

Chapter 1



Introduction

This report covers the period from 1 July 2004 to 30 June 2005. It considers two issues that are of major concern to Aboriginal and Torres Strait Islander peoples.

The first is progress in achieving lasting improvements in the health status of Aboriginal and Torres Strait Islander peoples. Chapter 2 of the report examines existing commitments and processes for addressing the health inequality experienced by Aboriginal and Torres Strait Islander peoples, and sets out a human rights framework for achieving such equality within a generation.

The second is progress in the introduction and implementation of new arrangements for the administration of Indigenous affairs at the federal level. Chapter 3 of the report considers these new arrangements from the perspective of whether they ensure the effective participation of Indigenous peoples in decision making that affects their daily lives.

Both issues go to the core of the commitments made by all governments to address the situation faced by Aboriginal and Torres Strait Islander peoples. They seek to establish whether the rhetoric heavy commitments of governments are being matched with solid action as well as transparent and accountable processes, and on a basis of true partnership with Indigenous communities.

A new approach to Indigenous affairs

The past year has seen the beginning of a new approach to how governments interact with Indigenous communities. The federal government has embarked on its new arrangements for service delivery to Indigenous peoples, and the states and territories have also begun to reform their processes so they are aligned with the whole of government approach adopted at the federal level. All governments have made commitments, through the Council of Australian Governments, to work collaboratively in accordance with the principles of the federal government's new arrangements.

It has been questioned by some whether these processes are in fact 'new'. My overriding impression is that the federal government's approach is based on repudiating the model of the past and focusing on addressing what it perceives to be the failures of previous arrangements, such as through the operation of the Aboriginal and Torres Strait Islander Commission (ATSIC). Consequently, a significant focus of the past year has been on dismantling the old structures and replacing them with new government machinery.



The benefit of this new approach is that it places responsibility for government performance squarely on mainstream government departments. They have no one else to blame for ongoing failures.

It also focuses on building a direct relationship between government and Indigenous peoples. The so called 'old' approach had seen governments walk away from a direct relationship with Indigenous people themselves. In the place of government, Indigenous peoples have had to deal with organisations and people of varying capacity. Governments had avoided any responsibility or accountability for outcomes for Indigenous peoples by simply passing the buck. The determination of the government to redress this situation is highly significant.

The problem with this approach is that it is based on an interpretation of what happened in the past that does not necessarily match the reality. On this basis, the problems of the past have been repudiated – but so have the advances. The reasons for failures in the past to improve the life circumstances of Aboriginal and Torres Strait Islander peoples are more complex than those that can be fairly attributed to ATSIC. Aboriginal and Torres Strait Islander health is a perfect illustration of this – an area of government activity over which ATSIC had no responsibility since the mid-1990s and in relation to which there has been no consistent forward trend over the past decade.

For Indigenous peoples, the challenge of the new arrangements is to ensure that they have an appropriate voice in determining the priorities that face their communities. This requires processes to match the stated commitments of governments to ensure Indigenous participation and representation. A related challenge is ensuring that rigorous accountability mechanisms are put in place so that success can be readily identified and failures addressed.

But Indigenous communities are not only facing significant challenges through the federal government's new arrangements. As outlined in Chapter 3, there are also a number of processes underway to reform how governments deliver particular types of services or interact with Indigenous peoples. These changes, which are additional to the new arrangements, are broad in scope and touch nearly every area of interaction between Indigenous communities and governments and the lives of Indigenous peoples.

For example, a community in Queensland or the Northern Territory may not only be coming to terms with the abolition of their regional representative voice through ATSIC; it may also be faced with changes to the operation of their local council as new models of governance are introduced. Local service delivery organisations and councils may also be facing similar challenges over the coming year, with proposed reforms to the federal act governing Aboriginal associations and councils. This is coupled with reforms to how the Community Development Employment Projects scheme operates, efforts to align this scheme more closely with employment programs and business development, and proposed reforms relating to heritage protection, land rights, native title and funding for local participation in schooling.

This list does not touch on reforms to laws of general application which will also impact on Indigenous peoples – such as reforms to workplace relations legislation governing conditions of work and bargaining power, and changes to telecommunications in rural and remote communities to name but two.



The cumulative impact of all reform processes which impact on Indigenous peoples is overwhelming. It places Indigenous communities in a precarious situation. The absence of culturally sound representative arrangements exacerbates this and limits the ability of Indigenous peoples' voices to be heard on the national stage and to influence decision-making processes.

One of the main findings of Chapter 3 in relation to the roll out of the new arrangements is that this particular vulnerability of Indigenous peoples has not been adequately acknowledged and addressed through the new processes to date.

