demonstrated the impact of these six causes of death on life expectancy for Indigenous peoples. It has sought to calculate the impact of eliminating the disparities experienced by Aboriginal and Torres Strait Islander peoples in relation to these six causes of death. The years of life expectation gained is shown in table 9. Note that given the complex interaction between diseases and causes of death, the impact would not necessarily be cumulative.[46]

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44   Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, *op.cit*, p181.

45   *ibid*, p192, Table 9.11.

46   Australian Bureau of Statistics, *Australian Social Trends* 2002, cat no 4102.0, Commonwealth of Australia, Canberra, p90.

**Table 9:   Potential years of life expectancy gained by Aboriginal and
Torres Strait Islander people if selected causes of death
reduced to that of the total population 1998-2000**[47]

Cause	Male – years of life expectation gained	Female – years of life expectation gained
Diseases of the circulatory system	6.5	6.4
External causes	3.7	1.7
Malignant neoplasms	2.4	2.5
Diseases of the respiratory system	2.0	1.7
Endocrine, nutritional and metabolic disease	1.6	2.5
Diseases of the digestive system	1.0	0.8

g) Health risk factors

In 2001, the ABS National Health Survey classified 63% of Aboriginal and Torres
Strait Islander people over 15 years of age as overweight or obese compared
with 50% of non-Indigenous people. The proportion of the population in both
groups defined as overweight or obese has increased since 1995.[48] Excess
body weight is a risk factor for diabetes, heart disease and other conditions.

The Survey reported 49% of Aboriginal and Torres Strait Islander people aged
18 years and over were smokers, compared with 24% of the general population.[49]
Smoking is a risk factor for coronary heart disease, stroke and cancers. Generally,
Aboriginal and Torres Strait Islander people are less likely to consume alcohol
than non-Indigenous people. The Survey reported 56% of Indigenous
respondents did not drink alcohol, compared with 38% of non-Indigenous
respondents. 10% of Aboriginal and Torres Strait Islander people were likely to
consume alcohol at risk or high risk levels, compared with 11% of non-Indigenous
people.[50] However, this finding contrasts with other surveys that report Aboriginal
and Torres Strait Islander people consuming alcohol at risk levels twice that of
the non-Indigenous community.[51]

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47   *ibid.*
48   Australian Bureau of Statistics, *National Health Survey, Aboriginal and Torres Strait Islander
      Results, Australia 2001*, cat no 4715.0, p33, Table 14.
49   *ibid*.
50   *ibid*.
51   Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and
      Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, *op.cit*, p174.

a) Household income

Estimates of household income are adjusted by the Australian Bureau of Statistics according to 'equivalence factors' in order to recognise the impact of different household compositions and different household sizes.[52]

In 2001, the mean (or average) equivalised gross household income for Aboriginal and Torres Strait Islander people was $364 per week, or 62% of the rate for non-Indigenous people ($585 per week). The ABS has stated that 'this disparity reflects the lower household incomes received by households with Indigenous person(s), and the tendency for such households to be larger than other households and hence for the equivalised gross household income to be lower'.[53]

For Indigenous persons, income levels generally decline with increased geographic remoteness. In major cities and regional areas, average equivalised incomes for Indigenous persons were approximately 70% of the corresponding income for non-Indigenous persons. This declines to approximately 60% in remote areas, and just 40% in very remote areas.[54]

Between 1996 and 2001, average equivalised gross household income for Indigenous persons rose by 11% (after adjustment for inflation using the Consumer Price Index) compared with 13% for non-Indigenous persons. As a consequence, the relative income disparity between Indigenous and non-Indigenous persons slightly increased over the five year period (with Indigenous persons earning 62% the non-Indigenous rate in 2001, compared with 64% in 1996).[55]

b) Individual income

The median weekly gross individual income for Indigenous people in 2001 was $226 (a $36 or 19% increase from the 1996 rate). This compares to $380 for non-Indigenous people in 2001 (an increase of 28.4% from the 1996 figure of $296).[56]

The disparity between Indigenous and non-Indigenous people increased noticeably in relation to individual income over the decade 1991-2001. The Centre for Aboriginal Economic Policy Research have estimated that median individual income for Indigenous adults, expressed as a ratio to non-Indigenous adult income, fell from 0.70 in 1991 to 0.65 in 1996 to 0.59 in 2001 (where 1.0 indicates a situation of equality or parity).[57]

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52   For a full explanation of equivalisation factors see Australian Bureau of Statistics, *op.cit*, *Population characteristics: Aboriginal and Torres Strait Islander Australians 2001*, p81.

53   *ibid*.

54   *ibid*, p82.

55   *ibid*.

56   *ibid*, p88, Table 7.2.

57   Altman, J and Hunter, B, *Monitoring 'practical' reconciliation: Evidence from the reconciliation decade, 1991-2001*, Discussion Paper 254/2003, Centre for Aboriginal Economic Policy Research, Canberra 2003, pp 5-6, Tables 1 and 2.

Much of the difference is due to the large numbers of Aboriginal and Torres Strait Islander people who derive their income from unemployment benefits or who are engaged in Community Development Employment Projects. There are also a larger number of Aboriginal and Torres Strait Islander people in lower-skilled jobs. The ABS has also noted that Indigenous persons tend to earn less money than non-Indigenous persons within the same occupational categories. For example, in 2001 the median income of Indigenous persons in managerial positions was 81% of the non-Indigenous median; for professionals it was 73% and among labourers just 53%.[58]

Employment

a) Participation in the labour force

In the 2001 Census, 52% of Indigenous people aged 15 years and over reported that they were participating in the labour force (meaning that they were engaged in mainstream employment, participating in CDEP or unemployed). This compares to 53% in 1996. The participation rate was higher for Indigenous men (60%) than Indigenous women (45%).

The labour force participation rate for non-Indigenous people was 63% in 2001 (i.e. 11% higher than for Indigenous people). When adjusted to include only people aged 15-64 years, the disparity in labour force participation widens further with 54% of Indigenous people in this age group in the labour force compared with 73% of non-Indigenous people.

Table 10 shows that labour force participation rates for Indigenous people declines with remoteness, with a 57% participation rate in major cities compared with 46% in very remote areas.[59]

Table 10: Labour force participation, by remoteness, 2001[60]

	Indigenous Australians	Non-Indigenous Australians
Major cities	57.3	64.3
Inner Regional	52.0	59.9
Outer regional	50.7	63.3
Remote	50.5	71.8
Very remote	46.2	78.1

58   Australian Bureau of Statistics, *Population Characteristics: Aboriginal and Torres Strait Islander Australians 2001*, *op.cit*, p85.
59   *ibid*, p65.
60   *ibid*, p71,Table 6.1.

Table 12: Unemployment rates by age group, 2001[64]

	Indigenous Australians	Non-Indigenous Australians
15-17 Years	31.8	16.3
18-24 Years	27.3	12.8
25-34 Years	20.7	7.1
35-44 Years	16.0	5.7
45-54 years	11.7	4.9
55-64 Years	10.4	5.7

c) Employment and CDEP Participation

Indigenous people employed in 2001 had the following characteristics:

- 93% were employees, with four per cent self-employed and two per cent employers;
- 55% worked in the private sector and 23% in government;
- 52% were full time and 38% part time;
- 60% worked in low skill occupations, 21% in medium skill occupations and 15% in high skill occupations;
- 29% reported having a non-school qualification.[65]

In 2001, 18% of all Indigenous people who were classified as employed were engaged in Community Development Employment Projects (CDEP). The CDEP Scheme enables participants to exchange unemployment benefits for opportunities to undertake work and training in activities managed by local Indigenous community organisations. Compared with all Indigenous people who were employed, Indigenous people identified as CDEP participants were:

- twice as likely to work part time (74% compared with 38%);
- more likely to report working in a low skilled occupation (79% compared with 60%); and
- one third as likely to report having a non-school qualification (nine per cent compared with 29%).[66]

Education

The 1994 National Aboriginal and Torres Strait Islander Survey demonstrated that the lack of secondary and tertiary qualifications impacts negatively on an Indigenous person's ability to obtain ongoing, gainful employment.[67] The Centre for Aboriginal Economic Policy Research (CAEPR) also notes that if Indigenous

64   *ibid*, p70, Table 6.2.
65   Australian Bureau of Statistics, *Population Characteristics: Aboriginal and Torres Strait Islander Australians 2001*, *op.cit*, p68.
66   *ibid*.
67   Australian Bureau of Statistics, National *Aboriginal and Torres Strait Islander Survey 1994,op.cit*.

Australians do not 'keep up' with the rest of the Australian population in educational attainment this will result in Indigenous Australians being less competitive in the labour market and increase the risk of continuing the cycle of severe poverty and disadvantage.[68]

CAEPR reports there have been absolute improvements in Indigenous education outcomes such as Indigenous post-secondary education qualification rates between 1986 and 2001. They caution however that:

> It is of concern that relative to the rate of improvement for non-Indigenous Australians there has been little or no gain. This relative lack of improvement occurs not only in the proportion of the population with post-secondary qualifications, but also in the proportion of Indigenous teenagers staying at school. By any measure the Indigenous population remains relatively disadvantaged.[69]

a) Secondary education

Table13 below compares the highest level of secondary schooling completed by Indigenous and non-Indigenous people. It shows that 39.5 per cent of non-Indigenous Australians had completed Year 12 or equivalent compared with 16.8 per cent of Indigenous Australians. Further, one per cent of non-Indigenous Australians reported that they did not go to school compared with three per cent of Indigenous Australians.

Table 13: Highest level of schooling completed, 2001[70]

	Indigenous students (%)	Non-Indigenous students (%)
Year 8 or below	16.8	9.4
Year 9 or equivalent	13.8	7.6
Year 10 or equivalent	27.0	24.5
Year 11 or equivalent	9.2	9.9
Year 12 or equivalent	16.8	39.5
Still at school	5.1	3.5
Did not go to school	3.0	1.0
Not stated	8.4	4.6

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68   Hunter, B, and Schwab, G, *Practical reconciliation and recent trends in Indigenous education*, No. 249/2003, Centre for Aboriginal Economic Policy Research, Australian National University, p18.

69   *ibid*, p14.

70   Australian Bureau of Statistics, *Census of Population and Housing: Selected Indigenous Characteristics 2001, op.cit*, p57, Table 5.4.

Table 14 below shows the noticeable difference between Indigenous and non-Indigenous students' transition to non-compulsory Year 11 schooling. The retention rate for Indigenous students fell from nearly 90% in year 10 to 67% in year 11. By comparison, the rate for non-Indigenous students falls less dramatically from year 10 to year 11 from nearly 99% to 90%.

Table 14: Grade progression rates, 2001[71]

Year level	Indigenous students (%)	Non Indigenous students (%)
8-9	96.1	99.8
9-10	89.7	98.6
10-11	67.6	89.4
11-12	66.6	86.5

Graph 8 below indicates that there has been an increase in Year 12 retention rates for Indigenous students from 1997 to 2001 from 32% to 36% respectively. These rates remain substantially lower than the rates for non-Indigenous students.

Graph 8: Apparent year 12 retention rates for Indigenous and non-Indigenous students from commencement of secondary school[72]
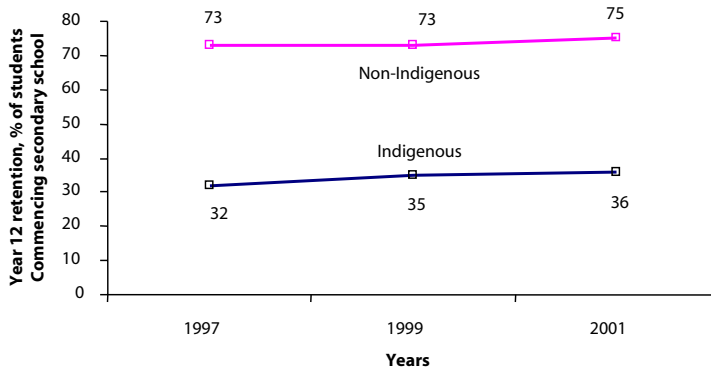
71   Department of Education, Science and Training, derived from National Schools Statistics Collection 4221.0, Australian Bureau of Statistics, p56.
72   Department of Education, Science and Training, derived from National Schools Statistics Collection 4221.0, Australian Bureau of Statistics, p57.

b) Post-secondary education

Census data for 2001 identifies people aged over 15 years who were attending a technical or further educational institution (such as a TAFE college) or a university or other higher educational institution. The ABS has reported that Indigenous people participate at a similar rate to non-Indigenous people in post-secondary education, although this varies across age groups, type of institution attended and across geographic regions.

Indigenous people were more likely to attend a TAFE and less likely to be attending university. Five per cent of all Indigenous people aged over 15 years attended TAFE in 2001, compared with three per cent of the non-Indigenous population. However, when this figure is restricted to people aged 15-17 years and excludes people still attending school, 14% of Indigenous people were attending TAFE compared with 22% of non-Indigenous people of the same age. Attendance rates at TAFE for Indigenous students aged 18-24 years were also lower than for non-Indigenous students (8% and 11% respectively).[73]

Indigenous people aged 15 years and over were less likely than non-Indigenous people of the same age groups to attend university (three compared with five per cent). For Indigenous peoples aged 18-24 years, this rate is significantly lower than for non-Indigenous people (five and 23% respectively).[74]

Table 15 below shows that Indigenous people are also less likely to have a post-graduate degree, bachelor degree, advanced diploma or diploma than non-Indigenous people.

