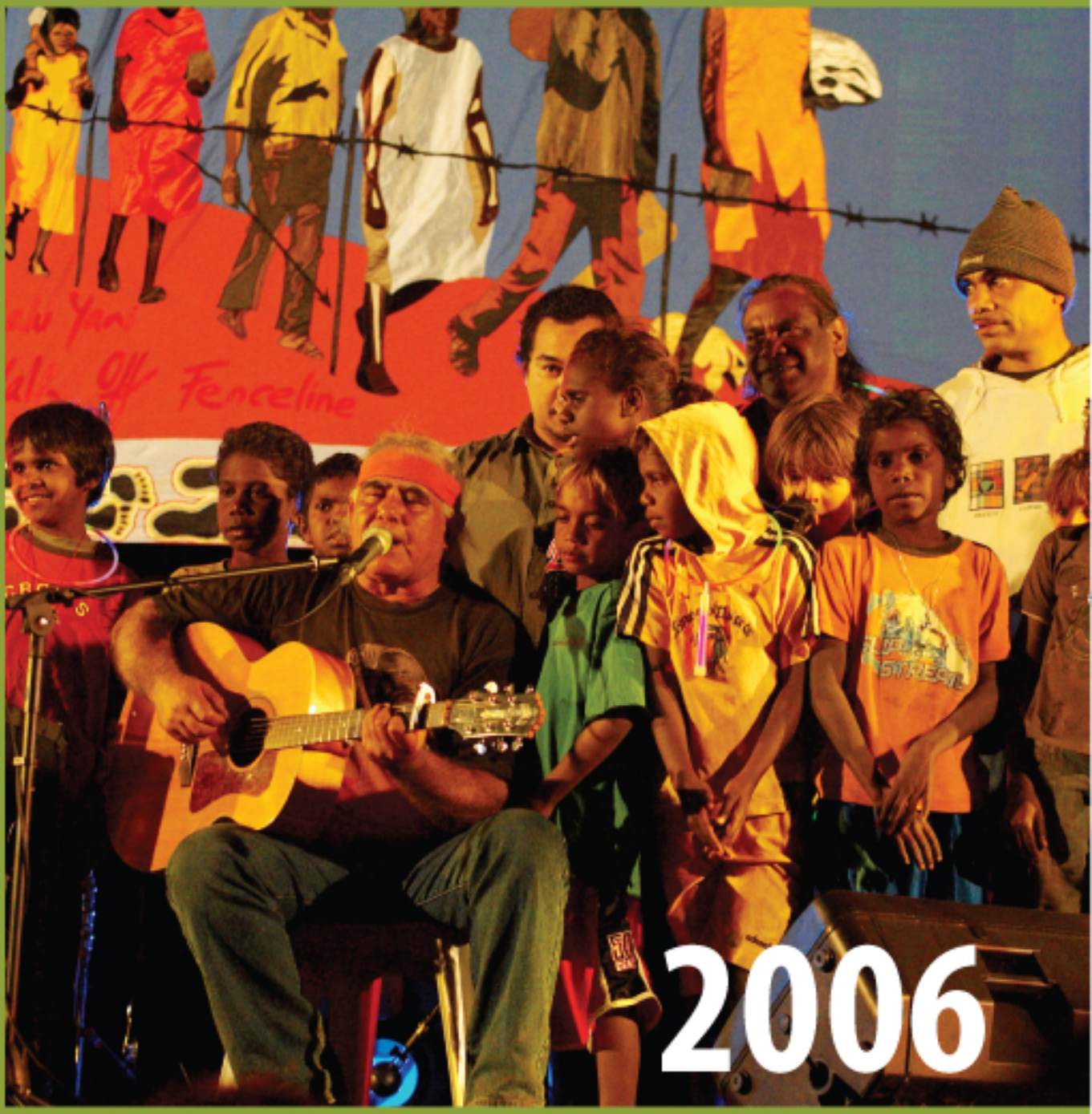
Social Justice Report



2006

Aboriginal & Torres Strait Islander Social Justice Commissioner

Human Rights and Equal Opportunity Commission
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Social Justice Report

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Aboriginal & Torres Strait Islander Social Justice Commissioner

Report of the Aboriginal & Torres Strait Islander Social Justice Commissioner

to the Attorney-General as required by section 46C (1)(a) Human Rights & Equal Opportunity Commission Act 1986.

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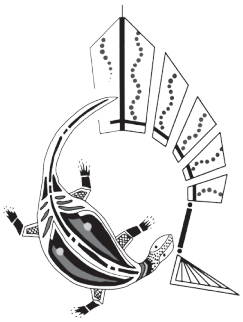

About the Social Justice Commission logo

The right section of the design is a contemporary view of traditional Dari or head-dress, a symbol of the Torres Strait Island 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 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.

Human Rights and Equal Opportunity Commission
humanrights.gov.au

5 April 2007

The Hon Philip Ruddock MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I am pleased to present to you the Social Justice Report 2006.
The report is provided in accordance with section 46C(1)(a) of the Human Rights and Equal Opportunity Commission Act 1986. This 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.

The report analyses the accessibility of mainstream services under the new arrangements for Indigenous affairs (Chapter 2), the adequacy of government engagement and participation of communities under the new arrangements for Indigenous affairs (Chapter 3, Appendix 3) and reports on international developments on the rights of indigenous peoples (Chapter 4, Appendix 4).

The report includes 8 recommendations and 1 action that I will continue to monitor over the coming year.

I look forward to discussing the report with you.

Yours sincerely

Tom Calma
Aboriginal and Torres Strait Islander
Social Justice Commissioner

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Note – Use of the terms 'Aboriginal and Torres Strait Islander peoples' and 'Indigenous peoples'

The Aboriginal and Torres Strait Islander Social Justice Commissioner recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is not one cultural model that fits all Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

Throughout this report, Aborigines and Torres Strait Islanders are referred to as **'peoples'**. This recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their livelihoods.

Throughout this report, Aboriginal and Torres Strait Islander peoples are also referred to as **'Indigenous peoples'.**

The use of the term 'Indigenous' has evolved through international law. It acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The United Nations High Commissioner for Human Rights has explained the basis for recognising this relationship as follows:

Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants – according to one definition – of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means… (I)ndigenous peoples have retained social, cultural, economic and political characteristics which are clearly distinct from those of the other segments of the national populations.

Throughout human history, whenever dominant neighbouring peoples have expanded their territories or settlers from far away have acquired new lands by force, the cultures and livelihoods – even the existence – of indigenous peoples have been endangered. The threats to indigenous peoples' cultures and lands, to their status and other legal rights as distinct groups and as citizens, do not always take the same forms as in previous times. Although some groups have been relatively successful, in most part of the world indigenous peoples are actively seeking recognition of their identities and ways of life.[1]

The Social Justice Commissioner acknowledges that there are differing usages of the terms 'Aboriginal and Torres Strait Islander', 'Aboriginal' and 'indigenous' within government policies and documents. When referring to a government document or policy, we have maintained the government's language to ensure consistency.

1 United Nations High Commissioner for Human Rights, *Fact sheet No.9 (Rev.1), The Rights of Indigenous Peoples*, www.unhchr.ch/html/menu6/2/fs9.htm

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 8 recommendations – 3 in relation to the accessibility of mainstream services under the new arrangements for Indigenous affairs, 1 in relation to engaging with Indigenous communities under the new arrangements for Indigenous affairs and 4 in relation to international developments on the rights of indigenous peoples. The report also contains 1 follow up action that my office will undertake in the next 12 months in relation to options for the establishment of the a national Indigenous representative body. These and the recommendations are reproduced here and appear at the relevant part of the report.

The new arrangements for Indigenous affairs – facilitating Indigenous access to government services

Recommendation 1: Directed to Federal Parliament

That the Secretaries Group request the Australian Public Service Commissioner to conduct a confidential survey of staff in Indigenous Coordination Centres to identify current issues in the implementation of the new arrangements and the challenges being faced in achieving whole of government coordination. This survey should be conducted by the APSC in furtherance of the Management Advisory Committee's *Connecting Government* report.

That there be established a regular federal parliamentary committee of inquiry into the progress of the new arrangements in Indigenous affairs and progress in achieving whole of government service delivery to Indigenous communities.

This Inquiry should be conducted every two years. Its terms of reference should include identifying:

- Progress in addressing existing inequalities in Indigenous peoples' access (both urban and remote) to mainstream services (including the adequacy of processes to ensure that Indigenous specific expenditure supplements mainstream expenditure rather than substitutes for this expenditure);
- Progress in ensuring that processes are targeted so as to address existing need;
- Effective, sustainable and representative mechanisms for the participation of Indigenous peoples at the local, regional and national levels;

- The adequacy of performance monitoring and evaluation mechanisms for the new arrangements, including the adequacy of data collected to evaluate progress in addressing Indigenous disadvantage; and
- Whether the new arrangements are meeting the commitments made by the Australian Government through COAG to overcome Indigenous disadvantage.

The Committee's terms of reference should also require it to report on the extent to which the new arrangements in Indigenous affairs comply with human rights based approaches to development and engagement with Indigenous peoples.

The Committee's inquiry processes should be required to maximise participation by Indigenous peoples, including by consulting widely with Indigenous communities and organisations.

Recommendation 2: Directed to the Council of Australian Governments, National Indigenous Council and Ministerial Taskforce on Indigenous Affairs

That there is acknowledgement by government of the importance of a human rights based approach to development in order to effectively implement the new arrangements and the achievement of effective and sustainable improvements in Indigenous living standards and well-being.

This requires acknowledgement of the importance of Indigenous forms of social organisation on the basis of mutual respect and good faith and for supported processes, including through capacity building initiatives, to ensure that the aspirations of Indigenous peoples are able to be voiced.

Recommendation 3: Directed to the Office of Indigenous Policy Coordination

That, in exercise of its coordination and monitoring role at a whole of government level, the Office of Indigenous Policy Coordination:

- Identify and promote best practice examples of improving accessibility of mainstream services as achieved through individual programs (such as Medicare and Pharmaceutical Benefits Scheme equivalent access arrangements) as well as through whole of government coordination initiatives (such as ICCs and SRAs); and

Develop its proposed Indigenous urban strategy with the full participation of Indigenous communities and peoples in urban localities, and with the inclusion of explicit targets and benchmarks for improved access to programs.

Addressing the fundamental flaw of the new arrangements for Indigenous affairs – the absence of principled engagement with Indigenous peoples

Recommendation 4: Directed to the Australian Public Service Commission (APSC) and Secretaries Group on Indigenous Affairs

That the Secretaries Group request the Australian Public Service Commissioner to conduct a confidential survey of staff in Indigenous Coordination Centres to identify current issues in the implementation of the new arrangements and the challenges being faced in achieving whole of government coordination. This survey should be conducted by the APSC in furtherance of the Management Advisory Committee's *Connecting Government* report.

Recommendation 5: Directed to the Ministerial Taskforce on Indigenous Affairs and National Indigenous Council

That the Ministerial Taskforce on Indigenous Affairs acknowledge that the absence of mechanisms at the regional level for engagement of Indigenous peoples contradicts and undermines the purposes of the federal whole of government service delivery arrangements.

Further, that the Ministerial Taskforce direct the Office of Indigenous Policy Coordination to address this deficiency as an urgent priority, including by:

- consulting with Indigenous communities and organisations as to suitable structures, including by considering those proposals submitted to the government for regional structures;
- utilising the Expert Panels and Multiuse List of community facilitators/coordinators to prioritise consideration of this issue; and
- funding interim mechanisms to coordinate Indigenous input within regions and with a view to developing culturally appropriate models of engagement.

Further, that the National Indigenous Council request the OIPC to report quarterly on progress in developing regional engagement arrangements and the mechanisms put into place to facilitate Indigenous participation in this process.

International developments on the rights of indigenous peoples – Closing the 'protection gap'

Recommendation 6: Directed to the Office of Indigenous Policy Coordination

That the federal government identify a focal point to coordinate, on a whole of government basis, its Program for the Second Decade of the World's Indigenous Peoples. The focal point should consult with Indigenous organisations in determining the activities to be undertaken for the Decade, in accordance with the goal, objectives and Program of Action for the Decade. The Government's Program should specifically respond to the items identified in the Program of Action for the Second Decade, rather than being a general thematic response. The Program should also be operational within this financial year.

Further, that the government allocate specific funding for the conduct of activities for the Second Decade, as determined through the consultations with Indigenous peoples.

Recommendation 7: Directed to the Office of Indigenous Policy Coordination and Department of Foreign Affairs and Trade

That the federal government specify the process for consideration of funding for engagement in international deliberations and identify focal points within each federal department or agency (for example, the relevant contact point within the Department of the Environment and Heritage for engagement on issues relating to the Convention on Biological Diversity).

Recommendation 8: Directed to the Indigenous Peoples Organisations Network and Australian Council for International Development

That the non-government sector, led by members of the Australian Council for International Development as appropriate, engage with Indigenous organisations and the IPO Network to build partnerships for the implementation of the Second International Decade (as well as highlighting the relevance of the Millennium Development Goals to the situation of Indigenous peoples in Australia).

Recommendation 9: Directed to the Department of Foreign Affairs and Trade, AusAid and Office of Indigenous Policy Coordination

That the Department of Foreign Affairs, in conjunction with the Social Justice Commissioner, conduct regular briefings for all agency heads on developments on the rights of Indigenous peoples, including the right to development (including the human rights based approach to development), Millennium Development Goals and Second International Decade for the World's Indigenous People. The Secretaries Group on Indigenous Affairs would be the appropriate body to receive these briefings.

Further, that AusAid be invited to contribute to the Secretaries Group on Indigenous Affairs to identify lessons that can be learned from Australia's international development activities for policy-making on Indigenous issues within Australia.

Follow Up Action by Social Justice Commissioner

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

The Commissioner will conduct research and consultations with non-government organisations domestically and internationally to establish existing models for representative structures that might be able to be adapted to the cultural situation of Indigenous Australians, as well as methods for expediting the establishment of such a body given the urgent and compelling need for such a representative body.

Chapter 1

Introduction

This is my third *Social Justice Report* as Aboriginal and Torres Strait Islander Social Justice Commissioner and covers the period 1 July 2005 to 30 June 2006.

The Report covers a broad range of issues extending from the local level (with Indigenous perspectives on Shared Responsibility Agreements), regional and national levels (considering the capacity for Indigenous participation and engagement in federal policy making processes), through to the international level (with a review of developments on Indigenous human rights over the past four years).

It is the fourth successive *Social Justice Report* to substantially focus on the federal governments' policy settings for Indigenous affairs. The 2003 report had provided a preliminary overview of the operation of the Council of Australian Government's (COAG) eight trial sites for whole of government activity and identified some concerns about their operation and their transferability into policy more generally. The COAG trials formed the genesis of the *new arrangements for the administration of Indigenous affairs* that were introduced in 2004, and which were given preliminary consideration in the 2004 report. That report also noted a series of preliminary concerns that, if not addressed, could compromise the overall effectiveness of the new arrangements.

The 2005 Report then considered progress in bedding down these new arrangements after twelve months of operation. It considered whether the preliminary concerns and warnings identified in the previous two reports had eventuated. It expressed serious concerns about lack of Indigenous engagement and participation in the new arrangements, and the overall lack of transparency and government accountability that has accompanied these arrangements.

This Report considers progress two years into the new arrangements. It builds on the analysis of the previous three reports.

This continuity of focus over a four year period provides a vital record of the policy making process for Indigenous affairs at the federal level. It documents the commitments of the Australian Government and its major announcements over this period. And it has identified significant concerns about the government's policy settings and the potential implications of these concerns if left unaddressed.

We can reasonably expect that over a four year period we would begin to see the impact of the substantial changes to policy that have occurred.

For example, it has been five years now since the Government committed to principles for service delivery to Indigenous peoples as a consequence of the findings of the landmark inquiry into Indigenous funding by the Commonwealth Grants Commission. A major focus of that report and of the consequent principles that guide Indigenous policy was on the need to improve accessibility of mainstream services to Indigenous peoples. One of the slogans of the new arrangements has been that government is committed to 'harnessing the mainstream'.

Similarly, the basic structure of the new arrangements for service delivery and policy development has now been in place for long enough to assess whether they are capable of meeting the extensive commitments made by all Australian governments to address the social and economic disadvantage experienced by Indigenous Australians.

What makes good Indigenous policy?

My role as Aboriginal and Torres Strait Islander Social Justice Commissioner is to monitor and report to the federal Parliament on the ability of Indigenous peoples in Australia to enjoy their human rights, and to identify where legal or policy changes could be made to improve such enjoyment.

Given the urgent need for sound policy in Indigenous affairs, it is timely to consider what some of the key elements of good Indigenous policy making are.

This is a question that is continuously being grappled with by the government and the Australian Public Service (APS).

In the context of Indigenous affairs, the most senior officers of the APS have recognised their part in contributing to dysfunction and disadvantage in Indigenous communities as a result of the 'failure of a generation of public policies to translate into the sustained economic betterment of indigenous Australians.'[1] As the Secretary of the Department of Prime Minister and Cabinet stated:

> I am aware that, for some 15 years as a public administrator, too much of what I have done on behalf of government for the very best of motives and had the very worst of outcomes. I (and hundreds of my well-intentioned colleagues, both black and white) have contributed to the current unacceptable state of affairs, at first unwittingly and then, too often, silently and despairingly.[2]

In an effort to standardise approaches to policy implementation in the APS, and ultimately improve policy outcomes, the Australian National Audit Office and the Department of Prime Minister and Cabinet have recently produced the *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter* (or the Better Practice Guide).[3] Although this publication is a general guide for policy makers across all portfolios – not just in the areas of

1 Shergold, P. (Secretary, Department of Prime Minister and Cabinet), *Indigenous Economic Opportunity: the Role of the Community and the Individual,* Speech delivered at the First Nations Economic Opportunities Conference, Sydney, 19 July 2006, p2.

2 Shergold, P. (Secretary, Department of Prime Minister and Cabinet), *Indigenous Economic Opportunity: the Role of the Community and the Individual,* Speech delivered at the First Nations Economic Opportunities Conference, Sydney, 19 July 2006, p2.

3 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet and Australian National Audit Office, Canberra, October 2006.

Indigenous affairs – it represents the collective wisdom and experience of senior managers and executives across the APS.

Some of the lessons learned within the APS that are reflected in the Better Practice Guide are particularly relevant in the context of Indigenous policy formulation. The Guide has the potential to assist the APS in overcoming the significant policy challenges that exist in relation to Indigenous issues.

In this section of the introduction I consider some of the key elements of good Indigenous policy. I then relate these to current developments in Indigenous policy making processes at the federal level.

• A commitment to human rights

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

As past *Social Justice Reports* have noted, human rights transcend politics and provide objective standards to which governments worldwide are accountable. Human rights are universal and indivisible.

In simple terms universality means that they apply to everyone, everywhere, equally and regardless of circumstance – they are intended to reflect the essence of humanity. They are the standards of treatment that all individuals and groups, irrespective of their racial or ethnic origins, should receive for the simple reason that we are all members of the human family. They are not contingent upon any factor or characteristic being met – you do not have to 'earn' rights or have to be 'deserving' for them to be protected.

And the indivisibility of human rights means that all rights - economic, social, cultural, civil and political rights – are of equal importance. There is no hierarchy or priority for the protection or enjoyment of rights. Similarly, this means that all rights are to be applied consistently – you cannot claim to be performing an action in exercise of your rights if it causes harm or breaches the rights of another person.

So what does this mean for policy making as it relates to Indigenous peoples in Australia?

Chapter 4 of this report discusses the existence of what is being referred to internationally as the 'implementation gap'[4] between the human rights obligations accepted by government and their application in domestic policy frameworks for Indigenous issues.

We do not protect the rights of Indigenous peoples in Australia well, and we have not adopted a human rights based approach to policy or service delivery.

At present, domestic Indigenous policy making processes treat human rights as a prescriptive framework that is focused on *what you can't do* and on a *compliance mentality*. The limited efforts to engage with human rights principles are at the most

4 Stavenhagen, R. (Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples), *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples,* Commission on Human Rights, UN doc E/CN.4/2006/78, 16 February 2006.

crude and basic level, such as crafting measures so that they can avoid accusations of racial discriminatory treatment.

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

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

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

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

One of the major problems with Indigenous policy making in Australia is that it is not sufficiently targeted to overcome the existing level of inequality and discrimination experienced by Indigenous peoples. Building this in to policy would require needs based funding so that programs are capable of overcoming existing inequalities and are also cognisant of the future needs of particular groups. For Indigenous peoples, this is going to be a major issue with a rapidly expanding youth population over the next decade creating a further pressure on what are already inadequate levels of funding and services.

The *Social Justice Report 2005* set a range of challenges for government to address Indigenous health inequality through adopting a rights based approach. The lack of needs based funding and longer term planning has also been identified as one of the shortcomings of the Shared Responsibility Agreement making process in the national survey of Indigenous communities contained in chapter 3 of this report.

A human rights based approach also emphasises the necessity for Indigenous participation at all stages of the policy development and implementation processes.

Effective participation in decision making processes that affect us has been confirmed as essential to ensuring non-discriminatory treatment and equality before the law. It is also central to the human rights based approach to development which is now widely accepted and operational across the United Nations and the international development cooperation system.

Chapters 2 and 3 of this report vividly demonstrate the problems that are now crystallising within the new arrangements for service delivery at the federal level as a result of the lack of effective participation of Indigenous peoples. I have described this as the fundamental flaw of the new arrangements.

All of these elements of a human rights based approach are required if the Australian Government is to effectively implement its human rights obligations and to ensure sound processes for Indigenous policy development.

Finally, good Indigenous policy making also requires a focus on compliance with human rights and action to redress known violations of human rights.

For example, Article 28 of the Convention on the Rights of the Child recognises the right of the child to education. Government undertake as a matter of legal obligation to make primary education compulsory and available free to all; and take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Non-attendance at school and low retention is a matter of human rights compliance and breaches the rights of the child. It necessitates action by governments to ensure that the right to education is available to all 'with a view to achieving this right progressively and on the basis of equal opportunity.' It should not simply be accepted that this is just the way it is for Indigenous children.

Similarly, the Convention on the Rights of the Child requires governments to ensure 'to the maximum extent possible the survival and development of the child'.[5] Article 19 of the Convention also requires that governments:

> shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Freedom from violence is also recognised as fundamental to equality and non-discrimination for women, and is also recognised in the Declaration on the Rights of Indigenous Peoples as a particular concern for Indigenous women and children.

There is a clear need to work with Indigenous communities to ensure compliance with human rights. This requires a multi-pronged approach – on the one hand, there should not be tolerance for breaches of rights such as family violence and non-attendance at school, but on the other hand, governments need to work with communities to increase their capacity to address these issues. This is not an either / or choice – it requires both elements and a starting point for this is human rights education for all to increase awareness of human rights and related responsibilities.

Overall, Australia's human rights obligations provide a framework for ensuring human rights are recognised and protected through a combination of measures ranging from:

- proactive measures to prevent violations from occurring in the first place and to address the underlying factors that can contribute to human rights violations;

5 Article 6(2), International Convention on the Rights of the Child.

- an accountability framework to ensure that governments remain focussed on the ultimate outcomes of policy and are able to be held accountable for their rate of progress in addressing significant human rights breaches where they exist;
- processes for ensuring the effective participation and real engagement with stakeholders and affected peoples in designing policy and delivering services; and
- measures to respond and address violations of rights whenever they occur.

The compliance mentality that currently permeates Indigenous policy making processes does not address this full sweep of issues. It is an increasingly punitive framework that cherry picks issues and neglects important essential characteristics for good policy.

A number of the recommendations contained in this report are aimed at addressing this imbalance in policy processes.

• Engagement and participation of Indigenous peoples in policy making

This report outlines in detail the importance of ensuring engagement and participation of Indigenous peoples in policy making and decision making processes that directly relate to our interests. This is central to the human rights based approach to development.

There is increasing awareness within the leadership of the APS that greater and more effective engagement with 'stakeholders' is required. For example, the Secretary of the Department of PM&C recently commented that:

> There needs to be greater recognition that success depends not just on the effectiveness of our [APS] own organisations but our ability to work in partnership with a variety of others.[6]

As with any stakeholder group, Indigenous peoples need to be involved at the earliest possible stage in the policy design process, so that they can contribute their perspectives and ideas on the objectives and content of the policy as well as *how* the policy should be implemented. This is particularly important to ensure that:

- Indigenous cultural differences are respected and accommodated;
- the appropriate Indigenous peoples are involved;
- sufficient time is allocated to developing community support for the implementation process; and
- ultimately, Indigenous peoples feel a sense of *ownership* of both the process and the outcome.

6 Shergold, P. (Secretary, Department of Prime Minister and Cabinet), *Implementation Matters,* Speech delivered at the launch of 'Implementation matters: the better practice guide to the implementation of programme and policy initiatives', Old Parliament House, Canberra, 16 October 2006, p.3. Available at http://www.pmc.gov.au/speeches/shergold/implementation_matters_2006-10-16.cfm accessed 13 March 2007.

As the Better Practice Guide acknowledges:

> Where this [consideration of how policy implementation will occur] does not receive sufficient and early attention, problems may arise during subsequent implementation. These problems may include: sub-optimal delivery methods; overambitious timeframes; resources not being available when required; inappropriate skills or capability for the initiative; and insufficient contingency planning.[7]
>
> Successful change management strategies require structured planning, design, communication and administration, as well as *early and continuous stakeholder involvement* [emphasis added].[8]

The Better Practice Guide also recognises that different stakeholder groups will have 'unique characteristics' that need to be 'considered' before the implementation process gets underway. It anticipates that these can include providing 'adequate time and resources' to facilitate engagement with the most appropriate community representatives; considering whether stakeholders might be resistant to the proposed changes and how such resistance will be 'overcome'; and how expectations will be managed so they are not raised unrealistically high.[9]

A human rights based approach to engaging with Indigenous peoples is consistent with these aspects of the Better Practice Guide, however it requires that policy makers go further. For example, a human rights based approach requires:

- transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities, which could include specific, time-bound and verifiable benchmarks and indicators to ensure that progress can be tracked and measured over time;
- frameworks for engagement that allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes; and
- participation based on the principle of free, prior and informed consent, which includes governments and the private sector providing information that is accurate, accessible, and in a language the indigenous peoples can understand.[10]

As Chapters 2 and 3 of this report demonstrate, there is currently a disconnect between policy making at the national level and its implementation at the local and regional level, with a consequence that there are insufficient provisions that enable Indigenous participation in the policy process.

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7 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet, Australian National Audit Office, Canberra, October 2006, p5.

8 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet, Australian National Audit Office, Canberra, October 2006, p43.

9 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet, Australian National Audit Office, Canberra, October 2006, p67.

10 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp107-109.

• A capacity building and community development approach

A human rights based approach regards capacity building in Indigenous communities as essential to facilitate their equal and meaningful participation in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them.[11] Furthermore, it recognises that governments and the private sector have a role in assisting Indigenous peoples in this regard. Some Indigenous communities require capacity building in a range of areas including financial management, business development, and corporate governance, and sometimes this assistance may be best delivered by the private sector.

Where the policy implementation process is intended to build capacity in Indigenous communities, a human rights based approach also recognises that initiatives need to respect and reaffirm the legitimacy of Indigenous decision-making processes, authority structures and collective identity. Research suggests that this approach is critical if capacity building initiatives are to be sustainable.[12] Such an approach can also facilitate greater cultural awareness and understanding on the part of non-Indigenous policy implementers, thereby assisting in the broader reconciliation process.

As previous *Social Justice Reports* have also pointed out, capacity building is not a one-sided process that focuses entirely on the needs of Indigenous communities. There is also a need for building the capacity of government to engage appropriately with Indigenous peoples and communities.

This is amply demonstrated by the difficulties in implementing a whole of government approach through the COAG trials, as well as through the new arrangements to date. The APS' Better Practice Guide emphasises the importance of the APS having 'adequately skilled and experienced people available for implementation', and that it may be necessary to train and support them to fulfil their implementation role.[13] Previous *Social Justice Reports* have expressed concerns at the recruitment and retention policies of government, particularly, but not exclusively, as they relate to Indigenous staff. This remains an ongoing challenge to support good policy development.

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

Chapter 3 of this report includes the results of a national survey of communities that had entered into a Shared Responsibility Agreement. The survey results

11 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp107-109.

12 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p20.

13 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet, Australian National Audit Office, Canberra, October 2006, p69.

demonstrate the willingness of communities to engage in such processes, but with the expectation that the commitments of government will be ongoing. The key weakness of the process was seen as raised expectations within the community that could not be supported by the scope of the SRA ultimately put into place and the lack of follow up and implementation with communities.

A community development approach also seeks to bring to the fore a positive vision for Indigenous communities. Nearly all coverage of Indigenous issues in national media is negative. Indigenous peoples continually confront negative stereotypes and defeatist attitudes about our abilities and capacity. Good policy involves a vision for a positive future to which we can strive and which can reinforce the inherent value and dignity of Indigenous peoples.

• Supporting sound Indigenous governance

Supporting good Indigenous governance is paramount to good policy development. Emerging evidence in Australia suggests that Indigenous governance is a broad concept that can include:

> how decisions are made, who has the authority to make those decisions, and how decision-makers gain legitimacy and are held accountable – both within the community and to external stakeholders such as government agencies and corporate partners.[14]

Research is also revealing that good governance is an important contributing factor in generating sustained economic development and social outcomes in Indigenous communities in Australia. As the preliminary research findings of the *Indigenous Community Governance Research Project* indicate:

> Effective governance is a prerequisite for mobilising community capital and provides better conditions for that capital to be developed and sustained. Good governance also sets in place the conditions for creating further capital. It's important that governance capacity is developed hand in hand with addressing the significant backlogs in basic infrastructure and essential services that exist in many communities.[15]

A human rights based approach to development will also recognise that Indigenous cultures vary considerably across Australia, and as a result there are a diversity of governance frameworks. Communities need the scope to design structures and methods of governance to suit their needs and the size of their group, rather than these being externally imposed in a one size fits all approach.

Equally, research suggests that community aspirations need to be balanced with 'hard-headed practical considerations when designing legitimate and effective structures and processes' to ensure that the most appropriate representatives are selected, and that strategic outcomes can be achieved.[16] Given that Indigenous

14 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p6.

15 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p14.

16 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p6.

cultures are evolving, governance structures and processes will also require the flexibility to evolve and change over time.

These observations have particular relevance for members of the APS who are working in portfolios with responsibility for the new arrangements in Indigenous affairs. As the preliminary research findings of the *Indigenous Community Governance Research Project* indicate:

> government agencies need to be better informed about the importance of the different governance relationships and hierarchies that lend legitimacy to different aggregations and scales, for different purposes. Government agencies need to be clear about who makes decisions, how, when, and in what contexts, so that their interventions do not undermine legitimate governance structures.'[17]

• Fostering and recognising leadership

From a government perspective there is a clear need for leadership from within government if complex whole of government arrangements are to succeed for Indigenous policy. As the Secretary of the Department of Prime Minister and Cabinet (PM&C) advised the APS when he launched the Best Practice Guide to policy implementation:

> It [best practice] depends on those at the top of organisations providing a clear picture of the decisions that need to be taken, by whom, for what purpose and when – and identifying the associated critical paths, risks, and interdependencies. The responsibility doesn't rest with the technical guys … – it rests with us.[18]

From a human rights perspective, leadership particularly on the part of governments and the private sector, is regarded as essential to drive the legal and policy changes that can facilitate the development of a human rights culture across society. In contrast to the speed with which political leaders can make legal and policy changes, the attitudinal and behavioural changes that need to occur across all sectors of the population to produce a human rights culture, can take generations.

However, it is equally important to cultivate and support leaders within Indigenous communities that will be affected by the implementation of the policy. Leadership within Indigenous communities is often a very complex phenomenon with different people taking lead roles depending on the task at hand. Policy makers need to be mindful and accommodating of the considerable pressures borne by Indigenous leaders who have to juggle Indigenous and non Indigenous political and professional demands; and immediate and extended family and cultural demands and achieve consensus outcomes across all areas of their work and life.

Developing an understanding and appreciation of the overlapping networks of leadership and authority in Indigenous families and communities can be critical

17 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p9.

18 Shergold, P. (Secretary, Department of Prime Minister and Cabinet), *Implementation Matters,* Speech delivered at the launch of 'Implementation matters: the better practice guide to the implementation of programme and policy initiatives', Old Parliament House, Canberra, 16 October 2006, p.3. Available at http://www.pmc.gov.au/speeches/shergold/implementation_matters_2006-10-16.cfm accessed 13 March 2007.

to the successful implementation of policy. For example, the preliminary research findings of the *Indigenous Community Governance Research Project* indicate that:

> Non-Indigenous stakeholders may not recognise legitimate Indigenous leadership, and hence may inadvertently undermine it. This risk is further magnified when interactions between government agencies and the community are rushed and/or impeded by cross-cultural or language challenges – particularly where the legitimate Indigenous leaders are not proficient in English and government officials do not speak the relevant Aboriginal language… It is critical that government agencies recognise the need to build their own capacity to interact with Indigenous communities.[19]

Furthermore, given the young demographic profile of Indigenous communities across Australia, there is a clear role for policy makers to play in providing coordinated program funding for leaderships development, mentoring and succession at the community level, to foster the next generation of leaders.[20]

• A learning framework / planning for implementation

Sharing information and experience within and across government agencies is critical if policy makers are to learn from mistakes and ultimately adopt the most effective approaches. In the context of a whole of government policy approach, such as the government's new arrangements in Indigenous affairs, the free flow of information and ability to learn from past mistakes is critical.

The Better Practice Guide recognises that it is necessary to cultivate an environment where mistakes can be admitted and public servants feel confident that they can provide frank and fearless advice to their Minister and their superiors.[21] Learning from the policy implementation experience should occur on an ongoing basis – not just at the end of the process. For example, the Better Practice Guide advises that mechanisms be put in place to 'ensure that information obtained from stakeholders will be acted on to improve the quality of the implementation', and that protocols be developed to deal with 'sensitivities' or conflicts that might arise during implementation.[22]

According to the Secretaries Group on Indigenous Affairs, the new arrangements are to operate in 'a learning framework', 'sharing information and experience, learning from mistakes and progressively adopting approaches that work best.'[23]

As outlined in chapters 2 and 3 of this report, I have concerns about how this is operating in effect. My primary concerns relate to policy development that is

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19 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p18.

20 Sixty percent of the Indigenous population is under the age of 25. See Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p18.

21 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet, Australian National Audit Office, Canberra, October 2006, p4.

22 Australian Government, *Better Practice Guide to the Implementation of Programme and Policy Initiatives – Making Implementation Matter,* Department of Prime Minister and Cabinet, Australian National Audit Office, Canberra, October 2006, p68.

23 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p27. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

not evidence based and lacking Indigenous input; and that where lessons are identified, they are not being addressed through the new arrangements (such as on the importance of regional engagement processes to facilitate Indigenous participation).

• Needs based funding and planning processes

A key principle guiding the government's approach to the new arrangements in Indigenous affairs is that access to services and opportunities should be based on need.[24] This reflects the diversity in need amongst Indigenous Australians, particularly the needs of remote versus urban based communities and peoples.

Funding based on need is an integral component of a human rights based approach to development and is an essential feature of good policy development.

Some of the necessary components of a rights based approach include:

- the development of agreed targets and benchmarks with timeframes for completion so we have a clear picture of what it is exactly that is trying to be achieved;
- the allocation of funding so that programs are capable of meeting identified need, particularly so that programs are able to overcome existing inequalities in access to services;
- identification of barriers to accessibility of services, including in urban locations and through mainstream programs;
- an evaluative framework to assess whether the rights of Indigenous peoples are being 'progressively realised', so that we can be confident that government efforts are effective, well targeted and taking place at the maximum level possible; and
- the adoption of a people-centred approach which values the full participation of Indigenous peoples in the process, from the very beginning of policy development, through to service delivery and monitoring and evaluation.

Recent *Social Justice Reports* have outlined the 'progressive realisation' principle in some detail and identified, as a weakness of current policy approaches, the mismatch between program funding allocation and need. I have continually expressed concern that current programs are not funded to a level that can overcome Indigenous disadvantage, rather than simply address the ongoing and growing consequences of inequality.