Governments have notionally committed to ensuring appropriate representation of Indigenous peoples and processes for their participation, and so this absence may prove to be temporary. But it also has the potential to be lasting in its impact. The implications of this situation need to be considered fully and addressed as a priority concern by governments. The recommendations in this report reflect this.

There are also challenges in meeting the government's intention that the new arrangements be based on direct engagement with communities. For such engagement to be equitable, communities must have sufficient information and support to ensure that they can participate and make decisions with their free, prior and informed consent. This is a core human rights obligation.

One issue that I have been particularly troubled by over the past year is the absence of processes to support communities to be in a position where they can participate in such an informed way. Critical to the success of these new arrangements is community education.

The annual rate of growth of the Indigenous population has been estimated at 2.3% compared with approximately 1.2% for the non-Indigenous population. It is estimated that the number of Indigenous peoples will grow to more than 550,000 by the year 2011 from 458,500 people at the 2001 Census. The average median age of an Indigenous person in Australia is 21 years compared with 36 years for the non-Indigenous population. In 2001, 39% of Indigenous people were under 15 years of age, compared with 20% of the non-Indigenous population; and 57% of the Indigenous population were under the age of 25 years.¹

Providing *rights and responsibilities education* for this body of Indigenous young people, particularly as they near working age, will be an important part of the shift away from a 'welfare mentality' that must occur in many communities if the new arrangements are to be sustainable. Young people must learn that welfare is not an absolute entitlement, and that the human rights framework envisages that individuals are responsible to themselves and their communities.

The new arrangements provide significant opportunities for Indigenous communities. There is a need, however, for building the capacity of communities so that they can engage meaningfully in the new processes and understand their rights and responsibilities in any negotiation processes that they engage in.

This is a feature missing from current policy frameworks and I will continue to work with governments to address this over the coming year.

¹ Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Commonwealth of Australia, Canberra, 2005, p3.



Developments over the past year – work of the Social Justice Commissioner

The past twelve months have also been the first of my term as Commissioner. I have prepared two *Social Justice Reports* and *Native Title Reports* in this period, which set out a comprehensive agenda for how I will perform my functions and provide a substantial overview of the new arrangements.

I have been able to engage productively with governments about the reports. I anticipate that funding will shortly be provided to convene a national roundtable on Indigenous women in corrections, in accordance with a recommendation in the *Social Justice Report 2004*. I have also established a regular process for dialogue with key stakeholders and the government on the new arrangements and native title issues.

I have been pleased with a number of developments which, if not developed in response to these reports, reflect on the concerns raised in them. I hope to continue to have a robust and frank relationship with the government to achieve improvements in their processes and the principled basis on which they operate.

During the period I have also travelled regularly to Indigenous communities across Australia and consulted and listened to the views of Indigenous Australians on the impacts of the implementation of the new arrangements.

In addition to completing these reports, I have also completed a range of other activities in my capacity as Social Justice Commissioner or Race Discrimination Commissioner. Some of these are listed in Text Box 1 below.

Text Box 1: HREOC projects on Indigenous issues, 2004-05

In addition to the production of the *Social Justice Report* and *Native Title Report*, HREOC has undertaken a range of activities during the past year which relate to the rights of Indigenous peoples.

Report on the impact of cognitive disabilities on Indigenous juveniles and the criminal justice system

The Federal Attorney General's Department provided funding to undertake a short research project examining the issues affecting Indigenous young people with a cognitive disability and/or mental health issue in the juvenile justice system. The funding provided for a series of meetings and consultations with relevant state and territory government agencies and a National Roundtable held on 15 June 2005 with a range of representatives from the community and university sector as well as state government agencies.

The final report of the project has now been submitted to the Attorney-General's Department and is available online at www.humanrights.gov.au/social_justice/. It highlights some of the current policy and program approaches to addressing issues relating to cognitive disabilities, as well as including the outcomes of the National Roundtable. The report provided a series of strategies and areas for future research including possible research on the impact of diversionary programs on Indigenous young people with a cognitive disability and/or mental health issue; the links between early disengagement with the education system and early contact with the juvenile justice system; the impact of Otitis Media on cognitive ability and early disengagement with the education system and early offending behaviour.



Engaging communities workshop

In late 2004, I entered into a partnership with the United Nations Permanent Forum on Indigenous Issues to co-host a workshop on engaging with Indigenous communities as part of the International Conference on Engaging Communities, convened in Brisbane in August 2005.