**Table 15: Highest non-school qualification, Percentage of
persons aged 15 years and over, 2001**[75]

	Indigenous people (%)	Non-Indigenous people (%)
Postgraduate degree	0.28	1.91
Bachelor degree	2.26	10.23
Graduate Diploma	0.36	1.44
Advanced diploma/Diploma	2.49	6.29
Certificate	9.38	16.43
Other/Level not determined	2.76	3.56
No qualification	72.14	55.30
Not stated	10.33	4.84

73   Australian Bureau of Statistics, *Population Characteristics: Aboriginal and Torres Strait Islander Australians 2001*, *op.cit*, p48.
74   *ibid*.
75   *ibid*, p59, Table 5.6.

Housing and homelessness

a) Housing tenure

In 2001, households with Aboriginal or Torres Strait Islanders were much more likely to be renting than purchasing a home, or owning a home outright. Table 16 shows that 63% of households with Indigenous people were renting (compared with approximately 27% of other households); 19% were purchasing their home (compared with 27% of other households); and 13% owned their home outright (compared with 40% of other households).

Table 16: Housing Tenure, 2001[76]

	Households with Indigenous persons	Other households
Renting	63.5	26.6
Purchasing	19.4	27.0
Owner	12.6	40.5
Other/not known	4.5	5.9

Generally speaking, in remote areas, Aboriginal and Torres Strait Islander people are less likely to own their home than in urban centres. This, in part, reflects the type of tenures available to people on traditional Aboriginal and Torres Strait Islander lands.

b) Household size and overcrowding

Households with Indigenous persons tend to have more residents than other households. At the 2001 Census, there was an average of 3.5 persons in households with Indigenous people, compared with 2.6 persons in other households.

A measure of over-crowding is the availability of bedrooms for household residents. 16% of Indigenous households were accommodated in dwellings that required at least one extra bedroom, compared with three per cent of other households.

Both household size and the proportion of households requiring at least one additional bedroom rose with increased geographic remoteness. Average household size increased from 3.2 residents in major cities to 5.3 in very remote areas. Table 17 shows that the proportion of households requiring at least one extra bedroom rose from 11% in major cities and inner regional areas to 46% in very remote areas. By comparison, the rate of other households requiring at least one additional bedroom does not reach four per cent in any geographic region.

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76   Australian Bureau of Statistics, Population characteristics: *Aboriginal and Torres Strait Islander Australians 2001*, *op.cit*, pp93-4.

Table 17: Households requiring an extra bedroom, by Indigenous status and remoteness, 2001[77]

	Indigenous Australians	Non-Indigenous Australians
Major cities	11.0	3.8
Inner Regional	10.9	2.5
Outer regional	14.7	2.8
Remote	21.5	3.2
Very remote	45.8	3.9

The Steering Committee for Government Service Provision has reported that Indigenous people were 5.6 times more likely to live in overcrowded houses than non-Indigenous people. This rate rises to 18.8 times the non-Indigenous rate in very remote areas.[78]

c) Discrete Aboriginal and Torres Strait Islander communities

'Discrete' Aboriginal and Torres Strait Islander communities are those that comprise largely, or only, Aboriginal and Torres Strait Islander people. They are located in both urban and remote areas. Conditions in these communities were until very recently far poorer than conditions in non-Indigenous communities. The Community Housing and Infrastructure Needs Surveys (CHINS) have been carried out every two years since 1997 by the ABS. They are commissioned by ATSIC. They aim to provide a picture of life in discrete communities and allow government programs to improve conditions there to be monitored.

A total of 1,216 discrete Aboriginal or Torres Strait Islander communities were covered in the 2001 CHINS, These communities had 16,960 permanent dwellings and a total reported population of 108,085.[79]

While many problems with housing and infrastructure in discrete Indigenous communities were reported, a number of improvements since the 1999 CHINS were observed. These include a reduction in the proportion of people living in temporary dwellings, an increase in the proportion of permanent dwellings connected to water, power and sewerage systems and a reduction in sewerage system overflows and leakages.

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77   *ibid*, p105, Table 8.4.
78   Australian Bureau of Statistics, *Census of Population and Housing: Selected Indigenous Characteristics 2001, op.cit*, p57, Table 5.4.
79   Australian Bureau of Statistics and Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2003*, *op.cit*, p43.

Selected findings in relation to discrete Indigenous communities were that water quality was either not tested, or had failed testing in the 12 months prior to the survey, in 46% of the 213 Indigenous communities which had a population of 50 or more and were not connected to a town water supply. This is a decrease from 52% of such communities in 1999.[80] Further, overflows or leakages from sewerage systems in the 12 months prior to the survey occurred in 48% of Indigenous communities with a population of 50.[81]

Aboriginal and Torres Strait Islanders and criminal justice systems

The Royal Commission into Aboriginal Deaths in Custody reported in 1991. In the 12 years since there has been little progress in reducing the level of contact of Indigenous peoples with criminal justice processes.

a) Indigenous adult prisoners

In 1991, Indigenous people made up 14% of the total prison population. Consistently since 1999 Indigenous peoples have constituted approximately 20% of the prison population.[82] Figures for 1991-2002 are shown in Graph 9 below.

Graph 9:   Aboriginal and Torres Strait Islander prisoners in Australia 1992-2002

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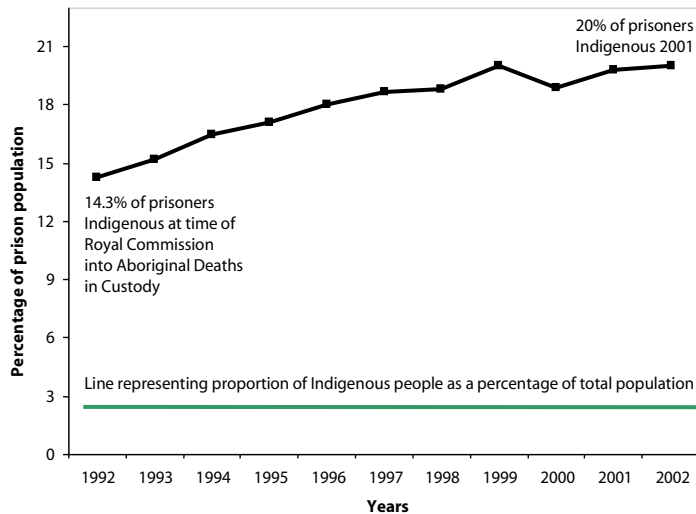
80   *ibid*, p46.
81   *ibid*, p47.
82   Australian Bureau of Statistics, *Prisoners in Australia – 30 June 2002*, Series: cat no 4512.0, Commonwealth of Australia, Canberra, p33, Table 15.

In June 2003, the highest rate of imprisonment for Indigenous persons was recorded in Western Australia (2,846 Indigenous persons per 100,000 adult Indigenous population) followed by New South Wales (2,128), the Northern Territory (1,768) and Queensland (1,710). The Northern Territory recorded the highest proportional increase in the Indigenous rate of imprisonment (33%) between the June quarters 2002 and 2003. Western Australia recorded the next highest proportional increase (12%). Tasmania, Queensland and Victoria recorded decreases in the Indigenous rate of imprisonment since the June quarter 2002 of 18%, three per cent and two per cent respectively. Nationally, the Indigenous rate of imprisonment was 16 times the non-Indigenous rate. The highest ratios of Indigenous to non-Indigenous rates of imprisonment were recorded in Western Australia and New South Wales with Indigenous rates of imprisonment 22 and 17 times the non-Indigenous rates respectively.[83]

On 30 June 2002, the night of the annual National Prisoner Census, there were 4,494 Indigenous prisoners in Australia. This is a rate of 1,806 prisoners per 100,000 population (compared with 148 prisoners per 100,000 for the total Australian population).[84] The age profile of Indigenous prisoners is younger than for the total prisoner population, with a median age of 28.9 years (compared with 31.2 years for all prisoners). On 30 June 2002, nearly six per cent of Indigenous males aged 25-29 years were in prison (compared with 0.6% of all males aged 25-29 years).[85]

A recent study in the state of New South Wales demonstrates the extent of contact of Indigenous people with criminal justice processes. Between 1997 and 2001, a total of 25,000 Indigenous people appeared in a NSW Court charged with a criminal offence. This constitutes 28.6% of the total NSW Indigenous population. In the year 2001 alone, nearly one in five Indigenous males in NSW appeared in Court charged with a criminal offence. For Indigenous males aged 20-24 years, this rate increased to over 40%.[86]

Recent statistics for the Northern Territory also indicate that Aboriginal people constitute between 75-78% of all prisoners, and up to 82% of juveniles in detention in the Territory in the 2002-2003 year.[87]

b) Indigenous women in corrections

Since the Royal Commission, the greatest relative increase in incarceration has been for Indigenous women. The Indigenous female prison population increased by 262% between 1991 and 1999 (compared with an increase in non-Indigenous

83   Australian Bureau of Statistics, *Corrective Services – June 2003 Quarter*, Series 4512.0, Commonwealth of Australia, Canberra 2003, pp2-3.
84   Australian Bureau of Statistics, *Prisoners in Australia, 30 June 2002*, cat no 4517.0, Commonwealth of Australia, Canberra 2003, p4.
85   *ibid*, p5.
86   Weatherburn, D, Lind, B, and Hua, J, '*Contact with the New South Wales court and prison systems: The influence of age, Indigenous status and gender*' 78 Crime and Justice Bulletin (NSW Bureau of Crime Statistics and Research) 1, 2003, pp4-5, www.lawlink.nsw.gov.au/bocsar1.nsf/pages/cjb78text
87   Northern Territory Government, *Northern Territory Quarterly Crime and Justice Statistics, Issue 4: June Quarter 2003*, Office of Crime Prevention, Department of Justice, Darwin, 2003 www.nt.gov.au/justice/ocp/pages/stats.shtml (12 October 2003).

women of 185%). In June 2003, Indigenous women were incarcerated at a rate 19.3 times that of non-Indigenous women. The highest rates of incarceration for Indigenous women were recorded in Western Australia (428.6 per 100,000), New South Wales (383.1 per 100,000) and South Australia (286.3 per 100,000).[88]

Graph 10: Aboriginal and Torres Strait Islander female prisoners 1995-2001[89]
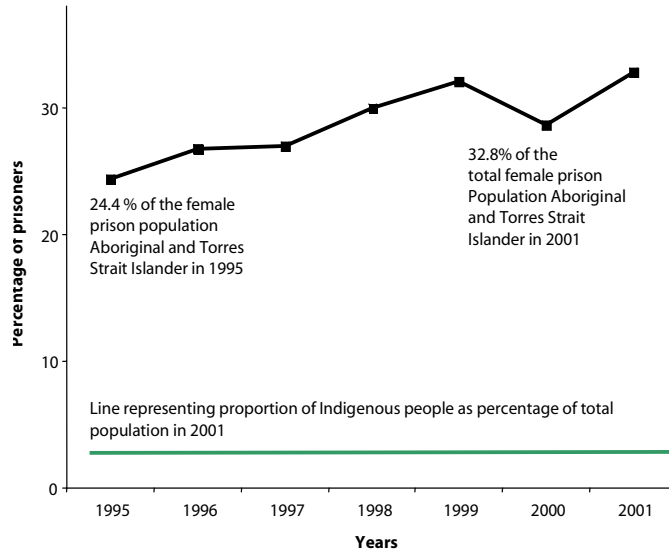
c) Indigenous juveniles and corrections

Indigenous juveniles (up to age 18) remain over-represented in criminal justice processes. Since 1997, Indigenous juveniles have consistently constituted 42% of all juveniles in detention nationally despite comprising less than four per cent of the total juvenile population.[90] In June 2002, Indigenous juveniles were detained at a rate almost 19 times that of non-Indigenous juveniles.[91] This compares to a rate of 13 times the non-Indigenous rate in 1993. Juvenile detention rates nationally are on the decline. Since 1998, rates of detention for Indigenous juveniles have declined faster than rates for non-Indigenous juveniles.[92]

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88   Australian Bureau of Statistics, *Corrective Services – June Quarter 2003*, *op.cit*, p22.
89   Australian Bureau of Statistics *Prisoners In Australia*, Cat no 4517.0, Commonwealth of Australia, Canberra, p33, Table 15.
90   Australian Bureau of Statistics and Australian Institute for Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, op.cit*, pp109-10.
91   Steering Committee for the Review of Government Service Provision, *op.cit*, para 3.63.
92   Australian Institute of Criminology, *'Juvenile corrective institutions: Indigenous status'* in Australian Crime: Facts and Figures 2002, AIC Canberra 2002, www.aic.gov.au/publications/facts/2002/fig76.html (15 October 2003).