This is a matter of great concern as the demographic profile of the Indigenous population means that there will be an increased demand for services in the coming decade. We should be building processes to plan for this eventuality, much as we have begun to plan for the consequences of an ageing Australia more generally.

24 Brough, M. (Minister for Families, Community Services and Indigenous Affairs), *Blueprint for Action in Indigenous Affairs,* Speech delivered at National Institute of Governance– Indigenous Affairs Governance Series, Canberra, 5 December 2006, p.2. Available at http://www.atsia.gov.au/media/speeches06/05_12_06.aspx accessed 13 March 2007.

• Monitoring and evaluation

Human rights based approaches to development assign clear responsibility to governments and the private sector to establish transparent and accountable frameworks. Key elements of such a framework include specific, time-bound and verifiable benchmarks and indicators to ensure that people's enjoyment of their rights can be measured and there is improvement over time. [25]

Regular performance review, evaluation and reporting allow problems to be identified and addressed in a timely manner. As recognised earlier, it is critical that Indigenous peoples are active participants in establishing the monitoring and review mechanisms, and in contributing information to them as policy implementation occurs.

As the APS Better Practice Guide acknowledges, and the government's commitment to a 'learning framework' requires, it is essential that 'bad news' gathered through the monitoring process is not filtered out. The Guide also recognises that quality of monitoring and review processes is largely determined by the quality of the data that is collected and the skills of those responsible for analysing it. Hence my ongoing concerns about the persistent and significant data quality issues in relation to progress under the government's new arrangements in Indigenous affairs.

Indigenous Australians expect that both government service providers and their own representative organisations will be accountable to them. If mismanagement, policy error or complete policy failure is occurring, Indigenous peoples want to know and expect the situation to be promptly rectified.

However research suggests that there are different approaches to accountability in Indigenous and non-Indigenous communities that need to borne in mind by policy makers. For example,

> Governments tend to emphasise 'upwards' accountability, risk avoidance, financial micro-management, and compliance reporting. Capacity in these areas promotes governments' assessment of an organisation's effectiveness.
>
> By contrast, Indigenous communities emphasise internal accountability and communication. Indigenous people want their organisations to provide clear, culturally-informed and regular communication with the community members they serve. People want to be consulted, to know what their organisation is doing, know what decisions are being made and why, and they want to be confident that the organisation is operating fairly and well. This promotes a community assessment that the organisation and its leaders are effective and legitimate.[26]

• A culture of implementation and government accountability

A consistent theme across this report is concern about the lack of implementation of the commitments of government and the lack of government accountability for policy failure.

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25 United Nations Development Programme (UNDP), *Human Development Report 2000 – Human rights and human development,* UNDP, New York, 2000, available online at http://hdr.undp.org/reports/global/2000/en/ accessed 14 February 2007.

26 Reconciliation Australia, *Indigenous Community Governance Research Project: Summary of Preliminary Research Findings;* Reconciliation Australia, Canberra, June 2006, p16.

There is a disturbing dynamic to public debates and media coverage of Indigenous issues which sheets home the responsibility for failed policy to Indigenous peoples. This is despite the absence of an outcomes focus to policy making, accompanied by a demonstrable lack of progress on key issues and slow progress on other issues.

There is currently not a culture among government that takes responsibility for a failure to implement commitments or to be held accountable for Government actions.

In 2004, the Secretary of the Department of Prime Minister and Cabinet had suggested that such a culture of implementation and accountability would be a central feature of the new arrangements. He stated that the new arrangements for Indigenous affairs constitute:

> the biggest test of whether the rhetoric of connectivity can be marshalled into effective action… It is an approach on which my reputation, and many of my colleagues, will hang.
>
> No new bureaucratic edifice is to be built to administer Aboriginal affairs separate from the responsibility of line agencies. 'Mainstreaming', as it is now envisaged, may involve a step backwards – but it equally represents a bold step forward. It is the antithesis of the old departmentalism. It is a different approach…
>
> The vision is of a whole-of-government approach which can inspire innovative national approaches to the delivery of services to indigenous Australians, but which are responsive to the distinctive needs of particular communities. It requires committed implementation. The approach will not overcome the legacy of disadvantage overnight. Indigenous issues are far too complex for that. But it does have the potential to bring about generational change.[27]

These bold words do not accord with the situation that has emerged in the initial years of the new arrangements.

Two of the Aboriginal Directors of Reconciliation Australia correctly identify the main challenge that remains for public servants as follows:

> Too often good policy becomes bad policy in its delivery. … Good policy for us should reflect the aspirations of our people for a better future for our young people. It should be developed in a truly bipartisan partnership involving Indigenous people working alongside the best and brightest of the public service, civil society and corporate sectors.
>
> It should be driven by a vision of success and what is possible. It should be driven by a shared imperative that it's in the national interest ie everyone's interest to close the 17 year gap in life expectancy. It should be driven by long-termism and consistency in policy that busts through commonwealth-state boundaries and electoral cycles.
>
> Good policy should be implemented by people who truly respect and listen to us. … And good policy should be determined equally by its evaluation and a strict regime of accountability for failure. There must be visible and direct consequences among those responsible for policy failure.[28]

27 Shergold, P. (Secretary, Department of the Prime Minister and Cabinet) *Connecting Government – Whole of government responses to Australia's priority challenges*, Launch Speech, Canberra, 20 April 2004, p4.

28 Marika, R. and Reys, S., *Social Policy in Action Session,* Making the Boom Pay Conference, University of Melbourne, 3 November 2006, p7. Unpublished paper provided by Reconciliation Australia.

Reflections on the current policy framework for Indigenous affairs

After four years of tracking the new policy and service delivery processes through the *Social Justice Report*, it is clear that there are significant problems with the processes for establishing policy and delivering services for Indigenous affairs at the federal level.

Primarily, this is due to an 'implementation gap' between the rhetoric of government and its actual activities. Perhaps most concerning, is that the problems with the current policy settings are well known and documented. The government has largely acknowledged their existence and has made extensive commitments to address them. And yet, the problems continue and are exacerbated year by year.

This is no more apparent than in relation to processes for engagement with Indigenous peoples. The government has consistently emphasised that engagement with Indigenous peoples is a central requirement for the new arrangements to work. And yet, two years down the track, there has been little progress and no apparent priority attached to ensuring that appropriate mechanisms exist to facilitate this. Policy is being developed in a vacuum at the national level, with no connection to Indigenous experiences at the local and regional level and without applying the 'reality test' that comes with Indigenous participation and local engagement.

What this, and previous *Social Justice Reports,* also demonstrate is the lack of coherence between the different levels of service delivery and policy. Through its ambitious commitment to whole of government service delivery (or 'connected government'), the government is aiming for a seamless connection between service delivery and policy development from both the 'bottom up' and the 'top down'.

In practice, the new arrangements are a top down imposition – with policy set centrally and unilaterally by government, confirmed in bilateral processes with state and territory governments (again without Indigenous input) and then applied *to* Indigenous peoples. The absence of regional mechanisms for engagement with Indigenous peoples is a critical problem that exacerbates this problem.

We only need to go back three years to remind ourselves of the likely outcome of such an absence of effective mechanisms to join the local and regional levels to the national level, and to join service delivery to policy development. The lack of effective connections between the regional and national level was identified as the central problem with the operation of the Aboriginal and Torres Strait Islander Commission (ATSIC), and a key reason cited by the Government for its abolition.

As I set out in chapter 3 of this report, I consider that the lack of effective participation in the new arrangements is the fundamental flaw of the new arrangements. It undermines the intent of the new arrangements, and is likely to undermine the achievement of outcomes into the longer term.

The Government knows this. As chapter 3 shows, the Government highlights the importance of addressing this issue continuously. And yet it does not act.

What the report also reveals is a system that is in a constant state of flux, with continual changes in rhetoric and ambition that is rarely matched by action to implement the stated policy objectives. Also revealed is the lack of involvement

of Indigenous peoples in the formulation of the policy, the token efforts to 'discuss new policy directions' and the paucity of information or systematic dissemination of information on new policy or programs to Indigenous peoples.

As chapter 2 demonstrates in relation to the focus on mainstream accessibility, there is a need to move away from a mindset that is concentrated on process towards one that is more focussed on outcomes. It is mystifying that after two years of the new arrangements there are not clear objectives for improving mainstream accessibility of services to Indigenous peoples, particularly in urban or regional settings.

One of the shortcomings of the new arrangements in Indigenous affairs has been the tendency to characterise all problems besetting Indigenous communities as the result of failed processes - whether it be during the ATSIC era, or more recently, as a lack of coordination on the part of governments in respect of service delivery.

It can, however, be misleading to confuse process with outcomes, and it appears that this may be what the new arrangements have unwittingly tended to do.

This confusion can also be seen as a by-product of the failure of the new arrangements to adopt a human rights based approach to addressing Indigenous disadvantage. The necessary components of such a rights-based approach have been set out above and are discussed at length in Chapters 2 and 4.

Chapter 4 of the report provides an overview of international developments in the fields of human rights protection and development cooperation generally, as well as specifically in recognising the human rights of Indigenous peoples. Read in the context of the current federal Government policy development approach as outlined in chapters 2 and 3 of the report, this chapter vividly demonstrates the shortcomings of the current approach being adopted by the federal government and shows how out of step this approach is with international developments.

Again, the government knows this. It participates actively in United Nations processes and has made solid commitments to implement its obligations. And yet there exists a substantial 'implementation gap' between these commitments and the domestic policy framework for Indigenous affairs.

In launching the Best Practice Guide to policy implementation, the Secretary of the Department of Prime Minister and Cabinet (Dr Shergold) made the following comments about the importance of leadership within the public service that are of particular relevance for Indigenous affairs:

> Good management practices consistently applied and a strong implementation culture persistently pursued are the foundations of effective project leadership…
>
> …we need leaders who can sell the message and set the tone. We require people at the top who appreciate fully the increasing importance of dealing with problems from a whole of government perspective or, given the concurrent responsibilities of our federal system, across jurisdictions.
>
> Those of us in positions of situational authority need to pay serious attention to how our agencies can generate greater policy innovation at the start of the policy cycle while, at the other end, pursuing administrative innovation to improve our delivery capabilities. There needs to be greater recognition that success depends not just on the effectiveness of our own organisations but our ability to work in

> partnership with a variety of others. We require leaders who see the link between structures, processes, strategy and workplace culture.[29]

As this report demonstrates, there is a critical failing of leadership on Indigenous issues within the public service on these criteria. This is particularly so from the central coordinating agency for the new arrangements, the Office of Indigenous Policy Coordination (OIPC).

The rhetoric of the new arrangements – as set out in COAG principles and commitments, the government's blueprint and other documents endorsed through the myriad of structures to support whole of government activity – is rarely matched by implementation. It cannot be said that there exists a 'strong implementation culture' when the phraseology of the new arrangements is seen as an end in itself.

The obsession with process that is the hallmark of the OIPC's activities mistakenly confuses administrative change with policy innovation. It lacks an evidence base (how else do we explain policies on issues such as the viability of outstations and homelands and the obsession with opening up communal land for individual leasehold arrangements that contradict all available evidence?), occurs without stakeholder engagement, is conducted outside of a learning framework and lacks transparency. It is also an increasingly punitive framework that scapegoats Indigenous peoples for the failures of government service delivery and thereby neatly sidesteps accountability for the historic and ongoing under-performance of government on Indigenous issues.

Ultimately, the 'new broom' that has been introduced through the new arrangements to date has been a process broom. This has both exaggerated the role of process as a cause of Indigenous disadvantage, and resulted in other key issues not receiving the priority attention they deserve. In particular, it does not pay sufficient attention to:

- the urgent need to improve access to mainstream services;
- the need to give Indigenous peoples a real and substantive voice at the negotiating table – it is a simple fact that without full Indigenous participation we cannot move from a passive welfare model, no matter how punitive an approach is adopted;
- the significant under investment in infrastructure for Indigenous communities, a problem which is being exacerbated by the young and highly mobile demographic profile of the Indigenous population; and
- the need to support Indigenous communities in capacity building to assist them in developing autonomy and self-reliance.

The final words of Dr Shergold quoted above are of particular importance: 'We require leaders (within the public service) who see the link between structures, processes, strategy and workplace culture'.

An essential link between structures, processes etc is effective participation of Indigenous peoples. The centralised, 'top down' approach that predominates

29 Shergold, P, *Implementation Matters,* Speech given at the launch of 'Implementation matters: the better practice guide to the implementation of programme and policy initiatives', Canberra, 16 October 2006, p2, available online at: www.pmc.gov.au/speeches/shergold/implementation_matters_2006-10-16.cfm.

from the OIPC does not promote the type of workplace culture that can lead to sustainable changes for the improvement of the lives of Indigenous peoples. At various stages of this report, I have identified specific concerns about the leadership on Indigenous affairs that is currently provided by the OIPC.

It is a culture of control that perhaps unintentionally disempowers Indigenous communities, and it is a culture that is not based on respect and partnership. Indigenous peoples are treated as problems to be solved, not as partners and active participants in creating a positive life vision for the generations of Indigenous peoples still to come.

The greatest irony of this is that it fosters a passive system of policy development and service delivery while at the same time criticising Indigenous peoples for being passive recipients of government services!

There needs to be a re-engagement with Indigenous Australians on the basis of mutual respect and equality, with clear processes and certainty of structures for Indigenous representation and advocacy. Without this, it remains uncertain whether the new arrangements can produce tangible, significant and lasting benefits rather than amounting to little more than an administratively complex repackaging of existing programs.

There are now four years of *Social Justice Reports* that outline in detail concerns that must be addressed. There can be no excuse for ongoing policy failure. And there can be no doubt at whose feet such failure lies.

Contents of the *Social Justice Report 2006*

Chapter 2 of this report identifies the ongoing obstacles and challenges that need to be overcome if mainstream services are to meet the needs of Indigenous Australians. One of the catchcries of the new service delivery arrangements is that they are aimed at 'harnessing the mainstream.' This is to be achieved by removing or reducing the barriers that prevent Indigenous peoples from accessing existing mainstream services on an equitable basis. The chapter focuses predominately on the role of the new whole of government machinery in achieving better synergies between mainstream programs and Indigenous specific services.

The chapter also demonstrates that a degree of instability appears to characterise the new arrangements in Indigenous affairs with a seemingly endless raft of complex changes to the government's administrative processes and policies. The rhetoric of the arrangements is strong, but the outcomes remain elusive. The chapter analyses the processes of the new arrangements in some depth and offers suggestions about how existing commitments and processes could be turned into action to achieve this critical goal of improving mainstream accessibility of programs and services.

Chapter 3 of the report then considers developments through the new arrangements at the federal level to ensure the effective participation of Indigenous peoples in decision making that affects our lives. This includes the development of policy, program delivery and monitoring by governments at the national, as well as state, regional and local levels.

The chapter provides an update on developments at the national and regional level. It is clear that the mechanisms for Indigenous participation in the new arrangements remain inadequate. Indeed this ongoing failure to ensure Indigenous participation in decision making is the fundamental flaw in the implementation of the new arrangements. I also provide a brief overview of developments by some Indigenous peoples in relation to a national representative body and share briefly my thoughts on the matter.

It then looks to developments at the local level through Shared Responsibility Agreements (SRAs) to see how this program of activities is unfolding. The chapter contains a series of interviews with three SRA communities, and the results of a national survey of two thirds of those Indigenous communities or organisations that had entered into an SRA by the end of 2005.

The chapter then looks to ways forward which address the significant concerns that have been raised. It makes clear that it is *not* a flaw in design or of government policy. Government commitments exist to ensure the maximum participation of Indigenous peoples in decision-making and these commitments have been consistently re-affirmed by the government. The concerns reflect a problem of implementation.

Chapter 4 then considers developments at the international level that impact upon the recognition and protection of the human rights of indigenous peoples. Much of the focus at the international level has now begun to address the need for implementation. There exists concern at the existence of a 'protection gap' between the rhetoric and commitments of governments relating to the human rights of Indigenous peoples and the activities of governments on the ground. This 'protection gap' exists due to limited consideration of the Government's human rights obligations in the settling of policy and delivery of programs as they affect Indigenous Australians.

Recent developments emphasise the importance of adopting a partnership approach that secures the effective participation of indigenous peoples. Accordingly, this chapter also considers what actions ought to be taken within Australia, by governments and by our Indigenous communities and organisations, to facilitate improved partnerships with Indigenous peoples and ultimately to address the 'protection gap' between international standards and commitments, and domestic processes.

Appendix 1 of the report contains a chronology of events relating to the new arrangements for Indigenous affairs at the federal level from 1 July 2005 to 30 June 2006. This is the third year such a chronology has been included in the *Social Justice Report*.

Appendix 2 then reproduces the summary guide to a recent publication by the Human Rights and Equal Opportunity Commission that provides an overview of findings of research on family violence in Indigenous communities.

Appendix 3 reproduces the Survey form used for the national survey of Shared Responsibility Agreements. The outcomes of the survey are reproduced in chapter 3.

Appendix 4 then reproduces extracts from the *resolution* and Program of Action for the Second International Decade of the World's Indigenous Peoples. This provides a vital tool for bridging the implementation gap between the international and domestic systems.

Chapter 2

The new arrangements for Indigenous affairs – facilitating Indigenous access to government services

It has now been over two years since the federal government introduced new arrangements for the administration of Indigenous affairs. One of the catchcries of the new arrangements is that they are aimed at 'harnessing the mainstream.' This is to be achieved by removing or reducing the barriers that prevent Indigenous peoples from accessing existing mainstream services on an equitable basis. There are two ways of achieving this: first, mainstream departments can improve their service delivery so that existing mainstream services are better able to meet the needs of Indigenous peoples; and second, the whole of government machinery of the new arrangements for Indigenous affairs can be utilised to create better synergies between mainstream programs and Indigenous specific services. The focus of this chapter is primarily on this second aspect of 'harnessing the mainstream'.

This is the third successive year that the *Social Justice Report* has considered the impact of the new arrangements. The two previous reports have expressed concerns at the lack of progress in 'harnessing the mainstream' and the existence of structural problems within the new arrangements that work against this objective (such as the absence of processes for systemic engagement with Indigenous peoples locally, regionally and nationally; the absence of appropriate monitoring and evaluation mechanisms; and the under-performance of Shared Responsibility Agreements and the new whole of government machinery in 'unlocking' mainstream accessibility).

Sufficient time has now passed to identify whether the new arrangements have indeed begun to positively impact on the accessibility of mainstream services for Indigenous peoples, and consequently to demonstrate their potential to impact on the social and economic disadvantage experienced by Indigenous peoples. This chapter focuses on the performance of the new arrangements, with a particular emphasis on this objective of improving access for Indigenous Australians to mainstream services.

Part 1 of the chapter provides a broad overview of the challenges of improving accessibility of mainstream services for Indigenous peoples, as well as the commitments made to achieve this through the new arrangements. Part 2 then considers the existing potential and current progress in 'harnessing the mainstream' through the new arrangements for the administration of Indigenous affairs.

As this chapter demonstrates, a degree of instability appears to characterise the new arrangements in Indigenous affairs with a seemingly endless raft of complex changes to the government's administrative processes, policies and programs. The rhetoric of the arrangements is strong, but the outcomes remain elusive. The chapter analyses the processes of the new arrangements in some depth and offers suggestions about how existing commitments and processes could be turned into action.

Part 1: The challenge of ensuring equal access to mainstream services for Indigenous peoples

Background – the new arrangements for the administration of Indigenous affairs

New arrangements for the administration of Indigenous affairs were introduced as of 1 July 2004. The arrangements abolished the Aboriginal and Torres Strait Islander Commission (ATSIC)[1] and Aboriginal and Torres Strait Islander Services (ATSIS), and transferred responsibility for ATSIC/ATSIS programs to mainstream agencies. The federal government held high hopes for the new arrangements. ATSIC was seen as the cause of the failure to improve Indigenous disadvantage and therefore abolishing ATSIC would clear the way for effective coordinated programs. The then Minister for Immigration and Multicultural Affairs, Senator Vanstone, observed that:

> No longer will governments persist with the ATSIC experiment that has achieved so little for Indigenous people.[2]

Under the new arrangements, the administration of Indigenous-specific programs became the responsibility of mainstream government departments. A brief description and rationale of the new arrangements was provided by Senator Vanstone on 30 June 2004, which stated, *inter alia*:

> More than $1 billion of former ATSIC-ATSIS programmes have been transferred to mainstream Australian Government agencies and some 1,300 staff commence work in the new Departments as of tomorrow.
>
> We want more of the money to hit the ground. We are stripping away layers of bureaucracy to make sure that local families and communities have a real say in how money is spent.
>
> Mainstream departments will be required to accept responsibility for Indigenous services and will be held accountable for outcomes. In future they will work in a coordinated way so that the old programme silos of the past are broken down.
>
> Guiding whole-of-government service delivery with Indigenous representatives will be Partnership Agreements developed at the regional level and shared responsibility agreements at the local and community level. The new approach will

1 ATSIC was created in 1989 and commenced operating in 1990 until 2004. It was a fully elected Commission with 35 Regional Councils and a national Board of Commissioners. In 2003, the service delivery responsibilities of ATSIC were administered by a newly created body, Aboriginal and Torres Strait Islander Services (ATSIS).

2 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Australian Government Changes to Indigenous Affairs Services Commence Tomorrow,* Media Release, 30 June 2004.

> require communities to offer commitments such as improved school attendance in return for Government funding initiatives.[3]

The new arrangements aimed to remove, or at least reduce, barriers that prevent Indigenous peoples from accessing existing mainstream services on an equitable basis.[4] This objective has been called 'harnessing the mainstream'.

'Harnessing the mainstream' is an evocative phrase suggesting that there is considerable potential for Indigenous advancement by improving access to mainstream programs for Indigenous peoples. This can involve removing barriers and constraints to accessing services, using mainstream programs creatively to work in tandem with Indigenous-specific programs, and delivering mainstream programs in a more flexible and less bureaucratic manner.

The Secretary of the Department of Prime Minister and Cabinet, Dr Shergold, explained the objective of improving performance of mainstream services through the new arrangements as follows:

> complex problems, particularly in public policy, are rarely resolved by structures. Public servants are remarkably good at structures. Put public servants together for half an hour and they can rearrange the boxes very easily... The solution that is required here on Indigenous affairs is necessarily a whole-of-government solution. One of our key failings, I think, in terms of public policy is the failure to have a whole-of-government approach to issues... The key is to change the culture of how public servants deliver public policy. That is my first point.
>
> My second point is that I think mainstreaming has been an enormous failure. If I thought we were returning to mainstreaming in the old sense I would not support it at all. But define mainstreaming. All the literature that I have seen says there are a number of qualities to mainstreaming. The first is that you do not have Indigenous specific programs. The second is that each department and agency makes its own decisions in a non-coordinated way. The third is that you do not have an Indigenous specific agency. The fourth is that you have national programs that are delivered in the same way no matter where they are delivered. Those are the four key ingredients of mainstreaming.
>
> The government's new approach is completely at odds with each of those four criteria. It is committed to maintaining the funding for Indigenous specific programs. It has established an Office of Indigenous Policy Coordination and Indigenous coordination centres across the country. It has made it clear that the mainstream departments have to work together, and it has said that there needs to be flexibility in programs so they can respond to local need. What we have here is a quite new approach. It will not work quickly; this is in for the long term. It is not mainstreaming in the sense of the articles that have been written criticising it. It is a new whole-of-government approach, and that is what I am committed to.[5]

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3 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Australian Government Changes to Indigenous Affairs Services Commence Tomorrow,* Media Release, 30 June 2004.

4 Office of Indigenous Policy Coordination, *New arrangements in Indigenous affairs: Attachment F: National Framework of Principles for Delivering Services to Indigenous Australians*, OIPC, Canberra, 2004, p51.

5 Shergold, P., Hansard, Senate Select Committee on the Administration of Indigenous Affairs, Inquiry into the *Aboriginal and Torres Strait Islander Bill 2005,* 8 February 2005, p2, available online at www.aph.gov.au/hansard/senate/commttee/S8106.pdf accessed 14 February 2007.

I have discussed the new arrangements (constituting a 'quiet revolution' according to Senator Vanstone[6]) in detail in the past two Social Justice Reports.[7] The government's new approach to Indigenous affairs reflects its strong commitment to what it terms 'practical reconciliation'. As my predecessor, Dr William Jonas AM, observed in the Social Justice Report 2003:

> 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.[8]

A number of commentators have noted that in some respects these new arrangements are not all that new.[9] 'Mainstreaming' as such has been a mainstay of Indigenous policy discourse for many years.[10] What was particularly new was the abolition of ATSIC and thereby the loss of an Indigenous representative voice in the processes of government at national and regional levels.

So how have the new arrangements matched with the rhetoric and begun to demonstrate their potential to impact on the social and economic disadvantage experienced by Indigenous Australians? This chapter examines the efficacy of the new arrangements, including in respect of the objective of improving access for Indigenous Australians to mainstream services.

Indigenous disadvantage and human rights

There is no dispute that there is a significant problem in respect of Indigenous disadvantage in Australia. As Gary Banks, Chairman of the Productivity Commission has noted in the Foreword to the Report *Overcoming Indigenous Disadvantage – Key Indicators 2003*:

> Notwithstanding many years of policy attention, this Report confirms that Indigenous Australians continue to experience marked and widespread disadvantage. This is shown most fundamentally by the 20 year gap in average life expectancy between Indigenous and other Australians.[11]

More recently Dr Ken Henry, Secretary of Treasury, commenting on the extent and persistence of Indigenous disadvantage in Australia, observed that 'Indigenous

6 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Address to National Press Club*, Speech, 23 February 2005: "Happily, I can say a quiet revolution in Indigenous affairs is already underway."

7 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004,* HREOC, Sydney, 2004, Chapter 3 and Appendix 1, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, Chapter 3 and Appendix 1.

8 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, HREOC, Sydney 2003, p13.

9 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, pp19-22.

10 See, for example, the Whitlam Government's reforms to the delivery of government services to Aboriginal communities in the Northern Territory in the early 1970s which dismantled the all-encompassing service provision umbrella of the Social Welfare Branch of the Northern Territory Administration in favour of line government agencies.

11 Steering Committee for the Review of Government Service Provision (SCRGSP), *Overcoming Indigenous Disadvantage – Key Indicators 2003,* Productivity Commission, Canberra, 2003, p v.

disadvantage diminishes all of Australia' and stated that 'it has to be admitted that decades of policy action have failed'.[12]

The situation in respect of Indigenous disadvantage has been noted at the international level. In 2000 the United Nations Committee on Economic Social and Cultural Rights (CESCR) expressed its:

> concern that, despite the efforts and achievements of the State party [Australia], the indigenous populations of Australia continued to be at a comparative disadvantage in the enjoyment of economic, social and cultural rights, particularly in the field of employment, housing, health and education.[13]

In important respects things are not improving for Indigenous Australians. Gary Banks, on the release of the *Overcoming Indigenous Disadvantage: Key Indicators 2005*,[14] commented on the mixed results in the report and identified 'areas of regression'. These included: increases in Indigenous peoples as victims of violence, as subject to child protection notifications, and in regard to imprisonment rates, especially for women.[15]

Recent reports suggest that increases in diabetes amongst Indigenous peoples will have a devastating impact over time. For example, up to 30% of Torres Strait Islanders are affected by type 2 diabetes.[16] Statistics on the large Aboriginal community of Wadeye in the Northern Territory reflect a parlous situation, with a death rate four times higher than the rate for the Northern Territory, an average life expectancy of 46 years, a range of serious and endemic health problems, and a high percentage of children in the 0-5 age group who are stunted (20%), wasted (10%) and/ or underweight (21%).[17]

Whilst there is widespread agreement and concern about the state of Indigenous disadvantage measured against a range of economic and social indicators, there is less recognition that this situation reflects a profound failure to afford Indigenous Australians their full range of human rights. Australia's ongoing inability to secure decent living standards for its Indigenous citizens is not only a failure of domestic policy, it is also a failure to meet basic legal obligations arising from Australia's role as a responsible member of the international community.

There is a clear obligation on Australia, in terms of the requirements under international law and in particular under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR – ratified by Australia), to:

> take steps … to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means.[18]

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12 Henry, K., (Secretary of Treasury), *Managing Prosperity*, Address to the 2006 Social and Economic Outlook Conference, Melbourne, 2 November 2006.

13 Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia 01/09/2000*, 1 September 2000, UN Doc E/C.12/1/add.50, paragraph 15.

14 Steering Committee for the Review of Government Service Provision (SCRGSP), *Overcoming Indigenous Disadvantage – Key Indicators 2005,* Productivity Commission, Canberra, 2005.

15 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?* Address to the Committee for Economic Development in Australia (CEDA), 21 September 2005, pp 8-9.

16 Diabetes Australia, *Rapid Increase in Diabetes Rates May Threaten Survival of Some Indigenous Groups*, Media Release, 13 November 2006.

17 Taylor, J., *Social Indicators for Aboriginal Governance: Insights from the Thamarrur Region, Northern Territory,* Centre for Aboriginal Economic Policy Research (CAEPR), Research Monograph No. 24, 2004, p12.

18 Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

These rights are precisely the sorts of rights in which Indigenous Australians fare so poorly. They include the right to an adequate standard of living (which includes adequate housing) and the right to the highest attainable standards of physical and mental health. Further, the steps required to be taken under the Covenant must be *deliberate, concrete and targeted* towards ensuring the full realisation of rights and governments must demonstrate that they are progressively realising the enjoyment of rights.[19] This requires that service delivery occur within an overall strategy that includes *specific, time-bound and verifiable benchmarks and indicators*[20] to ensure that the enjoyment of rights improves over time.[21]

In Australia, this requires an integrated and purposeful approach to improving Indigenous living standards which will necessarily include improved access to mainstream services and a range of Indigenous specific programs to respond to particular circumstances. It also requires flexibility and sensibility to the cultural and social norms and aspirations of Indigenous peoples. This principle is well established in international law,[22] and it should be the very bedrock on which Australia's reconciliation process is built.

When considering Indigenous peoples' ability to exercise and enjoy their economic, social and cultural rights, the United Nations Committee on Economic Social and Cultural Rights has also provided guidance to governments about how to fulfil their legal obligations. The Committee has encouraged governments to:

- Prepare aggregate national statistics or estimates so that they have an accurate diagnosis and knowledge of the existing situation;
- Give special attention to 'any worse-off regions or areas and to any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged';
- Engage in the elaboration of clearly stated and carefully targeted policies and develop and adopt a detailed plan of action for the progressive implementation of each of the rights contained in the Covenant;
- Facilitate public scrutiny of government policies with respect to economic, social and cultural rights, and encourage the involvement of the relevant sectors of civil society in the formulation, implementation and review of these policies;

19 Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of States parties obligations (art.2(1) of International Covenant on Economic, Social and Cultural Rights)*, 14 December 1990, UN Doc E/1991/23, para 2.

20 United Nations Development Programme (UNDP), *Human Development Report 2000 – Human rights and human development,* UNDP, New York, 2000, available online at http://hdr.undp.org/reports/global/2000/en/ accessed 14 February 2007.

21 For an overview of these principles in the Australian context see further: Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Achieving Aboriginal and Torres Strait Islander health equality within a generation', *Social Justice Report 2005*, Chapter 2, HREOC, Sydney, 2005 and Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Measuring Indigenous disadvantage', *Social Justice Report 2002*, Chapter 4, HREOC, Sydney, 2002.

22 See for example, *International Covenant on Civil and Political Rights*, Article 27; Committee on Economic, Social and Cultural Rights, *General comment 4 (1991): The Right to adequate housing (art.11(1) of the International Covenant on Economic. Social and Cultural Rights),* UN Doc E/1992/23, 13/12/91, 13 December 1991, para 8; Committee on Economic, Social and Cultural Rights, *General comment* 14 (2000): *The Right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights),* UN Doc E/C.12/2000/4, 11 August 2000, para 27.

- Identify specific benchmarks or goals against which their performance in a given area can be assessed; and
- Report in detail on the factors and difficulties that inhibit progressive realisation of the full range of economic, social and cultural rights so that more appropriate policies can be put in place.[23]

There have also been a number of developments at the international level in recent years which have seen a clearer understanding emerge of the relationship between human rights and development and poverty eradication. Past Social Justice and Native Title Reports have highlighted these developments.[24]

One of the most significant outcomes of this focus on integrating human rights and development and poverty eradication activities has been the agreement among the agencies of the United Nations of the *Common Understanding of a Human-Rights Based Approach to Development Cooperation*.[25]

This document outlines the human rights principles that are common to the policy and practice of the UN bodies. The *Common Understanding* states that these principles are intended to guide programming across a range of service delivery areas.[26] They are of importance in addressing the accessibility of mainstream services.

The *Common Understanding* has three principles. Namely, that:

- All programmes, policies and technical assistance should further the realisation of human rights;
- Human rights standards guide all development cooperation and all phases of programming; and
- Development cooperation contributes to the development of the capacity of 'duty-bearers' to meet their obligations and of 'rights-holders' to claim their rights.[27]

The *Common Understanding* also identifies the following elements that are 'necessary, specific, and unique to a human rights-based approach' to development.[28]

23 Committee on Economic, Social and Cultural Rights, *General Comment 1: Reporting by States parties,* 24 February 1989, UN Doc E/1989/22, paras 3, 4, 5, 6 and 8.

24 See in particular: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000; Social Justice Report 2002; Social Justice Report 2005;* and *Native Title Report 2003,* HREOC, Sydney.

25 United Nations, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies*, United Nations, New York 2003, available online at www.unescobkk.org/fileadmin/user_upload/appeal/human_rights/UN_Common_understanding_RBA.pdf accessed 14 February 2007.

26 Such as education, governance, nutrition, water and sanitation, HIV/AIDS, employment and labour relations, and social and economic security.

27 United Nations, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies*, United Nations, New York 2003, available online at www.unescobkk.org/fileadmin/user_upload/appeal/human_rights/UN_Common_understanding_RBA.pdf accessed 14 February 2007.

28 United Nations, *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies,* United Nations, New York 2003, available online at www.unescobkk.org/fileadmin/user_upload/appeal/human_rights/UN_Common_understanding_RBA.pdf accessed 14 February 2007.

Text Box 1: Elements of a human rights based approach to development

- Assessment and analysis identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realisation of rights.
- Programs assess the capacity of rights-holders to claim their rights and of duty-bearers to fulfill their obligations. They then develop strategies to build these capacities.
- Programs monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

Other elements of good programming practices that are also essential under a human rights based approach include that:

(i) People are recognised as key actors in their own development, rather than passive recipients of commodities and services.
(ii) Participation is both a means and a goal.
(iii) Strategies are empowering, not disempowering.
(iv) Both outcomes and processes are monitored and evaluated.
(v) Analysis includes all stakeholders.
(vi) Programs focus on marginalised, disadvantaged, and excluded groups.
(vii) The development process is locally owned.
(viii) Programs aim to reduce disparity.
(ix) Both top-down and bottom-up approaches are used in synergy.
(x) Situation analysis is used to identity immediate, underlying, and basic causes of development problems.
(xi) Measurable goals and targets are important in programming.
(xii) Strategic partnerships are developed and sustained.
(xiii) Programs support accountability to all stakeholders.

These principles provide useful guidance for incorporating participatory development principles into domestic policies and programs relating to Aboriginal and Torres Strait Islander policy, including, to improve accessibility of mainstream services.

The challenge of improving Indigenous access to mainstream services

Most expenditure by Australian governments on the provision of services to Indigenous peoples is made through mainstream services generally available to all citizens. However, the Commonwealth Grants Commission's *Report on Indigenous Funding 2001* found that Indigenous peoples do not access these mainstream services on an equitable basis:

> It is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous

> people. In general, Indigenous people experience greater disadvantage and have greater needs than non-Indigenous people and, for geographic, economic and cultural reasons, mainstream services are less accessible to them.[29]

The report noted that despite the physical accessibility of services in urban areas, there was a range of factors constraining access (see below). Although Indigenous peoples in rural and remote areas face similar barriers to urban Indigenous peoples, they also face major physical access difficulties because mainstream services are often either not provided, or physical access to them is restricted by distance.[30] There can also be problems in attracting and retaining experienced and trained staff to work in rural and remote areas or specifically with Indigenous peoples, regardless of location.