After a full day workshop, attended by over 150 delegates, a workshop report was prepared which identified principles for engaging with Indigenous communities. This report will be distributed internationally through the Permanent Forum on Indigenous Issues at the United Nations, and is available from the Social Justice Commissioner's website.

Aboriginal and Torres Strait Islander mental health issues

In May 2005 the Human Rights and Equal Opportunity Commission lodged a submission to the Senate Select Committee on Mental Health. The Social Justice Unit contributed to this submission with an outline of the mental health concerns of Aboriginal and Torres Strait Islander people. The submission urged the Senate Committee to undertake specific consultations with Indigenous groups and communities in order to reach a deeper understanding of the issues.

The submission provided an overview of the lengthy history of Indigenous mental health policy in Australia as well as urging the government to release and implement the *National Strategic Framework for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Well Being 2004-2009*. The submission also called for the government to ensure broad access to services delivered and that services developed for Indigenous people and communities are done so in consultation with Indigenous people and primary health care providers.

I was also involved in consultations with the Acting Disability Discrimination Commissioner, the Mental Health Council of Australia and the Brain and Mind Institute's review of the mental health system in Australia. The report of this review, *Not For Service* was published in October 2005.

In October 2005 I also participated in a conference hosted by Djirruwang Aboriginal Health Program at Charles Sturt University, Wagga Wagga. Forums such as these are integral to my work as Social Justice Commissioner as it presents me with opportunities to work with Indigenous Mental Health workers to gain a deeper appreciation of the issues concerning Indigenous peoples and social and emotional well being.

International Indigenous rights issues

My Office has continued to maintain an active interest in international developments on the rights of Indigenous peoples. In the past year I have participated in the working group meetings on the Draft Declaration on the Rights of Indigenous Peoples at the United Nations; as well as contributed to submissions by HREOC to the Committee on the Elimination of Racial Discrimination and Committee on the Rights of the Child, for their examination of Australia in March and September 2005 respectively.

I have also convened a number of workshops with Indigenous peoples to discuss progress on the Draft Declaration; as well as co-hosted a seminar with the International Law Association (Australian Division) on the application of the right to self-determination to Indigenous peoples. Information about these activities is available from the Social Justice Commissioner's website.

In December 2004 I lead an Australian delegation to the Yunnan Province of China to conduct a workshop on minority peoples and the Right to Development.



30th anniversary of the Racial Discrimination Act 1975

In my capacity as acting Race Discrimination Commissioner, I have also undertaken a number of projects to celebrate the 30th anniversary of the *Racial Discrimination Act 1975*. The main project has been *Voices of Australia*. This project has involved engaging with the community to hear people's experiences of race relations, diversity and living together in contemporary Australia. It has also involved the preparation of other information about the Racial Discrimination Act, in a range of print, audio and website resources. Associated with this project, I have also worked with the National Rugby League to promote tolerance and anti-racism in sport.

A second project to celebrate the anniversary was the production of the fourth edition of *Face the Facts*, a publication which aims to provide clear, factual information that addresses prevailing myths about refugees, migrants and Indigenous peoples.

For further information on activities of the Social Justice Commissioner and Race Discrimination Commissioner, visit: www.humanrights.gov.au/

I have also accepted an invitation to be Ambassador for White Ribbon Day on 25 November 2005. This day marks the United Nations International Day for the Elimination of Violence Against Women. All Australians are encouraged to wear a white ribbon to express their condemnation of violence against women. As I shall be stating during events to commemorate White Ribbon Day, there is a need for greater involvement of Aboriginal and Torres Strait Islander communities in activities related to this day. This is in light of the high rates of violence in Indigenous communities and the significant efforts that are being undertaken by many Aboriginal and Torres Strait Islander women and men to address this.

Contents of the *Social Justice Report 2005*

This year's report has three chapters and four appendices of supporting information.

Chapter 1 introduces the report and provides an overview of major issues that impacted on Indigenous peoples during the reporting period.

Chapter 2 sets out a human rights based approach to addressing Aboriginal and Torres Strait Islander health inequality. It proposes a campaign for health inequality with two main sets of targets – equal enjoyment of health infrastructure and universal access to primary health care within 10 years; and equalisation in life expectancy within 25 years.

Addressing health inequality is not insurmountable, although it will require long term action and commitment. Committing to a 25 year time frame to achieve this is feasible. It is also a long time in which to accept that inequality would continue to exist. But history shows us that an absence of targeted action and a contentedness that we are 'slowly getting there' is not going to result in the significant improvements in health status that Aboriginal and Torres Strait Islander peoples deserve – simply by virtue of the fact that we are members of the human race and of the Australian community.