Appendix 1

A recent study in Queensland has tracked the criminal trajectory of young offenders who have appeared in the juvenile justice system from 1994-95 onwards. The study tracks their rate of entry into the adult court system (through custodial and non-custodial orders served up to September 2002).[93] The study reported 86% of Indigenous juveniles who had been on supervised orders progressed to the adult criminal justice system (compared with 75% of non-Indigenous juveniles) and that 65% served a prison term (compared with 41% of non-Indigenous juveniles). By September 2002, 89% of Indigenous male juveniles on supervised orders had progressed to the adult system, with 71% having served at least one term of imprisonment.

The study reported there was an increased likelihood that those juveniles who were subject to a supervised justice order and had been the subject of a care and protection order would proceed to the adult criminal justice system, with 91% of all such juveniles having some contact with the adult system, and 67% having served at least one term of imprisonment.[94] The study concluded that 'over time, the probability of those juveniles on supervised orders in 1994-95 who are subject to multiple risk factors (e.g. male, Indigenous, care and protection order) progressing to the adult corrections system will approach 100 per cent'.[95]

d) Aboriginal and Torres Strait Islander deaths in custody

In the decade from 1990-1999, 115 Indigenous people died in custody. A significant feature of these deaths was that there were significantly fewer deaths in police custody (as opposed to in prisons) which tends to indicate that the implementation of recommendations of the Royal Commission relating to conditions and design of police custody had some impact.[96] Despite these improvements, Indigenous deaths in custody over the past decade still represented 18% of all deaths in custody. This figure has risen from 2000-2002 to 20% of all deaths in custody. In 2002, there were 14 Indigenous deaths in custody.[97]

e) Victims of crime

There is no national data on the extent to which Indigenous peoples are victims of crime. A study in New South Wales in 2001 reported that Indigenous people are 5.5 times more likely (6.2 times for Indigenous females) than non-Indigenous people to be a victim of a domestic violence related assault; 3.4 times (rising to 5.2 times for Indigenous females) more likely to be the victim of assault; 2.8 times (2.9 for Indigenous females) more likely to be the victim of a sexual assault;

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93 Lynch, M, Buckman, J and Krenske, L, *Youth justice: Crime Trajectories*, Australian Institute of Criminology and Queensland Crime and Misconduct Commission, AIC Trends and Issues in Crime and Criminal Justice, Issues Paper 165, September 2003, AIC Canberra 2003.

94 *ibid*, p4.

95 *ibid*, p2.

96 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2001*, *op.cit*, Human Rights and Equal Opportunities Commission, Sydney, 2002, pp15 -16.

97 Collins, L and Ali, M, *Deaths in Custody Australia – 2002*, National Deaths in Custody Program Annual Report, Australian Institute of Criminology, Canberra 2003, p25.

2.5 times (1.9 for Indigenous females) more likely to be the victim of murder; 1.4 times (same for Indigenous females) more likely to be the victim of a sexual assault against a child aged 0-15 years. Indigenous people were, however, less likely to be the victim of robbery. The study also reported that victimisation in violent crimes is also predominately the result of offending by other Aboriginal people.[98] This identifies the challenge to find solutions for Indigenous people being victims of crime, within the context of addressing the over-representation of Indigenous people in criminal justice processes.

A study in Western Australia in 2001 reported Indigenous people were nearly seven times more likely to be a victim of assault (and nearly 13 times for Indigenous females); seven times more likely to be a victim of homicide; and 3.2 times more likely to be a victim of sexual assault (rising to 3.3 times for Indigenous females).[99]

Child protection

There are three areas of child protection services for which national data is compiled:

- Child protection notifications, investigations and substantiations;
- Children on care and protection orders; and
- Children in out-of home care.

Children who are perceived to be in need of protection can come into contact with community services departments or child protection agencies (in the states and territories) by someone expressing concern about the welfare of a child or making a report to the department. From the reporting stage, if it is decided that the child is prima facie under risk of harm (neglect or abuse) the report is classified as a notification. Most notifications are investigated and classified as substantiated or not substantiated according to the degree of risk to the child. A range of services are then provided to that child and the child's family. In extreme cases, state departments can apply to the court for a care and protection order. Children can also be placed in out-of-home care, either temporarily or more long term, by order of the court.[100]

a) Child protection notifications, investigations and substantiations

In 2001-02, Aboriginal and Torres Strait Islander children (aged 0-16 years) were more likely to be the subject of a substantiation that non-Indigenous children in all states and territories except Tasmania. Table 18 below shows that the rate of Indigenous children who were the subject of a substantiation was 7.9 times higher than the rate for non-Indigenous children in Western Australia and Victoria; 7.2 times in South Australia; and 3.6 times in New South Wales.

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98 Fitzgerald, J and Weatherburn, D, '*Aboriginal Victims and Offenders: The Picture from Police Records*', NSW Bureau of Crime Statistics and Research, Sydney 2001, p1, www.lawlink.nsw.gov.au/bocsar1.nsf/pages/pub_atoc#aboriginality (15 October 2003).

99 Steering Committee for the Provision of Government Service Delivery, *op.cit*, Table 3.11.2.

100 For a detailed explanation of care and protection classifications and statistics see: Australian Institute of Health and Welfare, *Child protection 2001-02*, AIHW Canberra 2003, Chapter 1.

Table 18: Rate of children the subject of substantiations: by Indigenous status and state/territory, 2001-02[101]

State/Territory	Indigenous (rate per 1,000)	Non- Indigenous (rate per 1,000)	Indigenous to non-Indigenous ratio
NSW	15.3	4.3	3.6
Vic	48.1	6.1	7.9
Qld	14.3	7.9	1.8
WA	13.5	1.7	7.9
SA	31.6	4.4	7.2
NT	9.7	3.2	3.0
Tas	0.3	2.6	0.2
A.C.T	6.5	2.6	2.5

The pattern of substantiated abuse and neglect for Aboriginal and Torres Strait Islander children differs from the pattern for other children. Indigenous children were much more likely to be the subject of a substantiation of neglect. For example, in Western Australia 50% of substantiations for Indigenous children were of neglect (compared with 24% of other children).[102]

b) Children on care and protection orders

There were 4,264 Aboriginal and Torres Strait Islander children on care and protection orders nationally on 30 June 2002. This translates to a rate of 20.5 Indigenous children per 1,000. The rate for the rest of the population is 3.5 per 1,000. The rate for Indigenous children is 5.9 times the non-Indigenous rate.

Table 19 shows the rate of Indigenous children on care and protection orders across all states and territories, and comparisons to the rate for other children. It shows that the rate per 1,000 children is 10.4 times the non-Indigenous rate in Victoria; 8.0 times the rate in New South Wales; 7.9 times the rate in Western Australia; and 6.5 times the rate in South Australia.

101   *ibid*, p18, Table 2.9.
102   *ibid*, p18.

Table 19: Rate of children on care and protection orders: By Indigenous status and state/territory, 2001-02[103]

State/Territory	Indigenous (rate per 1,000)	Non-Indigenous (rate per 1,000)	Indigenous to non-Indigenous ratio
NSW	31.9	4.0	8.0
Vic	40.6	3.9	10.4
Qld	15.1	3.3	4.6
WA	15.7	2.0	7.9
SA	20.3	3.1	6.5
NT	5.2	1.9	2.7
Tas	2.8	4.0	0.7
A.C.T	18.1	2.9	6.2
Nationally	20.5	3.5	5.9

c) Children in out of home care

At 30 June 2002, there were 4,199 Aboriginal and Torres Strait Islander children in out-of-home care, an increase of 126 on the previous year. The rate of Aboriginal and Torres Strait Islander children in out-of-home care was 20.1 per 1,000 (compared with 3.2 per 1,000 for other children). In all states and territories except Tasmania the rate of Indigenous children in out-of-home care was higher than for other children.[104] Table 20 shows the rates per 1,000 for Indigenous and non-Indigenous children and the ratio of Indigenous to non-Indigenous children in out-of-home care. The ratio for Indigenous to non-Indigenous children was highest in Victoria, NSW, WA and SA.

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103   *ibid*, p34, Table 3.10.
104   *ibid*, p44.

Table 20: Rate of children in out-of-home care: by Indigenous status and state/territory, 2001-02[105]

State/Territory	Indigenous (rate per 1,000)	Non- Indigenous (rate per 1,000)	Indigenous to non-Indigenous Ratio
NSW	33.5	3.8	8.8
Vic	39.0	3.0	13.0
Qld	12.2	2.9	4.2
WA	17.1	2.2	7.8
SA	20.2	2.8	7.2
NT	4.4	1.6	2.8
Tas	3.6	4.6	0.8
A.C.T	15.3	2.5	6.1
Nationally	20.1	3.2	6.3

At 30 June 2002, 79% of Indigenous children placed in out-of-home care across Australia were placed in accordance with the Aboriginal Child Placement Principle. This Principle outlines a preference for placing Indigenous children with an Indigenous family. It places a preference for placements first with their extended families, second with their Aboriginal or Torres Strait Islander community and third with Indigenous people before placing the child with a non-Indigenous family.[106]

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105   *ibid*, p44, Table 4.8.
106   *ibid*, pp44-45, Table 4.9.

Appendix 2

The Council of Australian Governments' whole-of-government community trials initiative

This appendix provides a summary of the Council of Australian Governments (COAG) whole-of-government community trials initiative and its implementation in each state and territory.[1]

1. Background

In its communiqué of November 2000, COAG agreed on a reconciliation framework through which governments would work in partnership to advance reconciliation. The communiqué recognises that all levels of government have a responsibility to progress reconciliation and to improve the economic and social wellbeing of Indigenous peoples.

The Reconciliation Framework establishes three priority areas for government action:

- Investing in community leadership initiatives;
- Reviewing and re-engineering programmes and services to ensure they deliver practical measures that support families, children and young people. In particular, governments agreed to look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction; and
- Forging greater links between the business sector and indigenous communities to help promote economic independence.[2]

At its April 2002 meeting, COAG reaffirmed its November 2000 commitment to advance reconciliation and agreed to trial a whole-of-government cooperative approach in up to ten communities or regions across Australia:

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1   For further details, see the Indigenous Communities Coordination Taskforce website: www.icc.gov.au.
2   Council of Australian Governments, *Communiqué,* 3 November 2000, <www.dpmc.gov.au/docs/coag031100.cfm>, (4 December 2003).

The aim of these trials will be to improve the way governments interact with each other and with communities to deliver more effective responses to the needs of indigenous Australians. The lessons learnt from these cooperative approaches will be able to be applied more broadly. This approach will be flexible in order to reflect the needs of specific communities, build on existing work and improve the compatibility of different State, Territory and Commonwealth approaches to achieve better outcomes.[3]

It was subsequently agreed that there would be eight trial sites. The sites, and the Australian Government department that is leading each trial, are listed below:

1. *Murdi Paaki Region (New South Wales*):
   Department of Education, Science and Training;
2. *Wadeye (Northern Territory)*:
   Department of Family and Community Services;
3. *Shepparton (Victoria)*:
   Department of Employment and Workplace Relations;
4. *Cape York (Queensland):*
   Department of Employment and Workplace Relations;
5. *Anangu Pitjantjatjara Lands (South Australia):*
   Department of Health & Ageing;
6. *East Kimberley region (Western Australia):*
   Department of Transport and Regional Services;
7. *Northern Tasmania*:
   Department of Immigration, Multicultural and Indigenous Affairs; and
8. *The Australian Capital Territory*:
   Department of Environment and Heritage.

Within State and Territory jurisdictions, leadership of the trials rests with Premier and Cabinet (or Chief Minister's) departments and the portfolios with responsibility for Indigenous affairs except in NSW where the Department of Education and Training has head agency responsibility.

ATSIC is strongly supportive of the trials, and states that:

they provide a significant opportunity to identify more responsive and flexible ways in which governments can respond to the needs of Aboriginal and Torres Strait Islander peoples…. and [an] opportunity to examine the development of effective governance structures and processes, and to support and develop local leadership and build community capacity.[4]

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3   Council of Australian Governments, *Comminque,*5 April 2002, <www.pmc.gov.au/docs/coag050402.cfm>, (12 December 2003).

4   Quartermaine, L, *Correspondence from ATSIC with Aboriginal and Torres Strait Islander Social Justice Commissioner*, January 2004, p1.

2. Government coordination mechanisms for the trials

Overall coordination of the trials is done through the COAG Senior Officials Meeting (which consists of CEOs of Premiers and Chief Minister's Departments, and is chaired by the Secretary of the Department of Prime Minister and Cabinet). There are regular progress reports to this body.

At the federal level, the Minister for Immigration and Multicultural and Indigenous Affairs has overall responsibility for the trials. Federal government progress in the trials is advanced through four main government processes:

- First, meetings of Australian Government Ministers with program and policy responsibilities for Indigenous affairs;
- Second, meetings of Australian Government departmental secretaries (the Secretaries Group);
- Third, the Indigenous Communities Coordination Taskforce (ICCT) which implements the directives of the Secretaries Group; and
- Fourth, lead agencies, where Secretaries and their agencies' champion individual trial sites.