In response to this situation, the report identified as a principle that should underlie service delivery:

> Recognition of the *critical importance of effective access* to mainstream programs and services, and *clear actions to identify and address barriers* to access.[31] [emphasis added]

The ramifications of problems of accessibility to services were examined in the *Social Justice Report 2002*.[32] By way of example, that report noted that Indigenous peoples' access to health services needs to be viewed widely to include not only an evaluation of the specific health service in question, but the broader health context and underlying determinants of people's overall wellbeing. The work of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) is particularly relevant here as this body broadly interprets the right to health as contained in the Covenant as:

> an inclusive right extending not only to timely and appropriate health care but also to the *underlying determinants* of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.[33] [emphasis added]

The right to health has been elaborated in international law to give it real potency to improve health. This broad perspective and considered and elaborated approach to improving access to mainstream programs needs to be brought to bear in respect of the objective of 'harnessing the mainstream' under the new arrangements for Indigenous affairs in Australia.

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29 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra 2001, p 43.

30 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra 2001, p 62.

31 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra 2001, p101.

32 Aboriginal and Torres Strait Islander Commissioner, *Social Justice Report 2002,* HREOC, Sydney, 2003.

33 United Nations Committee on Economic, Social and Cultural Rights, *General comment 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights),* UN Doc E/C.12/2000/4, 11 August 2000, para 11. The full document, including references, is available online at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument accessed 14 February 2007.

There is a further dimension to consider when the health service in question is to be accessed by Indigenous peoples. The *Social Justice Report 2002* also observed that:

> Of particular note is the inclusion of a paragraph [in CESCR General Comment 14] specifically relating this right to Indigenous peoples.[34] The paragraph emphasises the need for health services to be *culturally appropriate* and for *full and effective participation* by Indigenous peoples. The Committee notes that in Indigenous communities the health of the individual is often linked to the health of the society as a whole and has *a collective dimension*. As with other rights protected by the Covenant (including the right to education), there is an emphasis on the need to develop health strategies that should identify appropriate right to health indicators and benchmarks. ..... Having identified appropriate right to health indicators, states should set appropriate benchmarks to each indicator, for use in monitoring and reporting.[35] [emphasis added]

The relevance of accessing mainstream services has been highlighted under the new arrangements for service delivery at the federal government level. The new arrangements emphasise whole of government service delivery and improved coordination and integration. Whole of government (or 'joined up' or 'connected' government) is a policy imperative that increasingly underpins the provision of government services across the board, including Indigenous services. Dr Shergold, Secretary of the Department of Prime Minister and Cabinet, has made clear that a whole of government approach is a high priority for the Australian Public Service.[36] 'Harnessing the mainstream' is a central plank in the 'whole of government' approach to service delivery.

The Australian government has also worked with state and territory governments to achieve better whole of government coordination between levels of government. The Council of Australian Governments (COAG) has made significant commitments to overcoming Indigenous disadvantage, including through the *National Framework of Principles for Delivering Services to Indigenous Australians* as agreed in June 2004. These principles include:

> address sharing responsibility, harnessing the mainstream, streamlining service delivery, establishing transparency and accountability, developing a learning framework and focussing on priority areas.[37]

COAG has identified the parameters of the objective of 'harnessing the mainstream' as follows.

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34 United Nations Committee on Economic, Social and Cultural Rights, *General comment 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights),* UN Doc E/C.12/2000/4, 11 August 2000, para 27. The full document, including references, is available online at http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument accessed 14 February 2007.

35 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002,* HREOC, Sydney, 2002, p98.

36 Shergold, P., (Secretary, Department of Prime Minister and Cabinet), *Connecting Government: Whole-of-Government Responses to Australia's Priority Challenges,* Speech at launch of the publication of the same name, 20 April 2004, available online at http://www.dpmc.gov.au/speeches/shergold/connecting_government_2004-04-20.cfm accessed 18 January 2007.

37 Council of Australian Governments (COAG), *Communiqué: Council of Australian Governments' Meeting 25 June 2004,* available online at http://www.coag.gov.au/meetings/250604/#formats accessed 18 January 2007.

Text Box 2: COAG Principles for ' Harnessing the Mainstream'

Ensuring that Indigenous-specific and mainstream programs and services are complementary.

Lifting the performance of programs and services by:

- reducing bureaucratic red tape;
- increasing flexibility of funding (mainstream and Indigenous-specific) wherever practicable;
- demonstrating improved access for Indigenous people;
- maintaining a focus on regional areas and local communities and outcomes; and
- identifying and working together on priority issues.

Supporting Indigenous communities to harness the engagement of corporate, non-government and philanthropic sectors.[38]

Increased access to mainstream programs is closely linked with improved integration and coordination of service delivery to Indigenous peoples and communities. In fact, these objectives are complementary, as one of the reasons for poor access is often perceived to be uncoordinated and complex service delivery arrangements. As I noted in my *Social Justice Report 2004,* the new arrangements for Indigenous affairs mean that, to a significant extent, at the federal level the administration of mainstream programs now sits alongside Indigenous-specific programs in the Indigenous Coordination Centres established to deliver Indigenous programs on a whole of government basis. As I emphasised:

> This is a significant opportunity to improve the accessibility of mainstream programs for Indigenous people and communities so as to better meet their needs.[39]

The new relationship between Indigenous-specific and general programs *within* portfolios rather than with *external* agencies, such as ATSIC, can lead to greater sensitivity in respect of actual *mainstream* program delivery. For example, delivery of mainstream services by an agency should now benefit from association with the Indigenous-specific services also being delivered. In this setting mainstream administrators will have a greater opportunity to learn about appropriate and effective Indigenous service delivery and be sensitised to particular difficulties confronting Indigenous peoples in their relations with government service providers.

As well, mainstreaming of ATSIC services under the new arrangements has given these issues greater cogency given that virtually all Indigenous funding now comes through mainstream agencies, whether as Indigenous-specific or as mainstream programs.

38 Council of Australian Governments, *National Framework of Principles for Delivering Services to Indigenous Australians,* 25 June 2004, available at http://www.coag.gov.au/meetings/250604/attachments_b.rtf accessed 18 January 2007.

39 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004,* HREOC, Sydney, 2004, p127.

This can, however, be problematic. As Gray and Sanders have noted, 'The relationship between Indigenous-specific programs and general programs within a portfolio area is complex'.[40] The problem is that the tendency to *substitute* rather than to *complement and supplement* programs can arise, even *within* portfolios – so that the burden may yet again be left to the Indigenous-specific programs, and the mainstream programs step back from the task. This **substitution effect** is explained in Text Box 3 below.

Text Box 3: The substitution effect

Besides the obvious disadvantage to Indigenous peoples resulting from barriers to access to mainstream services, a further problematic effect has been a tendency for Indigenous-specific programs to *substitute* for mainstream programs rather than to *supplement* them.

That is, mainstream service delivery for Indigenous peoples is simply replaced by Indigenous-specific programs, with no net increase in funds or resources being made available to address Indigenous disadvantage. This substitution effect also means that some agencies can put off coming to grips with their responsibilities to all Australians, including Indigenous Australians, and the need to develop the necessary expertise, sensitivity and flexibility for effective delivery of mainstream services to Indigenous peoples.

This was a particular problem for ATSIC, which was often left to fill the gap where mainstream agencies did not adequately meet their normal responsibilities to Indigenous peoples.

I appreciate that various high-level arrangements have been put in place to try to avoid such back-sliding.[41] Nevertheless, over time, there is a risk. As Gray and Sanders comment:

> Here then is the conundrum of Indigenous-specific mechanisms within government administration. They run the danger of letting general mechanisms avoid responsibility for Indigenous people, while simultaneously holding out the hope of sensitising those general mechanisms to Indigenous difference.[42]

The Secretaries' Group on Indigenous Affairs has delineated some of the challenges:

> The many challenges in this area include ensuring that Indigenous-specific and mainstream programs are complementary, reducing the red tape associated

40 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper No 282/2006, p23.

41 Structural arrangements designed to keep priority on reducing Indigenous disadvantage include the Ministerial Taskforce on Indigenous Affairs and the Secretaries' Group on Indigenous Affairs.

42 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p24.

with these services, and making mainstream services attractive to Indigenous people.[43]

These are important and difficult challenges for successful implementation of the new arrangements. The difficulties in the past in achieving objectives such as improving access to mainstream service provision provide a salutary lesson. Such difficulties were neither the making of ATSIC nor its predecessors, but instead reflect entrenched problems in responding to Indigenous disadvantage. One lesson is that, whilst ever Indigenous Australians retain distinctive cultural and societal values and practices, governments need to understand, respect and respond to such difference. They also need to value Indigenous participation in designing and implementing service delivery. Otherwise the difficulties between the 'mainstream' service providers and their Indigenous clients will worsen and inevitably, Indigenous people will bear the brunt of the failure.

I commented in my previous *Social Justice Report* that removing the barriers to accessing services is particularly challenging, and progress has been slow.[44] I believe this remains the case, and if anything this objective of the new arrangements has tended to slip from view. I also noted the absence of mainstream data, the lack of linkages between the *Overcoming Indigenous Disadvantage* reporting framework and mainstream programs, the absence of appropriate monitoring and evaluation processes, and the lack of mechanisms for Indigenous engagement and participation in designing and delivering services.[45] There remains a need for effective and credible evaluation of progress towards achieving the objective of 'harnessing the mainstream'.

The situation of urban Indigenous peoples – a particular concern

The federal government has made remote communities its priority for Indigenous-specific funding under the new arrangements. This is on the basis that need is greatest in remote communities, and on the understanding that mainstream services are generally available to urban-based Indigenous peoples.

This emphasis on remote communities is reflected in discussions at the November 2006 Senate Estimates hearings of the Senate Standing Committee on Community Affairs in the context of the 'strategic interventions' approach now being implemented in Indigenous affairs (see further below). In response to a question, the Associate Secretary of the Department of Families, Community Services and Indigenous Affairs (FaCSIA) advised that the great majority of these interventions are focused on remote locations that have been neglected, or where the needs are greatest. This reflects the Government's general approach:

43 Secretaries' Group on Indigenous Affairs, *Secretaries' Group Annual Report on Indigenous Affairs 2004-05*, Canberra, 2005, p13, available online at http://www.oipc.gov.au/performance_reporting/sec_group/ accessed 18 January 2007.

44 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p178.

45 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p178.

> *Mr Gibbons*—There is an Indigenous specific cluster [within FaCSIA] and the resources of that program cluster are focused more on remote Australia than anywhere else—not exclusively, but the burden of our investment is going to be on the backlog in housing and infrastructure in remote Australia. *That is a clear priority of the government*.[46] [emphasis added]

The implicit assumption is that to a considerable extent the needs of urban Indigenous peoples (including people living in regional centres) can be met by mainstream programs because:

- services are already in place to serve the wider community, unlike more remote areas where services may have to be provided specifically to meet the needs of Indigenous communities; and
- many Indigenous peoples in urban areas follow a lifestyle quite similar to the wider society, and so it may appear that these people are better placed to utilise mainstream services.

But the diversity of situations of Indigenous peoples in urban and regional areas makes it unrealistic to over-generalise. The needs of Indigenous peoples living on Special Purpose Leases on the outskirts of Alice Springs, Darwin or Katherine in the Northern Territory will be quite different to those of people living in the suburbs of Sydney or Melbourne or housing estates in regional centres such as Dubbo or Geraldton.

The Commonwealth Grants Commission has pointed out that:

> Despite the physical accessibility of services in urban areas, a range of factors clearly constrains access of Indigenous people to them. The result is that mainstream services are not meeting the needs of Indigenous people equitably.[47]

There are a number of reasons for this relative under-utilisation of mainstream services, which can be generally considered under the term of 'barriers to access'. This under-utilisation of services undoubtedly is a contributing factor to the relative disadvantage of the Indigenous population, including the disadvantage experienced by Indigenous peoples living in urban areas. The Commonwealth Grants Commission listed the following barriers to access in urban areas.

46 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard,* Standing Committee on Community Affairs Estimates, Canberra, 2 November 2006, pCA21, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

47 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra 2001, p61.

Text Box 4: Barriers to access to services for Indigenous peoples in urban areas

(i) Some mainstream services are planned and delivered so as to meet the requirements of the most common users, and do not allow sufficiently for the extreme disadvantage and special needs of Indigenous people;

(ii) Some requirements for accessing services do not take sufficient account of the lifestyle of Indigenous people;

(iii) In general, Indigenous people have very low incomes and little accumulated wealth. Consequently, financial barriers constrain access to some services;

(iv) People living in the outer suburban fringes of large urban centres, where public transport infrastructure is more limited, can experience difficulties in gaining physical access to services;

(v) Workforce issues experienced by service providers can restrict Indigenous people's access to services. Staff are not always trained to work in a cross-cultural context or where they experience the complex multiple problems Indigenous people often face. The relatively low number of Indigenous staff in some services, especially in large urban areas, adds to Indigenous insecurities in using mainstream services;

(vi) Legacies of history and unpleasant previous experiences with mainstream services can reduce Indigenous use of facilities;

(vii) Some mainstream services are delivered in ways that make Indigenous people feel uncomfortable, that is, services are not culturally appropriate or culturally secure; and

(viii) There may be poor links between complementary services, for example between training institutions and employment facilities, or between primary health providers and hospitals or ancillary health services.[48]

Cultural practices and social arrangements are also important determinants of the lower uptake, relative to the wider population, of mainstream services by Indigenous peoples in urban areas.

The persistence of Indigenous difference, and evolving Indigenous norms and customs, including in urban areas, results in mainstream services often being unsuitable or unworkable. For example, in urban and regional areas the mainstream criminal justice system, with relatively high rates of Indigenous offending and incarceration, is often less effective than it might be in deterring criminal behaviour and in providing effective rehabilitation. Consequently a number of initiatives, including elder participation in judicial processes and circle sentencing have been developed. This has been a positive development in aligning mainstream services with Indigenous needs and values. As my predecessor, Dr Jonas, pointed out:

48 Commonwealth Grants Commission, *Report on Indigenous Funding 2001*, Canberra 2001, p61-62.

> The fact that Indigenous involvement in sentencing processes is taking place in urban areas in the most settled eastern sea-board states, such as through the Koori, Ngunga and Murri Courts and circle sentencing, demonstrates the vitality and evolving nature of [Indigenous] customary law.[49]

As well, past bad experiences with mainstream service providers, and the confidence-sapping effects of a lifetime led in the shadow of racism, can all be real barriers to accessing services.[50]

Thus, as I pointed out in the *Social Justice Report 2004*, the emphasis in the new arrangements on remote discrete Indigenous communities poses difficulties for Indigenous peoples in urban areas.[51] Urban Indigenous peoples may in effect be abandoned to mainstream services, without adequately addressing issues of access, flexibility and relevance.

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) considered some of these problems in an inquiry into the needs of urban dwelling Aboriginal and Torres Strait Islander peoples in 2001. In respect of accessing mainstream services, it noted that:

> The evidence suggests that Indigenous people in urban areas tend not to use mainstream services and choose instead to use Indigenous community organisations as either intermediaries with mainstream agencies or as replacement service providers, *or not to use any services at all* [emphasis added]. [52]

Or, as Shelley Reys, an Indigenous consultant and a Board member of Reconciliation Australia, has observed:

> Indigenous people in Sydney are expected to access mainstream services that often don't meet their needs. [53]

Indeed, HORSCATSIA's Report set out the challenges and parameters of service delivery to urban-based Indigenous peoples as follows:

> In urban areas at least, the urgent priority should be on meeting the needs of Indigenous people through better access to existing mainstream services. This means that mainstream services need to be appropriately designed and delivered in culturally sensitive ways that reflect regional differences and cultural diversity. It also means that Aboriginal and Torres Strait Islander peoples need to be involved in program design and service delivery. It may be necessary to invest in parallel Indigenous specific structures or services where mainstream services are inadequate or non existent.

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49 Jonas, W., (previous Aboriginal and Torres Strait Islander Social Justice Commissioner), *The Recognition of Aboriginal Customary Law,* Speech to the HREOC and International Lawyers Association (Australian Division) Workshop on 'Recognising Aboriginal and Torres Strait Islander customary law – international and domestic law implications', Sydney, 20 November 2003, available online at http://www.humanrights.gov.au/speeches/social_justice/recognition_customary_law.html accessed 18 January 2007.

50 See, for example, report on work of the Winnunga Nimmityjah Heath Service in Canberra and its CEO Julie Tongs, 'Tongs draws on sobering past to guide others down the right path', *Canberra Times,* 18 November 2006, Forum B3.

51 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004,* HREOC, Sydney, 2004, p117.

52 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *"We Can Do It!" The Report of the Inquiry into the Needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples,* Commonwealth of Australia, Canberra 2001 at 3.3.

53 Reys, S. (Managing Director, Arrilla – Indigenous Consultants and Services and Director, Reconciliation Australia), quoted in *The Weekend Australian,* November 4-5, 2004 – 'The Nation' section.

> The Committee acknowledges that there are many mainstream government services that Indigenous people find currently neither easy to use nor appropriate to their circumstances. However, this is not a reason for doing nothing. Appropriate plans need to be developed to overcome these obstacles. They should not be perpetuated.[54]

This is the nub of the situation. These comments by the HORSCATSIA provide a template for the provision of services to Indigenous peoples in urban areas and regional centres. The question that needs to be considered is whether the new arrangements for Indigenous affairs are responsive to the needs of Indigenous peoples in urban areas. Does the current emphasis on SRAs and strategic interventions in discrete and remote communities mean that for urban Indigenous peoples the unsatisfactory state of affairs regarding access to mainstream services will be perpetuated?

The Office of Indigenous Policy Coordination has identified improving mainstream access as a critical component of the new arrangements if the government is to improve service delivery to Indigenous peoples in urban locations:

> the Government recognises that Indigenous disadvantage will not be addressed through Indigenous-specific programs and services alone. It is important, particularly in an urban context where the majority of mainstream infrastructure is already present, to 'harness the mainstream'… In urban and regional environments, where the majority of the Indigenous population lives, physical access to mainstream services is less likely to be the key issue. However, mainstream services have not performed as well as they should in meeting the needs of Indigenous people in urban areas. Therefore, the Australian Government is also working to harness mainstream services, to improve access to, take-up of and outcomes from these services for Indigenous Australians. This is also an issue being raised in various bilateral negotiations with the States.[55]

In correspondence provided for this year's report, as well as discussions with senior officials in OIPC, the government has indicated that it continues to struggle with the challenge of 'harnessing the mainstream' among Indigenous peoples in urban communities:

> Our analysis shows that harnessing the mainstream is closely connected to the effective provision of services to urban Indigenous people. Feedback from those working on the ground as well as nationally… reveals that there are many success factors and challenges common to both urban and mainstreaming issues. These include:
>
> - Improved mechanisms/incentives are needed in mainstream services to break down barriers to access and to ensure that use by Indigenous people is in line with need and that outcomes achieved are comparable to other Australians in like circumstances;
> - Further information is needed on Indigenous mobility and service usage in urban areas;

54 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *"We Can Do It!" The Report of the Inquiry into the Needs of Urban Dwelling Aboriginal and Torres Strait Islander Peoples,* Commonwealth of Australia, Canberra 2001, paragraphs 1.36 and 1.37.1.

55 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p179.

- The Indigenous population in urban areas can be diffuse and is not always readily identified as cohesive or 'community' groupings for the purpose of targeting services and collaboration;
- Cooperative action by governments can be hampered by inflexibility resulting from the funding, structure and operation of agencies and programs; and
- The necessary changes and improvements need a long term approach.

These success factors and challenges will be further examined during ongoing policy developments on improving urban and mainstream services.[56]

A case study: withdrawal of CDEP from urban and certain regional centres and abolition of Indigenous Employment Centres

There are two aspects to improving accessibility of mainstream services for Indigenous peoples. The first is improving such access through whole of government coordination and the machinery of the new arrangements (as discussed throughout this chapter). The second is the efforts of individual mainstream departments to build better connections between the mainstream and Indigenous specific services they deliver on a day-to-day basis.

The Department of Employment and Workplace Relations (DEWR) is one such mainstream agency that has taken on a significant role in Indigenous affairs as a result of the new arrangements. This owes much to the fact that tackling Indigenous unemployment and underemployment are at the core of the federal government's *Indigenous Economic Development Strategy (IEDS),* which was launched in November 2005.[57]

The goal of the IEDS is to support Indigenous Australians achieve economic independence by reducing their dependence on passive welfare. The strategy takes a whole-of-government approach to removing barriers to Indigenous economic independence, drawing together the range of mainstream and Indigenous-specific programs and services, and linking them into support offered through the corporate, community and philanthropic sectors.

Under this strategy, the 'key ingredients for economic independence' are Indigenous employment, home ownership and business development.[58] The twelve initiatives

56 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006*, 22 December 2005, pp7-8.

57 The IEDS builds upon the government's Indigenous Employment Policy (IEP). The IEP had been implemented progressively since 1999 to address continuing high unemployment rates among Indigenous Australians and a demographic profile which indicated that the labour market disadvantages of Indigenous Australians would, in all likelihood, increase further unless special efforts were made. The IEP focused on creating opportunities for Indigenous peoples in the private sector and aimed to: improve outcomes for Indigenous job seekers through Job Network; help Community Development Employment Project (CDEP) sponsors to place their work-ready participants in open (non-CDEP) employment; and support the development and expansion of Indigenous small business. See Australian Government, *Indigenous Employment Policy,* available online at http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/IndigenousEmploymentPolicyIEP.htm accessed 12 February 2007.

58 Australian Government, *Indigenous Economic Development Strategy: Achieving Indigenous Economic Independence, November 2005,* available online at http://www.workplace.gov.au/NR/rdonlyres/B7206570-9BFD-4403-B4A3-6649065FAE5A/0/IEDStrategyBooklet_revised_FINAL.pdf accessed 8 February 2007.

in the IEDS focus on two main areas: work and asset/ wealth management. The work initiatives include CDEP reform; local jobs for local people; improved employment service performance; and targeted industry strategies. The asset/ wealth management initiatives include increased Indigenous home ownership and economic development on Indigenous land.[59]

DEWR's prominence in Indigenous affairs is also related to the fact it is responsible for the largest Indigenous specific program, the *Community Development Employment Project (CDEP)*. The CDEP scheme was transferred from ATSIC to DEWR in July 2004, and underwent significant changes to align Indigenous specific services with mainstream services which I commented on in the *Social Justice Report 2005*.[60] Now one year on, we are faced with even more sweeping changes.

The CDEP scheme plays a central role in the economic and community life of many discrete Indigenous communities and rural towns with a significant Indigenous population.[61] As I reported in the *Social Justice Report 2005:*

> At 30 June 2004, there were over 36,000 CDEP participants and 220 CDEP organisations. In 2002 the CDEP scheme accounted for over one-quarter of the total employment of Indigenous Australians, with 13 percent of the working-age population being employed in the CDEP scheme. … The majority of CDEP participants (62%) were in very remote areas, 11 percent were in remote areas, 11 percent in outer regional areas, 9 percent in major cities and 7 percent in the inner regional areas.[62]

CDEP has been a contentious program since its inception in the late 1970s. Interestingly, it was an attempt to address the perceived negative effects that could flow from providing remote communities with social service benefits. There was a concern even then, that this 'passive welfare' would have harmful personal and social consequences.

Over its lifespan, the CDEP scheme has been criticised by Indigenous peoples and governments for a range of reasons, including that it:

- Is an alternative form of employment for Indigenous peoples, even where there are other jobs available in the local labour market;
- Is a destination or dead-end, rather than a pathway to 'real' and sustainable employment;
- It lets governments at all levels get away with not providing essential services to Indigenous communities;

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59 Australian Government, *Indigenous Economic Development Strategy: Achieving Indigenous Economic Independence, November 2005,* available online at http://www.workplace.gov.au/NR/rdonlyres/B7206570-9BFD-4403-B4A3-6649065FAE5A/0/IEDStrategyBooklet_revised_FINAL.pdf accessed 8 February 2007.

60 These reforms included an introduction of time limits for participation in CDEP contracts and an explicit focus on participants finding long-term jobs in the mainstream market. Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p180-192.

61 CDEP participants are paid a wage rather than receiving unemployment payments such as Newstart and Youth Allowance. Participants in remote areas receive a slightly higher wage than those in non-remote areas. CDEP organisations are paid 'on-costs' to cover the costs of running CDEP activities. Places in CDEP are capped and demand has always outstripped the available places.

62 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p180-181.

- It devalues the work done by CDEP participants because a 'real job' would earn a 'real wage;' and
- CDEP participants do not have access to superannuation, long-service leave and union membership.

For all its criticisms, it is important to acknowledge that the CDEP scheme has enabled many Indigenous communities to develop valuable community services which address key community needs. Many of these services are now regarded as 'essential services' in Indigenous communities and it is questionable that commercial enterprises could either afford to provide them, or deliver them in a culturally appropriate manner. Examples include: night patrol services; childcare centres; cultural and natural heritage programs; and garbage services.

The CDEP scheme has also contributed to the development of Indigenous businesses, entrepreneurship and leadership in some communities. CDEPs have been able to increase the employment prospects of many participants through the delivery of accredited vocational training courses, paid work experience, personal support and literacy/numeracy skills.[63]

Initially CDEP was based on community development with projects typically ranging from housing and road maintenance, to artefact production and horticultural enterprises. There was a strong emphasis on projects that positively contributed to community coherence and cultural integrity. There was also an emphasis on boosting the number of CDEP participants and completed projects.

However, reforms in recent years have shifted the focus towards long-term employment outside the CDEP scheme. Increasingly CDEP organisations are required to make links with a range of government programs aimed at getting Indigenous peoples into mainstream employment or developing Indigenous business opportunities.

The government's introduction of Indigenous Employment Centres (IECs) in recent years is indicative of the re-orientation of the CDEP scheme towards mainstream employment outcomes. From 2002, the government encouraged the establishment of IECs by CDEPs located in areas with good employment opportunities. The purpose of these centres was to assist more CDEP participants to move off CDEP into long-term employment outside the CDEP scheme. IECs would tailor help for individual CDEP participants to get them job ready, support them while they are in their chosen job, and provide a pathway to employment that has strong connections with the local community. IECs continued to be established in a total of 43 locations across Australia until 2006.[64]

On 6 November 2006 the Minister for Employment and Workplace Relations released an Indigenous employment discussion paper: *Indigenous Potential meets*

63 Unpublished Job Futures response to government discussion paper: *Indigenous Potential Meets Economic Opportunity,* November 2006, p2. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

64 Australian Government, Indigenous Employment Centres, Employment and workplace services for Australians website, available online at http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/IndigenousEmploymentCentres.htm accessed 9 February 2007.

Economic Opportunity.[65] It proposes 'a new model of employment services' for Indigenous Australians in urban and major regional centres.

The discussion paper notes major achievements of the CDEP reform process, which it credits to the introduction of the IECS, including:

- 3,704 Indigenous people moved out of CDEP and into employment in the 2005-06 financial year, an increase of 135 per cent on the 2004-05 financial year;
- In the three months to end September 2006, 1,482 CDEP participants were placed into jobs outside of CDEP – more than double the number in the same period last year;
- Over 20 businesses were progressed through CDEP during 2005-06. An additional 52 were identified and are progressing;
- The CDEP "No work No pay" rule is being more strictly enforced with participants now required to sign an acknowledgement form to ensure they are aware of the rule; and
- A more competitive funding process ensuring better value for money from CDEP.[66]

At the same time, the discussion paper acknowledges that only *5 percent* of the people moving through CDEP in 2005-06 were recorded as 'achieving employment off CDEP'.[67] In contrast, Job Network ('Australia's largest and most effective program in finding jobs for Indigenous people'[68]) placed over 45,200 Indigenous job seekers into jobs in a similar twelve month timeframe.[69] It is this apparent success of a mainstream service provider in placing Indigenous job seekers in employment that appears to be driving the government's latest round of CDEP changes.

Another reason for the changes is that 'outcomes from CDEP appear to be growing faster in remote areas than in urban areas', and 'a new approach is required to improve performance, particularly in urban and major regional centres with strong labour markets'.[70] This 'new approach' will include the abolition of CDEPs and IECs in urban and major regional centres, as well as a greater focus on placement directly into jobs through 'employer-focused job brokerage'. As the government's discussion paper elaborates:

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65 Andrews, K., (Minister for Employment and Workplace Relations), *Indigenous Employment Discussion Paper Released*, Media Release, 6 November 2006, KA303/06.

66 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p5, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

67 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p7, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

68 Department of Employment and Workplace Relations, *CDEP Guidelines 2005-06: Building on Success,* p.7, available at http://www.workplace.gov.au/NR/rdonlyres/DA6EA99F-EB21-4C90-810F-405D3AC49A51/0/CDEP_Guidelines2005_06.pdf accessed 13 February 2007.

69 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p6, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007. The timeframe was Aug 2005 – August 2006, and represented a 68 percent increase over two years.

70 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p7, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

> To make the most of strong labour markets in urban and major regional centres, the Australian Government proposes to further *increase the focus on employer demand* and placement directly into jobs. This would mean that in these locations, CDEP and IEC activities would cease and funding would be redirected to an enhanced STEP brokerage service from 1 July 2007. [emphasis added]
>
> The IEC model, which was designed to bridge the gap between CDEP and Job Network, is no longer necessary given the improved performance of CDEP service providers and Job Network members. Funding for IECs across Australia would cease on 30 June 2007. CDEP would continue to operate for eligible people in remote locations and regional location with weaker labour markets.[71] … This would affect about 40 of the 210 current CDEP service providers and about *7,000 CDEP places* out of around 35,000. All IECs across Australia would cease on 30 June 2007.[72] [emphasis added]

The new 'brokerage services' would be provided by enhanced *Structured Training and Employment Projects (STEP)* brokers (see text box below). They would work with local employers to identify employment opportunities and place people directly into jobs or organise training, mentoring and other activities that would prepare job seekers for identified jobs. CDEPs and IECs would be able to compete for new business as STEP brokers.[73]

Text Box 5: Enhanced STEP employment brokers

Regular STEP Program

There has been an increased emphasis on STEP since 1999 when the government introduced a range of initiatives to improve Indigenous economic independence.[74] The STEP program has the following characteristics:

- Provides funding and tailored help to private sector businesses that employ Indigenous Australians;
- Jobs must be ongoing after STEP funding ceases;.
- The level of funding depends on the type of organisation and assistance needed; and

71 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p7, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

72 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p2, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

73 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p8, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

74 Australian Government, *Indigenous Employment Policy,* Employment and workplace services for Australians website, available online at http://www.workplace.gov.au/workplace/Pages/ContentPage.aspx?NRMODE=Published&NRORIGINALURL=/workplace/Category/SchemesInitiatives/IndigenousProgs/IndigenousEmploymentPolicyIEP.htm&NRNODEGUID={1BB4D436-B862-4E41-9ABA-CFBDA2C2A713}&NRCACHEHINT=Guest#1 accessed 9 February 2007.

- Funding is available for training (including apprenticeships and traineeships, on the job training, school based apprenticeships and cross-cultural awareness training); development of an Indigenous employment strategy; mentoring; and help with employment costs.[75]

One feature that differentiates the STEP program from other Indigenous employment assistance programs is its *employer-driven orientation*. For example, STEP assistance 'is tailored to *business needs*'.[76] [emphasis added] This view is shared by Job Futures, which has described STEP as being:

> aimed at getting employers to increase the number of Aboriginal employees on their books, not aimed at enabling Very Long Term Unemployed or disadvantaged job seekers to gain and sustain employment. … STEP's effectiveness in creating new opportunities for long-term unemployed Aboriginal people, and for supporting local jobs for local people has not been demonstrated.[77]

Enhanced STEP brokerage

The government's description of 'enhanced STEP brokerage' indicates that like its predecessor, it too will focus on meeting *employer* demand:

> The enhanced STEP brokerage model would provide employers with employees to fill their available jobs. DEWR and STEP brokers would develop local strategies *based on employer needs* particularly in growth industries. Services for employers under these new arrangements would include:
>
> - Pre-employment support services that may include training and recruitment strategies;
> - Employment placement services to assist them place and retain Indigenous Australians in their workplaces; and
> - Mentoring services to help them retain their Indigenous employees.[78]

I am not confident that this demand-driven model is appropriate to address the problem of long-term Indigenous unemployment in Australia. Not only does it seem inappropriate to shift the focus to what *employers* need, rather than what will work best for Indigenous job seekers, it is also highly debatable that a demand approach will work in the regional centres where employment growth tends to be less strong. As Job Futures explains:

75 Australian Government, *Structured Training and Employment Projects (STEP) for employers,* available online at http://www.workplace.gov.au/workplace/Individual/IndigenousAustralians/StructuredTraningandEmploymentProjectsSTEPforemployers.htm accessed 13 February 2007.

76 Australian Government, *Indigenous Programs,* available online at http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/ accessed 9 February 2007.

77 Unpublished Job Futures response to government discussion paper: *Indigenous Potential Meets Economic Opportunity,* November 2006, p5. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

78 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p13, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

> While some employers complain that they would employ Aboriginal people if they could, these same employers complain about the quality of applicants they receive from Job Network. There is little evidence that employers have recognised either the need to reconsider their own hiring practices or the fact that the pool of high skilled, job-ready job seekers is diminishing – and those that remain require a substantial investment of time and resources to assist them into, and support them in, employment.
>
> … It is important to recognise too, that demand led strategies have been most successful where they have been geared to the needs of a single large employer or a critical mass of medium size employers in a common location or industry. … Demand led strategies may be viable in large urban centres with strong employment growth – like Perth or Melbourne. But it is less clear that they will work in Wagga, Broome or Port Lincoln.
>
> It is worth noting that small business is the largest employer of Australians. … Small businesses want employees who have real experience of paid work in a real workplace. The plant nurseries, maintenance crews, retail outlets, childcare centres, aged and disability care services that are currently provided by CDEP offer this opportunity.

It is important to note that these proposed changes are intended to commence implementation in mid 2007. The lifespan of these proposed new arrangements is only identified as being the next 2 years, i.e. 2007-08 and 2008-09. It seems the way is being left open for the full mainstreaming of Indigenous employment services in urban and regional centres following that.

The latest round of proposed changes to the CDEP scheme comes not long after a significant round of reforms last year. There has not been sufficient time to assess whether those changes were having a positive effective before Indigenous communities and organisations are now expected to absorb another, arguably more complex round of changes. This apparent 'restlessness' in arrangements, with constant changing of organisations, policy-settings, and even names, creates its own stresses and problems.[79]

It is important that there is clear direction and informed policy development in the critical area of Indigenous employment. This is not to suggest that all new policies should be free of modification and adjustment, but there needs to be recognition that communities and organisations can only absorb so much change before it becomes destabilising and detrimental.

It remains to be seen whether the government's proposal to increase Indigenous employment through job placement and job-relevant training in areas with an apparent strong labour market will result in increased sustainable job placements. However, there are a number of factors that bring into question whether this will be the case.

Principal among these is the assumption that a market with strong local demand will take up an Indigenous job seeker as readily as it would a non-Indigenous job

79 An overview of the reform process over the past two years is provided in the chronology of events in Appendix 1 of this report and Appendix 1 of the *Social Justice Report 2005*.

seeker. As Job Futures pointed out in its response to the government's discussion paper:

> Aboriginal job seekers, on the whole, are further from the world of work, more likely to live in jobless households, have lower basic skills (including literacy/numeracy) and are less likely to be prepared for sustainable work.[80]

Similarly, a downturn in current buoyant labour conditions may also weaken the position of Indigenous job seekers in the employment market.