We have an unprecedented opportunity to address health inequality due to the solid work in the health sector over the past decade and the new coordinated service delivery processes. But we do need to augment current efforts and match programs and resourcing to the level of need. Chapter 2 sets out what needs to



be done. My Office will continue to work with Indigenous health professionals and governments to see how this campaign can be achieved.

Appendix 4 supports this chapter, and provides a detailed overview of the content of the right to health.

Chapter 3 of the report then considers progress over the past twelve months in implementing the new arrangements for the administration of Indigenous affairs. In considering these developments, this chapter focuses on whether the new arrangements enable the effective participation of Aboriginal and Torres Strait Islander peoples at all levels of decision-making and service delivery that affect their lives. From a human rights perspective, Aboriginal and Torres Strait Islander peoples must be assured the opportunity to participate effectively in all aspects of policy development and service delivery by governments that impact upon their communities. This chapter responds to the 10 follow up actions identified in the *Social Justice Report 2004*.

This chapter is also supported by three appendices. **Appendix 1** provides a chronology of events relating to the introduction of the new arrangements over the past twelve months. It provides details of the various events and announcements made during this period, with links to assist in obtaining further information.

Appendix 2 provides an overview of the 35 ATSIC Regional Council Plans. These Plans are the legacy of the ATSIC regional structure and identify the priorities of Indigenous peoples in each region of the country. They are an invaluable resource and one that should be more heavily relied upon in the roll out of the new arrangements and in guiding service delivery. I have included these summaries due to the difficulties in obtaining the plans (which are not generally available online) and as a tool to assist communities as they enter processes to establish their priorities. Indigenous peoples have consistently expressed to me that they do not want to again have to tell governments what they want and need in priority order when they have recently been through a similar process with their Regional Council.

Appendix 3 then provides a summary of all Shared Responsibility Agreements struck in the past financial year. This provides a snapshot of the content of agreements, as well as the type of obligations being agreed by both government and communities.

There are also 5 recommendations and 5 follow up actions identified throughout the report.

Looking forward – a focus on engagement practices

Over the coming year, my Office will continue to focus on issues that have been identified in the *Social Justice Report 2004*, this latest report as well as my Native Title Report.

The *Social Justice Report 2004* set out priorities for my term as Social Justice Commissioner. I have already commenced to focus attention on some of the issues raised, such as health inequality and mental health.

That report provided a preliminary review of the new arrangements for administering Indigenous affairs at the federal level over the first six months of their operation. In particular, it identified a number of preliminary issues that would need to be addressed if the new processes are to work.



The *Social Justice Report 2005* provides an overview of how these new arrangements are now operating after 12 months. This year's report builds on the preliminary analysis of the *Social Justice Report 2004* by highlighting the details of how the new processes have been put into operation and providing guidance on the application of human rights standards to these processes.

Next year's report will explore further the issues identified over these two reports. In particular, it will focus on the practical efforts that have been made to support Aboriginal and Torres Strait Islander communities to engage effectively with government. This includes processes for consultation and negotiation adopted by government departments and different levels of government; and processes to support Indigenous decision making.

There are a number of useful programs that have been underway that highlight key issues relating to the capacity of Indigenous communities to be able to participate on an informed and equal basis in the new arrangements. These include the work of Reconciliation Australia on Indigenous governance, which is currently being further developed with the preparation of an Indigenous governance toolkit;² research projects being undertaken on agreement making processes, most notably through the development of an agreements database through the University of Melbourne;³ and the Indigenous mediation and facilitation project which will shortly conclude and that has been run by the Native Title Research Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies.⁴

This latter project supports best practice in Indigenous decision-making, conflict management and agreement-brokering with Indigenous communities. The lessons learned through the research and consultations for this project provide useful guidance for the new whole-of-government policy approaches including Shared Responsibility and Regional Partnership Agreements. I am particularly interested in the findings of the research which identify the importance of 'arms length' process experts to support Indigenous communities to achieve sustainable outcomes.

My Office will focus particularly on how the lessons from such projects, and the COAG trials, are informing policy to ensure appropriate engagement with Indigenous peoples. At present, there remains a distance to travel to ensure that the new arrangements – which ultimately affect all aspects of policy making relating to Indigenous peoples – are fair in process and outcome for Indigenous peoples.

2 See further: www.reconciliation.org.au/reconciliation/projects.html#icgp.

3 For details of the Treaties, agreements and negotiated Settlements project see: www.atns.net.au/.

4 For details of this project see: www.aiatsis.gov.au/rsrch/ntru/ifamp/index.html.