The Minister for Immigration, Multicultural and Immigration Affairs chairs the meeting of Australian Government Ministers. This group leads the whole-of-government process. The Secretaries Group meets once a month to oversee progress in the trial sites. The group promotes greater whole-of-government coordination across Australian government agencies and develops linkages with the State and Territory governments to improve service delivery to Indigenous communities.[5]

The Department of Immigration, Multicultural and Indigenous Affairs chairs this group. It includes membership from the following Australian Government agencies:

- Department of Education, Science and Training;
- Department of Health and Ageing;
- Department of Family and Community Services;
- Department of Employment and Workplace Relations;
- Department of Transport and Regional Services;
- Department of Environment and Heritage;
- Department of Prime Minister and Cabinet; and
- ATSIC.[6]

Reports are provided to the Prime Minister on the progress in the trials, in addition to reports to the Ministers.[7]

The Indigenous Communities Coordination Taskforce (ICCT) has been established to support the Secretaries Group and federal government agencies involved in the eight trials. The ICCT is located within the Department of

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5 Indigenous Communities Coordination Taskforce, *Who We Are*, Online at <www.icc.gov.au/ who_we_are > (10 December 2003).
6 ICCT, *Shared Responsibility, Shared future*, DIMIA, Canberra 2003, Attachment 1.
7 *ibid,* p5.

Immigration, Multicultural and Indigenous Affairs and is staffed by officers seconded from the various Commonwealth agencies involved in the initiative. The ICCT administers a Flexible Funding Pool (FFP) with a budget of $6 million over two years (from the 2003-04 Federal Budget) to facilitate projects within the trial sites. In supporting the Secretaries Group, the ICCT are involved in implementing the COAG initiative within Australian government agencies, working with State and Territory governments, monitoring performance , and providing feedback to and from Indigenous communities on the implementation of the initiative.[8]

For each trial site, a lead Australian government agency has also been selected. The lead agency has day-to-day accountability for progress in each of the trial sites. ATSIS does not have lead agency status in any of the eight regions. Instead it is designated partner agency status and plays a vital role in guiding and supporting activity in all of the trial sites.[9] The ICCT has noted that:

> The ATSIC Regional Councils should be a really important part of these trials. In some areas they are at the centre; in others, they are more of a support mechanism; but everywhere they are keen to be involved and to get more involved.[10]

The ICCT states that the commitment of government bureaucracies to the COAG initiative also differs from previous attempts to deliver more effective responses to Indigenous people given the governments high-level visibility and increased accountability to Indigenous people:

> What … is different at the bureaucratic level this time is the commitment across the board in a large number of key agencies of people at the top. There is a continuing and really strong commitment. People see that, because it is very visible. Secretaries have sort of put themselves on the line, I suppose, with communities in terms of being the person identified as their champion.[11]

ATSIC's approach has been to promote the Regional Councils as the preeminent source of Aboriginal and Torres Strait Islander advice in all trial sites. This is easier in regions where Regional Councils are the main source of leadership but has proved difficult where other organisations compete for the role, or where the trial site boundary differs from the Regional Council boundary.

ATSIC has stated that one the roles it has fulfilled is providing introductions between communities and government partners, and supporting these relationships. In some regions, it has set the framework from within which the trial has proceeded as a critical 'insider' (for example, Murdi Paaki and Cape York). ATSIC's role is made easier by the fact that in general the trials are being rolled out in an environment where there are already a number of agreement frameworks between ATSIC and state or territory governments.[12]

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8   *ibid,* p2.
9   Richardson, G, *Hansard*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 13 October 2003, p1304.
10   Hawgood, D, *Hansard*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 13 October 2003, p1305.
11   *ibid,* p1300.
12   Quartermaine, L, *op.cit,* p2.

Within State and Territory bureaucracies, a variety of mechanisms have been established to support the trials. Some are similar to the Australian Government arrangements, for example:

- In Queensland, the Premier established a CEO's Steering Committee to progress the reform process in Cape York through the Queensland Government's *Meeting Challenges, Making Choices* initiative which the COAG trial has built on. The CEO's Steering Committee also comprised senior Indigenous leadership from Cape York and, once the COAG trial started, the Australian Government. CEO's of Queensland government departments also act as champions for individual communities within Cape York.

- In Western Australia, an Indigenous Affairs Advisory Committee (IAAC) had been established to better coordinate Indigenous business across the State with membership from WA Government department CEO's and Chairs of ATSIC Regional Councils. After agreement on a COAG trial site, the Australian Government was also invited to be a member of the Committee.

- In the Northern Territory, the Chief Minister's Department coordinates across Territory agencies through regular meetings at the senior level. A tripartite steering committee of Australian Government and NT Government officials and representatives of the Thamarrurr Council from the Wadeye trial site has also been established to oversee progress in the trial site.

3. Improving government coordination and the 'Shared Responsibility' approach

The COAG Communiqué of April 2002 recognised that outcomes and management processes in Indigenous policy and service delivery need to be improved. The COAG initiative is intended to trial a different approach as current and past approaches have not always achieved the desired outcomes. A twofold method is proposed under the COAG initiative:

- governments must work together better at all levels and across all departments and agencies; and

- Indigenous communities and governments must work in partnership and share responsibility for achieving outcomes and building the capacity of people in communities to manage their own affairs.[13]

As stated by the Minister for Immigration and Multicultural and Indigenous Affairs:

> Put simply, COAG instructed the bureaucrats to get their act together and coordinate their efforts. In return, the Indigenous people were given more of a say and more responsibility for what happens in their communities.[14]

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13   ICCT, *Shared Responsibility, Shared future*, *op.cit,* p2.
14   Vanstone, A, (Minister for Immigration and Multicultural and Indigenous Affairs), *Very Encouraging Signs From Indigenous Pilots*, Media Release, 8 October 2003.

Appendix 2

The trials recognise the need for a different type of engagement and relationship to be developed between government and Aboriginal peoples and Torres Strait Islanders, with partnerships based on community-determined priorities. As stated by the ICCT the whole-of-government initiative supports:

- Different engagement between government and community; and
- Redefining the relationship between government and Indigenous communities based on what communities are saying.[15]

The objectives of the COAG trials set out a number of practical areas for government to reform its current operations. The objectives of the COAG trial are to:

- tailor government action to identified community needs and aspirations;
- coordinate government programmes and services where this will improve service delivery outcomes;
- encourage innovative approaches traversing new territory;
- cut through blockages and red tape to resolve issues quickly;
- work with Indigenous communities to build the capacity of people in those communities to negotiate as genuine partners with government;
- negotiate agreed outcomes, benchmarks for measuring progress and management of responsibilities for achieving those outcomes with the relevant people in Indigenous communities; and
- build the capacity of government employees to be able to meet the challenges of working in this new way with Indigenous communities.[16]

It is anticipated that the trials will encourage governments to modify the way they conduct their program and service delivery responsibilities, including by encouraging the pooling of funding, breaking down internal administrative barriers and improving the way government manage and award contracts.[17] The Minister for Employment and Workplace Relations has stated that:

> The whole-of-government initiative, which flows from an agreement at COAG last year, is designed to tackle this problem of the fragmentation of service delivery. In areas where the whole-of-government initiative is operating, one federal portfolio is coordinating the delivery of all federal services to Indigenous peoples in that area and it is working in close partnership with one state portfolio which is similarly coordinating the delivery of all state services to Indigenous people.[18]

The ICCT have noted that there is a lot of work to be done to improve coordination between the federal, state and territory governments in order to make them

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15   Indigenous Communities Coordination Taskforce, *Imagine What Could Happen If We Worked Together: Shared Responsibility and a Whole of Governments Approach,* Conference paper – The Native Title Conference, Alice Springs, 3 June 2003, <www.aiatsis.gov.au/rsrch/ntru/conf2003/papers/hawgood.pdf>, (24 December 2003).

16   Indigenous Communities Coordination Taskforce, *Trial Objectives*, online at: www.icc.gov.au/communities/objectives/, (29 October 2003).

17   Indigenous Communities Coordination Taskforce, *Imagine What Could Happen if we Worked Together: Shared Responsibility and a Whole of Governments Approach, op.cit.*

18   Abbott, T, *Hansard*, House of Representatives, 8 September 2003, p18892.

flexible and effective to community-identified needs.[19] The COAG whole-of-government approach is still in its early stages. It should not be assumed that existing Australian and State/Territory government funding parameters and restrictions have already been addressed under the COAG initiative.

The initial stage of the COAG initiative has been dedicated in part to developing, building or re-establishing effective networks and relationships between Indigenous people and government. The ICCT describes this stage as critical and building 'relationships of trust' between governments and Indigenous communities are essential to developing sustainable structures to support the initiatives.[20]

COAG's policy framework that underpins the trials is based on shared responsibility and partnership. The ICCT has stated that the 'Shared Responsibility approach will involve communities negotiating as equal parties with government'[21] and asserts that the wellbeing of Indigenous communities is shared by individuals, families, communities and government. All parties must work together and build their capacity to support a different approach for the economic, social and cultural development of Indigenous peoples.

One mechanism for formalising the partnership approach is through the negotiation of a *Shared Responsibility Agreement* (SRA) between government and Indigenous peoples. The purpose of the agreement is threefold. It:

- Sets out priorities identified with communities and agreed outcomes and benchmarks;
- Establishes partnership arrangements and describe each party's responsibilities; and
- Supports local governance and decision-making.[22]

A template of an SRA has been developed which could potentially be adapted to the circumstances of the Indigenous people in each trial site. The agreement outlines the parties to the agreement, objectives, local outcomes and priorities, agreed performance measurement and evaluation framework (including agreed benchmarks), access to data, dispute settling arrangements, processes for reviewing progress and the duration and variation provisions to the agreement.[23]

Three Shared Responsibility Agreements were finalised in 2003, with negotiations ongoing in relation to the remaining five trial sites. The current status of these agreements in each trial site is discussed later in this appendix.

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19   Hawgood, D, *Hansard*, Legal and Constitutional Legislation Committee, 4 November 2003, p10.
20   Hawgood, D, *Hansard*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 13 October 2003, p1294.
21   *ibid*.
22   Indigenous Communities Coordination Taskforce, *Imagine What Could Happen if we Worked Together: Shared Responsibility and a Whole of Governments Approach, op.cit.*
23   Indigenous Communities Coordination Taskforce, *Shared Responsibility Agreements*, online at: <www.icc.gov.au/communities/agreements>, (4 December 2003).

4. Performance Monitoring Framework for the trials

Australian Government and State and Territory officials have worked together to develop a broad framework for monitoring performance in the COAG trials. The framework, entitled 'National Performance Monitoring and Evaluation Framework', was finalised in November 2003. It is intended to capture information at the community/regional level, national level and within government bureaucracies. The information to be collected at each level includes the following.

- *Community and/or Regional Level Monitoring*

  Performance data collected at the community and/or regional level will be negotiated between government and Indigenous peoples and collected against agreed priorities, outcomes and benchmarks. An integral element of data collection at this level involves two-way communication between government and Indigenous people and the development of specific site indicators will be dependent on the negotiation and implementation of the *Shared Responsibility Agreement* in each of COAG trial sites.

- *National Level Monitoring*

  The local-level information will be aggregated to feed into the national level analysis, and if possible, will be aligned to the COAG Framework for Reporting on Indigenous Disadvantage. In addition to reporting under the headline and strategic change indicators developed by the Steering Committee for the Provision of Government Services, the monitoring framework will attempt to compare data against existing portfolio budget statements and other cross-government frameworks at the national level.

- *Government Level Monitoring*

  By monitoring the performance within the government bureaucracies, the initiative will identify whether the necessary structural changes are occurring to support greater flexibility and better coordination across and between the different levels of government. Agreed benchmarks will be established for the Commonwealth agencies involved in the trials to measure performance and the cost-effectiveness of operational and structural reform between the different levels of government.

In addition, the Australian Government intends to evaluate its own performance in the trials at 2 and 5 years. In a number of trial sites, plans are developing for site evaluation involving the Australian, State and Territory governments and community representatives.

Evaluation of the trials will be used to assess whether the COAG trials have lead to improved social and economic circumstances for Indigenous peoples and will inform decisions as to the potential of the approach being adopted more widely.[24] The ICCT is also developing a data tracking system, with a

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24   ICCT, *Shared Responsibility, Shared future*, *op.cit*, p3.

baseline data set and protocols. This 'Indigenous Communities Coordination Taskforce Database' will contain local-level performance and monitoring information across the eight trial sites.

5. Progress in each COAG whole-of-government community trial site

To date, the following seven trial sites have been publicly announced:

- Murdi Paaki region in New South Wales;
- Wadeye (Port Keats) in the Northern Territory;
- Shepparton in Victoria;
- Cape York in Queensland;
- Anangu Pitjantjatjara (AP) Lands in South Australia;
- East Kimberley in Western Australia; and
- Northern Tasmania.

There is one final trial site, to cover the entire Australian Capital Territory, which has yet to be publicly announced. The details of this site are expected to be made public in early 2004.

Initial Shared Responsibility Agreements have been negotiated and finalized in Murdi Paaki (New South Wales) and Wadeye (Northern Territory) during 2003. In Victoria, an agreement, called a Compact has been negotiated to underpin the trial in Shepparton. The next stage for these sites involves developing action plans, performance measures and benchmarks to implement the agreement. Negotiations on Shared Responsibility Agreements are continuing in the remaining five COAG sites.

There are significant variations between each of the COAG trial sites. They vary geographically across urban, regional and remote areas of Australia; and through the method of participation of Indigenous communities in the trials. The differences between sites are also reflected in different structures and processes for each trial site (with unique design, delivery and monitoring measures developed for each of the eight regions).