Although the government is confident that the CDEPs that have been targeted for replacement by enhanced STEP brokers all have strong labour markets, the socio-economic status of Indigenous peoples in those locations does not compare well to the non-Indigenous population. As Job Futures explains, in each location:

- The unemployment rate of Indigenous peoples is higher and the labour force participation rate lower than for non-Indigenous people – even when the CDEP labour force is included in the employment figures;
- The level of long-term unemployment is higher amongst Indigenous people than non-Indigenous people; and
- The level of schooling of Indigenous people is substantially lower than non-Indigenous people.[81]

Given the profile of Indigenous job seekers in the locations where the CDEP reforms will occur, Job Futures has recommended the government maintain the CDEP scheme as an 'intermediate labour market program' – which was the broad intention of the 2005-06 changes to CDEP guidelines. Job Futures recommends that in urban areas, rather than abolishing them, CDEPs be:

> repositioned as an Intermediate Labour Market program which provides an experience of real work, for wages, which reconnects people to the world of work and facilitates the transition to mainstream employment. … While many employers are willing to provide vocational skills, employers are not geared to assisting employees to gain basic skills. Employers want employees who will turn up each day appropriately dressed, able to work effectively with co-workers and with a basic understanding of work safety rules. Intermediate labour market programs give people the chance to develop these skills'.[82]

I am not alone in my concerns about the haste with which the changes to the CDEP scheme will be introduced, and the extent to which Indigenous communities and organisations will be prepared for their introduction.[83] The government's discussion paper acknowledges that on 1 July 2007 approximately 7,000 people will lose their

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80 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p9, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

81 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p9, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

82 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p9, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

83 See, for example, the Reverend Gregor Henderson, President of the Uniting Church, *Govt urged to defer axing of CDEP program,* ABC News online, 27 November 2006 available online at http://www.abc.net.au/message/news/ accessed 2 December 2006.

CDEP wage. What it does not contemplate are the possible adverse social and economic consequences for the Indigenous individuals, families and communities that will be affected. As Job Futures warns:

> CDEP is currently the largest employer of Aboriginal people in the country and is considered a real job by participants, community members and recipients of CDEP services. … Unless these individuals have a job to go to, they will be made redundant and are likely to experience the range of personal, social and financial problems that go with this. Shame, withdrawal from social activity, ill health and poor financial status are some of the consequences. …
>
> We highlight these issues not because we believe that the status quo should remain, but because we believe that *change should be measured and should be calculated to improve the situation of Aboriginal people* – not drive communities and individuals to despair.[84] [emphasis added]

Although the government's discussion paper provides assurances that DEWR will develop comprehensive transition arrangements for all CDEP participants and service providers affected by the new model, there is surprisingly little detail about what such arrangements might entail. Beyond assurances that DEWR will 'ensure affected participants understand how the changes affect them and what their options are', and will 'work with CDEP service providers, Centrelink, and other service providers' to assist participants – there is no further information.[85]

The government's proposal to abolish all IECs without first evaluating their effectiveness is also a matter of concern. The discussion paper makes no comment about whether they achieved any of their objectives, or how the enhanced STEP brokerage system will improve on them. Rather it appears that the IEC model is being mainstreamed and re-badged as something new and improved, namely *enhanced STEP*. However there is surprisingly little detail about how the 'enhanced STEP' will be different from the old 'STEP'. For example, there is no information about:

- The number of people that will be able to access the service over time;
- The nature or level of the community activities stream;
- How activities under STEP will be differentiated from Job Network services; and
- The key performance indicators or the guidelines that DEWR will use to distribute business amongst the employment brokers.

I am not confident that the month-long public consultation process shed any further light on these matters or enhanced general understanding in the Indigenous community about how the reforms will operate. Such understanding is critical to the smooth implementation at the community level. As Job Futures observes:

> After one consultation session at which DEWR presented, a number of organisational representatives discussed their impression of the extent to which community engagement activities would continue to be part of the enhanced

84 Unpublished Job Futures response to government discussion paper: *Indigenous Potential Meets Economic Opportunity,* November 2006, p3-4. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

85 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p9, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

> STEP model. The organisations had impressions ranging from that these activities would be unchanged under the new arrangements, to that they would be practically eliminated. This difference highlights the fact that the discussion paper simply does not have the level of information required by communities, recipients of CDEP services (eg childcare centres, Day Patrol) and CDEP participants to enable them to consult about the impact of the changes.[86]

I expressed significant concerns about the consultation process held for the previous round of CDEP reforms.[87] Similar concerns exist about the latest round of consultations on the discussion paper. A total of 30 face-to-face consultations were held in urban and regional centres over a two week period in November 2006, and each consultation ran for three hours. Interested parties had at most, one month to submit written comments.[88] Although the government has provided assurances that the feedback from these consultations will 'be used to shape the future direction of CDEP,'[89] I question the extent to which the government will take on board any Indigenous or employment industry feedback. The government has already identified which CDEPs it will abolish, it has set a deadline of 1 July 2007 for the commencement of the STEP brokerages, and there simply is not the time to rethink the model in any substantive way.

Concerns have also been expressed regarding the capacity of some CDEPs and IECs to compete for STEP brokerage contracts against organisations that have years of experience bidding for contracts with DEWR.[90] Although DEWR intends to 'work closely with CDEP organisations to maximise the opportunities for emerging businesses to continue',[91] there is considerable risk that some of these organisations will not make the transition. The loss of organisations that deliver valuable if not essential services in Indigenous communities will have broader social and economic consequences that will need to be addressed as a matter of urgency.

Finally, I question the extent to which enhanced STEP will really provide a new service to Indigenous job seekers. The government acknowledges that some Indigenous job seekers will not be ready for training or job placement; hence community work activities will have to continue to be provided through the enhanced STEP. It appears that, to this extent at least, STEP will continue to operate like a CDEP in relation to these Indigenous clients. Similarly, the services described

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86 Unpublished Job Futures response to government discussion paper: *Indigenous Potential Meets Economic Opportunity,* November 2006, p5. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

87 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p180-192.

88 Australian Government, *Indigenous Potential meets Economic Opportunity: A discussion paper,* p14, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

89 Australian Government, *Have your say,* Employment and workplace services for Australians website, available online at http://www.workplace.gov.au/workplace/Category/SchemesInitiatives/IndigenousProgs/Haveyoursay.htm accessed 13 February 2007.

90 Unpublished Job Futures response to government discussion paper: *Indigenous Potential Meets Economic Opportunity,* November 2006, p11. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

91 Australian Government, Indigenous Potential meets Economic Opportunity: A discussion paper, p12, available online at http://www.workplace.gov.au/NR/rdonlyres/D61B8DCB-A036-423F-9511-299E83F22752/0/CDEPPaperdiscussionwebfinal.pdf accessed 18 January 2007.

as falling within enhanced STEP are already currently available through the Job Network or Wage Assistance.[92]

My Office will continue to monitor developments in relation to the operation of the CDEP scheme and the enhanced STEP model. The effects of the changed arrangements will need to be carefully monitored before further changes are introduced. This will especially be the case if the proposed changes prove to be a trojan horse for further mainstreaming of Indigenous employment services in urban areas. It would be highly undesirable if a class of Indigenous peoples become permanently isolated from the labour market in urban and regional areas, without the support of CDEP or some similar arrangement that meets the particular needs of Indigenous unemployed people and allows them activity, training and purpose. It is difficult at this stage to see this being satisfactorily provided by the mainstream employment services.

The Council of Australian Governments (COAG) Trials

The genesis of the new arrangements are to be found in the agreement in April 2002 of the Council of Australian Governments (COAG) to trial a new whole of government approach to the delivery of services to Indigenous communities at eight selected trial sites:

> 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.[93]

The key objectives in the COAG trial sites were to:

- tailor government action to identified community needs and aspirations;
- coordinate government programs and services where this will improve service delivery outcomes;
- encourage innovative approaches;
- cut through blockages and red tape to resolve issues quickly;
- negotiate agreed project outcomes, benchmarks and responsibilities with the relevant people in Indigenous communities;
- work with Indigenous communities to build the capacity of people in those communities to negotiate as genuine partners with government; and
- build the capacity of government employees to work in new ways with Indigenous communities.[94]

92 Unpublished Job Futures response to government discussion paper: *Indigenous Potential Meets Economic Opportunity,* November 2006, p7. Response provided by Job Futures to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

93 Council of Australian Governments, *Council of Australian Governments Communiqué: Reconciliation*, 5 April 2002, available online at http://www.coag.gov.au/meetings/050402/index.htm#reconciliation accessed 18 January 2007.

94 Council of Australian Governments, *COAG Indigenous Trials: Trial Objectives,* available online at http://www.indigenous.gov.au/coag/trial_sites/default.html accessed 18 January 2007.

As it turns out, on the information available to date, it would appear that none of these objectives have been achieved to any significant degree (see below).[95]

The trials got underway in some sites in 2002 and in others in 2003. A federal government department was identified for each trial site to lead the government's involvement in the trial. The Secretary of the Department was to act as a 'champion' for the relevant community, in the sense of promoting the coordinated delivery of services by the federal departments involved. The sites were to be individually monitored and evaluated, as well as evaluating the overall whole of government approach embodied in the trials:

> The whole-of-government initiative will be evaluated by an independent expert within two years of commencement and again after five years. Data collected and analysed through the performance monitoring process and feedback received from trial regions will be included in the evaluation.[96]

Unfortunately, these early commitments concerning evaluation of the COAG trials were slow in coming to realisation. An evaluation framework for the trials was released in October 2003, but this set out evaluation priorities rather than an evaluation process. In April 2004 it was stated that 'evaluation of the trials would be premature at this stage'.[97] Even though the trials had neither been completed nor evaluated at the time, in July 2004 the Government chose to replicate this whole of government service delivery model on a nation-wide basis through implementing the new arrangements for the administration of Indigenous affairs.

Thus, as I noted in 2004:

> The structures of the new arrangements and the philosophy that underpins them can be seen to have been directly derived from the COAG trials.[98]

Indeed, despite the absence of any formal evaluation, the federal government continually stated that the new arrangements were based on 'the early learnings' from the COAG trials, as well as findings of the ATSIC Review.[99] *This places the COAG trials at the centre of the new arrangements*. Concerns about the trials have to be viewed in this context.

The key problem that presents itself is whether there was premature adoption of the COAG trials in terms of implementing the new arrangements. This danger was noted by the Senate Select Committee on the Administration of Indigenous Affairs in its 2005 report *After ATSIC – Life in the Mainstream?*[100] While the Senate Committee was supportive of the COAG trials, it had concerns, especially if the model was to be applied widely too early. As the Committee noted:

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95 Indigenous Communities Coordination Task Force, *Trial Objectives,* see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* HREOC, Sydney, 2003, p40.

96 Council of Australian Governments, *COAG Indigenous Trials: Evaluation,* available online at http://www.indigenous.gov.au/coag/evaluation/default.html accessed 9 November 2006.

97 Management Advisory Committee, *Connecting Government – Whole of government responses to Australia's priority challenges,* Australian Public Service Commission, Canberra, 2004, p158.

98 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004,* HREOC, Sydney, 2004, p71.

99 Office of Indigenous Policy Coordination, *Australian Government Submission to the Senate Select Committee on the Administration of Indigenous Affairs,* 11 August 2004, p2, available online at http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub128.pdf

100 Senate Select Committee on the Administration of Indigenous Affairs, *After ATSIC – Life in the mainstream?* Australian Senate, Canberra, March 2005.

> The Committee is concerned that the COAG trials are being used as a model for wider service delivery arrangements before there is any clear idea of whether these trial sites have succeeded or not. In point of fact, the COAG trials are yet to be assessed in any authoritative manner; until such time as that occurs, the likelihood of success of the new arrangements is difficult to gauge, and as such, *represents a risk in terms of public policy.*[101] [emphasis added]

In what now appears to be a prophetic observation, the Committee noted that the extent of dedicated support that the COAG trials were then receiving to ensure their success was unsustainable.[102]

My Office became increasingly concerned about arrangements for evaluation of these trials and public accountability for their outcomes. The *Social Justice Report 2003* noted that:

> it is not clear at this stage that the performance monitoring framework of the trials will be sufficiently rigorous.[103] … The lack of a clear evaluation strategy is of great concern.[104]

Consequently I recommended that an independent monitoring and evaluation process for the whole of government community trials initiative be initiated.[105] However, by the time of the *Social Justice Report 2005*, my concerns about the evaluation had not diminished, and I reported that:

> To date, progress has been slow in ensuring that the new arrangements are subject to rigorous and transparent monitoring processes. The absence of sufficient processes amounts to a failure of government accountability.[106]

HORSCATSIA, in its 2004 report on its inquiry into capacity building and service delivery in Indigenous communities, whilst being generally supportive of the trials, also noted its ''serious concerns regarding the Trials.'[107] They stated:

> The Committee notes that there has been limited, if any coordinated reporting on their implementation and, to date, no tangible evidence has emerged on their progress. The Committee has concerns regarding accountability matters, and believes that an effective audit process needs to be put in place and a regular report made on their progress in achieving outcomes.[108]

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101 **Senate Select Committee on the Administration of Indigenous Affairs,** *After ATSIC – Life in the mainstream?* Australian Senate, Canberra, March 2005, paragraph 5.61, p91.

102 **Senate Select Committee on the Administration of Indigenous Affairs,** *After ATSIC – Life in the mainstream?* Australian Senate, Canberra, March 2005, p92.

103 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* HREOC, Sydney, 2003, p46.

104 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* HREOC, Sydney, 2003, p46.

105 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* HREOC, Sydney, 2003, p48.

106 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p193.

107 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous communities,* June 2004, paragraph 2.94 at p.47.

108 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous communities,* June 2004, paragraph 2.94 at p.47.

The Committee went on to recommend that:

> The Commonwealth Government report to Parliament on an annual basis on the progress of the COAG Trial of the whole of government approach to service delivery in Indigenous communities and regions, and that procedures be implemented to ensure that the report presented in the House of Representatives stands referred to this Committee for its considerations and report.[109]

In its response to the Committee's Report (August 2006), the government rejected this recommendation, arguing that it:

> is committed to ensuring that reporting on the progress of the COAG trials is carried out and made widely available, and therefore [the government] does not consider that a report to the Parliament is necessary.[110]

Information about the progress of COAG trials has clearly not been made 'widely available' to date. The past three *Social Justice Reports* have expressed concerns about the lack of transparency and the absence of monitoring and evaluative processes, and the consequent lack of government accountability, for the COAG trials in some depth.[111]

This year the advice from the Office of Indigenous Policy Coordination (OIPC) concerning the status of the evaluation of the COAG sites has been as follows:

> In late 2003 the Australian and State and Territory Governments agreed on a monitoring and evaluation framework for the eight COAG Indigenous coordination trials … OIPC is coordinating evaluations of the eight COAG trial sites on behalf of the Australian Government, in consultation with the relevant Commonwealth and State/Territory lead agencies in each site.
>
> Formative evaluations of each site commenced in 2005-06. The evaluations are looking at what's working well and what can be improved. They are being undertaken by independent evaluators using a common evaluation framework. They are focusing on how governments can improve their engagement with each other and with Indigenous people and communities. The evaluation reports will cover the history of the trial, the coordination processes used in the trial, interim outcomes and options for further consideration by the trial partners. The evaluations should be largely completed by July 2006.
>
> An overarching report (or meta-evaluation) in the second half of 2006 will draw together the common themes and lessons from the individual COAG Trial site evaluations.
>
> The need for and nature of further evaluation of the COAG Trials will be considered after the meta-evaluation and will be flagged in future evaluation plans as appropriate.[112]

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109 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous communities,* June 2004, Recommendation 3, p61.

110 Australian Government response to *Many Ways Forward – Capacity building and service delivery in Indigenous communities*, August 2006, p15.

111 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* HREOC, Sydney, 2003, pp227-251; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004,* HREOC, Sydney, 2004, pp71-74; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp193-202.

112 Office of Indigenous Policy Coordination, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs 2006-09,* Attachment A, available online at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 18 January 2007.

This timetable has run behind schedule. Further, the federal government has not made the findings of the reviews of the COAG trial sites publicly available as they have been completed, preferring instead to release all of the individual trial reports and the synopsis report when they are all complete and the government has had the opportunity to consider them.[113]

In the absence of information from the federal government on the evaluation of the trials, I sought to gauge the effectiveness of the trials using what information was available from various state and territory governments and other sources.[114] I presented and analysed this information in the *Social Justice Report 2005,* noting the shortcomings and problems evident in at least some of the trials at that stage. For example, independent evaluations of the Shepparton COAG trial, commissioned by the community partners, concluded that the trial was failing.[115]

Such apparent failures put a question mark over the entire COAG trial process. As the authors of the Shepparton evaluation rightly asked:

> If the COAG pilot is unable to function successfully in an innovative and tested Aboriginal community such as Shepparton, the question must be asked: Where can it succeed?[116]

We now have part of the answer to that question: not, apparently, at Wadeye in the Northern Territory.

The evaluation of the Wadeye COAG trial (also referred to as the 'Gray Report') entered the public arena in late 2006 before the government intended and was widely reported in the press.[117] It was also discussed at the November 2006 Senate Estimates hearings. The Gray Report described significant problems with the Wadeye trial (see box below).

Wadeye was selected as the Northern Territory site for a COAG trial. The Secretary of the then Department of Family and Community Services (FaCS) was responsible for the implementation of the trial. Its high profile nature prompted the Prime Minister, the Chief Minister of the NT, and other senior Ministers to visit Wadeye during the period of the trial, which in turn heightened expectations of the trial's success. The Secretaries' Group on Indigenous Affairs *Annual Report 2004-05* commented:

> The trial site at Wadeye is showing how governments can work together with Indigenous communities to improve outcomes for Indigenous people.[118]

113 Ms Bryant, *Hansard,* Standing Committee on Community Affairs Estimates, Canberra, 2 November 2006, p29, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

114 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp193-202.

115 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp200-01.

116 The Eureka Project, *Take It Or Leave It – How COAG is failing Shepparton's Aboriginal People,* The Eureka Project Pty Ltd Melbourne, October 2005, p9.

117 Bill Gray AM, *Council of Australian Governments (COAG) – Wadeye Northern Territory – An independent evaluation,* May 2006.

118 Secretaries' Group on Indigenous Affairs, *Secretaries' Group Annual Report on Indigenous Affairs 2004-05*, Canberra, 2005, p7, available online at http://www.oipc.gov.au/performance_reporting/sec_group/ accessed 18 January 2007.

In a similar vein, the then Minister, Senator Vanstone, had commented:

> In the COAG trial we dealt directly with the 'Thamarrurr' [traditional governance arrangement] so each of the clans has been able to have its say. As a result of us listening to the Thamarrurr and responding, life is now improving for the people of Wadeye.
>
> The Thamarrurr, Territory and Australian governments agreed education was a priority and just last week there was a massive increase in the number of children attending school. So much so that more desks had to be put on the barge from Darwin.
>
> What works in Wadeye of course will not work everywhere else.[119]

Unfortunately the optimism shown about the trial proved to be misplaced. The evaluation report by Bill Gray AM, a highly regarded former senior government official, indicates an almost total failure of the Wadeye trial to achieve its objectives.

Text Box 6: The 'Gray Report' The Wadeye COAG Trial Evaluation – a failed experiment?

The Wadeye community is the largest Aboriginal community in the Northern Territory and indeed one of the larger Northern Territory towns. Despite extremely low life expectancy, the population has a very high rate of natural increase.[120] Wadeye has appalling health statistics, serious overcrowding, and significant crime and violence which at times render the community virtually dysfunctional.

Wadeye seemed a good choice for a COAG trial – a large community with a number of pressing needs. Initially, there were strong expectations that the COAG trial, based on a whole of government approach and direct engagement with the community (through the Thamarrur Regional Council), would lead to more effective service delivery and consequently improvements in social and economic circumstances.

As part of the trial, a Shared Responsibility Agreement (SRA) was signed between the Australian Government, Northern Territory Government, and Thamarrur Council in March 2003. The SRA identified three priority areas for action: Women and families; Youth and Housing; and construction.

The Gray Report shows that in key aspects the trial has been a significant failure. There was no identified leadership of the trial. Contrary to the trial's objective of a reduction in red tape, the burden of administering funds increased markedly. Flexible funding and streamlining did not eventuate. Experience of communications within and between governments was mixed with a reduction in effective communication as the trial progressed.

119 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Address to National Press Club*, Speech, 23 February 2005.

120 Taylor, J., *Social Indicators for Aboriginal Governance: Insights from the Thamarrur Region, Northern Territory,* Centre for Aboriginal Economic Policy Research (CAEPR), Research Monograph No24, 2004, p35.

The government's objective of improving engagement with Indigenous families and communities was not achieved. There was a significant breakdown in relations with Thamarrur. Other key structures or processes agreed under the SRA, such as Priority Working Groups, either never became operational or faltered.

The community's expectations of improvements in infrastructure and services were not realised. In particular, nothing was done about the priority area of 'Youth'. The community had expected that youth issues, gang violence and safety would be addressed and resolved at an early stage of the trial. Instead this agreed priority area was allowed to 'fall between the cracks.' If anything, things became worse causing considerable disappointment and anger within the community.

Provision of more housing at outstations was seen (and remains so) by the community as the only sustainable solution to overcrowding at Wadeye. At the end of the trial the pressing needs of Wadeye remain. The community needs a major commitment of resources including an urgent investment in housing, especially at outstations. It also needs support for activities and resources to deal with youth and gang-related difficulties.

As discussed further below, the federal government has now commenced what it terms a 'strategic intervention' approach for selected communities. Wadeye is one such community. The arrangements advanced through the COAG trial are likely to be sequenced into this new strategic intervention approach, possibly linked through the development of a Regional Partnership Agreement. Announcements on this approach are likely to be announced in the 2007-08 Budget in May 2007. How this approach will respond to the significant concerns identified in the Gray report is unknown at this stage.

The Wadeye COAG trial showed that the whole of government approach to service delivery is difficult to implement, requires a major investment of time and resources, and has yet to demonstrate that it provides a reliable and realistic platform for the administration of Indigenous affairs. Whilst coordination of service delivery is important and should be pursued, it is not a substitute for developing and implementing strong policies and effective programs to respond to the difficult circumstances facing communities like Wadeye.

A sense of urgency, commitment and partnership is required. However, as of November 2006 at Wadeye the government is instead locked in a wrangle over leasing arrangements for the township which seem more to do with ideology and less to do with service delivery.[121] Australian National University researcher John Taylor has observed:

> … the Thamarrurr region is rapidly expanding in population size. Unless a major upgrading occurs, this trajectory means that Wadeye (along with many predominantly Aboriginal towns across the Top End) will be increasingly anomalous in the Australian settlement hierarchy for being a vibrant and growing medium-sized country town yet with almost none of the basic infrastructure and services normally associated with such places.[122]

121 *Govt Rejects 20-Yr Lease Proposal,* 1 December 2006, News item available online at http://www.abc.net.au/message/news/stories/ms_news_1802425.htm accessed 15 February 2007.

122 Taylor, J., *Social Indicators for Aboriginal Governance: Insights from the Thamarrur Region, Northern Territory,* Centre for Aboriginal Economic Policy Research (CAEPR), Research Monograph No. 24, 2004, pp35-36.

The Wadeye trial indicated unresolved tensions or contradictions in policy settings. For example, genuine engagement at family level, a key objective of the new arrangements, will almost certainly take government down the path of support for smaller family and clan-based satellite and outstation communities. However, present federal government policy towards outstations is uncertain at best, and has included a moratorium on housing for outstation and similar communities, as described in Text Box 7 below.

Text Box 7: Moratorium on housing and infrastructure expenditure on homelands and outstations

Over the previous year the withdrawal of funding support for outstations, homelands and pastoral property communities has been threatened by the federal government on a number of occasions.

The funding guidelines for the Community Housing and Infrastructure Program (CHIP) for 2006-07 (see below) introduce a moratorium on housing and infrastructure assistance in these areas. I find this decision difficult to understand given the acute level of need for housing stock in these areas. Outstations and homelands are often the very communities that have attempted, with a commendable degree of success, to establish economic self sufficiency and social stability. Despite some examples where homeland communities have not proved viable, it is widely acknowledged that it is highly desirable for Indigenous peoples to be able to live in extended family or clan arrangements, either on or in proximity to their traditional country.

Sensible investment in these communities will provide real improvements in addressing Indigenous disadvantage. Small scale enterprises, tourism ventures, traditional arts and crafts, coastal surveillance and engagement in environmental and land management activities are all areas where small communities are well placed to succeed and merit support and encouragement. Problems of isolation and remoteness can be overcome with innovative approaches to service delivery and drawing on the range of technological options now available in fields such as energy, communications and distance education.

Whilst the moratorium is in place, the quality of life of those currently living on homelands and outstations is likely to deteriorate. Among the likely adverse consequences for these communities are: exacerbation of already overcrowded Indigenous communities (including in the larger settlements), deterioration in health status, and relocation of some people to the fringes of rural and regional towns where social and economic opportunities are more limited.

CHIP – E-Sub Program Guidelines 2006-07

2.5 Homelands and Outstations[123]

Considerable whole of government discussion is occurring on the funding to homelands and outstations. While this work is being undertaken **the moratorium on the funding of new homelands and outstations remains in place**.

Submissions for funding of homelands and outstations in 2006-07 will only be considered if the homeland has previously received funding under the programme and essential services are in place. Funding will only be provided to maintain and repair existing housing, infrastructure and essential services.

In addition the homeland or outstation must satisfy the existing funding criteria that serve to minimise risks to the health and safety of homeland residents and to the assets and infrastructure.

The greatest danger arising from the disappointing outcomes of the COAG Wadeye trial, and from similar problems with other COAG trials, is that the wrong lessons will be learned.

When asked about the government's response to the Gray Report at Senate Estimates hearings in early 2007, the Associate Secretary of FaCSIA explained that ' … our [the government's] response to the evaluation predated our receipt of the report'.[124] The Associate Secretary went on to explain that shortly after taking office, the Minister for Indigenous Affairs travelled to Wadeye and undertook immediate action to try to alleviate the situation and quell local riots. Not only is this an indication of the extent to which the trial had failed to achieve a coordinated, whole of government outcome, it is also a very clear indication of the fact that we may not be given the opportunity to learn the lessons from the Wadeye trial. The message from Wadeye may well be as much about policy failure as about failure of processes and procedures. We have to look this possibility squarely in the face – simply moving on to another 'model' of intervention will not do.

Whilst the trial evaluations remain important in their own right, the COAG trial evaluations are something of a proxy for evaluation of the new arrangements in their entirety. Significant problems in respect of the trial sites would suggest that the system as a whole may be in difficulty. This consideration adds a dimension of urgency and significance to the evaluations of the COAG trials.

It is becoming evident that serious discussion needs to takes place with Indigenous peoples and other stakeholders at national, regional and local levels about the new arrangements in Indigenous affairs. As we move into post-COAG trial arrangements for Indigenous affairs, there is a pressing need for transparent and rigorous evaluation processes if egregious errors of policy and judgement are to be avoided.

123 FaCSIA, *Community Housing and Infrastructure Program (CHIP) E-Sub Program Guidelines 2006-07,* pp5-6, available online at http://www.facs.gov.au/internet/facsinternet.nsf/via/chip_guidelines/$file/e-sub_guide_2006_07.pdf accessed 5 December 2006.

124 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard,* Senate Standing Committee on Community Affairs, Additional Budget Estimates, Canberra, 12 February 2007, pCA99. Available at http://www.aph.gov.au/hansard/senate/commttee/S9937.pdf accessed 15 February 2007.

Such regular reviews of progress on the new arrangements should involve Parliamentary scrutiny. The appropriate body for ongoing review would be either the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs; the Senate Standing Committee on Aboriginal and Torres Strait Islander Affairs (which was established as a one off committee for inquiry into the bill to abolish ATSIC); or a newly established standing Joint Parliamentary Committee.

The 'democratic spotlight' that this would provide is especially important in an area as complex and sensitive as Indigenous affairs, and it is unrealistic to think that all wisdom can rest in the necessarily somewhat circumscribed world of Ministers and senior bureaucrats who have limited knowledge or experience in Indigenous affairs. The imposition of unresearched and unproven policies on Indigenous Australians will continue to enable governments to blame the victims for the failures of such policies.

At present, the Senate Estimates process is the only avenue for information about the new arrangements and their implementation. These hearings are, however, limited in scope (relating to matters of appropriation and not policy development). They do not provide an adequate process for Parliamentary scrutiny of Indigenous affairs, particularly given that there is no avenue for the direct input and participation of Indigenous communities and people into the process.

Post COAG trials – another 'new' approach

Regardless of whether individual COAG trials have been more or less successful, it is now clear that the federal government is moving to abandon them. There is an evident lack of enthusiasm for continuing with the COAG model for service delivery to communities. As has been pointed out by senior officials: '[t]he trials were trials; it was never intended that they would go on forever'.[125]

It appears likely that once all the COAG site evaluations are completed (anticipated for late 2006) and the results of the 'meta-evaluation' of all the evaluations considered, governments will move on from the COAG trial approach. Comments made at the November Senate Estimates hearings indicate when and how the trials could be brought to an end:

> *Mr Gibbons* – It [ending the trials] is under consideration with a number of jurisdictions now. If I take the Wadeye one which we have been talking about, I believe both governments are comfortable with the idea of *transitioning* from a trial into a regional partnership agreement. The negotiations we are having at the invitation of the Chief Minister will probably lead to a longer term commitment to replace the COAG trial. [emphasis added]
>
> … As a result of the evaluations that are about to be considered by government, I think consideration will be given to bringing the trials to an end and moving

125 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard*, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA39, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

> on, but that will have to be resolved in partnership with the appropriate state or territory jurisdiction.[126]

The new approach now being implemented is two-pronged. On the one hand it *devolves* the authority for agreement-making for service delivery down, by giving ICC managers authority to commit in a single SRA up to $100,000, and state managers up to $500,000.[127] On the other hand, agreements relating to regions or communities deemed to be 'in crisis' are being *elevated* to the status of high-level agreements between the federal and state/territory governments. These agreements are being referred to as 'strategic' or 'intensive interventions' in respect of designated priority communities.

Turning first to the increased authority for the ICC and state managers, this appears to be an attempt to find a way around the red tape that has tied up the new arrangements and hindered the delivery of substantive outcomes in communities. The types of projects that the government intends to fund under this initiative include early childhood centres, sports facilities and new housing. To enable managers to respond to the immediate needs of Indigenous communities, they will ask them to 'sign on-the-spot shared responsibility agreements in exchange for the cash'.[128] As the Minister has explained:

> The managers of the 29 Indigenous Co-ordination Centres that have been created across the country will no longer have to wait for official sign-off to take action. We are giving ICC managers the capacity to actually see what needs to be done on the ground to make those decisions and fund them on the ground, bang.[129]

This 'bottom up' model contrasts with the more 'top down' approach that is implicit in 'strategic interventions'. The Minister for Families, Community Services and Indigenous Affairs is credited with having developed the framework for strategic interventions in an attempt to address the failures of the COAG trials and the continuing serious problems in a number of Indigenous communities:

> Since Minister Brough has come in he has very quickly decided that you have got to define an area, put someone in to do an assessment and really coordinate between the Commonwealth and the state *an intensive response* which is coordinated and planned, et cetera. That is basically the route we are going in Wadeye [post COAG trial], as well as a range of other locations across the north of Australia.[130] [emphasis added]

126 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard*, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA39, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

127 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard*, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA16, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

128 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), quoted in '*No more waiting on black projects*', article in Equity Email Networks Newsletter, Issue 26, 14 September 2006, available online at http://www.equity.qut.edu.au/publications/publications/newsletter/E_News_Issue_26.doc accessed 18 January 2007.

129 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), quoted in '*No more waiting on black projects*', article in Equity Email Networks Newsletter, Issue 26, 14 September 2006, available online at http://www.equity.qut.edu.au/publications/publications/newsletter/E_News_Issue_26.doc accessed 18 January 2007.

130 Harmer, J., (Secretary, FaCSIA), *Hansard,* Senate Standing Committee on Community Affairs Estimates, Canberra, 2 November 2006, pCA41, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

This is spelt out a little more in the following description:

> A significant change since Minister Brough has been in the portfolio, recognising some of the experience that has come out of the trials and elsewhere, has been the reconstruction of our approach to Commonwealth-State cooperation in this area to lock the bulk of our investment into joint agreements around strategic issues.
>
> In the case of Alice Springs, for example, we were invited to assist the Northern Territory deal with the growing issue of demographic movement into Alice Springs and the shortage of accommodation, both long and short term, et cetera. We are making a significant investment there in partnership with the Northern Territory. We have been asked to do the same in Wadeye. So, instead of committing first and then working out what we are doing, we are negotiating up front what the objective is, what each jurisdiction is going to do and what conditions are going to prevail et cetera.[131]

The Secretary of FaCSIA, put the same point another way:

> .we are in the process of *changing our approach entirely* and it is an approach based on a very clear bilateral arrangement with the state or territory government - in this case, the Northern Territory. While we are still talking with them, we have not got a document that spells it out but it is very much a focus on ensuring that the state or territory government live up to their responsibilities around schooling and policing and those sorts of things. In return for that, we live up to our responsibilities in the provision of our services. That is basically what it is about.[132][emphasis added]

I have quoted from the Senate Estimates hearings at some length because there has been little public consideration of the newly proposed changes to the administration of Indigenous affairs. It is important to understand what is involved, and to appreciate that these changes have been triggered by the problems associated with the COAG trials.

In September 2006, the Australian Government confirmed this new intensive intervention approach as applying more broadly to urban communities when the *Australian Government Blueprint for Action in Indigenous Affairs* was endorsed by the Ministerial Taskforce on Indigenous Affairs. As noted by OIPC, this Framework:

> introduces a more structured, geographically based approach that recognises that locational factors have a significant bearing on Indigenous peoples' wellbeing and on how governments can best work to overcome Indigenous disadvantage. [133]

The government notes that the Blueprint is based on three geographic categories from the ARIA classification system: urban (where over 30% of the Indigenous population live), regional (with approximately 43% of the Indigenous population) and remote (where about 27% of Indigenous Australians live). OIPC have noted

131 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard*, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA42, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

132 Harmer, J., (Secretary, FaCSIA), *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA41, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007

133 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006*, 22 December 2005, pp8-9.

that this definition of 'urban' differs from the definition used by OIPC to date, which was less specific.[134]

The Blueprint repeats the government's intention to focus on harnessing the mainstream in urban areas:

> In addressing Indigenous disadvantage the Australian Government aims to *leverage existing infrastructure*. In urban areas the majority of existing infrastructure revolves around mainstream programs and services, and consequently the work to address disadvantage in urban areas focuses on harnessing the mainstream.[135]

The government goes on to state that 'leveraging existing infrastructure' in order to 'harness the mainstream' entails the following:

> The Blueprint outlines the role of Australian Government agencies in urban areas as 'improving the functioning of mainstream services for Indigenous people', including through intensive place-based intervention if necessary. The Australian Government applies the principles of flexibility, shared responsibility and local solutions across all its work on urban and mainstreaming issues. Strategies for the Australian Government to achieve this are identified in the Blueprint, including:
>
> - develop and implement an Indigenous urban strategy that identifies and removes barriers to access and modifies mainstream services to improve participation by and outcomes for Indigenous people;
> - share responsibility, make agreements, and be flexible and consultative in order to improve outcomes and build better relationships;
> - respond to the needs identified locally and use intensive intervention when needed (coordinated centrally by FaCSIA and ICCs where relevant);
> - improve the quality, design, and delivery of Indigenous-specific and mainstream services; and
> - improve its own and support its partners' cultural understanding, governance, operations, policies, accountability and evaluation.
>
> Cooperation and coordination across all governments is needed to improve the integration of, and outcomes from, services. The role of States and Territories is critical, given their significant responsibility for service delivery and relevant regulation. FACSIA's role is to facilitate policy development where there are issues in common across the Australian Government or with States and Territories through overarching bilateral agreements.
>
> FACSIA has initiated cross-departmental work on policy issues relating to improving mainstream service provision and cultural inclusiveness, provided opportunities for Australian Government departments to learn from each other, and has sought the advice of the National Indigenous Council (NIC) on those issues. The NIC has underlined the need to adapt mainstream services and improve their cultural inclusiveness to ensure that Indigenous people get better access to and outcomes from those services.

134 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006*, 22 December 2005, p8.

135 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006*, 22 December 2005, p8.

> Program and service delivery is the responsibility of the specific Australian Government department or agency managing the program or service. The OID reporting framework is being used to guide the construction of performance indicators in Shared Responsibility Agreements and the development of Baseline Community Profiles.[136]

There are two features of concern in this Blueprint. The first is the clear lack of progress in improving mainstream access that has occurred in the first two years of the new arrangements. The Blueprint provides a further bureaucratic re-organisation of what the government intends to do rather than reporting on what the government is actually doing or has already done. It also proposes the development of an urban strategy – surely there are useful lessons from the past two years of the new arrangements and the operation of ICCs in urban localities, in particular, to advance this?