A summary of the progress in each of the eight COAG trial sites is provided below (commencing with the three trial sites which have signed agreements or compacts).

a) Murdi Paaki region (New South Wales)

The COAG trial site in NSW is the region comprising the ATSIC Murdi Paaki Regional Council. This is an area of 300 000 square km, covering one-third of NSW. It includes the communities of Bourke, Brewarrina, Broken Hill, Cobar, Collarenebri, Coonamble, Dareton, Enngonia, Goodooga, Gulargambone, Ivanhoe, Lightning Ridge, Menindee, Quambone, Tibooburra, Walgett, Weilmoringle and Wilcannia.[25]

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25 Indigenous Communities Coordination Taskforce, *Murdi Paaki trial site (NSW)*, online at <http://www.icc.gov.au/communities/locations/murdi_paaki> 10 December 2003.

A Shared Responsibility Agreement was signed by the ATSIC Murdi Paaki Regional Council, the Commonwealth of Australia and the Government of New South Wales in August 2003.

The Department of Education, Science and Training (DEST) is the lead agency for the Australian government, and a dedicated officer is located in Dubbo to work closely with regional staff and have greater access to the region. DEST reports that the early planning and negotiation stages of the COAG whole-of-government initiative has resulted in the capacity development of government and Indigenous peoples in the region.[26] The lead agency for the NSW government is the Department of Education and Training. Although structural policy and procedural changes have not occurred at this stage, the NSW government expects the community planning process to identify better ways of providing services which will be implemented under the COAG initiative as it develops.[27]

Under the agreement, the ATSIC Murdi Paaki Regional Council and the Community Working Parties (CWPs) it has established are recognised as the primary contact points for Indigenous peoples in the region. The Community Working Parties are the primary governance structure in the communities, with each comprised of a broad cross section of the local Indigenous community. To ensure these working parties are as representative as possible, the Murdi Paaki Regional Council is currently facilitating 'refresher' elections.[28]

All parties to the Shared Responsibility Agreement have committed to four key regional priorities. These are:

- Improving the health and wellbeing of children and young people;
- Improving educational attainment and school retention;
- Helping families to raise healthy children; and
- Strengthening community and regional governance structures.[29]

The establishment of effective local governance structures is seen as essential to the sustainability of any initiatives under the COAG trial. The Shared Responsibility Agreement details how the ATSIC Regional Council, Australian and New South Wales (NSW) governments will support the sixteen Community Working Parties (CWPs). The Agreement details the benchmarks, reporting arrangements and short and long term outcomes to provide secretariat and administrative support to the CWPs. This includes assistance from the Australian and state government to provide additional funding and training support to Community Development Employment Program (CDEP) workers to provide Secretariat services to each of the CWPs participating in the COAG trial.

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26   Minister for Education, Science and Training (Cth), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, November 2003.
27   Director General, New South Wales Department of Education and Training, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, 28 October 2003.
28   Minister for Education, Science and Training (Cth), *op.cit*.
29   *Shared Responsibility Agreement Between the Murdi Paaki Regional Council, the Commonwealth of Australia (through the Department of Education, Science and Training) and the State of New South Wales (through the Department of Education and Training),* August 2003, p2, available online at www.icc.gov.au/communities/locations/murdi_paaki, accessed 10 December 2003.

In addition to building governance structures, supporting children at schools has been identified as the critical priority in the region. Discussions are currently underway to identify one to three schools to be involved in a joint approach between the community, Australian government and NSW government to work together to focus on strengthening families, school retention and providing family support to children.[30]

The Shared Responsibility Agreement is a regional agreement. It is anticipated that individual shared responsibility agreements will be negotiated with each of the 16 Community Working Parties and the Government. A staged approach has been adopted to negotiating these agreements to account for the different capacities of each of the working parties. Six communities (Enngonia, Collarenebri, Goodooga, Ivanhoe, Weilmoringle and Wilcannia) have been selected to develop local agreements in the first instance.[31]

A number of structures have been established to facilitate the whole-of-government trial. A steering committee has been established with members from the ATSIC Murdi Paaki Regional Council, DEST, the ICCT, and NSW Government Cabinet Office, and the Department of Employment and Training. The Steering Committee is responsible for progressing regional priorities, addressing barriers and improving the delivery of services.[32] The Steering Committee is supported by a group of field officers who work across all levels of government and negotiate directly with the Community Working Parties. An Evaluation Framework Committee has also been established to facilitate the collection of baseline data and discus how the trial will be evaluated.[33]

b) Wadeye (Northern Territory)

The Wadeye whole-of-government trial site was announced in November 2002. Wadeye is the sixth largest town in the Northern Territory, approximately 420 kms south-west of Darwin, and is one of the largest Aboriginal communities in the Territory.[34] The *Shared Responsibility Agreement* (SRA) for the trial was signed on 21 March 2003 between the Commonwealth of Australia, the Northern Territory Government and the Thamarrurr Regional Council.

The Thamarrurr Regional Council was endorsed under the Local Government Act of the Northern Territory in early 2003 by the Northern Territory Parliament, and is the result of over six years of work by the land-owning groups to develop the unique governance structure of Thamarrurr.[35] The Thamarrurr region covers approximately 5000 kilometres and 20 land-owning groups are included within

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30   Hawgood, D, *Hansard*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 13 October 2003, p1298.

31   Minister for Education, Science and Training (Cth), *op.cit.*; Director General, New South Wales Department of Education and Training, *op.cit.*

32   Minister for Education, Science and Training (Cth), *op.cit.*

33   *ibid.*

34   Indigenous Communities Coordination Taskforce, *Wadeye Trial site (NT),* online at: <http://www.icc.gov.au/communities/locations/wadeye>, (10 December 2003).

35   Minister for Family and Community Services (Cth), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, December 2003. Since approximately 1996 the Northern Territory government and Wadeye community leaders have working towards the establishment of Thamarrurr as the regional governance authority for the Wadeye region.

the area, including Rak Diminin (referred to as Kardu Diminin) who are the traditional landowners of the Wadeye township.[36]

The Department of Family and Community Services is the lead agency for the Australian Government and the Office of Indigenous Policy (within the Department of the Chief Minister) leading the trial on behalf of the Northern Territory government. At this stage, the COAG trial has highlighted the need for stronger collaborative efforts between governments by encouraging funds pooling based on needs-based planning models and administrative reforms for alternative models of service delivery to reduce bureaucratic processes.[37]

The Northern Territory government has identified governance as the critical starting point in the whole-of-government initiative. They see the major challenge facing Indigenous communities in North Australia as how to bring together contemporary governance arrangements with culturally based systems of authority and decision-making.[38]

As stated by the Northern Territory Government:

> Previous [government] policies have resulted in largely imposed localized structures that have been designed for 'governing for dependence'. Without effective governing institutions, leaders who have cultural legitimacy and the ability for Indigenous institutions to exercise real decision making powers, the aims of …[the COAG trial] …will simply not be sustainable or of any long term social or economic benefit.[39]

In the trial, the Thamarrurr Regional Council has a government to government relationship with the Australian and Northern Territory governments. All three parties are given equal standing in the SRA, the key principles of which are based on cultural respect and the beliefs of the Thamarrurr.[40] Notwithstanding the mutual responsibilities of all governments (Australian, Northern Territory and Thamarrurr), Indigenous peoples have insisted that it wants the Australian and Northern Territory governments to 'take responsibility for its responsibilities'.[41] The Northern Territory government has stated that:

> Community leaders tell us that Governments often arbitrarily shove problems off onto community people to solve. They have made it clear they want Government field staff to offer options that involve practical solutions not just more problems.[42]

The *Shared Responsibility Agreement* outlines the three key regional priorities for the region. These are women and families; youth; and housing and

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36   *ibid*.
37   Office of Indigenous Policy, Department of the Chief Minister of the Northern Territory, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner,* 14 November 2003, (Herein: Office of Indigenous Policy (NT), *Correspondence*) .
38   *ibid.*
39   *ibid.*
40   *Shared Responsibility Agreement between the Commonwealth of Australia through the Department of Family and Community Services, the Northern Territory Government through the Department of Chief Minister Indigenous Policy Unit and the Thamarrurr Regional Council,* 21 March 2003, p2.
41   Office of Indigenous Policy (NT), *Correspondence, op.cit.*
42   *ibid.*

construction. As stated in the agreement, education, training and enterprise development are intrinsically linked to advancing the three regional priorities, and these needs will be central to any strategies developed in pursuit of the regional priorities. The importance of tackling issues in manageable components has been identified by all partners in Wadeye.

As stated by the Northern Territory government:

> The partners recognise up front the pressure to spread effort too thinly. The decision to focus on a common community chosen theme 'Give every kid a chance', tackle issues in biteable chunks and avoid trying to fix everything has proven to be the correct strategy.[43]

As advised by the ICCT, a number of local projects have been initiated under the three regional priorities, including the family program activities conducted by the Women's Centre, the employment and training of local people in the region[44] and the Economic Education Project. The 'Local Jobs for Local People Plan' strategy forms the blueprint for all future training and employment activity at Wadeye and the Economic Education Project provides information and resources on a range of issues to assist the Thamarrurr understand economic and money matters that impact on their daily lives.[45]

The governance structure to oversight and manage the COAG initiative comprises a Tri-partite Steering Committee. This committee was involved in the negotiations of the *Shared Responsibility Agreement* and will develop an appropriate evaluation methodology. Representatives from the three tiers of government are members on the Tripartite Steering Committee and Priority Working Groups have been established under the committee to concentrate on the three regional priority issues. As stated by the ICCT, the Priority Working Groups are developing action plans for the identified priorities outlined in the *Shared Responsibility Agreement* and the community members are using these groups to drive reforms and seek innovative ways to deal with community issues.[46]

The Priority Working Group action plans will specify the responsibilities of all level of governments, agreed performance indicators and benchmarks, and establish specific feedback and monitoring mechanisms. The action plans will be attached as schedules to the *Shared Responsibility Agreement* and endorsed by the Tripartite Steering Committee.

43   Westbury, N, *The Indigenous Community Coordination Pilot Trial: The Leadership Challenge for Governments in supporting Indigenous Governance*, Conference paper: Building Effective Indigenous Governance Conference, Jabiru, November 2003, p6, online at <www.nt.gov.au/ cdsca/indigenous_conference/web/html/papers.html>, (5 December 2003).

44   Indigenous Communities Coordination Taskforce, *Council of Australian Governments – Indigenous Whole of Governments Initiative, Report – September 2003*, op.cit, p2.

45   Hunter, S, *The COAG Trial: The Leadership Challenge for Governments in Supporting Indigenous Governance*, Conference paper: Building Effective Indigenous Governance Conference, Jabiru, November 2003, p6, online at <www.nt.gov.au/cdsca/indigenous_conference/web/html/ papers.html>, (4 December 2003).

46   Indigenous Communities Coordination Taskforce, *Council of Australian Governments – Indigenous Whole of Governments Initiative, Report – September 2003*, op.cit, p2.

The Northern Territory government's approach to the trial is based on their *Stronger Regions – Stronger Futures Strategy* which was released in 2003.[47] This outlines strategies for a focused collaborative approach between Indigenous peoples and government for the development of sustainable regional economies. A key component of the strategy is the Northern Territory government's commitment to the negotiation of Partnership Agreements and the establishment of Regional Authorities where existing community councils agree to amalgamate. Under this strategy, and aligning with the COAG whole-of-government initiative, the Northern Territory government has recognised the need to expand its skill base to support regional social and economic development. To achieve this, Northern Territory government officers will undertake training and development in community development skills and their future recruitment strategy will reflect this requirement.[48]

The Australian Department of Family and Community Services shares this view and believes that capacity building skills are needed within government:

> The pilot has also revealed a need for a deliberate approach to the fostering of community development, and community capacity building skills across government agencies. FaCS is attempting to get this issue on the national agenda.[49]

c) Shepparton (Victoria)

The Greater Shepparton region of Victoria was announced as a COAG trial site in July 2003. The region covers approximately 2,422 square kilometres of the Goulbourn Valley in mid-north Victoria. It is the fourth largest provincial centre in Victoria.[50]

A Compact was signed in September 2003 between the Aboriginal Community Facilitation Group (on behalf of the Aboriginal community of greater Shepparton), the Australian and Victorian governments, the Greater Shepparton City Council and the ATSIC Binjirru Council.[51] The Department of Employment and Workplace Relations (DEWR) is the lead Australian government agency for Shepparton, and a dedicated on-the-ground DEWR position has been appointed to lead its involvement in the initiative.[52]

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47   Department of Community Development, Sport and Cultural Affairs, *Building Stronger Regions Stronger Futures,* Northern Territory Government, Darwin 2003.
48   Office of Indigenous Policy (NT), *Correspondence, op.cit.*
49   Hunter, S, *The COAG Trial: The Leadership Challenge for Governments in Supporting Indigenous Governance*, *op.cit*, p4.
50   Indigenous Communities Coordination Taskforce, *Shepparton trial site (VIC)*, online at <www.icc.gov.au/communities/locations/shepparton>, 10 December 2003.
51   *Compact Outlining a New Collaboration Between the Aboriginal Community Facilitation Group on behalf of the Aboriginal Community of Greater Shepparton, The Federal government through the Department of Employment and Workplace Relations, The Victorian Government, The Greater Shepparton City Council and the ATSIC Binjirru Council*, 4 September 2003, online at < www.icc.gov.au/_data/page/13/Shepparton_Compact_-_final.pdf> (Herein, *Shepparton Compact*).
52   Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service (Cth), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, November 2003.

The Department of Victorian Communities is the lead agency for the Victorian government and believes the trials align closely with the Victorian Government's broad agenda to strengthen communities and deliver better services to all Victorians.[53] The Victorian government describes the COAG whole-of-government initiative as an evolutionary model and structures and processes will change as understanding develops about what constitutes an effective working relationship between Indigenous peoples and governments.[54]

The objectives and guiding principles of the Compact are based on developing an equal partnership between Indigenous peoples and government, which recognises the need for innovative changes and capacity development within all levels of government and community to support sustainable and long-term improvements in government and community practice.[55] This involves changes to the current planning, service delivery and monitoring approaches afforded to Indigenous peoples in the past by government agencies.

As stated by the Victorian Premier:

> We're committed to working closely with the Koori community so that Government services fit around their needs and their priorities. This is a radical change from the community having to organize itself around Government programs.[56]

Extensive community consultation occurred in Shepparton to identify the following community priorities and strategic areas for action in the Compact:

- Strengthening families;
- Governance;
- Strategic planning;
- Leadership strategy;
- Pride, image, social connectedness and respect strategy;
- Cultural enhancement;
- Education and Training strategy;
- Job strategy;
- Economic development strategy;
- Justice strategy;
- Community health strategy; and
- Housing strategy.[57]

The first priority – strengthening families – is central to all strategic areas. The next stage for the whole-of-government initiative in Shepparton involves developing action plans for each of these eleven priority action areas.[58] The

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53 Secretary, Department for Victorian Communities, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, November 2003.

54 *ibid.*

55 *Shepparton Compact*, *op.cit,* p1.

56 Minister for Employment and Workplace Relations (Cth), Premier of Victoria, Minister for Aboriginal Affairs (Vic) and Shepparton Indigenous Community Facilitation Group, *Shepparton's Indigenous Community Joins COAG Trial,* Joint Media Release, July 2003.

57 *Shepparton Compact*, *op.cit*, p7.

58 Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, November 2003.

action plans will form part of the Compact and will include performance measures, benchmarks and an evaluation framework for each of the priority areas.

These will be jointly developed by all partners to the Compact. Additional performance measures and benchmarks will be developed to measure and monitor community-government collaboration; improvements in community and government capacity to identify and respond to local issues; and improvements in Aboriginal community's social, economic and cultural sustainability.[59]

A number of community and government structures have been established to support the COAG whole-of-government initiative. These include the Aboriginal Community Facilitation Group and the Steering Group. The Aboriginal Community Facilitation Group represents the Indigenous people of Shepparton and is consulting with the wider community about the initiative and is developing a community plan and longer-term community structures for greater representation and involvement.[60] A community facilitator has been employed to assist in establishing the partnership, and works directly to the Aboriginal Community Facilitation Group. It is proposed that the position will be supported by a project team with seconded officers from the Victorian government, DEWR and the Aboriginal Community Facilitation Group. The Victorian government has financially committed to support the community's participation in the Whole of government Shared Responsibility Agreement (SRA) with $500 000 over three years to support the community's participation in the project.

The Steering Group consists of representatives from the Aboriginal Community Facilitation Group, the ATSIC Binjirru Chair and the Victorian, federal and local government (with government representation at Secretary/CEO level). The Steering Group will meet regularly to negotiate and implement policy, program and service delivery in response to the community-identified priorities and monitor progress.

Three broad (and overlapping) stages have been identified in the Compact for the trial to be achieved over a three year timeframe.[61] These stages are:

- *Phase 1: Development*. Focused on developing the community-government partnership and processes to manage the trial, and has included ways to ensure wide community participation and community engagement.

- *Phase 2: Initiation*. Focused on establishing new approaches and reshaping existing services in the context of the community's strategies and priorities.

- *Phase 3: Consolidation*. Focused on ensuring ongoing community-government collaboration for identifying and responding to Indigenous needs, aspirations and interests.[62]

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59   *Shepparton Compact*, *op.cit*, p5.
60   Secretary, Department for Victorian Communities, *op.cit*.
61   *Shepparton Compact*, *op.cit*, p8.
62   Secretary, Department for Victorian Communities, *op.cit*.

d) Cape York region (Queensland)

The Cape York region was the first COAG trial site to be announced, in September 2002. A Shared Responsibility Agreement is still being negotiated for the trial. The trial area covers approximately 150,000 square kilometres in Far North Queensland and includes the communities of Aurukun, Lockhart River, Mapoon (Old Mapoon – Marpuna), New Mapoon, Wujal Wujal, Coen, Hope Vale, Injinoo, Kowanyama, Laura, Napranum, Pormpuraaw and Umagico.[63]

The lead Commonwealth agency for the trial is the Department of Employment and Workplace Relations (DEWR) which has two dedicated DEWR officers have been located in Cairns to work with the Queensland government and Indigenous leaders, organisations and communities in the Cape. The DEWR positions have a brokerage role across Federal government agencies and will coordinate and facilitate appropriate programs and services to meet agreed community and regional priorities.

The lead Queensland government agency is the Department of Aboriginal and Torres Strait Islander Policy (DATSIP). The trial is being closely aligned with the implementation of the Queensland Government's *Meeting Challenges Making Choices* (Herein *Meeting Challenges*).[64] *Meeting Challenges* was released in April 2002 and is the Queensland Government's response to the Cape York Justice Study.[65] *Meeting Challenges* has eight key priority areas: alcohol and substance abuse and rehabilitation; governance; crime and justice; children, youth and families; health; education and training; economic development; and land and sustainable resources.

Under *Meeting Challenges*, the Queensland government is supporting a number of community-owned mechanisms to inform government policy and service delivery. The first of these was the development of Alcohol Management Plans and associated intervention measures by Community Justice Groups to reduce the instances of alcohol abuse and violence.[66] Alcohol management plans are currently in place in Aurukun, Bamaga, and Napranum and are being implemented in Lockhart River and Wujual Wujal.[67]

The Queensland strategy is supported by a number of high-level government structures, with the 'government champions' concept a central component.

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63   Indigenous Communities Coordination Taskforce, *Cape York trial site (Qld)*, online at <http://www.icc.gov.au/communities/locations/cape_york>, accessed 10 December 2003

64   Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, November 2003 (Herein Minister for Employment and Workplace Relations, *Correspondence)*.

65   The Cape York Justice Study was commissioned by the Queensland Government and released in November 2001. The CYJS recommends a number of strategies to address factors contributing to breaches of the law in Cape York communities, with a particular focus on strategies that target alcohol and substance abuse.

66   In the 2003-2004 Queensland Government budget $2.9 million was allocated for 34 community justice groups (CJGs) to established across Queensland. These CJGs will be located in Deed of Grant in Trust (DOGIT) communities and other non-DOGIT regions.

67   Director-General, Department of Aboriginal and Torres Strait Islander Policy (Qld), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner,* November 2003.

Each region under *Meeting Challenges* has been assigned a 'government champion' (a Chief Executive Officer of a Queensland government department) and their role is to manage negotiations at the highest executive level, streamline agency initiatives and formally support negotiation table participants.[68]

In addition to the government champions concept, the Cape York CEO Steering Committee was established in November 2001 to coordinate public sector policy and program reform in response to the Cape York Justice Study.[69] DEWR, ATSIS and the Indigenous Communities Coordination Taskforce (ICCT) represented the federal government at the Cape York CEO Steering Committee. This has since been replaced with the Meeting Challenges, Making Choices CEO Steering Committee.[70]

These State-level structures are mirrored at the regional level and the Queensland Government's Cape York Strategy Unit (CYSU) in Cairns is staffed by various Queensland Government agencies and its aim is to better align resources and efforts across Queensland government agencies and work directly with Indigenous communities in the Peninsula.[71] The Queensland government describes the CYSU structure as unique in forging partnerships with agencies, regional bodies, government and community leaders in a new context of reciprocity and cooperation.[72] A strong relationship has developed between the DEWR, ATSIS and the CYSU (with DEWR having located a senior staff member within the CYSU)[73] and a number of whole-of-government forums have been established to support collaborative arrangements between the federal and Queensland governments.

Through the COAG trial, governments are working both with Indigenous leaders at the regional level and with individual communities.

Discussions are continuing about the COAG whole-of-government regional priorities and a number of key issues have been identified. These include health and wellbeing (with a focus on substance abuse and family violence); education and economic development; home and community environment and; linking education, training and employment outcomes.[74] DEWR advises that progress is being made in developing a common understanding of what shared responsibility means in practical terms, improving governance arrangements in communities, identifying community priorities and implementing local-level strategies to address issues such as employment, education, economic development, health and money management.[75]

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68 *ibid*.
69 The Steering Committee is chaired by The Hon Steve Bredhauer , Queensland Minister for Transport and Minister for Main Roads and is attended by the Chief Executive Officers of Queensland Government agencies. The Steering Committee provides a forum for collaboration between agencies and information exchange on the progress of *Meeting Challenges* initiatives.
70 Discussions with Department of Employment and Workplace Relations, 20 January 2004.
71 Director-General, Department of Aboriginal and Torres Strait Islander Policy, *op.cit*.
72 *ibid*.
73 Discussions with Department of Employment and Workplace Relations, 20 January 2004.
74 Indigenous Communities Coordination Taskforce, *Council of Australian Governments – Indigenous Whole of Governments Initiative, Report – September 2003*.
75 Minister for Employment and Workplace Relations, *Correspondence, op.cit*.

Aside from discussions about regional priorities it is likely that community-level Shared Responsibility Agreements will be developed through the Queensland government's 'negotiation table' process.[76] The 'negotiation table' concept is a key policy platform of the Queensland Government's *Meeting Challenges* strategy, and involves a process of negotiation between Indigenous communities and government to identify community priorities and establish agreed strategies to respond to these issues. The negotiation table process commenced in late 2003 and the federal government participated on these community-government processes.

In addition to the *Meeting Challenges* strategy, there are a number of significant Australian Government and Queensland Government initiatives in the Cape York region which are compatible with the identified priorities of the COAG trial. These include the Primary Health Care Access Program (PHCAP) being run through Apunipima Cape York Health Council and the Cape York Partnerships Institute for Policy and Leadership (an academic centre developed between Cape York Indigenous organisations and Griffith University, and jointly funded by the Australian and Queensland Governments).[77]

e) Anangu Pitjantjatjara Lands (South Australia)

The Anangu Pitjantjatjara Lands (the AP Lands) were announced as the South Australian trial site in May 2003. The AP Lands cover approximately 103,000 square kilometres in the far north-west of South Australia and are protected under the *Pitjantjatjara Lands Rights Act 1981 (SA)*. The AP Lands are part of a larger cross-border region which covers some 350,000 square kilometres of South Australia, Western Australia and the Northern Territory, and which is the traditional lands of the Ngaanyatjara, Pitjantjatjara and Yankunytjatjara (NPY) peoples.[78]

The Department of Health and Ageing is the lead Australian Goverment agency for the initiative. The Department of Aboriginal Affairs and Reconciliation is the agency for the South Australian government.

Community consultations have occurred to determine the priorities for a regional Shared Responsibility Agreement.[79] The identified priorities include health and wellbeing with focus on substance misuse and the supply of healthy food, education, training and employment opportunities; better access to services such as banking and Centrelink, essential services and housing; and strengthening community governance.

To provide the overall direction to the AP Lands trial a joint COAG Steering Committee was established in early 2003. Its membership comprises representatives from the community, Australian and State governments and ATSIS. This Committee oversees the COAG agenda, and works in close

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76   *ibid*.
77   *ibid*.
78   Indigenous Communities Coordination Taskforce, *Anangu Pitjantjatjara (AP) Lands (SA)*, online at <http://www.icc.gov.au/communities/locations/ap_lands> accessed 12 December 2003.
79   Indigenous Communities Coordination Taskforce, *Council of Australian Governments – Indigenous Whole of Governments Initiative, Report – September 2003*.

cooperation with the Tier One group where common priorities are being addressed.

The draft SRA has been endorsed by the COAG Steering Committee and circulated for signing. Two projects addressing identified priorities have been agreed – the implementation of *Mai Wiru*, the regional stores policy, which seeks to address issues of pricing, nutrition and stores management training and the establishment of rural transaction centres.

The AP Lands Inter-government Inter-agency Collaboration Committee (APLIICC) between the Commonwealth, South Australian government, ATSIS and Anangu Pitjantjatjara Council is known as the Tier One group and was established in 1999 to better coordinate the delivery of services to the Anangu Pitjantjatjara Yankunytjatjara (APY) communities.[80] The committee was supported by a second tier of working groups composed of senior policy and project officers (the Tier Two working groups) and has recently been replaced with a number of 'task forces'. These taskforces implement the directives of the APLIICC and focus on a range of issues, including community health and wellbeing; arts and culture; economic and resources; community cohesion and safety; education and training; income support and infrastructure. Tier One now focuses on coordinating State government activities and links in with the COAG Steering Committee work. An Allocation Committee has been established and the fifteen-member committee has membership from Community Councils, Homelands Groups, Nganampa Health and the APY Women's Council. The group assists in the disbursement of new SA government funding for AP Lands and its establishment ensures all stakeholders have a clear understanding of funding available for the AP Lands and are involved in its distribution.