The second is that the federal government is moving towards *a bilateral interventionist model*. The government appears to require some certainty from its state and territory counterparts on the level and detail of their commitment *before* an intervention can commence, rather than developing this as the program unrolls in the chosen community. It is clear that the interventionist model puts the strategic decision-making clearly in the hands of government – with the Indigenous community only becomes involved *after* the basic decision to intervene has been made and respective levels of commitment agreed.

Elcho Island (Galiwin'ku) in the Northern Territory has been given as an example of a strategic intervention that is underway.[137] In this instance the Australian and Northern Territory Governments selected the community, but the federal government is now 'engaged with the traditional owners on Elcho Island and the historical people of Galiwinku' in an attempt to 'secure the agreement of all the parties' before the detailed planning of the implementation stage of the intervention is finalised.[138]

This example suggests that 'strategic intervention' in fact means 'restricted Indigenous participation' at a governmental and priority-setting level. Priorities are determined by outsiders (governments), then the insiders (the community) are invited to participate in the detailed planning and implementation.

This does not appear to provide a sound basis for 'ownership' by Indigenous communities of initiatives undertaken as part of such strategic interventions. It is inconsistent with the various commitments made by government through COAG relating to Indigenous participation.[139]

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136 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006*, 22 December 2005, p9.

137 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard*, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA22, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

138 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard*, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA22, available online at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

139 These are outlined in detail in the Chronology in Appendix One as well as in Chapter 3 of this report.

Nor would it be consistent with the *Guidelines for engagement with Indigenous peoples* that were contained in the *Social Justice Report 2005*. Of particular importance in the context of 'strategic interventions' are the following principles, contained in the Guidelines:

- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives;
- Such participation shall be based on the principle of free, prior and informed consent, which includes governments and the private sector providing information that is accurate, accessible, and in a language the indigenous peoples can understand;
- Governments and the private sector should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities;
- Indigenous peoples and communities have the right to choose their representatives and the right to specify the decision making structures through which they engage with other sectors of society;
- Frameworks for engagement should allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes;
- Indigenous peoples and communities should be invited to participate in identifying and prioritizing objectives, as well as in establishing targets and benchmarks;
- There is a need for governments, the private sector, civil society and international organizations and aid agencies to support efforts to build the capacity of indigenous communities, including in the area of human rights so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them.[140]

To ensure a sound basis to government programs, full Indigenous participation must be guaranteed *from the start* in determining the priorities and basic parameters of government support. Perhaps the term 'intervention' itself is a bit awkward, and a term without a connotation of unilateralism might be preferable.

Concurrent with the strategic intervention approach, a new division has been established in FaCSIA to administer the interventions, known as the *Strategic Interventions Task Force*. The Task Force is to initially focus on communities on Mornington Island, in Queensland; Galiwinku, Alice Springs and Wadeye in the Northern Territory; and Kalumburu in Western Australia.[141]

140 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp107-109.

141 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), quoted in 'No more waiting on black projects', article in Equity Email Networks Newsletter, Issue 26, 14 September 2006, available online at http://www.equity.qut.edu.au/publications/publications/newsletter/E_News_Issue_26.doc accessed 18 January 2007.

Another associated change has been referred to by the Minister as 'cutting the fat from the bureaucracy'.[142] It will result in just one State Manager being responsible for Families, Community Services and Indigenous Affairs in each state and territory, rather than having a separate Indigenous Affairs Manager (within OIPC) and State Manager (within FaCSIA).

The federal government will move staff from southern Australia to remote areas in northern Australia to give isolated communities more intensive support. This will be done through a phased approach. Such a move is consistent with the government's view that urban and regional based Indigenous peoples can be served by mainstream agencies and services. This reinforces concerns that the government continues to focus insufficient attention on the specific difficulties of urban and regional Aboriginal communities in accessing mainstream services.

A further component of the changed arrangements now being introduced concerns community profiles or baseline data. The Office of Indigenous Policy Coordination (OIPC) has advised that as a result of the COAG trials, better baseline data is required. Thus:

> OIPC is developing an approach for evaluating intensive whole-of-government initiatives in Indigenous communities and regions. *This evaluation approach would be used for priority region interventions.* Elements of this approach would be applied as appropriate to comprehensive SRAs, other SRAs with a substantial investment, and a sample of communities being assisted under the Petrol Sniffing 8 Point Plan.[143] [emphasis added]

OIPC has developed a prospective timetable for community profiles as part of the Performance Management Framework for Intensive Whole-of-Government Interventions, as follows:

Text Box 8: OIPC Evaluation Timetable 2006-09[144]

Year 0

- Establish a community profile to report on the current status of the community using both quantitative and qualitative measures. Intangible elements such as governance and family violence would be included through the use of qualitative data. This profile would establish the current state of play, and capture the community's view on the perceived trajectory – are things getting better or worse?

142 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), quoted in '*No more waiting on black projects*', article in Equity Email Networks Newsletter, Issue 26, 14 September 2006, available online at http://www.equity.qut.edu.au/publications/publications/newsletter/E_News_Issue_26.doc accessed 18 January 2007.

143 OIPC, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs 2006-09*, Attachment C, available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 18 January 2007.

144 OIPC, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs 2006-09*, Attachment C, available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 18 January 2007.

- Conduct a diagnostic assessment to identify community strengths and opportunities, determine priority areas for action and inform a community action plan.
- Negotiate a plan of action (for example, through an SRA or RPA) with the community on the basis of the profile and diagnostic assessment. This would include a small set of performance indicators relevant to the planned interventions that would be monitored on a regular basis.
- Begin implementing the agreed action plan with regular reporting against the small set of performance indicators relevant to the agreed interventions.

Year 2-3

- Rerun the community profile to assess progress against the baseline.
- Undertake a formative evaluation to inform fine tuning of the action plan, with a focus on what's not working, what's working well and what could be improved.

Year 6-8

- Rerun the community profile to further build a picture of progress against the baseline.
- Undertake a summative evaluation to measure and assess the effectiveness of the strategy.

A key element of the evaluation strategy proposed is using the data to help frame and reframe the necessary interventions. As the community is consulted in the compilation of this data, they are directly involved both in agenda setting and the evaluation process. This approach also allows the interventions to evolve over time in response to community needs.

Ensuring a well designed quantitative and qualitative profile that will remain relevant over the life of the planned intervention will be essential to the success of this approach. The *OIPC Evaluation Plan for Whole of Government Activities in Indigenous Affairs 2006-2009* indicates that OIPC will be working in partnership with state and territory governments and local communities to establish a number of quantitative and qualitative baseline data points.

As anyone with experience in Indigenous affairs can attest, community profiling exercises have something of a cyclical nature. Over the years there have been a number of such exercises, of varying detail and quality. As well, there is already a considerable amount of data available from a range of sources including state and territory profiles of communities,[145] the Australian Bureau of Statistics, the Centre for Aboriginal Economic Policy Research (CAEPR), the Australian Institute for Health and Welfare (AIHW), a range of government agencies that collect data to inform their own programs, and academic institutions.

As profiled in last year's *Social Justice Report*, there has also been the regional identification of priorities by Indigenous peoples through ATSIC Regional Council

145 See, for example, the Northern Territory Government's BushTel site which provides a basic data set on all Indigenous communities in the Territory, at http://www.bushtel.nt.gov.au/portal/page?_pageid=53,1&_dad=portal&_schema=PORTAL&p_nav_type=BushTelHome&p_text_only accessed 19 January 2007.

Plans, extensive data collection through the Western Australian Aboriginal Child Health Survey**,** and information collated nationally through regional health planning forums under the National Aboriginal and Torres Strait Islander Health Strategy. Each of these is a significant source from which community profiling exercises could draw.

Such community profiling should only be undertaken with the full participation and cooperation of Indigenous communities. A profiling exercise conducted with such participation can provide a valuable tool for empowering communities to identify the priority issues and actions necessary to improve their circumstances.

I do, however, have some concerns about this approach. The investment of the high level of resources and time to develop such community profiles should not be an end in itself. The identification of high levels of needs in communities, for example, necessitates action to address the findings of this research. This was a fundamental failing of the extensive community profiling done as part of the COAG trial in Wadeye, where government expenditure and program activity has clearly not responded to the urgent and high levels of need identified in the community profiling work undertaken by John Taylor.[146]

The findings of such community profiling should also be treated with flexibility. The population dynamics of remote area communities mean that today's demographic profile might be quite inaccurate in a year or two. The difficulties of making valid comparisons over time in Indigenous communities, because of population instability and other reasons, on almost any social indicator, have been extensively documented.[147]

Taylor, Bern and Senior have affirmed the importance of establishing baseline data, but with the qualification that careful attention must be paid to the impact that future population dynamics may have on community needs and priorities:

> In Indigenous affairs generally, social indicator analysis is increasingly used to quantify the degree of relative disadvantage and to monitor the effects of government policy and economic development in general. In a fundamental sense, planning for social and economic change is determined by the size, growth, and socioeconomic composition of populations. Accordingly, an understanding of these factors is essential for a proper assessment of the need for, access to, and distribution of resources. There is also a growing awareness of a need to better understand the dynamics of change in the size and composition of the Indigenous population, so as to formulate policies that are based not solely on current or historic assessment of government obligations, but also on some estimation of anticipated requirements.[148]

146 See Taylor, J., *Social Indicators for Aboriginal Governance: Insights from the Thamarrurr Region, Northern Territory,* Centre for Aboriginal Economic Policy Research (CAEPR) Research Monograph No.24, 2004, available at http://www.anu.edu.au/caepr/mono.php ; and Taylor, J. and Stanley, O.*, The Opportunity Costs of the Status Quo in the Thamarrurr Region,* CAEPR Working Paper No28, 2005, available at http://www.anu.edu.au/caepr/working.php accessed 15 February 2007.

147 See, for example, Taylor, J., Bern, J. and Senior, K.A., *Ngukurr at the Millennium: A Baseline Profile for Social Impact Planning in South-East Arnhem Land,* Centre for Aboriginal Economic Policy Research (CAEPR) Research Monograph No 18, 2000, Chapter 1.

148 Taylor, J., Bern, J. and Senior, K.A., *Ngukurr at the Millennium: A Baseline Profile for Social Impact Planning in South-East Arnhem Land,* Centre for Aboriginal Economic Policy Research (CAEPR) Research Monograph No 18, 2000, p5.

Another important caution that needs to be applied when compiling and analysing baseline data for Indigenous communities is the variance that can emerge between what the data indicates and what Indigenous communities themselves perceive or aspire to. As Taylor, Bern and Senior explain:

> … while social indicators report on observable population characteristics, they reveal nothing about more behavioural population attributes such as individual and community priorities and aspirations for enhancing quality of life— indeed the whole question of what this might mean and how it might be measured in an Aboriginal domain is only just beginning to be addressed.[149]

Reliable data is essential. However, the gathering of facts and statistics, important as they are, must not be a substitute for action. Nor should this become a substitute for meaningful Indigenous participation and consultation. Although the task of establishing community baseline data will assist in evaluating interventions, it should not be *relied* upon as the primary the basis for the development and modification of Indigenous policy.

The frequency with which some Indigenous communities are 'measured' is also of concern. This can be very frustrating and exhausting for the communities involved, as well as the wider community, all of whom want to see significant on-the-ground progress as quickly as is reasonably possible. This sort of frustration became evident at the November 2006 Senate Estimates hearings.[150] I certainly hope that the community profiles are not an excuse for lack of action, nor that they draw resources away from initiatives that might directly address Indigenous disadvantage.

It is unfortunate that many of the senior bureaucrats involved in Indigenous affairs at this juncture do not have the corporate or historic knowledge to inform policy development. It is also unfortunate that the huge cost of this exercise and other 'new innovations' will be attributed to Indigenous affairs spending reinforcing the government's claims of significant input with minimal outcomes.

I am also concerned by the thinking behind the selection of communities for special attention, and whether there is a tendency for the focus to move from one community to another before the first community has seen real improvements. Indeed, the Chief Minister of the Northern Territory, while welcoming the federal government's proposals in respect of Galiwin'ku, has expressed such a concern:

> We have received a proposal from the Australian Government for what is called an 'intensive intervention' in Galiwinku. I have given a commitment to the federal government we will work with them on that, that is fine. However, while I endorse that initiative, I believe that the priority for such intensive intervention is the community of Wadeye. It is our largest Aboriginal community and, for the last three years, it has been the subject of the COAG trial.

149 Taylor, J., Bern, J. and Senior, K.A., *Ngukurr at the Millennium: A Baseline Profile for Social Impact Planning in South-East Arnhem Land,* Centre for Aboriginal Economic Policy Research (CAEPR) Research Monograph No18, 2000, p6.

150 See for example comments by Senator Adams, member of the Senate Committee on Community Affairs, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, 2 November 2006, pCA44. "I find it very, very strange that you have to now go and employ consultants to get the data about dealing with these communities. It just is incredible. There have been trials, trials and trials, and I think you will find that the Aboriginal communities are saying, 'Gosh, not another survey! We are not being researched again!' This is just a disgrace." Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

> While we welcome Galiwinku – that is terrific – we do not want the federal government's attention taken away from Wadeye. It has been a COAG trial. We cannot say, because the outcomes we wanted in three years had not been achieved: 'Okay, Wadeye, let us look somewhere else'. What I am saying to the Indigenous Affairs Minister is: welcome, Galiwinku, welcome the work we are doing together on Alice Springs, particularly on the town camps, but important to this Territory and our future is Wadeye.[151]

The federal government's tendency to deliver important policy decisions in Indigenous affairs as a *fait accompli* – even to territory and state governments – raises serious concerns about the ability of Indigenous communities to negotiate as equal partners in the many agreement making processes that have been introduced with the new arrangements.

Constructive engagement with Indigenous communities and good faith negotiations are critical to the successful operation of the principle of mutual obligation.

However, there are perceptions that in some instances, the government's application of the principle of mutual obligation has slipped into a coercive mode with Indigenous communities and territory administrations alike. [152]

For example, in Galiwin'ku, the reward offered to the community for agreeing to lease land in the Indigenous township on a 99 year basis will be a significant investment in housing. The Minister, Mr Brough, explained the proposed deal in the following terms:

> Around fifty houses will be built and real jobs provided, if the community is safe and signs up to full school attendance, a no-drugs no-violence policy *and agree to a 99 year lease* to support home ownership and business development opportunities.[153] [emphasis added]

Similar concerns about coercion have been expressed in respect of the Tiwi Islands where there is a concern that the federal government will not deliver on a $10 million funding commitment for a new boarding school if the community rejects a proposed 99 year lease.[154]

If such deals are being proposed they may well put Australia in breach of its international obligations in respect of human rights. Given the parlous housing conditions at townships such as Galiwin'ku, this arguably could be seen as a form of inducement and contrary to the principle of free and informed consent. To sign away valuable rights in land for 99 years is a matter which should require careful consideration and independent expert legal advice.[155]

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151 Martin, C., (Northern Territory Chief Minister and Minister for Indigenous Affairs), *Hansard,* Question Time, 13 June 2006, available online at http://notes.nt.gov.au/lant/hansard/hansard10.nsf/0/19638dd5f6e96927692571b60000908d?OpenDocument&Click accessed 19 January 2007.

152 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *Alice Springs Town Camps and Itinerant Populations – NT and Local Politicians Can't Walk Away from Solutions,* Media Release, 25 August 2006. See also ABC news item: *Federal Government can negotiate with Indigenous leaders without NT: Brough,* 9 November 2006.

153 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *New Aboriginal Land Deal for Galiwin'ku,* Media Release, 19 June 2006.

154 The Australian, 'Island "held to ransom" over land', *The Australian,* 9 November 2006.

155 To rely on the relevant Land Council may not be sufficient for this purpose.

Although the underlying title stays with the traditional owners, in the circumstances such arrangements potentially can be the *de facto* equivalent of a transfer of freehold title. I am concerned that if agreements are made as a result of inducements, and where there is a clear power imbalance, we may be getting towards a situation that could be characterised as expropriation of Indigenous land.[156]

Summary: The challenges of achieving equitable access to mainstream services for Indigenous peoples

This first section of the chapter has provided an overview of the challenges facing the government in achieving equitable access to mainstream services for Indigenous peoples. There are two key elements to the government's approach to achieving this.

Firstly, individual mainstream departments are endeavouring to adapt existing services so they better meet the needs of Indigenous peoples. A good example here is the government's proposal to abolish IECs and CDEPs in urban and major regional centres and to steer Indigenous job seekers into mainstream jobs using employment brokers. This raises the fundamental question of whether mainstream services can be sufficiently *adapted* to both address the needs of Indigenous Australians, and respect and accommodate their cultural differences. It also raises the question of why this has not happened in the past and what strategies are going to be put in place to ensure that it will happen into the future.

The second and larger element of the government's approach to improving Indigenous peoples' access to mainstream services is achieving a more coordinated and effective 'whole of government' response. This involves a major reorganisation of the way the federal bureaucracy deals with Indigenous affairs so that there are better linkages between mainstream programs and Indigenous specific services. It also involves reaching agreement with the states/territories on respective roles and responsibilities in addressing Indigenous disadvantage and service delivery. This has been the Government's policy focus since the new arrangements were introduced in 2004, and hence is the major focus of this chapter.

Absent from the Government's approach to harnessing the mainstream is the participation of Indigenous peoples. I continue to have serious concerns that Indigenous Australians have largely been left out of the government's equation. Where they are consulted on legal and policy developments, it is rushed, ad hoc and often tokenistic. But all too frequently major policy decisions, such as the abandonment of the COAG trials, are made and implemented without Indigenous input, knowledge or consent.

Two years on from the introduction of the new arrangements, we are yet to see significant improvements in Indigenous levels of disadvantage – whether it be in relation better access to mainstream services, or economic independence. I am the first to acknowledge that improvement on these fronts will take time and we need more and better data to make these evaluations with any confidence.

156 This issue is discussed at length in the *Native Title Report 2006*, particularly chapter 2.

However, what does concern me is that the government has not bedded down its policy direction for Indigenous affairs. This is not only destabilising and confusing for Indigenous peoples, it is diverting valuable resources from producing changes on the ground that will improve the daily lives of Indigenous Australians. Indigenous peoples, governments and other key stakeholders have to get the policy foundations right before new directions are taken.

Part 2: 'Harnessing the mainstream' through the new arrangements for Indigenous affairs

The new arrangements for Indigenous affairs have a number of key elements that can contribute to harnessing the mainstream. In this part of the report I will examine the role of each of these building blocks in terms of how they currently operate and how they could potentially contribute (or contribute more effectively) to this objective.

These key elements are as follows:

- Regionally focussed service delivery through Indigenous Coordination Centres, solution brokers, agreement making processes and 'intensive interventions';
- Engagement processes with Indigenous peoples;
- The role of the Office of Indigenous Policy Coordination; and
- Monitoring and evaluation mechanisms.

Regionally focussed service delivery: Indigenous Coordination Centres, solution brokers, agreement making processes and 'intensive interventions'

A central component of the new arrangements is the development of a whole of government machinery for service delivery that is regionally based and which prioritises agreement making processes with Indigenous communities. Information about these processes indicates that the government clearly intends them to play a critical role in 'harnessing the mainstream'.

• Indigenous Coordination Centres and solution brokers

Indigenous Coordination Centres (ICCs) are designed to be the focal point of the new relationship being forged with Indigenous communities. They replace ATSIC Regional Offices. According to the Minister, Mr Brough:

> Our Indigenous Coordination Centres (ICCs) are the frontline of the Government's efforts. All Australian Government agencies with major responsibilities for Indigenous programs are required to work together. This is the new single face of government.[157]

157 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *Indigenous Affairs Arrangements,* Foreword, Department of Families, Community Services and Indigenous Affairs, Canberra, 2004, p.v.

OIPC has defined the specifics of the ICC role as follows:

> Each of these ICCs coordinates Australian Government program funding and services to local Indigenous people. ICCs will coordinate Indigenous-specific programs in their regions. They will work with local Indigenous communities and negotiate regional and local agreements for effective partnerships based on shared responsibility.[158]

The role of ICCs in respect of *Indigenous-specific* programs is clear enough, although there are significant issues with the workability of this model of service delivery and coordination. Gray and Sanders note, for example, the view held by heads of government departments that ICCs present 'some very significant governance and skill challenges'.[159]

However, the role of ICCs in respect of the objective of removing barriers to mainstream services is less clear. Do ICCs have a mandate to involve themselves in issues of mainstream service delivery, especially where those services are provided by state and territory authorities?

ICCs are the federal government's primary point of contact with Indigenous communities for the development of local and regional agreements. These include: Shared Responsibility Agreements (SRAs), Regional Partnership Agreements (RPAs) and Regional Indigenous Engagement Arrangements. ICCs are also responsible for regional coordination with state and territory government activities.

Accordingly, the ICC structure is well placed to develop complementarity between Indigenous-specific and mainstream programs. For example, ICCs could negotiate with communities to mix and match mainstream and specific programs to better meet their needs. If a particular agency is attempting to develop complementarity in its programming between its mainstream programs and its Indigenous-specific programs, the culture and resources of an ICC are potentially helpful.

The *Social Justice Report 2005* discussed the potential for the ICC structure to be utilised to improve regionally focused service delivery for Indigenous health. It noted the potential for the whole of government structure at the regional level to provide an improved focus on the social determinants of health, which could complement health specific interventions.[160]

Last year's report noted that in the first twelve months of the new arrangements, the Department of Health and Ageing had not played a significant role in the roll out of the new arrangements, did not have a significant presence in ICCs and had 'limited capacity to influence the strategic directions underpinning engagement at the regional level and through agreement making processes such as SRAs.'[161]

158 OIPC, *Indigenous Coordination Centres – Questions and Answers*, at http://www.Indigenous.gov.au/icc/qa.html accessed 19 January 2007.

159 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p13.

160 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p42-46; p86-94.

161 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p46.

I noted the failure of the new arrangements to build on significant progress and experience in the health sector, or to develop effective relationships with the extensive local Aboriginal Community Controlled health sector.[162] In particular, I expressed concern at the failure to:

- Apply the methodologies and lessons learned from the health sector;
- Build upon the significant community resources and capacity that exists through the Aboriginal Community Controlled health sector; and
- Build upon the findings and recommendations of the regional planning processes conducted under the state-wide Aboriginal Health Forums.[163]

And as a consequence, I noted that there is a 'disconnect between existing programs relating to Aboriginal and Torres Strait Islander health and the whole of government approach adopted through the new arrangements.' This was despite the 'clear inter-connections between the issues' and the recognition by governments of the need to adopt a holistic response to achieve lasting improvements in Indigenous health.[164]

In meetings with senior executives of the OIPC, the potential to utilise the existing processes within the health sector to improve the performance of the new whole of government machinery was discussed. A senior executive stated that they would be 'mugs' if they did not pay attention to this and begin to utilise the existing resources, such as regional health planning forums. There is, however, no evidence that any such links have been developed in the year that has passed since this discussion and since the findings of last year's *Social Justice Report*. This remains a major failing of the ICC process, and accordingly an ongoing failure to meet the objectives of the new arrangements.

Taking a whole of government approach to service delivery through ICCs is a major challenge. It can cut across well established systems of budget and program control, delivery and accountability arrangements and, simply, differing departmental cultures. There is, predictably, a degree of inertia in the system. At least some experience from the COAG trials suggests that it is very difficult to change established organisational patterns of service delivery planning and activity.[165] Experience in the Wadeye COAG trial indicates that communities and departments can quickly lapse back into direct negotiations and funding arrangements. [166] In other words, the old silo-mentality can quickly re-assert itself.

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162 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p46.

163 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p46.

164 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p46.

165 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p13.

166 For example, Gray found evidence that the partners in the COAG trial began to initiate funding applications and responses that were not part of the agreed processes under the SRA. See Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p8.

OIPC has indicated that each regional ICC has now commenced developing *regional priority plans* which will 'identify the key issues (with measures and timeframes) that the ICC will focus on in a 12 month period.'[167] These plans:

> cover work done through a variety of mechanisms, including RPAs and SRAs (both single issue and more comprehensive), strategic intervention arrangements and community in crisis interventations (sic.).
>
> The regional priority documents are endorsed by Australian Government agency state manager groups that meet regularly with ICC managers in each state and territory. These in turn link back to national priorities. This ensures the commitment of all necessary Australian Government agencies to a particular regional priority. The ICC Managers then report regularly to the state manager group on progress with the priority initiatives.
>
> The priority plans are a guide only and do not attempt to cover all the activities in which an ICC may be involved within the year, rather they highlight the most significant community and government work in which the ICC is likely to be involved.[168]

The *regional priority plans* process is a new development. There is no public information about this process. Given the prominence attached to harnessing the mainstream, it can be expected that the regional priority plans for many regions will provide greater detail about how the government intends to progress the objective of improving mainstream accessibility. This would particularly be expected for those regional priority plans for ICCs that are based in urban centres.

The regional priority plans are internally focused on how the ICC organises its business. It is not intended to establish the priorities for Indigenous communities, but instead form the basis for how different government departments will collaborate through the ICC structure. Clearly, the priorities for government coordination cannot be divorced from the priorities of Indigenous communities. It is artificial and unrealistic to suggest otherwise.

I am concerned that there is a disconnect between the creation of such regional priority plans and Indigenous engagement and participation in determining what the priorities for a region are. The experiences and views of Indigenous peoples and communities appear to have been given little consideration to date, which is a critical oversight. This absence has the potential to impact on the effectiveness of program delivery (such as through an ICC) and on the effectiveness of whole of government coordination.

One of the government's responses to the challenge of making a whole-of-government approach work has been the appointment of *solution brokers*. Solution brokers are staff from different government departments, usually located in ICCs or state offices/departments, which progress the whole of government and whole of agency approach of the new arrangements. The OIPC has described their role as follows:

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167 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006,* 22 December 2005, p5.

168 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for Information in preparation of Social Justice Report 2006,* 22 December 2005, p5.

> Solution brokers should have a detailed understanding of the *full* range of programmes and services in their agency, particularly those impacting on Indigenous Australians, and understand how to link these various programmes – or to suggest how they might need to be adapted so they respond to community circumstances and deliver better outcomes.[169]

Solution brokers should have the skills to link programs of their own and other agencies to generate innovative, flexible solutions to issues identified by communities. They are meant to support ICC managers in implementing a whole of government response to communities' needs including assisting to negotiate SRAs. As I have noted elsewhere, this:

> new brand of bureaucrat, a 'solution broker', navigates through all the levels and sectors of government to negotiate, as their name suggests, a solution. …. it is intended that as many of these solutions as possible are to be delivered according to the principle of mutual obligation.[170]

Solution brokers have, for example, been appointed by the Department of Employment and Workplace Relations (DEWR) to every ICC.[171] The role of DEWR solution brokers is to:

- Represent DEWR in the implementation of the Australian Government's collaborative approach to Indigenous program management and service delivery;
- Contribute to the development and implementation of Regional Partnership Agreements (RPAs) and Shared Responsibility Agreements (SRAs) through ICCs;
- Identify gaps/duplication in service delivery, areas for improvement and opportunities for innovation, coordination and collaboration;
- Negotiate and liaise within DEWR and with other government agencies, external organisations and local Indigenous communities to promote employment and enterprise development opportunities for Indigenous Australians; and
- Prepare briefings, submissions, reports, reviews, contractual documentation, risk management plans, business plans and general correspondence as required.[172]

Clearly it is the intention that the solution broker looks for complementarity between Indigenous specific and mainstream programs, and that they then prioritise those programs that are best suited to meeting the particular needs of each community.

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169 Office of Indigenous Policy Coordination, Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner (Email), 15 June 2005.

170 Calma, T., Aboriginal and Torres Strait Islander Social Justice Commissioner, *Evaluating the external forces which exert an influence on government policy direction,* Speech delivered at Collaborative Indigenous Policy Development Conference, Brisbane 27-28 June 2006.

171 This is according to the Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005 p 6. However, it appears that not all ICCs may, in fact, have solution brokers.

172 Department of Employment and Workplace Relations, *CDEP Guidelines 2005-06: Building on Success,* p25. Available at http://www.workplace.gov.au/NR/rdonlyres/DA6EA99F-EB21-4C90-810F-405D3AC49A51/0/CDEP_Guidelines2005_06.pdf accessed 13 February 2007.

Other departments and agencies have also placed solution brokers in ICCs, although as last year's *Social Justice Report* noted, they have not been placed in every ICC. This is for a combination of reasons, including difficulties experienced by some departments in identifying and placing sufficiently senior and experienced staff as ICC solution brokers. Instead, they have been placed in other offices such as a primary regional office or a state office on a 'hub and spoke' model.[173]

To what extent this reflects a retreat from the model of a solution broker in every ICC remains to be seen. Indeed, ICC staffing seems to have been a problem wider than the placement of solution brokers, and there may have been a reduction in staffing levels in ICCs, particularly at the more junior levels, by some agencies.[174]

The role of solution broker is potentially valuable. However, it takes a special kind of person, with both the motivation and the skill set to carry out this role successfully. Not only does the solution broker need to know what is available from the government side, he or she needs to be able to interact with the Indigenous community on a constructive basis and also be able to deal with the non-government sector as appropriate. In this regard, I have consistently expressed concerns at the recruitment practices adopted through the new arrangements to date because they do not sufficiently recognise that the ability to communicate effectively with Indigenous communities is an important and essential skill and an integral component of all merit based selection processes.[175]

The potential role of solution brokers is discussed further below in relation to the Shared Responsibility Agreement making process.

• Reducing 'red tape' through funding processes

Another of the government's responses to the challenge of making a whole-of-government approach work better has been to explore ways of reducing the 'red tape' that acts as a barrier to Indigenous peoples' access to mainstream services. A particular focus has been on reducing the red tape associated with accessing funding for Indigenous programs. Complex, multiple forms; difficult bureaucratic processes; inflexible service arrangements; lengthy submissions and reports and persistant changes to policy and program guidelines have all contributed to Indigenous peoples being unsure of what services are available, and how they can be accessed.

The Secretary of the Treasury recently acknowledged the bureaucratic burden associated with the new arrangements in Indigenous affairs:

> I was struck, during a visit to one of the Cape York communities last year, that the principal concern of its leaders was the red tape burden of reporting and compliance arrangements arising from a multiplicity of government intervention programmes and delivery agencies. Compliance with red tape was absorbing all of

173 See Senate Community Affairs Legislation Committee, 2006-07 Budget Estimates, Question No.071, p 79.

174 Senate Estimates, Hansard, Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA11-12. Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

175 See for example Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p166-169.

> the administrative capacity of the community. Reducing the red tape burden on indigenous communities must be a national reform priority.[176]

Devising strategies to reduce red tape has been a particular focus of ICCs. This has led to the introduction of the electronic Submission (eSub) process for organisations applying for Indigenous program funding. ICCs also provide information on available programs and funding priorities to applicants.

eSub enables Indigenous community organisations to download one funding application even when requesting funding for multiple projects or from more than one agency. The completed form or an eSub disk is mailed or electronically submitted to the closest ICC for assessment.[177]

Whilst this has undoubtedly streamlined and simplified the process for Indigenous organisations to access funding, the government is aware that the problems created by red tape are more extensive. Addressing these problems requires more than providing web-based solutions – as the government found out in May 2006 when Morgan Disney & Associates presented OIPC with their report entitled *A Red Tape Evaluation of Selected Indigenous Communities* (hereafter the Morgan Disney report).[178]

The overall conclusion of the Morgan Disney report was that:

> *actual* red tape is less than *perceived* red tape, and that many of the issues raised as examples of red tape, are in fact about relationships, program management practices, and capacity of government agencies, ICCs and funded organisations. [However,] the expressed frustration, of both Indigenous organisations and ICC staff … around having to take time away from urgent, daily service delivery, or operational matters, to comply with conditions of grants in reporting was considerable.
>
> … [Indigenous organisations dispute] whether much of what is currently required [in terms of reporting] actually assists governments or their governing bodies to manage risk, to assess what outcomes are being achieved, and therefore to account well for the use of funds.[179]

Funding procedures and conditions that the report identified as contributing to levels of frustration and perceptions red tape included:

- The reporting burden of small grants is virtually equal to that of much larger grants. Even though there is a smaller risk, small grants still have the same reporting frequency and the same number of performance indicators for which data has to be collected.

176 Henry, K., (Secretary of the Treasury), *Managing Prosperity,* Address to the 2006 Economic and Social Outlook Conference, Melbourne, 2 November 2006, p6, available at http://www.treasury.gov.au/documents/1183/PDF/Managing_Prosperity.pdf accessed 19 January 2007. See also the evaluation of the Wadeye COAG trial, as discussed in section one of this chapter. It noted an increase in red tape as a result of the whole of government efforts as part of the trial.

177 Australian Government, e-Sub online introduction, available at https://www.indigenous.gov.au/eSub/PublicPages/IntroInformation.aspx accessed 14 February 2007.

178 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006.

179 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p6-7.

- 66% of grants from programs that continue year after year have to be re-applied for annually, even though there is little variation in risk or circumstances.
- Funding departments appear to make little use of the information in the reports they receive from grant recipients, including information about the financial well-being of recipient organisations.
- Performance indicators are frequently not related to the activity being funded.[180]

The report also identified adverse 'organisational cultures' as another source of frustration and perceived red tape. For example, some departments suffer from a 'rigid compliance' culture. Rather than striving to help communities achieve their goals and build up their organisational capacity, these departments insist on compliance with 'less than sensible reporting requirements' or 'standard performance indicators which do not match the project'.[181]

To address both the actual and perceived burden of red tape on Indigenous communities, the Morgan Disney report recommends a 'paradigm shift' at the federal level to bring about organisational and cultural change.[182] The alternative paradigm proposed is based on the concept of mutual responsibility, a concept that already underpins the government's approach to Indigenous affairs. The major objective of this paradigm shift would be move the focus of funding Indigenous programs from one of achieving compliance, to one that is measured by beneficial outcomes in Indigenous communities.

The Morgan Disney report characterises the concept of mutual responsibility in a manner that emphasises mutual trust, respect and accountability between funding agencies and funded organisations. In order to ensure that the funding of Indigenous organisations results in beneficial outcomes for communities, the report suggests that there needs to be a general acceptance of the following premises by both parties:

- Organisations, on the whole, want and do what they believe is best for their communities, and similarly governments want to assist communities to achieve their potential;
- Risks are best managed when these are assessed together by the funding agency and the funded organisation, and jointly managed;
- Working together is more likely to achieve agreed and better outcomes for communities;
- Accountability for outcomes requires a mutual accountability between funding agencies and funded organisations based on respect and capacity building of Indigenous organisations; and

180 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p7.

181 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p8-9.

182 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p10.

- Governments have a responsibility to monitor the use of public` funds and this can be done well, in partnership with Indigenous organisations and communities.[183]

According to the Morgan Disney report, this paradigm shift would be a relatively low cost option and would not require 'massive change'. Rather there would be a need for 'change management, organisational and cultural change and training.'[184] In fact, many of the government's current overarching policy strategies would be consistent with, and quite critical to the success of this paradigm shift. For example, it would be critical to maintain:

- An ongoing commitment to finding whole of government solutions to funding and supporting Indigenous organisations and communities, and to ways of working in partnership;
- A commitment to negotiating and focussing on accountability at the outset to ensure outcomes are achieved;
- A commitment to capacity building in Indigenous communities and organisations; and
- The development of the role of ICCs and OIPC at the regional and national levels, to improve and coordinate whole of government and cross government efforts to support and fund organisations, and reduce the administrative burden on Indigenous organisations. [185]

The Morgan Disney report is clear in the need for this paradigm shift to be led by senior elements of the Indigenous affairs bureaucracy. For example, it recommends that:

- The Secretaries Group on Indigenous Affairs establish a service charter and issue a leadership statement;
- OIPC examine practices within the ICCs and work with other departments to improve funding mechanisms and processes; and
- State/territory Managers of Australian Government departments provide 'a solid foundation' for the paradigm shift to take root.[186]

• Shared Responsibility Agreements

Shared Responsibility Agreements (SRAs) have been a prominent feature of the work of ICCs and solution brokers at the regional level over the first two years of the new arrangements. SRAs are defined as:

> … agreements between the government and Indigenous communities or groups, to provide a discretionary benefit in return for community obligations. These discretionary benefits may take the form of extra services, capital or infrastructure

183 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p82.