Further information about the AP Lands COAG trial is contained in Chapter 4 of this report on the responsive of governments to issues of petrol sniffing on the Anangu Pitjantjatjara Lands.

f) East Kimberley region (Western Australia)

The Western Australian COAG trial (formerly known as the Tjurabalan trial site) was announced in July 2003. It is situated in the east Kimberley region and encompasses the communities of Balgo, Bililuna, Mulan, Ringers Soak and Yagga Yagga.[81] The lead Australian government agency is the Department of Transport and Regional Services (DoTARS). Other partners in the trial include the Tjurabalan Native Title Land Aboriginal Corporation, ATSIC Wunan Regional Council, the local government Shire of Halls Creek and the communities of Billiluna, Yakka Yakka, Balgo, Kundat Djaru and Mulan. The Department of Indigenous Affairs is the lead agency for the WA government and a partner in the trial. The Halls Creek Shire Council is also a key partner and the local government involved in the trial.

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80   Minister for Aboriginal Affairs and Reconciliation, Minister for Correctional Services and Minister Assisting the Minister for Environment and Conservation (SA), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner,* November 2003.

81   Indigenous Communities Coordination Taskforce, *WA COAG trial site*, online at <http://www.icc. gov.au/communities/locations/wa_coag_site> accessed 11 December 2003.

The initial focus of the trial has been on establishing governance structures through which the parties can interact and to identify community consulting agents to help engage local communities. The Munjurla Reference Group was established to drive the trial, with support provided by an on-the-ground Secretariat. The reference group consists of two representatives from each community, traditional owners the ATSIC Wunan Regional Council and representatives from Australian, State and local governments at Secretary or CEO level.

The group has agreed on its roles and responsibilities, the establishment of a basic administration centre in the region, and series of activities for the Justice Participation Project.[82]

A working group has been established under the Munjurla Reference Group to progress decisions, and the first task has been to ensure effective communication channels are established and maintained between the Munjurla Reference Group and existing Community Councils.[83] The working group secretariat is comprised of a Community Initiatives Coordinator (jointly funded between DoTARS and the Department of Family and Community Services), an ATSIS-funded COAG officer and a WA state government officer.

A scoping study has also commenced (the Munjurla Scoping Study) to gather baseline data to provide a 'road map' for negotiating an agreement with the communities. It has been commissioned by ATSIS. A joint fund has been established under the auspice of the Halls Creek Shire Council to support consultations about the scoping study. In addition to the scoping study, this fund supports broader community engagement with government and reference group meetings with contributions made by the federal and Western Federal governments, and provides a vehicle for private sector contributions.[84]

A draft Shared Responsibility Agreement has been provided by the two lead agencies – the Department of Transport and Regional Services and the WA Department of Indigenous Affairs to all partners through the Munjurla Reference Group in December 2003. Further consultations will be held with local communities and partners to the trial to finalise an SRA. Some issues have already been identified for negotiation under the SRA, including the need for activities for children and young people; better education options; improved health services; improved policing; improved housing and transport infrastructure and amelioration of substance abuse.[85] Alcohol, substance abuse and community safety have been raised consistently as major areas for concern within communities.[86] Other issues in the region include the development of

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82   Secretary, Department of Transport and Regional Services, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, 25 November 2003.

83   *ibid*.

84   *ibid*.

85   Indigenous Communities Coordination Taskforce, *Council of Australian Governments – Indigenous Whole of Governments Initiative, Report – September 2003*.

86   Secretary, Department of Transport and Regional Services, *op.cit*.

economic opportunities in mining, land care and tourism that have arisen from the native title consent determination in August 2001.[87]

The need to change existing government processes and service delivery arrangements has been recognised by DoTARS:

> A new level of 'bureaucratic awareness' is also necessary – a way of looking beyond the boundaries of the existing envelope of government processes and seizing opportunities to make a difference for Indigenous communities in innovative ways.[88]

DoTARS states that while it is difficult to describe success in terms of real changes to the social and economic wellbeing of communities, there are anumber of early successes from the COAG trial. These successes focus on the relationship between Indigenous people and government. As stated by the Department:

> The successes to date have been about engaging the communities and governments to try things differently. This has meant building new relationships and developing a shared understanding of what it means to work together.[89]

The key lessons DoTARS have identified from the trial have focused on the need to build effective relationships with Indigenous peoples and ensure communities are supported in developing their capacities:

> Successful engagement with remote Indigenous communities requires a realistic and long-term approach, and for activities to occur at a pace the communities are comfortable with. Introducing change in severely disadvantaged communities requires that we first assist the communities to develop their capacity to engage. Time for this process needs to be factored into any planning.[90]

g) Northern Region of Tasmania

The Northern region of Tasmania was announced as the Tasmanian site for the COAG trial in August 2003. The region is a mix of urban and rural areas and covers Launceston, the Furneaux Islands group and the northern midlands covering Deloraine to the far west and Bicheno in the south. The Tasmanian Government's Aboriginal Family Violence Working Group has agreed in principle to the northern geographical region and the initiative is in the early stages of development.[91]

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87 Deputy Prime Minister and Minister for Transport and Regional Services (Cth), President Halls Creek Shire Council, Minister for Indigenous Affairs (WA), Chair of the Tjurabalan Native Title Land Aboriginal Corporation and Chair ATSIC Wunan Regional Council, *Tjurabalan and Region Indigenous Communities Join COAG Trial*, Joint Media release, July 2003.

88 Secretary, Department of Transport and Regional Services, *op.cit*.

89 *ibid*.

90 *ibid*.

91 Secretary, Department of Premier and Cabinet (Tas), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, November 2003.

The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) is the lead Australian government agency and a dedicated full-time officer was appointed to manage the initiative in June 2003.[92] The Department of Premier and Cabinet is the lead agency for the Tasmanian government, and an interim Commonwealth/State Steering Committee has been formed to improve coordination between the different levels of government and scope existing government funded services in the trial area to identify resources and areas of need.[93] Both levels of government are exploring ways agencies can coordinate their efforts to better meet the needs and interests of Indigenous peoples, and due to being in the early stages of the trial, no legislative or administrative amendments have been identified for implementation by the Tasmanian government.[94]

There were a number of reasons for the selection of the Northern region as the whole-of-government trial site. These included:

- Based on available data it has one of the highest incidences/reporting rates of domestic violence in the State (of all cultural groups);
- Currently no government funded Aboriginal specific family violence services exist in the region;
- The region has a supportive and well-connected Aboriginal and non-Aboriginal community organisation network; and
- There is a good geographical mix of urban and rural areas.[95]

Family violence and safety issues have been identified as themes for the trial and discussions are continuing between Indigenous people and the Australian and Tasmanian government about a shared responsibility agreement.

Early discussions indicate the COAG whole-of-government initiative will build on the initiatives of the Tasmanian government report on family violence – *ya pulingina kani – Good to See You Talk* and the criminal justice options paper on family violence, *Safe at Home*.[96]

Under the 'shared responsibility' concept a partnership model will be developed between government and Indigenous people, and the current consultation process in the Northern region in Tasmania will determine the model of Indigenous governance that will lead the community component of the trial.

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92   Office of Aboriginal and Torres Strait Islander Affairs. Department of Immigration and Multicultural and Indigenous Affairs (Cth), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner,* November 2003.
93   Secretary, Department of Premier and Cabinet (Tas), *op.cit*.
94   *ibid*.
95   *ibid*.
96   Minister for Immigration and Multicultural and Indigenous Affairs (Cth) and Premier of Tasmania, *Aboriginal People in Northern Region of Tasmania to join COAG Trials*, Joint Media Release, 28 August 2003.

h) Australian Capital Territory

The Australian Capital Territory (ACT) has not yet been announced publicly as a COAG trial site. It is expected that it will be formally announced in early 2004.

The Department of Environment and Heritage is the lead Australian government agency for the initiative. The trial will be implemented across the entire region of the ACT. The Chief Minister's Department is the lead agency for the ACT government.

Indigenous community consultations and negotiations have been undertaken for the trial, which culminated in a two day workshop held in September 2003. Forty Indigenous leaders and representatives from Indigenous community organisations attended.

The September 2003 meeting obtained Indigenous community endorsement for the trial and the themes to be progressed under the shared responsibility approach.[97] The initial proposed focus of the trial on youth issues and education have evolved through the consultation process to an holistic approach being pursued under the concept of 'The Living Web – Keeping the Web Alive'. This framework is multifaceted and encompasses justice, employment, youth, culture, education, housing, health and aged care. Three overarching themes have emerged from these discussions: social and emotional well being; culture and learning; and capacity building for all.[98]

It was agreed at the September 2003 workshop that a federation of Indigenous community organisations would constitute the community governance model in the ACT. An Indigenous working group has been established as an executive group to the community federation model and will represent the community interests in negotiating the Shared Responsibility Agreement.[99]

A shared responsibility agreement is expected to be finalised during 2004 and will outline the agreed responsibilities between the Indigenous Working Group, Australian and ACT government and ATSIC. The Minister for Environment and Heritage states that close working relationships have been developed between the two tiers of government and both Governments have established closer relationships with the Indigenous communities in the ACT.[100]

A monitoring and evaluation framework for the trial is currently being drafted, and will align with the national reporting measures set by the Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA) and the Productivity Commission.[101]

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97   Chief Executive, Chief Ministers Department (ACT), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner,* October 2003.

98   *ibid*.

99   Minister for the Environment and Heritage (Cth), *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner,* November 2003.

100   Minister for the Environment and Heritage (Cth), *op.cit.*

101   *ibid*.

Appendix 3

Extract from findings of Coronial inquests on petrol sniffing on the Anangu Pitjantjatjara Lands

This appendix contains an extract from the findings of Coroner Chivell in the inquests of the South Australian Coroner's Court into the deaths of three Anangu on the Anangu Pitjantjatjara Lands between 1999-2001.[1] The full findings of the Coroner can be accessed online at the following address: http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_ken.finding.htm

1. Executive Summary

1. This inquest concerns the deaths of three people, Kunmanara Ken who died on 3 August 1999, Kunmanara Hunt who died on 27 January 2001 and Kunmanara Thompson who died on 26 June 2001.

2. All three deceased died as a result of inhalation of petrol fumes. The mechanism of death was strikingly similar in each case, namely that the deceased took a can containing petrol to bed with them, and continued to sniff until they died from respiratory depression with a possible additional component of asphyxia.

3. Each person had marks on his or her face indicating that the head was resting on the tin, which had been shaped to fit the contours of the face and achieve a seal.

4. Each of them was of mature age (27, 25, 29 years) and each had been sniffing petrol for more than ten years, thereby justifying the description 'chronic sniffers'. Each had led lives characterised by illness, hopelessness, violence and alienation from their families and community. Each had parents and family who did their best to stop them sniffing, and who have endured much suffering and grief as a result of their inability to do so, and the consequent death of a loved family member.

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1   Chivell, W, *Findings of the South Australian State Coronial Inquest into the Deaths of Kunmanara Ken, Kunmanara Hunt and Kunmanara Thompson*, 6 September 2002.

5.   Petrol sniffing is endemic on the Anangu Pitjantjatjara Lands. It has caused and continues to cause devastating harm to the community, including approximately 35 deaths in the last 20 years in a population of between 2,000 and 2,500. Serious disability, crime, cultural breakdown and general grief and misery are also consequences.

6.   The phenomenon is still not well-understood, and although considerable research has been undertaken, Governments still do not have a clear idea how many people are involved, and the extent to which they have already suffered serious harm.

7.   The extent of the problem diminished somewhat in the mid 1990's, and it is apparent that there was a reduction in effort towards tackling the problem. It has been apparent since at least 1998 that the problem was returning, and that the prognosis was bad, but little has been achieved to restore the effort to pre-1995 levels, let alone take it further.

8.   Clearly, socio-economic factors play a part in the general aetiology of petrol sniffing. Poverty, hunger, illness, low education levels, almost total unemployment, boredom and general feelings of hopelessness form the environment in which such self-destructive behaviour takes place.

9.   That such conditions should exist among a group of people defined by race in the 21st century in a developed nation like Australia is a disgrace and should shame us all.

10.   Many attempts over the years to combat petrol sniffing have been unsuccessful. Anangu continue to try and care for sniffers even when they continue to sniff, and even after they are violent and disruptive to their families and the community. Some Anangu are concerned that if they try and stop sniffers they will harm them, or that the sniffers may harm themselves. They look to the broader community to help them deal with a problem which has no precedent in traditional culture.

11.   The South Australian Government established the Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee ('APLIICC') to tackle the wider issues and the Petrol Sniffing Task Force ('PSTF') to specifically tackle petrol sniffing. The terms of reference of APLIICC were established in September 2001. It has held several meetings, as have its sub-committees, but the 'big meeting' with Anangu on the Anangu Pitjantjatjara Lands is yet to occur.

12.   The Commonwealth Government took over responsibility for aboriginal health from the Aboriginal and Torres Strait Islander Commission ('ATSIC') in 1995. It has conducted a review and established the Central Australian Cross Border Reference Group on Volatile Substances Use. That Group has also met several times but is yet to develop a 'framework for action'.

13.   The establishment of these bodies met with a generally favourable response, although there have been criticisms about failure to consult, and delay. Both bodies have taken far too long to act. Their meetings are too far apart, and still seem stuck in the 'information gathering' phase. There is no need for further information gathering, and there is a vast untapped pool of professional expertise to be utilised. What is missing is prompt, forthright, properly planned, properly funded action.

14.   Many of the people in the field complained of the remoteness of bureaucracies, and their incessant demands for written reports on performance outcomes and so forth. It would be better if the bureaucracies appointed trusted representatives who could monitor and evaluate projects and programmes for themselves, rather than insisting that dedicated professionals in the field continue to spend valuable time and resources preparing reports in order to ensure continued funding. It would also be preferable, for a variety of reasons, if programmes are funded on a triennial basis, as recommended by the Royal Commission into Aboriginal Deaths in Custody.

15.   A variety of intervention strategies to combat petrol sniffing were analysed at this inquest. Clearly a successful strategy must have broad community support.

16.   Strategies at three different levels are called for:
- Primary interventions – to reduce recruitment into substance abuse;
- Secondary interventions – seeking to achieve abstinence and rehabilitation;
- Tertiary intervention – providing services to the permanently disabled.

17.   Strategies include:
- Youth activities through provision of youth workers;
- Neuropsychological testing;
- Outstations / Homelands;
- Avgas;
- Legal sanctions;
- Night patrols;
- Programmes for 'Children At Risk';
- Disability services;
- Secure care facilities;
- Policing;
- Crime Prevention strategies.

18.   The implementation of any one of those strategies by itself is likely to fail, but introduction in combination with a variety of others will give a better chance of success.

19.   All these strategies must be accompanied by strategies to address socio-economic issues such as poverty, hunger, health, education and employment.

20.   The implementation of these strategies will doubtless involve difficult problems such as recruitment and retention of suitable staff. Creative solutions will need to be found. Anangu cannot be expected to find all of the human and other resources to tackle these problems. They need the assistance and input of non-Anangu professional people to tackle these problems directly, and to give them the power and skills to take up the task in due course.

21.   Anangu who gave evidence at the inquest were not consistent in their views about the role they felt police should take, although I detected a general feeling that they wanted more protection and security from the South Australia

Police Department ('SAPOL'), particularly during the acute phase of incidents involving petrol sniffers.

22.   The evidence of non-Anangu witnesses was unanimous that a much greater, permanent SAPOL presence on the Anangu Pitjantjatjara Lands is called for. This was accepted in principle by SAPOL following a review in 1998, although the recommendations of the review have still not been implemented.

23.   The Community Constable Scheme is a worthwhile initiative, and could be improved with further training of community constables. However the scheme has significant limitations because of cultural constraints, and the fact that the Community Constables are members of very small communities. Their strengths lie in diffusing acute situations, and acting as liaison and intelligence officers.

24.   Ongoing training, support and supervision of community constables by sworn police officers is needed, and this will require a permanent SAPOL presence on the Anangu Pitjantjatjara Lands. The decision to station two police officers at Umuwa on a rotation basis is supported, but a review to assess the adequacy of this measure is necessary in due course.

25.   The presence of SAPOL officers in the Anangu Pitjantjatjara Lands could fulfil a valuable community development role in addition to policing issues.

26.   The establishment of SAPOL officers at Marla is significantly under-strength, and more needs to be done to attract officers to the area.

27.   Police are considerably inhibited from dealing in a more effective way with offending in the Anangu Pitjantjatjara Lands at present by the lack of appropriate detention facilities, lack of personnel, the distances involved, and the lack of sentencing options available to the courts.

28.   Operation Pitulu Wantima conducted in January and February 2000 demonstrated that police can be effective in interdiction and suppression of petrol sniffing, and of crime generally, if they have a more sustained presence on the Anangu Pitjantjatjara Lands…

12.   Royal Commission into Aboriginal Deaths in Custody (RCIADIC)

12.1   A comparison of the issues which have arisen at this inquest with the findings of the RCIADIC published in 1991 reveals that the recommendations of that inquiry have still not been fully implemented. An exhaustive analysis of those recommendations (339 in all) is beyond my capacity in the context of this inquest, but an examination of some specific recommendations is instructive:

> **Recommendation 88:** That Police Services in their ongoing review of the allocation of resources should closely examine, in collaboration with Aboriginal organisations, whether there is a sufficient emphasis on community policing. In the course of the review, they should, in negotiation with appropriate Aboriginal organisations and people, consider whether:
>
> a) There is over-policing or inappropriate policing of Aboriginal people in any city or regional centre or country town;

b) The policing provided to more remote communities is adequate and appropriate to meet the needs of those communities and, in particular, to meet the needs of women in those communities; and

c) There is sufficient emphasis on crime prevention and liaison work and training directed to such work (page 51).

Recommendation 113: That where non-custodial sentencing orders provide for a community work or development program as a condition of the order the authorities responsible for the program should ensure that the local Aboriginal community participates, if its members so choose, in the planning and implementation of the program. Further, that Aboriginal community organisations be encouraged to become participating agencies in such programs (page 55).

Recommendation 195: That, subject to appropriate provision to ensure accountability to government for funds received, payments by government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding (page 74).

Recommendation 238: That once programs and strategies for youth have been devised and agreed, after negotiation between government and appropriate Aboriginal organisations and communities, governments should provide resources for the employment and training of appropriate persons to ensure that the programs and strategies are successfully implemented at a local level. In making appointment of trainers preferences should be given to Aboriginal people with a proven record of being able to relate to, and influence, young people even though such candidates may not have academic qualifications (page 84).

Recommendation 265: That as an immediate step towards overcoming the poorly developed level of mental health services for Aboriginal people priority should be given to complementing the training of psychiatrists and other non-Aboriginal mental health professionals with the development of a cadre of Aboriginal health workers with appropriate mental health training, as well as their general health worker training. The integration of the two groups, both in their training and in mental health service delivery, should receive close attention. In addition, resources should be allocated for the training and employment of Aboriginal mental health workers by Aboriginal health services (page 91).

Recommendation 286: That the Commonwealth Government, in conjunction with the States and Territories Governments and non-government agencies, act to co-ordinate more effectively the policies, resources and programs in the area of petrol sniffing (page 94).

12.2   It can be seen that simply by analysing the facts and circumstances of these three deaths, and the circumstances which still exist on the Anangu Pitjantjatjara Lands at the moment, those recommendations of the RCIADIC have not been complied with, either by Commonwealth or State Governments.

12.3   This is a great tragedy which I have no doubt will, if it is not addressed, lead to severe disability and further deaths, not to mention continuing social dislocation, crime, loss of culture and general community degradation and loss.

13.   Recommendations

13.1   I am empowered by section 25(2) of the Coroners Act, 1975, to make recommendations following an inquest if, in my opinion, to do so may 'prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest'.

13.2   Having considered the evidence in this matter and the detailed and very helpful submission of counsel, I consider that it is appropriate to make the following recommendations:

> 1.   That Commonwealth, State and Territory Governments recognise that petrol sniffing poses an urgent threat to the very substance of the Anangu communities on the Anangu Pitjantjatjara Lands. It threatens not only death and serious and permanent disability, but also the peace, order and security of communities, cultural and family structures, education, health and community development.
>
> 2.   Socio-economic factors such as poverty, hunger, illness, lack of education, unemployment, boredom, and general feelings of hopelessness must be addressed, as they provide the environment in which substance abuse will be resorted to, and any rehabilitation measures will be ineffective if the person returns to live in such conditions after treatment.
>
> 3.   The fact that the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture, is clear. Governments should not approach the task on the basis that the solutions must come from Anangu communities alone.
>
> 4.   The Commonwealth Government, though the Central Australian Cross Border Reference Group, and the South Australian Government through the Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee, should accelerate their efforts to find solutions to these issues and get beyond the 'information gathering' phase forthwith. They should use the extensive knowledge, published material and professional expertise that is already available.
>
> 5.   It is particularly important that Inter-Governmental coordination of approach be a high priority in order to avoid the fragmentation

of effort and confusion and alienation of service-providers which are features of current service delivery to Anangu communities.

6.   Commonwealth and State Governments should establish a presence in the region, if not on the Anangu Pitjantjatjara Lands then at least in Alice Springs, of senior, trusted officials, in order to develop local knowledge, personal relationships with service providers and receivers, and some expertise and experience in cross-cultural issues, rather than relying on infrequent meetings with ever-changing officials in order to communicate with Anangu. Such officials should be invested with sufficient authority to manage and assess programmes on an ongoing basis, so that service providers can have a line of communication with the funding body, and some certainty as to future arrangements.

7.   Many of the strategies for combating petrol sniffing which have been tried in the past should not be discarded simply because they failed to achieve permanent improvements. Some of them might be regarded as having been successful for as long as they were extant. For any strategy to be successful will require broad Anangu support. Most strategies will fail unless they are supported by others as part of a multi-faceted approach. Strategies should be aimed at primary, secondary and tertiary levels, as I have outlined in these findings.

8.   In particular:

8.1   The proposal before the Tier 1 Committee of APLIICC to appoint four youth workers and a coordinator for the Anangu Pitjantjatjara Lands should be implemented forthwith. Practical issues such as employment conditions, housing conditions and the like must be dealt with. The situation should be monitored to ensure that this number is sufficient to meet the needs of all communities;

8.2   A programme of further research and evaluation of people who have been sniffing petrol, on a neurological and neuropsychological basis, should be instituted so that assessments can be made about the suitability of candidates for rehabilitation, and the level of need for disability services on the Anangu Pitjantjatjara Lands can be evaluated;

8.3   The establishment of a culturally appropriate Homelands/Outstation programme should be undertaken to provide a venue for community respite, recreation, skills training, education and the like in the context of abstinence from petrol sniffing. Such establishments should not be considered as rehabilitation facilities for chronic petrol sniffers;

8.4   The Commonwealth Government should continue to resource the Avgas initiative through the Comgas scheme, as it represents a successful interdiction strategy without which petrol would be much more widely available;

8.5   The range of sentencing options available to courts sitting in the Anangu Pitjantjatjara Lands must be increased. The SA Department for Correctional Services must provide supervisors so that bonds, undertakings and community service obligations can be enforced. The establishment of Outstations/Homelands, and a secure care facility would also provide options to courts;

8.6   The Public Intoxication Act should be amended so that it applies on the Anangu Pitjantjatjara Lands. There should be a declaration that petrol or hydrocarbons, or the vapours thereof, are a drug for the purposes of the Act. A secure care facility would provide a 'sobering up' facility to which detainees could be taken pursuant to the Act;

8.7   Although night patrols have not received support on the Anangu Pitjantjatjara Lands to date, the possibility of encouraging and supporting Anangu to establish them as part of an overall crime prevention strategy in consultation with SAPOL should be explored;

8.8   APLIICC should consider the future role of FAYS in relation to children at risk on the Anangu Pitjantjatjara Lands, and in particular whether their role needs to be expanded into a much more proactive community development role;

8.9   The level of services for disabled victims of petrol sniffing should be urgently upgraded. The recommendations of Mr Tregenza's review should receive urgent consideration (it has been in the hands of the SA Government for six months or more) and implemented where practicable;

8.10 Planning for the establishment of secure care facilities on the Anangu Pitjantjatjara Lands should commence immediately. These facilities must be reasonably accessible from all communities on the Anangu Pitjantjatjara Lands, and have a multi-functional role to provide facilities for detention, detoxification, treatment and rehabilitation as outlined in these findings;

8.11 A much more energetic, concerted and creative approach to recruitment of suitably qualified experienced and appropriate staff will need to be undertaken in order to attract people to employment in the implementation of these strategies;

8.12 The implementation of the recommendations of the SAPOL review into the Community Constable Scheme, in particular concerning establishment of a permanent, sworn SAPOL presence on the Anangu Pitjantjatjara Lands, should be undertaken forthwith. The proposal to station two officers at Umuwa is a start, but the abandonment of the proposal to establish another base in the Western area, at Murpatja, should be reconsidered in order to provide an appropriate degree of training, support, and supervision of Community Constables;

8.13 Further measures need to be taken by SAPOL to ensure that the staff establishment at Marla is at full strength. Although efforts made to address this issue to date are recognised, the station remains under-strength, and is unable to provide an effective policing service on the Anangu Pitjantjatjara Lands, at present, resulting in under-reporting of crime and a general disenchantment with the level of police service among Anangu;

8.14 The interventions described above must be implemented as part of an overall multi-faceted strategy, and not piecemeal, as they are interdependent and stand a high chance of failure if they are introduced separately;

8.15 The recommendations of the Royal Commission into Aboriginal Deaths in Custody should be re-examined by both Commonwealth and State Governments as a check to assess the degree to which those recommendations have still not been implemented.