184 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p10.

185 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p83.

186 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p10.

> *over and above* essential services or basic entitlements. They can involve all or some of the people in a residential community.[187]

The *Annual Report 2004-05* of the Secretaries' Group on Indigenous Affairs observed that:

> A central element of the Australian Government's new approach is the voluntary development with Indigenous families and communities of Shared Responsibility Agreements (SRAs).[188]

Through SRAs, the government seeks to establish a mutual obligation basis for assistance to Indigenous communities. SRAs are intended to respond to the identified priorities of particular communities or family groups. In return for discretionary benefits from government, communities make specific commitments in order to achieve their identified goals. The obligation on the community or family is often in the form of behavioural change (for example ensuring children attend school). [189] SRAs also meet the objective of the new arrangements of direct engagement with Indigenous peoples.

As reported in last year's *Social Justice Report*, OIPC had identified a key role for SRAs in achieving improved access to government services, including in urban locations:

> There are a number of mechanisms under the new arrangements that will facilitate improved service delivery to Indigenous people living in non-remote communities, including SRAs…
>
> As part of the new arrangements ICCs have been working with Indigenous people and communities in both rural and urban areas to identify their needs and priorities as well as develop Shared Responsibility Agreements (SRAs). SRAs can be used in both rural and urban contexts, either as a mechanism through which disadvantage can be tackled directly, or to complement and inform the delivery of an existing service. They are also a useful mechanism through which Government can respond to community identified needs by linking programs and closing gaps in current service delivery. There are already a number of examples or SRAs in urban areas.[190]

The 'directness' of the SRA process is seen as worthwhile in itself as a form of engagement and because it potentially lessens the influence of 'gatekeepers', including Indigenous organisations.

Although accounting for a relatively small share of total Indigenous program funding, SRAs have been given considerable prominence by the government. In the national media, they have come to embody the government's commitment to partnership, local agreements and flexible 'joined-up' government service

187 Secretaries' Group on Indigenous Affairs, *Shared responsibility agreements,* Bulletin 1, April 2006.

188 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p9. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

189 Australian Government, Indigenous Portal, *SRA and RPAs* Website available at http://www.Indigenous.gov.au/sra.html accessed 19 January 2007.

190 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p178-79. The report notes (p179), however, that while 'there are some SRAs in urban contexts' they 'are, however, very few in number. The SRA process has not, to date, been a significant tool in harnessing the mainstream.'

delivery. There are now over 190 of these agreements in place.[191] The responses of Indigenous communities that have entered into SRAs are considered in detail in the next chapter of this report.

However, the question remains: are SRAs an effective tool to 'harness the mainstream'? Do they achieve synergies between Indigenous-specific and mainstream programs that improve the outcomes for communities. Or, are SRAs really just a tool for tailoring Indigenous-specific programs to the needs of the community concerned?

In last year's *Social Justice Report* I wrote that the SRA process had not, on the evidence to date, been a significant tool in harnessing the mainstream.[192] With a truly flexible approach one might expect **mainstream funds to be deployed through SRAs** to meet the expressed needs of the community. I commented that ultimately, if funding for SRAs remains basically Indigenous specific expenditure 'then SRAs will remain a supplementary funding source and will play a similar role to that of ATSIC program funding.'[193]

There are some examples of SRAs which seek to use Indigenous-specific funding to reduce barriers to mainstream services. For example:

- The Areyonga community in Central Australia developed the *Areyonga Bus and Oval SRA* to reduce barriers to mainstream services that were caused by the community's remote location.[194] The Areyonga community identified their priority need as being 'improved access to educational, specialist medical, cultural, sporting and recreational opportunities in Alice Springs and the region.'[195] Among other things, the SRA provided the community with a bus.
- The Bagot community in Darwin entered into the *Bagot SRA* to reduce barriers to mainstream services that were caused by the community's lack of knowledge of how to access services. The Bagot community, although right in Darwin and having access to a strong labour market, operates like a discrete Indigenous community. It identified its priorities including the development of a community plan. It did not have the skills or expertise to develop a community plan so wanted a Community Development Officer position with two locals trained to do the work. Among other things, the SRA provided the community with a Community Development Officer and a package of training opportunities.

191 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p178-9.

192 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p179.

193 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p179.

194 OIPC, *Areyonga Bus and Oval SRA,* June 2005, available at http://www.indigenous.gov.au/sra.html#sra accessed 19 January 2007.

195 OIPC, *Areyonga Bus and Oval SRA,* June 2005, available at http://www.indigenous.gov.au/sra.html#sra accessed 19 January 2007.

- The Sarina Aboriginal and Torres Strait Community in Queensland through the Mudth-Niyleta Aboriginal and Torres Strait Islander Corporation developed the *Sarina Economic Participation Strategy SRA* to reduce barriers to mainstream employment opportunities that were caused by the community's reliance upon CDEP. The Sarina community identified their priority need as being 'wanting to stay in the community and be a part of the mainstream labour market.' Among other things, the SRA provided the community with an Indigenous Community Volunteer (ICV) who helped to prepare the Economic Participation Strategy. This is seen to be the first of a number of SRA's that will be entered into by the community.
- The Palmerston Indigenous Village developed the *Palmerston Community Plan SRA* to reduce anti-social behaviour in the community and create greater engagement with mainstream activities. Among other things, the SRA provided the community with a Community Development Officer who will work with the local council to develop and implement a community plan.

These SRAs provide the *potential* to achieve improved access to mainstream services over time.

A year further into the new arrangements, though, and it appears that the majority of SRA funding continues to come from Indigenous specific expenditure and not mainstream programs. The potential remains, however, for SRAs to build the necessary linkages between Indigenous specific services and mainstream services.

Solution brokers are ideally placed to create these linkages.

Chapter 3 of this report contains the results of a survey of Indigenous communities and organisations which have entered into SRAs. The survey results show that solution brokers are indeed critical to Indigenous community satisfaction with SRAs. The survey found that:

- The biggest single reason that an SRA was initiated was at the suggestion of the government, usually through an ICC or solution broker;
- In 57% of cases, the ICC or solution broker were integrally involved in the development of the SRA (although survey respondents generally identified this participation as by 'ICC staff' rather than by 'solution brokers'); and
- Communities that stated they had received no assistance from the ICC in developing the SRA had much lower rates of satisfaction with the SRA process.[196]

However, the survey also confirmed the potential for SRAs to be a tool to further the holistic, longer term priorities of communities. The survey found that a majority of respondents defined their SRA as being about multiple issues, and not being restricted to a single issue. This suggests a willingness to look to more comprehensive arrangements that tackle the priorities identified by communities.

196 For the full survey results see further Chapter 3 of this report.

The survey also identified disappointment from communities that SRAs did not provide this broader, more comprehensive focus. Concern was expressed that the one off nature of the funding was not capable of producing sustainable improvements in communities, and could lead to disillusionment from communities about engaging with government – the very opposite of the intended impact.

• Comprehensive SRAs, Regional Partnership Agreements and 'intensive interventions'

Regional agreement making processes were intended from the start to be an integral component of the new arrangements. The principal tool that has been identified for this purpose is the Regional Partnership Agreement (RPA). OIPC has described the nature and purpose of RPAs as follows:

> Regional Partnership Agreements provide a mechanism for setting out a coherent government investment strategy across a region, eliminating overlaps or gaps, and promoting coordination to meet identified priorities for the region. Where States and Territories have agreed, RPAs may also incorporate State and Territory investment. RPAs will accord with the Framework Principles for Government Service Delivery agreed by the Council of Australian Governments in June 2004.[197]

SRAs were originally intended to be 'more detailed documents operating at a family or community level'[198] and accordingly were not intended to provide a mechanism for developing regional plans and strategies.

However, there has been an evolution in thinking about SRAs towards their expanding in focus and duration. The Secretaries' Group on Indigenous Affairs has commented that this evolution towards a 'comprehensive SRA' approach:

> describes the more intensive work that we will do with Indigenous communities that goes beyond addressing single issues. It will require strong partnerships between communities and government at all levels, with business and our provider networks.[199]

According to the Secretaries' Group, this approach will be implemented:

> in locations where communities are ready and willing to build on what they have already achieved – to work with us towards their longer term goals, covering more community priorities overtime (we are calling this a more comprehensive approach to SRAs, but it can also be done through RPAs).[200]

This evolutionary approach appears to deal with the potential for SRAs to be *ad hoc*, limited in focus, of short duration and uncoordinated with the needs of the wider community or region. The rationale of moving towards a more comprehensive approach has been set out as follows:

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197 OIPC, *New Arrangements in Indigenous Affairs,* p40. Available http://www.oipc.gov.au/About_OIPC/new_arrangements.asp accessed 15 February 2007.

198 OIPC, *New Arrangements in Indigenous Affairs,* p32. Available http://www.oipc.gov.au/About_OIPC/new_arrangements.asp accessed 15 February 2007.

199 Secretaries' Group on Indigenous Affairs, *A Comprehensive Approach to Indigenous Reforms,* Bulletin 3/2005. Available at http://www.apsc.gov.au/indigenousemployment/bulletin0305.pdf accessed 15 February 2007.

200 Secretaries' Group on Indigenous Affairs, *A Comprehensive Approach to Indigenous Reforms,* Bulletin 3/2005. Available at http://www.apsc.gov.au/indigenousemployment/bulletin0305.pdf accessed 15 February 2007.

> While it is important not to underestimate the impact of single-issue SRAs – particularly in smaller and remote communities as the first step – progress will always be limited in any single area unless factors in related areas are addressed. For example, only limited success can be expected in the area of employment (even if real job opportunities exist), if education and health issues are not also addressed.[201]

A distinction continues to be made between comprehensive SRAs (as relating to one community) and RPAs. Thus, for communities which are able to take advantage of a wider approach to agreement-making:

> This might mean they want to take a whole of community or even a cross community approach – here they might start with a comprehensive (multi issue) SRA if it's just for one community, or with an RPA if they want to work across several communities in a region.
>
> RPAs tend to set out higher level community goals and the outcomes to be delivered. However, as they progress, they should include SRAs with clear shared responsibilities for local communities or groups which support the objectives of the RPA.[202]

It is clear that there may be some overlap. Gray and Sanders suggest 'perhaps the distinction between SRAs and RPAs are becoming rather blurred anyway'.[203]

There is also the question of where the comprehensive SRAs or RPAs will fit in the new 'intensive intervention' model (as discussed in Part 1 of this chapter). The intervention model is based on identifying priority communities (which seems to mean in general, communities that are in crisis). Presumably, such communities, if in crisis, are not in the position to negotiate and enter into comprehensive SRAs. A term which has been used to describe the sort of agreements that might be developed in such situations is a 'holistic' SRA, which:

> would relate more to those locations where we are planning or have already commenced a joint intervention with a state or a territory where we are attempting at a particular place to deal with a broad range of issues concurrently.[204]

Accordingly, it appears there are now three agreement mechanisms being used which are similar in approach and purpose, and which may overlap. These are RPAs, 'comprehensive SRAs', and 'holistic SRAs'. This proliferation of approaches is not necessarily a problem, but these terms and concepts do need to be thought through carefully to avoid confusion. Nevertheless, the priority in agreement-making lies with avoiding an excess of *ad hoc* and isolated agreements that do not take into account local and regional needs, resources, options for efficient and effective service delivery and meaningful participation of Indigenous partners.

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201 Secretaries' Group on Indigenous Affairs, *A Comprehensive Approach to Indigenous Reforms,* Bulletin 3/2005. Available at http://www.apsc.gov.au/indigenousemployment/bulletin0305.pdf accessed 15 February 2007.

202 Secretaries' Group on Indigenous Affairs, *A Comprehensive Approach to Indigenous Reforms,* Bulletin 3/2005. Available at http://www.apsc.gov.au/indigenousemployment/bulletin0305.pdf accessed 15 February 2007.

203 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p13.

204 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard,* Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA17. Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

The move towards 'comprehensive' or 'holistic' SRAs seems sensible and timely. Such devices, along with RPAs, could be used to contribute to a regional needs analysis approach in order to map mainstream and Indigenous-specific services together.

The challenge, and it is not easy, is to balance the directness and immediacy of a bottom-up family or community-based approach, through small one or two-issue SRAs, with the efficiencies and effectiveness of coordinated planning and service delivery on a wider community or regional basis.

The potential for 'comprehensive' SRAs has been discussed by the government for some time. It was anticipated that there would be several such SRAs in place during the past financial year, however, these agreements have yet to eventuate.

Accompanying this slow progress in finalising comprehensive SRAs has been the slow pace of finalising RPAs. This is discussed in further detail in Chapter 3 and remains a matter of significant concern. When writing the *Social Justice Report 2005* there was only one concluded RPA to report, the Ngaanyatjarra Regional Partnership Agreement,[205] and OIPC had advised that a number of RPAs were under discussion.[206]

There are now apparently several RPAs that have been negotiated to agreement stage and are awaiting signature by ministers at both the federal and state/territory levels. As well, there appears to be a continuing commitment to RPAs in the context of arrangements to follow on from the COAG trials. As the Associate Secretary of FaCSIA has explained:

> If you look at the bilateral agreements we have with several states, you will see a clear intention to move on to replace the trial arrangements with regional partnership agreements that lock in both the Commonwealth and the state or territory jurisdiction to an ongoing commitment.[207]

For example, the intention at Wadeye seems to be to 'transition' the COAG trial into an RPA.[208] These agreements appear to be focussed on the bilateral level.[209] As noted elsewhere in this report, it is not clear what role is anticipated for Indigenous representative organisations in the new regional partnerships to succeed the COAG trials. The Ngaanyatjarra RPA provides a model for appropriate Indigenous participation.

Two further RPAs have recently been signed in November 2006. These are the East Kimberley RPA and the Port Hedland RPA. The Port Hedland RPA has an employment focus to take advantage of opportunities in the minerals sector in the region. The RPA has been developed under a Memorandum of Understanding between the

205 Regional Partnership Agreement between the Ngaanyatjarra Council (Aboriginal Corporation), the Australian Government, the State Government of Western Australia and the Shire of Ngaanyatjarraku, 12 August 2005.

206 *Social Justice Report 2005,* op cit, p 118-119.

207 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA39. Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

208 Gibbons, W., *Hansard,* (Associate Secretary, FaCSIA), Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA39. Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007.

209 Compare to the Ngaanyatjarra RPA which is a 4-way agreement between the Australian Government, the Western Australian Government, the Ngaanyatjarra Council, and the Shire of Ngaanyatjarraku.

Australian Government and the Minerals Council of Australia. The Minister, Mr Brough, has indicated that:

> Over the next five years the partners to the Agreement will aim to prepare Indigenous people for the workforce and support the development of Indigenous businesses.[210]

Indigenous partners to the RPA include Bloodwood Tree, Pilbara Meta Maya, Pilbara Logistics and Indigenous Mining Services, and it is to be signed by 14 key players including industry partners such as BHP Billiton Iron Ore, Fortescue Metals, Newcrest Mining as well as Ngarda Civil and Mining. This RPA is profiled as a case study in chapter four of the *Native Title Report 2006*.

Although there has been a considerable delay, it is pleasing to see these RPAs finalised and agreed. It is to be hoped that further RPAs will be agreed to progressively around the country. My Office will monitor developments with new RPAs and similar agreements, including their:

- Arrangements for Indigenous participation in decision-making at all levels;
- Their performance in addressing Indigenous disadvantage; and
- Their progress in realising the goals of the Indigenous peoples of the regions concerned.

Issues concerning engagement with Indigenous communities

• The absence of regional representative structures – a flaw in the new arrangements

As already noted on several occasions in this chapter, the need for Indigenous regional representative structures to partner governments in region-based planning and in determining appropriate service delivery arrangements is paramount. Their absence constitutes a significant flaw in the administration of the new arrangements to date.

A somewhat passive approach appears to have emerged on the part of the federal government in facilitating and supporting the emergence of regional representative structures to enable Indigenous peoples to participate in decision-making. This is discussed in detail in chapter 3 of this report.

In announcing the abolition of ATSIC, the government stated its intention to support the creation of a network of regional representative Indigenous bodies to interact with governments.[211] In June 2005, the then Minister for Immigration and Multicultural and Indigenous Affairs had confirmed that the government remained committed to establishing representative bodies at the regional level:

210 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *Port Headland tackles Indigenous Unemployment,* Media Release, 7 November 2006.

211 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p110.

> We have always stated that, following the dissolution of ATSIC Regional Councils from July 1 this year, there will be room for genuine Indigenous representative bodies to emerge in their place.[212]

In the *Social Justice Report 2005,* I reported on the considerable progress that had been made in negotiating regional representative arrangements and structures.[213] I was also able to report that consultations had been conducted across many regions to identify replacement representative structures during the past year, and OIPC had provided funds through the ICCs for Indigenous peoples to convene local and regional meetings to discuss options for new regional representative arrangements.[214]

An overview of progress on a state-by-state basis showed that there were promising developments in determining culturally appropriate regional representative models,[215] although there were gaps and problems with some of the models. I noted that the federal government had not yet outlined in concrete terms how it proposed to support such bodies. I emphasised the need to finalise and operationalise representative organisations where negotiations were largely complete, and to make greater progress in other areas where models had not yet been finalised.

Given the advanced state of discussions a year ago in a number of regions, it is quite remarkable that progress towards recognising regional representative structures has stalled. It appears that the government now sees the principal route to regional engagement structures as being developed around participation in RPAs, rather than separately established representative organisations.

There is an important change in approach from an emphasis on regional *structures,* to regional *processes and agreements*, particularly RPAs. The federal government's preferred new approach is to work in partnership with Indigenous groups, as well as state and territory governments, to establish *Regional Indigenous Engagement Arrangements* (RIEAs). The government has stated that:

> The new engagement arrangements are important mechanisms for Governments to engage with Indigenous communities about agreed priority areas for joint effort and promote the principles of partnership, shared responsibility, and self-reliance.[216]

OIPC has set out the parameters for RIEAs as follows:

> Clearer parameters have recently been agreed by Minister Brough. These are allowing us to progress RIEA proposals that are consistent with the Australian Government's principles of partnership, shared responsibility and self-reliance, and to provide feedback to communities on proposals that are not consistent with

212 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements,* Media Release, 29 June 2005, p1.

213 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p110-111.

214 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p110-111.

215 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p117 and text box on p-112-114.

216 OIPC, *Regional Indigenous Engagement Agreements,* available at http://www.oipc.gov.au/documents/RegionalIndigenousEngagementArrangements_Parameters.pdf accessed 4 December 2006.

the Australian Government's objectives. Parameters for Australian Government funding and support include:

- Initial Australian Government funding be capped and limited to one year after which further support be negotiated through RPAs;
- Funds support meeting costs such as travel, but not sitting fees or remuneration;
- State and Territory Governments participate through RPAs or bilateral agreements;
- The Government retains the right to engage directly with communities or other bodies;
- The Government be assured of the legitimacy of RIEAs among their constituents; and
- RIEAs not be 'gatekeepers' or have decision-making responsibilities concerning Indigenous program funding.[217]

However these parameters do not necessarily have to be met in total. They are intended as a guide, and other proposals that merit consideration but do not meet these criteria will be considered.

The parameters are themselves of some concern, as they indicate that the shift away from regional representative bodies is definite. RIEAs will only get funding support for a year, after which time any further support must be negotiated through an RPA. Whilst this does not necessarily preclude organisations with a degree of permanency, it shows that engagement arrangements are to be contingent on RPAs.

While it is desirable not to foist a standard model on different regions, and this is one of the reasons given for the slowness in getting regional engagement arrangements in place or supported, I remain concerned that the vacuum in Indigenous regional participation is creating problems. It is difficult for Indigenous communities to deal with the volume of changes, agencies and requirements under the new arrangements and the increasing entanglements of red tape.[218] There is a need to support authentic and credible structures and processes for Indigenous communities that allow them to: engage with governments; be consulted; and where appropriate, provide informed consent.

Chapter 3 considers this issue I some depth. It notes that:

> In my view the government has adopted a cynical and disingenuous approach in which the apparatus of the new arrangements play no active role in engaging with Indigenous peoples on a systemic basis to ensure that mechanisms for Indigenous participation can become a reality.
>
> The Government has clearly stated that one of the priority areas for their Expert Panels and 'Multiuse list of community facilitators/coordinators' is to assist in the development of regional engagement arrangements. This demonstrates that they are fully aware that such arrangements will only become a reality if intensive

217 OIPC, *Regional Indigenous Engagement Agreements,* available at http://www.oipc.gov.au/documents/RegionalIndigenousEngagementArrangements_Parameters.pdf accessed 4 December 2006.

218 Morgan Disney & Associates Pty Ltd, *A Red Tape Evaluation in Selected Indigenous Communities: Final Report for OIPC,* May 2006, available at http://www.oipc.gov.au/publications/PDF/RedTapeReport.pdf accessed 19 January 2007.

> support is provided to Indigenous communities to develop models that are suitable to their local needs.
>
> It is fanciful to expect that RIEAs will emerge solely through the efforts of Indigenous communities that are under-resourced and that in most instances do not have the necessary infrastructure to conduct the wide-ranging consultation and negotiation required to bring a regional engagement structure into existence.
>
> It is also convenient for Government to leave this issue solely up to Indigenous peoples to progress. I would suggest that this is done in full knowledge that the outcome of this approach will be an absence of regional engagement arrangements.
>
> There is a clear need for special assistance to ensure that Indigenous peoples are able to, in the words of the object of the *Aboriginal and Torres Strait Islander Act 2005*, ensure the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.[219]

I hope that RIEAS will develop in a manner that can represent Indigenous interests in their area, but whether they will have sufficient autonomy to freely represent their members' interests remains to be seen.

• The importance of direct engagement with Indigenous communities

It is also important to consider the *modalities* of engagement with Indigenous communities. A major thrust of the new arrangements has been *direct engagement* with communities and families. This approach has been taken, despite the government's oft repeated conviction that there were serious failings in the modalities of engagement with Indigenous communities in the era of 'self-determination' or 'self-management' (essentially from the 1970's through to the new arrangements in July 2004).

Indigenous organisations and various other intermediaries had, according to the government, become 'gatekeepers' - in effect preventing Indigenous peoples from dealing directly with governments, expressing their real priorities, or operating on a basis of mutual responsibility. The then Minister, Senator Vanstone, expressed these concerns with the old ways of doing things and the government's intention to let Indigenous families and communities speak for themselves:

> When no one listens to your view, when no one sees that you could contribute anything of value, it's the equivalent of being told that you are of no value, either within or outside that community. That debilitating and degrading message has been reinforced day-after-day, year-after-year, decade-after-decade, in hundreds, if not thousands, of communities around Australia. We're changing that. We are listening directly to communities. We are asking them not only what they want, but also, what they can contribute.[220]

219 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006,* HREOC Sydney 2007, Chapter 3.

220 Vanstone, Address to National Press Club 23 February 2005 at http://www.kooriweb.org/foley/news/vanstone1.html accessed 15 February 2007.

This remains a key plank of the new arrangements, as shown by the following comment of the current Minister, Mr Brough:

> We aim to make it simpler for Indigenous people to deal with government. We want to show respect by encouraging them to be active participants in solving their own problems.[221]

This is an entirely worthy objective. There can be no doubt that intermediaries - including Indigenous organisations – can unintentionally disempower Indigenous peoples. This has clearly occurred at times in Australia, particularly where key interests, such as rights in lands and waters, have been concerned. However, this paradox of Indigenous representation reflects an inherent problem in the interface of two quite distinct systems – the European system of laws, governance and administration[222] and Aboriginal and Torres Strait Islander systems of laws and customs. These two systems are based on quite different premises and values, but the two have to find a way to interact as they coexist over the same land and in the case of land and native title rights, Indigenous laws have legal effect in the European system.

No matter what rhetoric is current, Indigenous peoples undoubtedly retain some rights of self-government, and in practical terms have to be, and will be, consulted and negotiated with over programs and services. In any society with Indigenous minorities, whether Australia, New Zealand, Canada or others, the forms or modalities of engagement present significant challenges and require considerable thought and, indeed, sensitivity.

Programs to address Indigenous disadvantage have to be provided in genuine partnership with Indigenous peoples, and in terms that give those peoples room for input and initiative. These programs and services need to be provided *in ways that Indigenous peoples can identify with and 'own'*.

Indigenous peoples must be able to incorporate programs into their ideological and value systems. If such programs remain outside their systems, they will be seen simply as 'foreign', or as just the latest concern of government officials. If this is the perception in Indigenous communities, those programs will continue to be ineffective in dealing with Indigenous disadvantage.

Leading Indigenous spokespeoples have made this point repeatedly. Noel Pearson, writing in the context of alcohol and drug problems, affirms that while law enforcement is important, coercive measures alone will not succeed. Rather, Pearson believes a combination of both the enforcement powers of the police, and 'the moral resolve of elders' is required.[223] Similarly Pat Dodson has observed:

> All the assistance in the world will be of no consequence if our governments are not prepared to enter into genuine conversations with our people at every level to come to agreement about how Aboriginal people can take their place in the

221 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *Indigenous Affairs Arrangements,* Foreword, OIPC, Commonwealth of Australia, Canberra, 2006, pv. Available at http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf accessed 15 February 2007.

222 'European' in terms of the system of laws that entered Australia with settlement, which were predominantly British.

223 Pearson, N., 'The Right Side of the Law', *The Australian,* 11 November 2006.

> Australian society, while still being able to be Aboriginal people with unique roles and responsibilities in their own land.[224]

It is my concern that the basic problem remains when it comes to government engagement with Indigenous peoples in Australia: there is still an unwillingness or inability to fully comprehend and respect the distinctive nature of Indigenous societies and cultures. Until this situation changes, even with the best will in the world, policies of 'direct engagement' with Indigenous peoples are unlikely to succeed.

• Defining Indigenous 'communities'

The engagement process under the new arrangements is based largely on the concept of a 'community'. While it is possible to strike agreements with 'families', the focus of most SRAs are at the 'community' level. This focus on 'community' is despite the extensive literature about the artificiality and problematic nature of major Indigenous settlements in Australia.

The term 'community' is misleading in the Australian context because many Indigenous settlements are artificial constructs that bring together disparate clan and language groups. Many of these settlements only took root because non-Indigenous people established a mission or ration depot, and over time Indigenous peoples settled in and around these locations. Not surprisingly, this mix of clan and language groups created and continues to create tensions and stresses in what we now loosely refer to as 'Indigenous communities'.

The transformation of a 'settlement' into a 'community' in the sense of a cohesive functioning 'town' like other Australian rural towns, has been a policy objective going back to the 1960s.[225] The objective of 'normalising' Indigenous communities clearly underlies current government initiatives, rather than the stated aim of direct engagement with Indigenous communities.

A good case in point is provided by the recent amendment of the *Aboriginal Land Rights (Northern Territory) Act 1976* to enable the creation of 99 year leases over Indigenous owned land. The objective of this proposal appears to have been to turn Indigenous settlements into 'normal townships', in part by overriding traditional land ownership laws and the responsibilities of traditional custodians through the device of a 'headlease'.

Such attempts (and the 99 year leases are just the latest incarnation of this objective) will almost certainly have the opposite effect to that which is desired. The changes are likely to reinforce the artificiality and alienating nature of these communities, and to add to their social dysfunction. The rights of the traditional owners will be nullified. Regardless of compensation arrangements or 'rents', this is unlikely to work towards the development of harmonious communities. Similarly, Indigenous initiatives to relocate away from the social dysfunctional characteristics of large Indigenous settlements by establishing homelands communities have met with a degree of negativity (see discussion of Wadeye COAG trial above).

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224 Corbett, K., 'Stop criticising indigenous people – leader', *The Australian,* 23 November 2006.

225 See Rowley, C.D., *The Remote Aborigines,* Pelican, Sydney, 1972.

Such policy developments lead me to suspect that the direct engagement objective, whilst well intentioned, is not yet sufficiently based on a full understanding and acceptance of the values, aspirations and social organisation of Indigenous Australians. As well as mutual obligation, we must strive for mutual understanding and genuine partnership.

• Capacity building

Indigenous peoples are not always in a position of equal power, nor do they necessarily have the capacity to engage in direct negotiations without some risk to their legitimate interests. Safeguards must be in place to ensure that interests and rights are protected. Where necessary, assistance should be provided in strengthening capacity to engage in negotiations.

Over many years there has been considerable effort put into capacity building in Indigenous communities. Many of these programs have been successful, and there is now significant Indigenous capability in a wide range of areas. But the need to build and strengthen capacity remains a massive task, and when the emphasis is placed on direct negotiation, consultation and agreement making as under the current arrangements, this potentially brings the capacity building requirement right down to the grass roots.

The more that this capacity building can come from Indigenous organisations the more effective it will be. I note the continuing work of the Office of the Registrar of Aboriginal Corporations in providing on-the-ground accredited training in corporate governance for Indigenous Governing Committees and Boards.[226] There is, however, an ongoing need for a strategic approach to creating succession in communities for Indigenous peoples to take over many of the jobs currently undertaken by non Indigenous people in communities. There are also many organisations, both government and non-government working at the local, regional and national levels to strength and enhance Indigenous capacity.

There is a particular concern in relation to small SRAs and capacity building, which I highlighted in the *Social Justice Report 2005*:

> With the initial focus on single issue SRAs, it is also difficult to see that a capacity building approach tied to long term change is being prioritised in the SRA approach – although the government has clearly indicated that this is an intention of the process and will be built upon through the negotiation of more comprehensive SRAs.[227]

Since then, the Government has responded (in August 2006) to my report by way of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Many Ways Forward – Capacity Building in Indigenous communities.*[228] One of the Committee's recommendations was that all three levels of government work cooperatively and in consultation with Indigenous peoples in

226 See Office of the Registrar of Aboriginal Corporations at http://www.orac.gov.au/training_information_sessions/calendar/default.aspx

227 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p160.

228 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous communities,* June 2004.

relation to the provision of services. This whole of government approach to service delivery should include:

> the incorporation of capacity building into the design and implementation of programs delivering services to Indigenous communities, including funds to enable mentoring of community members and organisations.[229] [Recommendation 7(d)]

In its response to the Committee, the government observed generally in respect of SRAs and capacity building, that:

> The close engagement with communities in the development of SRAs has allowed the Government to obtain a better idea of the capacity building requirements of communities and to tailor program and service delivery to help build capacity where it is needed. Approximately half of all SRAs signed to date feature community capacity building, governance and leadership initiatives supported by the Government.[230]

The government in specifically responding to Recommendation 7 (d) did not accept this particular recommendation in full, however, it noted that:

> Capacity building, within both Indigenous communities and government agencies, is a key focus for the Government. Rather than it being an automatic requirement that a capacity building component be built into the design and implementation of programs, capacity building needs should be considered in the light of the circumstances of individual communities and service delivery organisations.[231]

Undoubtedly this is so. Communities have variable levels of capabilities. Some only need some initial facilitation support, such as assistance with marketing, seed funding for enterprises, or linkages to relevant agencies in fields such as tourism, the arts and environmental management. Other communities, perhaps without experience or training in the past, might need substantial and longer-term assistance in capacity building.

What matters is that direct engagement can only be meaningful if the capacity exists in communities to so engage. In designing program delivery, capacity building always needs to be considered and resources made available appropriate to the circumstances.

The changing role of the Office of Indigenous Policy Coordination (OIPC)

Organisational stability during the implementation of new administrative arrangements would normally help such arrangements to 'filter down' and become understood and accepted by clients as being the way that business is now done. However, such stability has been lacking in respect of the new arrangements in Indigenous affairs, with a number of significant shifts in both arrangements and

229 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA), *Many Ways Forward: Report of the inquiry into capacity building and service delivery in Indigenous communities,* June 2004, paragraph 2.94 at p..xxix.

230 Australian Government response to *Many Ways Forward – Capacity building and service delivery in Indigenous communities,* August 2006, p7.

231 Australian Government response to *Many Ways Forward – Capacity building and service delivery in Indigenous communities,* August 2006, p 20.

policy settings in the relatively short period since the new arrangements came into effect. Changes to the location of OIPC within the Indigenous affairs bureaucracy are suggestive of the instability that lies at the very foundation of the new arrangements.

As the successor to ATSIC and ATSIS, OIPC was to be the focus of the implementation of the new arrangements. Its role included:

- Coordinating Indigenous policy and programs at the national level;
- Managing the Indigenous Coordination Centres (ICCs);
- Brokering relationships with other levels of government, including with the states and territories; and
- Reporting on the performance of government programs and service delivery for Indigenous people, in the context of policy review and development.

At the time of the implementation of the new arrangements OIPC also retained some responsibility for delivering major programs, particularly in relation to land rights and native title.

OIPC faced significant difficulties from the start. The new arrangements involved a number of innovative changes, including ICCs, Regional Partnership Agreements (RPAs) and Shared Responsibility Agreements (SRAs). These changes brought new challenges for policy and program development, such as the need to reduce barriers to access mainstream services for Indigenous peoples, which were often provided by state and territory governments.

As a result of mainstreaming ATSIC programs, OIPC lost a significant number of skilled and experienced staff, including Indigenous staff.[232] The reduced organisational expertise available to the new agency, given the considerable challenges facing it, created its own difficulties. As well, an undue confidence based on an assumption that ATSIC had been the major cause of failure in Indigenous affairs, may have exacerbated the difficulties which have accompanied implementation of the new arrangements.

Early reservations on the part of Secretaries of some departments about the role of OIPC were noted by Gray and Sanders.[233] In their view, the role of OIPC was:

- Too prominent in the new arrangements, and potentially OIPC could grow into the government's major Indigenous agency, thereby undermining the objective of mainstreaming; and
- That OIPC sat awkwardly in the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA).

One Secretary's view (at the time OIPC was located in DIMIA) was that:

> it might be more productive if OIPC were in the future 'broken up' and for relevant parts of it to come across into that department [the department of the person

232 Previous reorganisations and downsizing of ATSIC had already had a considerable detrimental impact, particularly the reorganisation of 2000.

233 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p10-12.

> making this observation], rather than being left as an 'awkward pimple' on a department dominated by its immigration function.[234]

It seems that this has now largely transpired. First OIPC was transferred to the Department of Family and Community Services that was later renamed FaCSIA. Then, a reorganisation of FaCSIA in the latter part of 2006 resulted in OIPC programs and some of its key functions being taken from OIPC and subsumed within the overall departmental structure of FaCSIA. Program losses included native title and land rights, which are now handled by a Branch (Land) within the Indigenous Land and Housing Division of FaCSIA. The other major change is the loss of the responsibility for managing ICCs. ICC managers now report to FaCSIA state and territory managers, whose responsibilities are wider than Indigenous programs.

As the OIPC website states:

> Certain functions that had been with OIPC are now undertaken from within the wider FaCSIA, including management of ICCs and program management.[235]

As at November 2006, the role of OIPC was as follows:

- Provide advice to the Minister for Families, Community Services and Indigenous Affairs;
- Coordinate and drive whole-of-government innovative policy development and service delivery across the Australian Government;
- Coordinate the Single Indigenous Budget;
- Broker relations with State and Territory Governments on Indigenous issues;
- Evaluate and report on the performance of government programs and services for Indigenous people to inform policy review and development; and
- Support the work of the Ministerial Taskforce on Indigenous Affairs, Secretaries' Group on Indigenous Affairs and National Indigenous Council.

It seems that under the new administrative arrangements OIPC becomes one division or group among others in the FaCSIA structure, rather than an autonomous agency as suggested by its name.[236] The Secretary of FaCSIA, Dr Farmer, described the change in the following discussion at the Senate Estimates hearing in November 2006:

> *Dr Harmer:* OIPC in the new structure has been redefined to a coordinating group.
>
> *Senator CHRIS EVANS:* Coordinating group. So what does that mean in terms of its resources? Policy coordination is a small section?
>
> *Dr Harmer:* No, it is not small. It is a significant coordination function which manages the single Indigenous budgets submission and manages the secretariat for the

234 Gray, W. and Sanders, W.G., *Views for the Top of the 'Quiet Revolution': Secretarial Perspectives on the New Arrangements in Indigenous Affairs,* Centre for Aboriginal Economic Policy Research (CAEPR), Discussion Paper no 282/2006, p11.

235 Office of Indigenous Policy Coordination, *About OIPC,* available at http://www.oipc.gov.au/About_OIPC/default.asp accessed 19 January 2007.

236 See FaCSIA Organisation Structure January 2007, available at http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/orgchart.htm accessed 15 February 2007.

> secretary's [sic] group. It manages the secretariat for the National Indigenous Council and a whole range of other coordination tasks—
>
> *Senator CHRIS EVANS:* All of the line functions have been placed elsewhere?
>
> *Dr Harmer:* They are now part of FaCSIA proper, yes.
>
> *Senator CHRIS EVANS:* They have all been brought under one roof inside FaCSIA?
>
> *Dr Harmer:* Yes, they have.[237]

Although OIPC undoubtedly retains important coordination functions, nevertheless, the loss of responsibility for management of the ICCs is highly significant. This role provided leverage in policy development and relationship brokering roles; ICCs were a key OIPC responsibility. In October 2005 the Secretaries' Group on Indigenous Affairs released a Bulletin on ICCs[238] which emphasised the pivotal role of OIPC in relation to the management and functioning of the ICCs. As recently as August 2006 the government's response to a report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs stated that 'OIPC leads the ICCs'.[239] Given the pre-eminence of ICCs in the new arrangements, this change appears to represent a major downgrading of OIPC's role.

These changes to OIPC's role only increase present uncertainty about where overall responsibility for Indigenous policy lies. Despite assurances from FaCSIA that the reorganisation will lead to a greater focus within that Department on Indigenous policies and programs by bringing together all Indigenous-specific programs,[240] I am concerned that we are in fact seeing an increase in 'disconnected' government. One wonders where within the system, the objective of boosting Indigenous peoples' ability to 'harness the mainstream' now lies.

The fact that OIPC sits within FaCSIA and that its various Indigenous programs have been grouped under one Deputy Secretary[241] appears to give FaCSIA a *de facto* lead agency role in Indigenous affairs. Another way of putting this is that the Secretary of FaCSIA is now the senior official in Indigenous affairs. To what extent this is a rational outcome, or whether it reflects the vagaries and shifting sands of bureaucratic arrangements is unclear. Confusion over who is responsible for leading change has been identified in respect of the failures of the COAG trial in whole of government administration at Wadeye (see above). I am concerned that this may be an emerging system-wide problem.

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237 Harmer, J., (Secretary, FaCSIA), *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA13. Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

238 Secretaries' Group on Indigenous Affairs, *The ICC model: Five point plan,* Bulletin (4/2005), October 2005, p1, available at: www.apsc.gov.au/indigenousemployment/bulletin0405.pdf, accessed 9 November 2006.

239 Australian Government response to *Many Ways Forward – Capacity building and service delivery in Indigenous communities,* August 2006, p5.

240 Gibbons, W., (Associate Secretary, FaCSIA), *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA14. "… all of the programs that are Indigenous-specific are in one area of the department, together with the whole-of-government coordination functions in the Office of Indigenous Policy Coordination. Activities that are mainstream in their focus—that is, they service Indigenous and non-Indigenous people alike - are in the mainstream element of the department." Available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 13 February 2007

241 See FaCSIA Organisation Structure January 2007, available at http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/orgchart.htm accessed 15 February 2007.

FaCSIA is a mainstream agency that has responsibilities to a broad range of clients. It is difficult to see how it can be expected to consistently provide the essential advocacy and support that is needed to adequately protect Indigenous rights and interests.

It is equally concerning that the portfolio of Indigenous affairs does not have a Minister with sole responsibility. Instead the Minister responsible is also the Minister for Families and Community Services.[242] Not only does this mean the Minister's attention is not focussed on Indigenous affairs and the task of directing the whole of government approach to address Indigenous disadvantage, it also means that this Minister has multiple responsibilities at the Cabinet table. It is therefore not to be expected that he will always have the needs and aspirations of Indigenous Australians at the forefront of his mind; they will inevitably and frequently come second.

This situation is disturbing. If Indigenous affairs are going to be effectively subsumed within broader departmental structures and Ministerial portfolios, this will reduce visibility, accountability and perhaps responsibility. It raises the issue of just how far the mainstreaming of Indigenous affairs is to go. It appears to be consistent with the dogma that Indigenous Australians have no special place, and no special rights.

Text Box 9: The quiet revolution?

The full reach of the 'quiet revolution' may have yet been under-estimated. Since the establishment of an Office of Aboriginal Affairs (established by the Prime Minister in 1967),[243] the Commonwealth's involvement in Indigenous affairs, including its relations with the states and territories, has been mediated through relatively autonomous stand-alone administrative machinery. This machinery has included the Office of Aboriginal Affairs, the Department of Aboriginal Affairs, ATSIC and finally ATSIS.

Now, we are going in the opposite direction and OIPC, as the agency with the nominal task of coordinating Indigenous policy, is being reduced in status, and is in danger of losing the degree of autonomy and separation that would appear necessary to allow for providing independent advice and objective evaluation of programs. No new agency charged with such responsibility seems likely.

In terms of the principal concern of this chapter, these changes beg the question of who is to watch, monitor and assess progress in eliminating the barriers that inhibit Indigenous peoples' ability to access mainstream services? Are mainstream services to evaluate their own progress? If so how can objectivity be guaranteed?

242 The Hon. Mal Brough MP was appointed Minister for Families, Community Services and Indigenous Affairs, and Minister Assisting the Prime Minister on Indigenous Affairs on 27 January 2006. Prior to this, The Hon Senator Amanda Vanstone MP was the Minister for Immigration and Multicultural and Indigenous Affairs, and Minister Assisting the Prime Minister on Indigenous Affairs. See Parliamentary Library, *Parliamentary Handbook of the Commonwealth of Australia,* Current Parliamentary Information on the 41st Parliament, Commonwealth Government, Canberra, 2007. Available at http://www.aph.gov.au/library/parl/41/ministry/ministry.htm accessed 15 February 2007.

243 See Rowley, C.D., *The Remote Aborigines,* Pelican, Sydney, 1972, p343.

The changes in role of OIPC are part of a kaleidoscope of shifting arrangements that have confused and bedevilled the 'new arrangements in Indigenous affairs' since their inception and implementation. The confusion and instability appears to be worsening. Whilst I hope this does not continue to be the case, these are matters of concern and my Office will follow them closely over the next 12 months.

Monitoring and evaluation mechanisms – ensuring accountability for the new arrangements

There is a danger in the new arrangements of an 'accountability gap'. Such a gap could develop between the *rhetoric* of improved outcomes through mainstreaming on a 'whole-of-government' basis, and the *reality* of actual outcomes for Indigenous peoples and communities on the ground.

The need to evaluate the new arrangements has been recognised from early in their implementation. In 2002 COAG noted that:

> failures in the past have emphasised the importance of policy that is evidence based and incorporates ongoing mechanisms for evaluation and review.[244]

In 2004 COAG agreed to a *National Framework of Principles for Delivering Services to Indigenous Australians*.[245] This Framework clearly linked the need for greater transparency and accountability to the goal of better service delivery to Indigenous peoples. By adopting the Framework, Australian governments committed themselves to:

- Strengthen the accountability of governments for the effectiveness of their programs and services through regular performance review, evaluation and reporting;
- Ensure the accountability of organisations for the government funds that they administer on behalf of Indigenous people; and
- Task the Productivity Commission to continue to measure the effect of the COAG commitment through the jointly-agreed set of indicators.

In the *Social Justice Report 2004* I noted that there was a need for 'rigorous monitoring of the implementation of the new arrangements'.[246] In 2005 the Senate Select Committee on the Administration of Indigenous Affairs, noting that 'the Committee has not been presented with any actual evidence to show that mainstreaming will bring about improvements in service delivery',[247] recommended:

244 COAG, Communiqué, 5 April 2002, Attachment 1, *COAG Reconciliation Framework: Report on Progress in 2001,* p6-7, available at http://www.coag.gov.au/meetings/050402/reconciliation_report.pdf accessed 19 January 2007.

245 COAG, Communiqué, 25 June 2004, Attachment B – *National Framework of Principles for Delivering Services to Indigenous Australians,* p2, available at http://www.coag.gov.au/meetings/250604/index.htm#attachments accessed 19 January 2007.

246 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004,* HREOC, Sydney, 2004, p95.

247 Senate Select Committee on the Administration of Indigenous Affairs, *After ATSIC – Life in the mainstream?,* Commonwealth of Australia, March 2005, chapter 5 Mainstreaming of Service Delivery, para 5.54. Available at http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/report/final/report.pdf accessed 15 February 2007.

> that the Government immediately establishes a mechanism to thoroughly and impartially assess the new mainstreaming arrangements as they are implemented, including those already in place. The Committee also recommends that the resultant report is made public. (Recommendation 5.1)[248]

The Secretaries' Group on Indigenous Affairs commented in its *Annual Report 2004-05* on the implementation of the new arrangements: 'We consider that, given the magnitude of the task, the progress made to date is significant.'[249]

It would be reassuring to think that this is the case, but can we be sure?

In implementing the reconciliation framework to address Indigenous social and economic disadvantage, COAG in 2002 commissioned a regular report against key indicators of Indigenous disadvantage. The Prime Minister, Mr Howard, subsequently stated that the principal task of this report would be:

> to identify indicators that are of relevance to all government departments and Indigenous stakeholders and that can demonstrate the impact of programme and policy interventions'. [250]

Subsequently, the Steering Committee for the Review of Government Service Provision (SCRGSP), with secretariat assistance from the Productivity Commission, produced *Overcoming Indigenous Disadvantage – Key Indicators 2003,*[251] and a second report in 2005. As the Chairman of the Productivity Commission, Gary Banks, has observed, by linking progress with reducing Indigenous disadvantage to government programs, the accountability of governments in dealing with Indigenous disadvantage has been elevated.[252]

The laudable, indeed essential, objective of monitoring the impact of program and policy interventions through charting changes in key indicators has proved in actuality somewhat difficult to achieve. Despite the best efforts of the Productivity Commission, the *Key Indicators* reports have not been able, to date, to yield data that can, in the Prime Minister's words, 'demonstrate the impact of programme and policy interventions'.

It is simply too early for changes flowing from the new arrangements to show up in a way that cause and effect can be reasonably identified. The *Key Indicators 2005* report is based to a considerable degree on data that predates the policy initiatives arising from COAG and implemented by the new arrangements in

248 Senate Select Committee on the Administration of Indigenous Affairs, *After ATSIC – Life in the mainstream?,* Commonwealth of Australia, March 2005, chapter 5 Mainstreaming of Service Delivery, para 5.76. Available at http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/report/final/report.pdf accessed 15 February 2007.

249 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p2. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

250 Howard, J., (Prime Minister) letter to Mr Gary Banks, Chairman Steering Committee for the Review of Commonwealth/State Service Provision, 3 May 2002, reproduced in SCRGSP, *Overcoming Indigenous Disadvantage – Key Indicators 2003, Productivity Commission, Canberra, 2003.* Available at http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2003/ accessed 15 February 2007.

251 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage – Key Indicators 2003, Productivity Commission,* Canberra, 2003. Available at http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2003/ accessed 15 February 2007.

252 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?,* Speech, Committee for Economic Development in Australia (CEDA), 21 September 2005, p3.

Indigenous affairs.[253] As well, there are a range of significant gaps, inconsistencies and definitional problems in the data.[254]

The *Key Indicators 2005* report showed at best a mixed picture in respect of addressing Indigenous disadvantage in Australia, with some key indicators showing improvement, but others showing deterioration. Overall the Productivity Commission concluded that:

> in the areas identified as crucial to reducing disadvantage, outcomes fall well short of what is needed.[255]

Although there are significant problems associated with using the *Key Indicators* reports to assess the outcomes of the new arrangements, at least in the short to intermediate term, the Productivity Commission has advised that *in time* they will enable government to gauge the extent to which the new arrangements are producing better results.[256]

A further difficulty is that the *Overcoming Indigenous Disadvantage* reports provide a reading of outcomes from a 'whole of government' perspective. This means that the information is inevitably provided at a broad level.[257] The strategic change indicators in the reports are more closely linked to program areas, but are not comprehensive and also suffer from a range of data issues. It is simply not possible to establish causal linkage between policy objectives and/ or program specifics with the results of the key indicators. One can only draw conclusions by implication. As the Productivity Commission has correctly pointed out:

> It (the report) is not a substitute for detailed evaluation of specific programs and policy initiatives.[258]

Overall, the risk is that without targeted evaluations, set against well considered benchmarks and reporting on relevant indicators, policy failure may take some while to show up in the key, or 'headline', indicators. The time lag in this reporting framework means that remedies and adjustments to policy settings may, by the time the necessity to make them has become clear, be all that more difficult to implement. The disadvantage of Indigenous peoples will be further entrenched.

The Secretaries' Group on Indigenous Affairs has also noted the following evaluation problems. Firstly, the problems of delay:

253 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?,* Speech, Committee for Economic Development in Australia (CEDA), 21 September 2005, p9.

254 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage – Key Indicators 2003,* Productivity Commission, Canberra, 2003, Section 2.5 'Data issues', p2.15. Available at http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2003/ accessed 15 February 2007.

255 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?,* Speech, Committee for Economic Development in Australia (CEDA), 21 September 2005, p12.

256 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?,* Speech, Committee for Economic Development in Australia (CEDA), 21 September 2005, p3.

257 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?,* Speech, Committee for Economic Development in Australia (CEDA), 21 September 2005, p16.

258 Banks, G., (Chairman of the Productivity Commission), *Indigenous disadvantage: are we making progress?,* Speech, Committee for Economic Development in Australia (CEDA), 21 September 2005, p16.

> it will take some years to be able to report comprehensively on the impact of the new arrangements for Indigenous Australians.[259]

Secondly, the need for *Key Indicators* reports to be supported by other evaluation data. Thus, these reports:

> need to be complemented by a robust, whole-of-government accountability and performance reporting framework for the Australian Government's programs and services. We need stronger performance indicators and a more systemised way of capturing and, more importantly, regularly reporting this information.[260]

And thirdly, the need to link programs and actual on-the-ground outcomes:

> We also need to focus more on how funding or service interventions are making a difference in the life circumstances of Indigenous Australians.[261]

According to the Secretaries' Group, the new administrative arrangements for Indigenous affairs are, in fact, 'supported by a comprehensive accountability framework, with multiple layers'.[262] The Secretaries' Group also notes that the new arrangements are to operate in 'a learning framework', 'sharing information and experience, learning from mistakes and progressively adopting approaches that work best.'[263] Such a learning environment can only work, of course, with a good evaluative data base.

OIPC, in conjunction with other federal agencies, has prepared a plan for evaluation activities in respect of the government's whole of government approach in Indigenous affairs.[264] While the plan covers the period 2006-09, it focuses on activities for the 2006-07 financial year.

Mainstream government departments and agencies remain responsible for the evaluation of the programs they administer.[265] To avoid duplication of effort, agency evaluations are expected to be shared across agencies. OIPC has undertaken to compile and maintain a running directory of all evaluations of Indigenous specific

259 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p24. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

260 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p24. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

261 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p24. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

262 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p26. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

263 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p27. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

264 OIPC, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs 2006-09,* p1, available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 18 January 2007.

265 Senate Community Affairs Legislation Committee, *Answers to questions on notice, Families, Community Services and Indigenous Affairs Portfolio,* 2006-07 Budget Estimates, May-June 2006: Office of Indigenous Policy Coordination Evaluation Plan for whole-of-government activities in Indigenous Affairs 2006-09, p1. Available at available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 18 January 2007.

programs over the past 5 years. The focus of the *Evaluation Plan* itself is on activities of a whole of government nature.[266]

Thus both Indigenous specific and mainstream programs as accessed by Indigenous peoples, are excluded from OIPC's evaluation activities. OIPC makes clear that:

> This plan is therefore only one element of the assessment of the new arrangements in Indigenous affairs. The new arrangements are being assessed through several layers of evaluation and performance management. This whole-of-government evaluation activity complements and will be informed by:
>
> - Evaluations and audits by independent authorities, including the Office of Evaluation and Audit (Indigenous Programs) in the Department of Finance and Administration;
> - Australian National Audit Office;
> - Aboriginal and Torres Strait Islander Social Justice Commissioner;
> - Departmental sponsored audits and evaluations of the mainstream and Indigenous specific programs, including lapsing programs and services each is responsible for;
> - Public-sector, academic and independent research activities, including those funded by government departments and those conducted independently by academic institutions;
> - Performance monitoring and reporting mechanisms, such as the Council of Australian Governments (COAG) *Overcoming Indigenous Disadvantage Report* and the annual *Reports on Government Services;* and
> - The *Secretaries' Group on Indigenous Affairs Annual Report*.[267]

It is proposed that the OIPC plan will be a rolling plan. It will be reviewed annually to ensure that planned evaluation activities target the areas of most need. Thus:

> The plan is not a constraining document, and other evaluative activities may be commissioned during the 2006-07 and beyond if the need arises.[268]

The plan is an interesting document and I am pleased to see a continuing commitment to the need for ongoing evaluations. The plan builds on whole of government evaluative work over the past 12 months, including the *Red Tape Evaluation* (Morgan Disney report),[269] the formative evaluation of the 8 COAG trial sites, and the review of individual SRAs. There is a commendable flexibility built into the plan.

The most recent system evaluation, the Morgan Disney report identified significant problems in program implementation. One significant problem identified, in terms of evaluation, is a mismatch between indicators established in funding approvals (for example for SRAs) and the intended outcomes.[270] The report found instead a

266 OIPC, *Evaluation Plan for Whole of Government Activities in Indigenous Affairs 2006-09,* p1. Available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 15 February 2007.

267 OIPC, *Evaluation Plan for Whole of Government Activities in Indigenous Affairs 2006-09,* p1-2. Available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 15 February 2007.

268 OIPC, *Evaluation Plan for Whole of Government Activities in Indigenous Affairs 2006-09,* p3. Available at http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 15 February 2007.

269 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006.

270 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p73.

compliance driven emphasis on outputs, unrelated to the objectives of the program or project. Indicators were not related to nation-wide objectives and tended to be idiosyncratic. The data resulting from poorly articulated indicators cannot be seen as evaluative or as providing guidance for policy development.

In respect of the evaluations of the COAG trials, although not complete at the time of preparation of this report, these showed indications of serious failures of the trials. There appears to be a hasty transition from the evaluation findings to new or different policy settings underway without sufficient time to reflect on the lessons of the evaluations (as discussed in earlier sections of this chapter). The SRA reviews are 'very low cost' because they are very brief (and potentially superficial).

While evaluations have to be as technically rigorous as possible, they also need to be conducted in an inclusive manner to ensure that accurate interpretations and conclusions are drawn from the data, and the correct policy implications drawn.

There remains a particular challenge in respect of the objective of the new arrangements of 'harnessing the mainstream.' That is, how to achieve measurable outcomes for Indigenous peoples. Again, this problem has been highlighted by the Secretaries' Group on Indigenous Affairs, which commented that '[i]n most areas, information is not yet available to assess the use of mainstream programs by Indigenous people.'[271]

Further, they note:

> Improving the range and currency of this kind of information is an area where we need to do further work.[272]

In this I concur. The range of information on accessing mainstream government services is patchy at best. There appears to be no overarching framework of benchmarks and indicators specific to issues of improving access to mainstream services. This amounts to a major evaluation gap in the new arrangements for the administration of Indigenous affairs given the centrality of this objective in reducing Indigenous disadvantage.

It is possible that, given the lack of data and tools for measuring outcomes, there may in fact be no overall improvement in accessing mainstream services as a result of the new arrangements. Some Indigenous peoples, particularly those in urban areas, may actually be in a worse position as a result of the new arrangements, given the withdrawal of Indigenous-specific programs. This is a significant concern in the social justice context.

The accountability problem is potentially acute in respect of mainstream, as distinct from Indigenous-specific, programs. The methodological difficulties entailed in monitoring and evaluating progress in improving accessibility to mainstream programs can be significant. This is an area that needs to be addressed specifically in planning for evaluation of the new arrangements.

271 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p16. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

272 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p16. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

Over the coming year, my Office will continue to follow the implementation of the OIPC *Evaluation Plan*, as well as evaluations undertaken by other agencies wherever possible. In particular, I will closely watch developments in relation to the audit currently being conducted by the Australian National Audit Office into key aspects of the new arrangements at the federal level.

The results of these evaluations will be of critical importance in guiding and modifying policy settings in Indigenous affairs. At the very least, the 'lessons learned' from these evaluations need to be shared widely and seriously considered by the Secretaries Group on Indigenous Affairs. They also need to be discussed with Indigenous peoples and other stakeholders including state and territory governments, the community sector and relevant industry bodies.

Part 3: Conclusions and recommendations

An increasing degree of disquiet can be discerned in relation to the efficacy of the new arrangements. The concern is whether they are capable of delivering the promised improvements, given the extent and pervasiveness of Indigenous disadvantage, and whether any progress is being made.[273]

As Dr Shergold, in his capacity as Chair of the Secretaries' Group on Indigenous Affairs has observed, the reform of the administration of Indigenous affairs instituted in 2004 'set a huge challenge for the Australian Public Service (APS)'.[274] While Dr Shergold expressed confidence that the APS could meet this challenge, he did not underestimate the level of difficulty in radically re-structuring the administrative arrangements for Indigenous affairs.

Streamlining service delivery, enhancing coordination, eliminating duplication, and engaging with local communities rather than having a 'one size fits all' approach, laudable as these objectives are, may instead create their own red tape entanglements, establish their own new bureaucratic silos and bump along in a series of half-developed initiatives that do not substantially reduce Indigenous disadvantage.

It is indeed possible that the level of coordination and integration of services required under the new arrangements will prove to be too complex in implementation, and that the delivery of services to Indigenous communities will collapse under the weight of inordinately complicated and unrealistic arrangements. The impacts of continual change and insufficient attention to the management of the changes on staff in the ICCs also cannot be overlooked or disregarded. The Morgan Disney report, discussing the costs, benefits and consequences of coordination noted:

> The new arrangements at Australian Government level have built into their structure the need for a high degree of coordination between all the agencies

273 See, for example, 'Post-ATSIC Agenda Needs Explaining', *The Australian,* editorial, 2 October 2006. Also comments from members of the government-appointed National Indigenous Council, as reported in: 'Show Aborigines the money, Howard's advisers demand', *Weekend Australian,*16/17 September 2006, p3. Also Bartos, S., (Director of the National Governance Institute, University of Canberra), 'The light at the end of the tunnel could be – The year in review', *Canberra Times,* The Public Sector Informant, December 2006, p4.

274 Shergold, P., Foreword, in Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05,* Office of Indigenous Policy Coordination, Canberra, 2005, p.v. Available at http://oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 15 February 2007.

> represented in the ICCs. The necessary level of coordination is resource intensive and constantly needs attention. For every Minute (or administrative instruction) or policy statement that is issued in one department, there is a set of communications that must then occur between departments at national office, state/territory office and, ICC levels, in order to ensure that there is 'joined up government', with all parties made aware.
>
> This is resource intensive for the Australian Government agencies, and reduces the time available to spend with Indigenous organisations dealing with their needs and problems, and assisting them in developing their own organisational capacity.[275]

The difficult but important challenge of improving the access of Indigenous peoples to mainstream services seems to be slipping from view. Experience with the implementation of the new arrangements has shown that assertions of intent, no matter how well-meaning, unless backed by specific programs, activities and undertakings, often have come to nought.

There is a need to move away from a mindset that is concentrated on process, towards one that is more focussed on outcomes. One of the shortcomings of the new arrangements in Indigenous affairs has been the tendency to characterise all problems besetting Indigenous communities as the result of failed processes – whether it be during the ATSIC era, or more recently, a lack of coordination on the part of governments in respect of service delivery. It can be misleading to confuse process with outcomes, and it appears that this may be what the new arrangements have, unwittingly, tended to do.

This confusion can also be seen as a by-product of the failure of the new arrangements to adopt a human rights based approach to addressing Indigenous disadvantage. The necessary components of this rights-based approach include: the development of agreed targets and benchmarks, an evaluative framework to assess whether the 'progressive realisation' principle is being met, and a people-centred approach which values the full participation of Indigenous peoples in the process.

The 'new broom' that has been introduced through the new arrangements to date has been a process broom. This has both exaggerated the role of process as a cause of Indigenous disadvantage, and resulted in other key issues not receiving the priority attention they deserved. In this regard I am thinking in particular of:

- The urgent need to improve access to mainstream services;
- The need to give Indigenous peoples a real and substantive voice at the negotiating table. Without full Indigenous participation we are not moving from a passive welfare model, regardless of initiatives such as SRAs;
- The significant under investment in infrastructure for Indigenous communities, a problem which is being exacerbated by the young and highly mobile demographic profile of the Indigenous population; and
- The need to support Indigenous communities in capacity building to assist them in developing autonomy and self-reliance.

275 Morgan Disney & Associates, *A Red Tape Evaluation of Selected Indigenous Communities: Final Report for the Office of Indigenous Policy Coordination,* Morgan Disney & Associates Pty Ltd, May 2006, p72.

The vacuum at the national and regional levels of Indigenous representative input is now serious. Without that Indigenous input, I am concerned that the mistakes of the past will be repeated, or the wrong lessons learned.

Unless there is a re-engagement with Indigenous Australians on the basis of mutual respect and equality, with clear processes and certainty of structures for Indigenous representation and advocacy, it remains uncertain whether the new arrangements can produce tangible, significant and lasting benefits rather than amounting to little more than an administratively complex repackaging of existing programs.

The following recommendations are made to address the critical absences of regular monitoring, engagement with Indigenous peoples and benchmarking of accessibility of mainstream service delivery. The first Inquiry identifies the need for regular parliamentary scrutiny that can then also be supplemented through the estimates process and in the examination of proposed legislation.

Recommendation 1: Directed to Federal Parliament

That there be established a regular federal parliamentary committee of inquiry into the progress of the new arrangements in Indigenous affairs and progress in achieving whole of government service delivery to Indigenous communities.

This Inquiry should be conducted every two years. Its terms of reference should include identifying:

- Progress in addressing existing inequalities in Indigenous peoples' access (both urban and remote) to mainstream services (including the adequacy of processes to ensure that Indigenous specific expenditure *supplements* mainstream expenditure rather than *substitutes* for this expenditure);
- Progress in ensuring that processes are targeted so as to address existing need;
- Effective, sustainable and representative mechanisms for the participation of Indigenous peoples at the local, regional and national levels;
- The adequacy of performance monitoring and evaluation mechanisms for the new arrangements, including the adequacy of data collected to evaluate progress in addressing Indigenous disadvantage; and
- Whether the new arrangements are meeting the commitments made by the Australian Government through COAG to overcome Indigenous disadvantage.

That there be established a regular federal parliamentary committee of The Committee's terms of reference should also require it to report on the extent to which the new arrangements in Indigenous affairs comply with human rights based approaches to development and engagement with Indigenous peoples.

The Committee's inquiry processes should be required to maximise participation by Indigenous peoples, including by consulting widely with Indigenous communities and organisations.

The second recommendation seeks to address one of the fundamental policy problems of the new arrangements.

Recommendation 2: Directed to the Council of Australian Governments, National Indigenous Council and Ministerial Taskforce on Indigenous Affairs

That there is acknowledgement by government of the importance of a human rights based approach to development in order to effectively implement the new arrangements and the achievement of effective and sustainable improvements in Indigenous living standards and well-being.

This requires acknowledgement of the importance of Indigenous forms of social organisation on the basis of mutual respect and good faith and for supported processes, including through capacity building initiatives, to ensure that the aspirations of Indigenous peoples are able to be voiced.

For example, the new arrangements should be able to provide mechanisms to support viable aspirations of smaller communities located on traditional country (outstations), and to develop appropriate enterprises in order to provide such communities with a degree of autonomy, purpose and stability.

A human rights based approach to development also requires a people-centred approach that aims above all else to produce beneficial outcomes for Indigenous Australians. In order to move the bureaucratic culture away from its current emphasis on compliance, both governments and senior officials within the bureaucracy need to exercise their leadership to ensure the new arrangements prioritise beneficial outcomes on the ground. This will necessarily require a degree of flexibility being incorporated into the design and implementation of policies and programs for Indigenous peoples to ensure that where appropriate, processes can be modified to ensure beneficial outcomes can be achieved. Policies and programs should therefore be monitored and evaluated in terms of the effectiveness of their processes as well as the outcomes they achieve.

The third recommendation relates specifically to the situation of urban based communities and peoples and ensuring adequate monitoring and an evidence base for decisions relating to mainstream accessibility.

Recommendation 3: Directed to the Office of Indigenous Policy Coordination

That, in exercise of its coordination and monitoring role at a whole of government level, the Office of Indigenous Policy Coordination:

- Identify and promote best practice examples of improving accessibility of mainstream services as achieved through individual programs (such as Medicare and Pharmaceutical Benefits Scheme equivalent access arrangements) as well as through whole of government coordination initiatives (such as ICCs and SRAs); and
- Develop its proposed Indigenous urban strategy with the full participation of Indigenous communities and peoples in urban localities, and with the inclusion of explicit targets and benchmarks for improved access to programs.

Chapter 3

Addressing the fundamental flaw of the new arrangements for Indigenous affairs – the absence of principled engagement with Indigenous peoples

This is the third successive *Social Justice Report* to report on the implementation of the new arrangements for Indigenous affairs at the federal government level. The past two *Social Justice Reports* have emphasised the importance of governments ensuring the effective participation of Indigenous peoples in decision making that affects our lives. This includes the development of policy, program delivery and monitoring by governments at the national, as well as state, regional and local levels.

The *Social Justice Report 2005* expressed significant concerns about the lack of progress in ensuring processes were operating to ensure the participation of Indigenous peoples in policy, particularly at the regional and national levels. The report also provided a stern warning about the implications of failing to address this issue as an urgent priority. It stated that the 'absence of processes for Indigenous representation at all levels of decision making contradicts and undermines the purposes of the new arrangements'.[1] The report called for *principled engagement* with Indigenous peoples as a fundamental tenet of federal policy making.

This chapter does three things.

First, it provides an update on the progress made over the past twelve months in ensuring the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them' with a particular emphasis on developments at the national and regional level. It is clear that the mechanisms for Indigenous participation in the new arrangements remain inadequate. Indeed this ongoing failure to ensure Indigenous participation in decision making is the fundamental flaw in the implementation of the new arrangements.

Second, it looks to developments at the local level through Shared Responsibility Agreements (SRAs) to see how this program of activities is unfolding. Substantial effort has been devoted to this program of small scale interventions. This can be

1 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p136.

justified if it provides a pathway to improving existing mechanisms for engaging with Indigenous communities at the local level and identifying the crucial barriers to sustainable development within communities. It is reasonable to expect such lessons after two years of solid engagement.

The chapter examines progress under the SRA program by engaging with those people affected most by them – namely, the Indigenous communities who have entered into SRAs. This is achieved through a series of interviews with three SRA communities and through analysing the results of a national survey of two thirds of those Indigenous communities or organisations that had entered into an SRA by the end of 2005.

Third, the chapter looks to ways forward which address the significant concerns that are set out in the chapter. As the chapter makes clear, Government commitments exist to ensure the maximum participation of Indigenous peoples in decision-making and these commitments have been consistently re-affirmed. The concerns in this chapter reflect a problem of implementation of these commitments.

The absence of appropriate mechanisms for the participation of Indigenous peoples in the new arrangements is a significant policy failure. It is inconsistent with our human rights obligations, existing federal legislation, and the government's own policies.

The immediate impact of this policy failure is to render Indigenous voices silent on new policy developments, in the legislative reform process and in the setting of basic policy parameters and the delivery of basic services to Indigenous communities. The chapter emphasises the potential danger of the new arrangements to the well being of Indigenous peoples, if the concerns raised in this report are not addressed as an urgent priority.

Developments in ensuring the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'

The importance of regional Indigenous participatory mechanisms in the new arrangements

The legislation which forms the foundation for the new arrangements, the *Aboriginal and Torres Strait Islander Act 2005* (Cth), has as one of its objectives 'to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.[2]

The government has continually emphasised the importance of ensuring such participation as an integral component of its arrangements for Indigenous Affairs. In June 2005, the then Minister for Immigration and Multicultural and Indigenous

2 *Aboriginal and Torres Strait Islander Act 2005* (Cth), section 3(a), Available online at: www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/889B9887C357132ECA257227001E0801/$file/AbTorStrIsland2005.doc.

Affairs confirmed that the government remained committed to establishing representative bodies at the regional level:

> We have always stated that, following the dissolution of ATSIC Regional Councils from July 1 this year, there will be room for genuine Indigenous representative bodies to emerge in their place.[3]

This commitment has been constantly re-iterated by the Government since. They have stated that through regional Indigenous Coordination Centres, 'the Australian government is committed to real engagement with Indigenous people in the areas where they live'.[4]

The Minister for Families, Community Services and Indigenous Affairs has also stated that:

> We aim to make it simpler for Indigenous people to deal with government. We want to show respect by encouraging them to be active participants in solving their own problems...
>
> (T)he one-size-fits-all approach will not work. We need different strategies for urban, rural and remote areas. Indeed we must recognise that every individual community is different and that local solutions need to be designed with local people to suit their local circumstances.[5]

The Government has emphasised that the new arrangements are intended to ensure that programs are 'being implemented more flexibly in response to local Indigenous needs' and that 'Indigenous communities at the local and regional level… have more say in how (funding) is spent'.[6]

In their implementation, the new arrangements are underpinned by five key principles. These include:

> **2. Regional and local need**
>
> ICCs are talking directly with Indigenous communities and groups about their priorities and needs and their longer term vision for the future. Shared responsibility Agreements (SRAs) may result from these discussions…
>
> The Australian government is also progressing negotiations on Regional Partnership
>
> Agreements (RPAs) to tailor government interventions across a region. RPAs can also provide a framework for recognising the range of regional Indigenous engagement arrangements that develop around Australia.
>
> **5. Leadership**
>
> Strong leadership is required to make the arrangements work, both within government and from Indigenous people.

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3 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements*, Media Release ID: vIPS 22/05, 29 June 2005.

4 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p2, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

5 Minister Brough, Foreword in Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p v, available online at: www.oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

6 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p2, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

> The regional engagement arrangements that Indigenous people establish will provide leadership and be accountable to the people and communities they represent.
>
> Where Indigenous leadership capacity and organisational governance need to be strengthened, the Australian government can provide support.[7]

What is clear from this is that the Government has acknowledged that mechanisms for Indigenous participation at the regional level are essential if the whole of government model it is seeking to implement is to work.

Regional Indigenous participatory mechanisms have an essential role in the new arrangements as the link in the chain that connects policy making from the top to service delivery that is relevant and appropriate at the grass roots. It is essential to identify local need and to facilitate regional planning and coordination.

In materials explaining the operation of the new service delivery arrangements, the Government explains the role and importance of regional engagement arrangements and agreement-making processes to facilitate partnerships between Indigenous peoples and governments. Regional Partnership Agreements are seen as a key mechanism to achieve this. The Government's approach is described as follows:

> Through ICCs, the Australian government has been consulting with Indigenous
>
> communities and state/territory governments about regional solutions to regional needs.
>
> Regional Partnership Agreements (RPAs) are negotiated to coordinate government services and deliver initiatives across several communities in a region. They are a means of eliminating overlaps or gaps, and promoting collaborative effort to meet identified regional needs and priorities. They may also involve industry and non-government organisations.
>
> RPAs also seek to build communities' capacity to control their own affairs, negotiate with government, and have a real say in their region's future.
>
> RPAs may include shared responsibility Agreements (SRAs) with local communities or groups that support the objectives of the RPA.[8]

RPAs are a tool to facilitate and recognise regional Indigenous engagement arrangements. As the Government explains:

> Regional Indigenous engagement arrangements are evolving in a number of regions to help Indigenous people talk to government and participate in program and service delivery. These engagement arrangements are a mechanism for making and implementing agreements between government and Indigenous people based on the principles of partnership, shared responsibility and self-reliance.
>
> The Australian government does not want to impose structures but will support and work with arrangements that are designed locally or regionally and accepted by Indigenous people as their way to engage with government.

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7 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p8, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

8 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p40, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

> The government has supported consultation with Indigenous people about the types of engagement arrangements they want. Communities need time to think through these issues, and views differ widely across regions on the most appropriate models.
>
> In Western Australia and New South Wales, the Australian and state governments are already supporting new engagement arrangements in the Warburton and Murdi Paaki regions respectively.
>
> Bilateral agreements with state and territory governments are also pointing to a variety of approaches to regional engagement. These approaches include regional authorities in the Northern Territory and 'negotiation tables' in Queensland.
>
> Regional Partnership Agreements are a primary mechanism for government to provide funding for regional Indigenous engagement arrangements. More regional Indigenous engagement agreements are likely to be finalised as indigenous groups negotiate with the Australian and other governments on their funding. [9]

Regionally based Indigenous Coordination Centres (ICCs) provide the interface with Indigenous communities for the establishment of regional indigenous engagement arrangements and the finalisation of RPAs. To assist in this process the Government has created four panels of experts to support ICCs, including for the specific task of 'developing regional engagement arrangements'.[10]

Similarly, a 'multiuse list of community facilitators/coordinators' has also been created to compliment the more specialised and technical services of the Panels of Experts. Members of the Multiuse List are intended to create links between communities and governments, coordinate and develop service delivery, support communities and specific groups, such as women and youth, in identifying their priorities, in negotiating agreements with government, and in developing new regional engagement arrangements.[11]

Progress in supporting Indigenous engagement at the regional level

Last year's *Social Justice Report* provided an extensive overview of developments towards the establishment of regional Indigenous representative bodies.

The report noted the considerable progress that had been made in negotiating regional representative arrangements and structures. It reported that consultations had been conducted across many regions to identify replacement representative structures during the year, and that OIPC had provided funds through the ICCs for Indigenous peoples to convene local and regional meetings to discuss options for new regional representative arrangements.[12]

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9 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p40, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

10 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p40, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

11 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, p41, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf..

12 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp110-111.

An overview of progress on a state-by-state basis showed that there were promising developments in determining culturally appropriate regional representative models, although there were gaps and problems with some of the models.[13] I emphasised the need to finalise and operationalise representative organisations where negotiations were largely complete, and to make greater progress in other areas where models had not yet been finalised.

Overall, I found the situation to be of some concern:

> The consequence of the current status of these models is that there are few mechanisms for Indigenous participation at the regional level…[14]
>
> Addressing the absence of regional representative structures is an urgent priority for the 2005-06 financial year. It would be wholly unacceptable for regional structures to not exist and not be operational in all ICC regions by the end of this period.[15]

The report recommended that the Australian government, in partnership with state and territory governments, prioritise, with Indigenous peoples, the negotiation of regional representative arrangements and that Representative bodies should be finalised and operational by 30 June 2006 in all Indigenous Coordination Centre regions.[16]

At that time, the Government had finalised one RPA that recognised the Ngaanyatjarra Council as the representative body for 12 communities spread across the Ngaanyatjarra lands in Western Australia.

It had also finalised a Shared Responsibility Agreement which recognised the Murdi Paaki Regional Assembly as the peak regional Indigenous body in the Murdi Paaki region of far north-west New South Wales. It is understood that the Murdi Paaki Regional Assembly is now close to signing a RPA to formalise strategic planning arrangements proposed through community planning processes undertaken as part of the SRA.

In brief, it is worth recalling developments relating to the creation of regional representative structures as they stood 12 months ago:

- The government, through ICCs, supported consultations with Indigenous communities to identify replacement regional representative structures following the abolition of ATSIC;
- At 30 June 2005, when ATSIC Regional Councils ceased to exist, no replacement representative structures were in place;

13 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, p117 and pp112-114.

14 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005,* HREOC, Sydney, 2005, pp110-111.

15 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC Sydney 2005, p136.

16 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, Recommendation 4.

- The then Minister announced on 29 June 2005 that representative arrangements had been 'finalised' in 10 of the 35 ICC regions, with consultation and negotiation ongoing in other regions;[17] and
- All State and territory governments had indicated their support for regional representation in their jurisdictions (based on different models).

As the *Social Justice Report 2005* noted, 'common to all the existing proposals (for regional structures) is that the federal government has not as yet outlined in concrete terms how they will support them'.[18] In particular, there was no clarity as to how regional bodies would be funded and the type and level of administrative support they would be provided. The report noted that Regional Partnership Agreements provided an appropriate model for developing regional structures.

Throughout the past twelve months, the government has continued to state that it is committed to establishing regional representative structures. In correspondence with my Office in December 2006, the Office of Indigenous Policy Coordination stated that RPAs are the primary mechanism for formally engaging with Indigenous peoples and communities at a regional level, and that they:

> … are a way of harnessing the potential of communities in a region through genuine partnerships involving many sectors, backed by a serious commitment of resources.[19]

As discussed further below, commitments to ensure Indigenous participation and engagement are also contained in each bilateral agreement between the Australian government and the states and territories.

The Government also released guidelines indicating the parameters of what support they would provide for regional structures. These guidelines were for 'Regional Indigenous Engagement Arrangements' (RIEA) and were intended to:

> … [P]rogress RIEA proposals that are consistent with the Australian Government's principles of partnership, shared responsibility and self-reliance, and to provide feedback to communities on proposals that are not consistent with the Australian Government's objectives.[20]

A notable feature of these guidelines is that they do not use the phrase 'representative structures'. This language of representation had been acceptable during the first year of the new arrangements. Importantly, the various proposals submitted to the government before 30 June 2005 were for replacement representative structures.

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17 The regions where arrangements were 'finalised', 'continuing' or 'to begin shortly' were specified in the Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp111-114.

18 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, p117.

19 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2006*, 23 December 2006, p2.

20 Australian Government, FaCSIA, Office of Indigenous Policy Coordination, *Regional Indigenous Engagement Arrangements*, available online at: www.oipc.gov.au/documents/RegionalIndigenousEngagementArrangements_Parameters.pdf.

The RIEA guidelines therefore elaborate the shift by the Government from supporting 'representation' to supporting 'engagement arrangements'. The parameters for Australian Government funding set out in the guidelines are as follows:

- Initial Australian Government funding be capped and limited to one year after which further support be negotiated through RPAs;
- Funds support meeting costs such as travel but not sitting fees or remuneration;
- State and Territory Governments participate through RPAs or bilateral agreements;
- The Government retain the right to engage directly with communities or other bodies;
- The Government be assured of the legitimacy of RIEAs among their constituents; and
- RIEAs not be 'gatekeepers' or have decision-making responsibilities concerning Indigenous program funding.[21]

A second key feature of the guidelines is that they substantially reduce the scope of what the federal government would consider supporting and funding. Regional Indigenous Engagement Arrangements will only get funding support for a year, after which time any further support must be negotiated through a Regional Partnership Agreement. Whilst this does not necessarily preclude organisations with a degree of permanency, it shows that engagement arrangements are to be contingent on RPAs.

The shift in focus that the guidelines present is problematic in that various proposals were prepared *prior* to these guidelines being made public and available. Indeed, the guidelines were in all likelihood developed as a response to concerns by the government about the content of the proposals developed prior to 30 June 2005.

This means that proposals submitted by Indigenous communities would be assessed against guidelines that the proponents were unaware of and which would require a much narrower and restricted proposal for support to be forthcoming.

The document outlining the guidelines made clear that the guidelines outlined would be utilised 'to progress RIEA proposals' such as the 18 that had been received at the time. This suggests that the Government would engage with the proponents of regional models to consider their proposals in light of the government guidelines.

Over the past eighteen months and since the adoption of these guidelines, the Government has finalised two RPAs – in Port Hedland and the East Kimberly (both signed in November 2006).

Neither of these agreements relate to supporting Regional Indigenous Engagement Arrangements. Instead, they are the result of negotiations within two trial sites under a Memorandum of Understanding (MoU) between the Government and the Minerals Council of Australia.

21 The guidelines state that they 'include' these principles, although no other principles are elaborated elsewhere. Australian Government, FaCSIA, Office of Indigenous Policy Coordination, *Regional Indigenous Engagement Arrangements*, available online at: www.oipc.gov.au/documents/RegionalIndigenousEngagementArrangements_Parameters.pdf.

The MoU with the Minerals Council is about building partnerships between the government, mining sector and Indigenous communities. The MoU negotiation process involved local Indigenous leaders through the *Indigenous Leaders Dialogue* - a forum through which local Indigenous leaders advise the MCA about Indigenous aspirations and anticipated outcomes from the MoU.

Case studies of these RPAs are included in the *Native Title Report 2006*. The Report notes that a concern during the negotiation of the RPAs was the lack of sufficient Indigenous engagement. In relation to the East Kimberly RPA, the *Native Title Report 2006* states that:

> From the outset, parties to the RPA saw it as an initiative of the Australian Government. There is evidence that the negotiation processes were run according to the Government's own agenda and plans were hastily developed in a rush to meet fixed deadlines leaving other parties feeling pressured to follow for fear of being left behind… The level of community engagement (on the RPA) is regarded as greatly inadequate.
>
> As a result of the lack of engagement with Indigenous people, there is a critical lack of understanding within the community about the RPA, and what it aims to deliver. For example, there was reported confusion between the RPA and other changes to regional governance arrangements including changes to the Community Development Employment Project. This kind of confusion has the potential to skew commitment and expectations of the RPA, and may lead to dissatisfaction with outcomes. In addition, as long as communities are uncertain about the nature of the RPA, they will be unable to take advantage of the opportunities it creates.[22]

Aside from these RPAs emanating from the MoU with the Minerals Council, no other RPAs have progressed in the past eighteen months.

In researching this report, my Office sought to contact the proponents of proposed regional arrangements that had been identified by the Minister for Indigenous Affairs as 'finalised' in June 2005. My purpose was to identify what had transpired over the past 12-18 months and whether the proposals as submitted had been considered and what advice had been provided back to the proponents of these bodies in order to advance them (consistent with the commitment given by the government when it announced its guidelines for RIEAs). [23]

Those proposals that had been identified as 'finalised' related to the following ICC regions:

- Many Rivers, Northern NSW;
- Gulf and West Queensland;
- Central Queensland;
- Cairns and District Reference Group;
- East Kimberly District Council;
- Kullari Regional Indigenous Body;
- Yamatji Regional Assembly;

22 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2006*, HREOC, Sydney, 2007, Chapter 3.

23 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements*, Media Release ID: vIPS 22/05, 29 June 2005, available online at: http://www.atsia.gov.au/media/former_minister/media05/v0522.aspx.

- Nulla Wimla Kutja;
- Ngaanyatjarra Council; and
- Murdi Paaki Regional Assembly.[24]

In Hansard in federal Parliament in May 2006 the Government stated that two arrangements had been established and were receiving funding support from the Australian Government and sixteen other reports from Indigenous groups had been received by the Australian Government for consideration.[25]

Information on progress was sought initially from the relevant ICCs and the Office of Indigenous Policy Coordination. For some of the proposed regional structures, the ICCs advised that they had no contact information for the proponents of the models and that there had been no activity to advance discussions within the region over the past year.

In a regular request for information to the OIPC that I make for each *Social Justice Report* I also specifically requested a region by region update on progress in advancing RIEAs and in consideration of proposals that had been submitted to OIPC through the ICCs. The OIPC provided no response to this question.[26]

Discussions with Indigenous community members who had been involved in proposing structures for these regions also revealed that little progress had occurred in progressing RIEAs. Part of the difficulty in this was the fact that most of the models had been presented by, or were facilitated by, the relevant ATSIC Regional Council prior to their abolition. Accordingly, there is now no institutional structure in place to progress the proposals made.

Various community members noted that the process of negotiating an RIEA had not progressed due to a lack of communication from the OIPC and ICC, with the proponents not hearing from the local ICC regarding their proposal,[27] no financial support from any level of government to facilitate progressing the proposal, lack of communication on the proposal between the state or territory government and the federal government, and/ or a lack of support for the proposal by the state or territory government.[28]

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24 Vanstone, A., (Minister for Immigration and Multicultural and Indigenous Affairs), *Minister announces new Indigenous representation arrangements*, Media Release ID: vIPS 22/05, 29 June 2005, available online at: http://www.atsia.gov.au/media/former_minister/media05/v0522.aspx. A colour map showing areas where representation arrangements are in place and where consultations are continuing is available at: www.indigenous.gov.au/OIPC_Regional_Representational_Map.pdf.

25 Commonwealth of Australia, Parliamentary Debates, *Senate Official Hansard, No. 4 2006*, Thursday 11 May 2006, Forty First Parliament, First Session – Sixth Period, pp185-186.

26 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report 2006*, 23 December 2006.

27 For example, in relation to the proposal of the Gulf and Western Queensland Indigenous Regional Coordination Assembly.

28 Interviews conducted by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner with Indigenous community members who had been involved in the consultation processes for the establishment of Regional Indigenous Engagement Arrangements, July – December 2006. In a number of interviews with ICC staff they reported that the regional representative bodies 'do not exist' and were unable to provide contact information (for the following regions: Nulla Wimla Kutja, Yilli Rreung Aboriginal Corporation, Northern Tablelands Aboriginal Community, Kamilaroi, South Central Queensland, Malarabah, Perth Noongar, Wangka Wilurrara and Papta Warra Yunti).

The Government explains the current absence of consultative mechanisms as follows:

> *Mr Yates* - There was quite a lot of work done in the follow-up to the abolition of the ATSIC regional councils, typically in conjunction with state or territory governments where they were reviewing representative arrangements or machinery for engagement with government. So there has been quite a lot of work done over the last couple of years, but they have not all translated into replacement arrangements. As far as possible we were looking to try and support arrangements which both levels of government would be backing rather than having multiple layers. Our focus in terms of the future has been on, at the regional level, the engagement that we are having there where that translates into regional partnership agreements. We are quite ready and willing to work with the other parties and provide resources to support the effectiveness of Indigenous groups engaging with government to enable those regional partnership agreements to work well.[29]

There is an important change in approach here, from an emphasis on regional *structures,* to regional *processes and agreements*, particularly RPAs.

Given the advanced state of discussions a year ago in a number of regions, it is quite remarkable that progress towards recognising regional representative structures has stalled, if not dissipated.

Even more remarkably, the OIPC has sought to suggest that this lack of progress is a result in a shift in the thinking and preferences of Indigenous people themselves!

In Senate Estimates they stated:

> … what we [FaCSIA] have found is that some of the early thinking in a number of regions, which was to re-establish something very similar to an ATSIC regional council, has dissipated. They [Indigenous peoples] have realised that that is not workable or meaningful for them and they have moved on. So we are in a situation where we are having to work more case by case in different regions, and it is taking a while, but the timetable is very much in the hands of Indigenous people, as is the shape of any engagement arrangements that that results in.[30]

This proposition needs to be tested further. It is not consistent with the findings of discussions conducted by my Office and it is not consistent with the apparent lack of activity by OIPC and ICC to progress this important issue.

As indicated above, immediately following the demise of the ATSIC Regional Councils and over the course of the first year of the new arrangements, the government expressed a clear intention to assist Indigenous peoples to establish replacement bodies for regional participation. After an initial level of activity by OIPC to this end, this undertaking was quietly dropped and replaced with a commitment to RIEAs.

It now seems that the federal government would prefer to avoid anything resembling the ATSIC Regional Council model. I have serious doubts that this fully

29 Yates, B., Deputy Secretary, FaCSIA, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA45, available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

30 Yates, B., Deputy Secretary, FaCSIA, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA45, available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

represents the will of Indigenous peoples in the regions, or that they have 'moved on' in their thinking.

Given the unqualified nature of the government's initial undertakings, a more thorough explanation of what is being done to replace the ATSIC Regional Councils with appropriate regional representative organisations is called for.

While it is desirable not to foist a standard model on different regions, and this is one of the reasons given for the slowness in getting regional engagement arrangements in place or supported,[31] I remain concerned that the vacuum in Indigenous regional participation is creating problems.

It is difficult for Indigenous communities to deal with the volume of changes, agencies and requirements under the new arrangements and the increasing entanglements of red tape.[32] There is a need to support authentic and credible structures and processes for Indigenous communities that allow them to engage with governments, be consulted, and where appropriate, provide informed consent.

In my view the government has adopted a cynical and disingenuous approach in which the apparatus of the new arrangements play no active role in engaging with Indigenous peoples on a systemic basis to ensure that mechanisms for Indigenous participation can become a reality.

The Government has clearly stated that one of the priority areas for their Expert Panels and 'Multiuse list of community facilitators/coordinators' is to assist in the development of regional engagement arrangements. This demonstrates that they are fully aware that such arrangements will only become a reality if intensive support is provided to Indigenous communities to develop models that are suitable to their local needs.

It is fanciful to expect that RIEAs will emerge solely through the efforts of Indigenous communities that are under-resourced and that in most instances do not have the necessary infrastructure to conduct the wide-ranging consultation and negotiation required to bring a regional engagement structure into existence.

It is also convenient for Government to leave this issue solely up to Indigenous peoples to progress. I would suggest that this is done in full knowledge that the outcome of this approach will be an absence of regional engagement arrangements.

There is a clear need for special assistance to ensure that Indigenous peoples are able to, in the words of the object of the *Aboriginal and Torres Strait Islander Act 2005*, ensure the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.

Options for addressing this significant failure of the new arrangements are discussed in detail in the final section of this chapter.

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31 Yates, B., Deputy Secretary, FaCSIA, *Hansard,* Senate Standing Committee on Community Affairs, Supplementary Budget Estimates, Canberra, 2 November 2006, pCA45, available at http://www.aph.gov.au/hansard/senate/commttee/S9783.pdf accessed 15 February 2007.

32 Morgan Disney & Associates Pty Ltd, *A Red Tape Evaluation in Selected Indigenous Communities: Final Report for OIPC*, May 2006, available at http://www.oipc.gov.au/publications/PDF/RedTapeReport.pdf accessed 19 January 2007.

As noted in chapter 2 of this report, a related concern is that each regional Indigenous Coordination Centre is now developing its own Regional Action Plan which identifies the key issues that the ICC will focus on in a twelve month period.

The plans will cover work completed through a variety of mechanisms including RPAs and SRAs, strategic intervention arrangements and community in crisis interventions. The plans are to be endorsed by federal government state manager groups and will highlight the most significant community and government work which the ICC is involved as well as link into national priorities.[33]

It is a concern that ICCs are developing such action plans in the absence of systematic engagement with Indigenous communities at a regional level and in the absence of Regional Indigenous Engagement Arrangements in nearly all ICC regions. Ensuring such engagement with Indigenous communities should be a fundamental pre-requisite to determining service delivery priorities and in the identification of need for each ICC region.

As I have travelled around the country I have discussed this situation with Government staff in ICCs and OIPC state offices. These staff, particularly at the field operative level, are observing the frustration, disengagement and bewilderment of Indigenous peoples. Many of these staff have had long term relationships with indigenous communities and peoples and they are experiencing the pressures of top down impositions that are not likely to see any real and sustainable outcomes for indigenous people. They also feel disempowered themselves, and that the culture within the OIPC is one that does not value their views and concerns. Many have expressed an unwillingness to raise their concerns for fear of reprisals.

Government would benefit from conducting a confidential survey of all staff in ICCs to gauge their views on the current directions in implementing the new arrangements and to raise suggestions on the way forward to achieve sustainable outcomes.

Indigenous participation in decision making at the national level

Last year's *Social Justice Report* provided a detail overview of the issues relating to Indigenous engagement at the national level.[34] These include:

- difficulties in ensuring the involvement of Indigenous peoples in inter-governmental framework agreements (such as health and housing agreements with the states and territories);
- the removal from the *Aboriginal and Torres Strait Islander Act 2005* (Cth) of previously existing requirements for departments to consult with Indigenous peoples in planning and implementing their activities; and
- the absence of processes for engagement with Indigenous peoples at the national level.

33 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Social Justice Report* 2006, 23 December 2006, p5.

34 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp130-135.

In the past twelve months, there have been limited changes at the national level to the situation as described in the *Social Justice Report 2005*. The government has continued to utilise the National Indigenous Council (NIC) as the primary source of advice on Indigenous policy[35] and has not sought to engage more broadly with Indigenous communities on matters of policy development that affect our lives.

The result of this has been a noticeably low level of participation of Indigenous peoples in inquiry processes (such as parliamentary committees) on matters of crucial importance to Indigenous peoples and a new 'unilateralism' in policy development.

There are two principle concerns that I have regarding developments at the national level over the past 12- 18 months.

- First, we have seen reforms being introduced extremely quickly with limited processes for consultation and engagement from Indigenous peoples. Limited processes for engagement are compounded by the lack of capacity of Indigenous communities and low levels of awareness of the various reforms proposed. During the course of some reform processes, the government has stated that they are under no obligation to consult with Indigenous peoples – this has contributed to the emergence of a culture within the federal government that does not place sufficient value upon Indigenous engagement and participation.
- Second, as the government has continued to bed down the new arrangements they have continued to distance Indigenous peoples from processes for agreeing to policy priorities – this includes through setting the key priorities for inter-governmental cooperation through bilateral agreements with the states and territories without Indigenous participation, and a changed focus in federal processes, such as through the strategic interventions approach described in chapter 2.

Last year's *Social Justice Report* expressed concern at the existence of multiple processes to reform Indigenous policy that were taking place concurrently and the limited ability for Indigenous people and communities to engage in these processes. I noted my concern that:

> … the cumulative impact of the parallel reforms currently taking place is overwhelming some communities and individuals.
>
> This renders it very difficult for Indigenous peoples to participate meaningfully in policy development, program design and service delivery. This is particularly so in the absence of representative structures to coordinate and focus the input of communities, particularly in relation to legislative reform and inquiry processes.

35 The NIC has expressed significant concerns to the Government that it does not consider that their advice has been treated appropriately. In December 2006, it was reporting that there was 'serious disquiet among NIC members who say they feel marginalised' with the Government taking limited notice of their advice. **NIC chairwoman Sue Gordon was quoted as saying there was "no question' there were** reservations about whether or not the council was being fully consulted on issues and whether our capacity was being utilised, especially through our dealings with the bureaucracy. The fact he (Mr Brough) undertook to improve the Government's interaction with the council is very welcome' she added': Karvelas, P., *Aboriginal adviser quits in protest*, The Australian, 1 December 2006, p3.

> The intention of the reforms is plainly to improve engagement and service delivery with Indigenous peoples… The rapid rate of the reforms and the accompanying impact it is having on communities and individuals needs to be acknowledged by governments.[36]

This situation has continued over the past year.

For example, communities have had to deal with the following ongoing reform processes that have been occurring simultaneously at the national level:

- Reforms to governance arrangements for Aboriginal councils and associations, which had been held over for a further twelve months;
- Reforms to the CDEP program, as well as processes for the lifting of Remote Area Exemptions in some remote communities; and
- Reforms of other employment related services, such as Indigenous Employment Centres, the Structured Training and Employment Program (STEP), and welfare to work reforms.

At the same time, consultations have been conducted relating to:

- Reforms to the Aboriginal Land Rights (Northern Territory) Act, including substantial reforms for land tenure arrangements in townships and proposed changes to the permit system;
- Six inter-connected reform processes for different aspects of the native title system, followed by draft legislation to implement the findings of some of these consultation processes (with further amendments expected later on); and
- Reforms to the community housing and infrastructure program.

Legislation has also been introduced to the federal Parliament that impacts on Indigenous communities relating to:

- Land rights reforms in the Northern Territory (through the *Aboriginal Land Rights (Northern Territory) Act 1975*);
- Indigenous heritage protection (through the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*);
- Indigenous governance (through the *Aboriginal Councils and Associations Act 1976*);
- Banning of consideration of Aboriginal customary law in federal sentencing matters (through the *Crimes Amendment (Bail and Sentencing) Act 2006*);
- The removal of consent procedures for traditional owners in the nomination of sites for storage of radioactive waste on Indigenous lands (through the *Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006*); and
- Welfare to work reforms (through the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006)*

36 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney 2005, p104.

Parliamentary inquiries have also been conducted into:

- petrol sniffing in remote Aboriginal Communities;
- national parks, conservation reserves and marine protected areas;
- the Indigenous visual arts and craft sector;
- Indigenous stolen wages;
- Native Title Representative Bodies (this inquiry was in addition to the four separate consultation processes on native title issues conducted by the Attorney-General's Department);
- Indigenous employment;
- health funding;
- the non-fossil fuel energy industry;
- mental health;
- civics and electoral education, including the non-entitlement of prisoners (of whom Indigenous peoples make up a significant proportion) to vote; and
- an identity card (which is likely to have a significant impact on Indigenous peoples as high users of government services such as the welfare and health systems).

These activities are just some of the reforms that have occurred at the national level. They do not include significant reforms at the state and territory level – such as to governance arrangements and local councils in Queensland and the Northern Territory; the operation of the state based land council system, care and protection and adoption systems in NSW; protections through a Bill of Rights in the A.C.T, Victoria, Tasmania and Western Australia; and inquiries into family violence and child sexual abuse in NSW and the NT, among other things.

The consultation processes and reforms at the federal level have also been difficult for Indigenous peoples to participate in due to the short timeframes within which consultation for some of the reforms have taken place. The adequacy of consultation processes for CDEP and related employment changes, for example, were discussed in Chapter 2 of this report.

An issue of major concern has been the shortness of time for parliamentary inquiries into issues of relevance to the situation of Indigenous peoples and particularly for draft legislation. This has been particularly noticeable in inquiries before the Australian Senate where public consultation on proposed legislation has consistently been severely curtailed.

For example:

- The Senate Committee inquiry into changes to federal sentencing laws to ban consideration of Aboriginal customary law was formed on 14 September 2006 with submissions required to be submitted by 25 September 2006 – just 11 days later (with the committee due to report by 16 October 2006). Just 5 submissions were received from Indigenous organisations. The final report noted that the Government confirmed

that 'there was no direct consultation' on the content of the Bill with groups who could be affected.[37]

- The Senate Committee Inquiry into the provisions of the amendments to the *Aboriginal Land Rights (Northern Territory) Act 1975* was created on 22 June 2006 for inquiry and report by 1 August 2006. The Committee received 4 submissions from Indigenous organisations. The final report of the inquiry (by both government and non-government members of the Committee) stated:

  'The Committee considers the time made available for this inquiry to be totally inadequate. The *Aboriginal Land Rights (Northern Territory) Act* is one of the most fundamentally important social justice reforms enacted in Australia and these are the most extensive and far reaching amendments that have been proposed to the Act. There was insufficient time for many groups to prepare submissions and a single hearing was complicated by the necessity to include a number of teleconferences within the hearing. Additionally, time constraints prevented the Committee hearing from a number of witnesses'.[38]

The lack of emphasis given to ensuring that Indigenous peoples are able to participate in decision making processes that affect us is of serious concern.

As I note elsewhere in this report, the lack of engagement generally with Indigenous peoples ensures that the system of government, of policy making and service delivery, is a passive system that deliberately prevents the active engagement of Indigenous peoples. This contradicts the central policy aims of the new arrangements, which includes commitments to partnerships, shared responsibility and mutual obligation.

It is paradoxical for the Government to criticise Indigenous people for being passive victims and stuck in a welfare mentality yet to continually reinforce a policy development framework that is passive and devoid of opportunity for active engagement by Indigenous peoples.

I find it particularly disturbing that there is a lack of acknowledgement of the importance of Indigenous engagement and participation in policy making. I am concerned that there is emerging a culture within the federal public service, led by the Office of Indigenous Policy, which does not place sufficient value upon such engagement.

This has been particularly notable in debates about reforms to land rights in the Northern Territory, particularly those relating to changes to land tenure in townships. The government has stated before the Senate Committee inquiring into the amendments to the land rights legislation that it is not under an obligation

37 Senate Legal and Constitutional Legislation Committee, *Report on the Crimes Amendment (Bail and Sentencing) Bill 2006*, Parliament of Australia, Canberra 2006, para 3.6, available online at: www.aph.gov.au/senate/committee/legcon_ctte/crimes_bail_sentencing/report/index.htm. The Bill had resulted out of the Ministerial Summit on Violence and Abuse in Indigenous communities – that Summit had also not been attended by Indigenous representatives.

38 Senate Community Affairs Committee, *Provisions of Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, Parliament of Australia, Canberra 2006, para 1.3. Available online at: www.aph.gov.au/senate/committee/clac_ctte/aborig_land_rights/report/index.htm.

to consult with Indigenous peoples on the proposed changes, and that that role lay instead with the land councils in the Northern Territory.[39]

In subsequent discussions where I have expressed concern about the lack of community consultation on the issue of town leasing, the OIPC have also noted that they are not obliged under the legislation to consult with the community, just with a section of it, that is traditional owners, which the government has stated could mean just one person in some instances.[40]

As a matter of practicality, processes for engaging with stakeholders about proposed reforms are integrally linked to achieving successful implementation at the community level. It is a mistake to believe that reforms that are developed in a vacuum will be embraced by communities. It is far more likely that such reforms will be perceived as disempowering and paternalistic. As a consequence, governments will face greater difficulties in realising their intended goals. This will particularly be so if those goals are not shared by Indigenous communities.

The absence of a national representative body exacerbates this situation.

It is my impression, from discussions with officials in different departments and agencies and from observing current practices, that government departments are struggling about *how* to consult and with *who*.

As reported in the past two *Social Justice Reports,* Indigenous peoples have been giving attention to the necessary components of a replacement national body for the Aboriginal and Torres Strait Islander Commission (ATSIC).

The National Indigenous Leaders Conference was convened in Adelaide in June 2004 and set out principles that must be met for any national body to be credible.[41] A smaller steering committee of participants in that process have met since that initial meeting, including at a meeting in Melbourne in 2006, to advance their proposal.

To date, there has been limited information made publicly available about this process or its outcomes. This is unfortunate given the urgent and compelling need for a national representative body to be in place.

The *Social Justice Report 2004* set out a number of options for ensuring the effective participation of Indigenous peoples in decision making at the national level. These included the establishment of a national congress of Indigenous representative

39 The dissenting report of Opposition Senators notes, for example, that they 'strongly disagree with the Office of Indigenous Policy Co-ordination's (OIPC) submission that it was not their responsibility to communicate the changes with Traditional Owners. Even if it was the responsibility of the Land Councils, the shortage of time and resources made it physically and logistically impossible for Land Councils to consult their traditional owner base': Senate Community Affairs Committee, *Provisions of Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, Dissenting Report – Opposition Senators, Parliament of Australia, Canberra 2006, available online at: www.aph.gov.au/senate/committee/clac_ctte/aborig_land_rights/report/d01.htm.

40 Under the reforms to the Act they are legally correct in that they are not required to consult with the Indigenous community more broadly or the community that would be directly affected by any changes. This does not, of course, make the policy process a sound one. The amendments to the land rights legislation relating to town leasing does not include a caveat which would render processes invalid where consent has not been obtained or even where fraudulent behaviour has occurred: this also undermines a 'culture' of effective participation in decision making.

41 See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, p105, pp174-175.

organisations, annual meetings of Indigenous service delivery organisations, and the establishment of a national Indigenous non-government organisation.[42]

My current assessment of these options is as follows:

- *Establishing a national body comprised of the chairpersons of Regional Indigenous Representative Structures* – this is essentially the model proposed by the ATSIC Review Team in 2004. It is presently not a feasible model due to the absence of regional representative structures, as discussed in this chapter. The convening of a national forum should still be treated as a high priority once regional structures have been established across the country.
- *Establishing a National Forum of existing Aboriginal and Torres Strait Islander peak organisations* – This could provide an interim approach to a more inclusive national representative model. The Forum could be attended by National Secretariats and State Associations for:
  - Indigenous women's legal services;
  - Torres Strait Islander organisations;
  - native title organisations and land councils;
  - legal services;
  - childcare services;
  - community controlled health organisations;
  - justice advisory committees;
  - stolen generations organisations;
  - peak Indigenous education organisations;
  - networks for CDEP; and
  - Job Network providers and so forth.

  I would see enormous value in bringing together these organisations to share common experiences and consider mechanisms for improved coordination and consideration of issues in a whole of government matter. The absence of such a coordinated approach from Indigenous organisations (who are clearly not equipped or resourced to operate in this way) creates a mismatch between the Government's new whole of government approach and the ability of Indigenous peoples to participate in it.

  A National Forum of Service Providers and peak bodies would be useful as an ongoing mechanism, but ultimately would not substitute the need for a representative body to ensure effective engagement with Indigenous communities.
- *Establishing a national non-government organisation of Indigenous peoples* – This may well be the result of current consultations being undertaken by Indigenous peoples. The difficulty that this model will face is ongoing funding and adequate resourcing. In addition to issues around establishing a mandate for the organisation, time will need to be devoted to options for resourcing such a body to ensure that it has the capacity to undertake the necessary level of activity. Where this model

42 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, p105.

exists internationally, such as the Assembly of First Nations in Canada, the Indigenous peoples it represents have a secure land and resource base that assures the ongoing viability of such a mechanism.

This is, in my view, achievable. Lessons regarding funding arrangements and structure can be learnt from similar organisations internationally but also from domestic organisations in other sectors – such as the Federation of Ethnic Community Councils of Australia and the Australian Council for Overseas Aid.

The current lack of effective participation of Indigenous peoples at the national level is a matter of major concern. If the current approach is to continue unabated, we risk government policy processes entrenching existing problems of lack of engagement. This will result in systemic problems in Indigenous policy and service delivery.

Due to my ongoing concerns about this issue, I have identified the following as a follow up action for my Office over the coming year.

Follow Up Action by Social Justice Commissioner

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

The Commissioner will conduct research and consultations with non-government organisations domestically and internationally to establish existing models for representative structures that might be able to be adapted to the cultural situation of Indigenous Australians, as well as methods for expediting the establishment of such a body given the urgent and compelling need for such a representative body.

Indigenous participation in determining priorities for inter-governmental cooperation

Concurrent to these developments, the government has continued to bed down the new arrangements and to confirm changes in policy through processes that do not include Indigenous participation at the outset. This has primarily occurred through a new focus on 'intensive interventions' and through an emphasis on setting priorities and agreed areas for action through bilateral agreements with the states and territories.

Generally speaking, Indigenous engagement is limited to the implementation of the priorities once they have already been agreed between governments. Chapter 2 of this report discussed the federal government's movement towards a bilateral interventionist model of 'strategic interventions' or 'intensive interventions' in some communities designated as being 'in crisis'.

As noted in chapter 2, the interventionist model puts the strategic decision-making clearly in the hands of government – the Indigenous community only becomes

involved *after* the basic decision to intervene has been made and respective levels of commitment have been agreed between different governments.

'Strategic intervention' in this context in fact means 'restricted Indigenous participation' at a governmental and priority-setting level. Priorities are determined by outsiders (governments), and only then are the insiders (the community) invited to participate in the detailed planning and implementation. This does not appear to provide a sound basis for 'ownership' of initiatives undertaken as part of such strategic interventions.

This approach is more broadly applied through the negotiation of bilateral agreements on Indigenous affairs between the federal government and the states and territories.

In general terms, the bilateral agreements commit each government to work in partnership and in accordance with principles as agreed through the Council of Australian Governments (COAG). They also include schedules of priority actions which are agreed solely by governments without Indigenous participation.

In contrast to this lack of engagement prior to the finalisation of the bilateral agreements, each agreement then commits the Australian government and the relevant state or territory government to ensure Indigenous participation in the implementation of the agreement. For example:

- *The Bilateral Agreement with the Northern Territory Government:* identifies the Northern Territory's proposed local government reforms through the creation of Regional Authorities under the NT *Local Government Act 1994* as the main model for Indigenous participation and engagement. As noted in last year's *Social Justice Report*, this is primarily focused on rural and remote areas and does not address the needs of Indigenous peoples in urban centres in the Northern Territory. This model is also not universally accepted by Indigenous peoples in the Territory as the appropriate mechanism. To address this, the bilateral agrees to consider representational issues 'through flexible arrangements (including options that bring together Indigenous peak bodies)'[43] although there have been no developments in progressing this in the past year.
- *The Bilateral Agreement with the Queensland Government* commits both governments to 'work with Aboriginal and Torres Strait Islander people to determine community engagement arrangements at the local level' and to use the Queensland government's 'negotiation table' process as 'the key community engagement mechanism'.[44]
- *The Bilateral Agreement with the New South Wales Government:* recognises the NSW Government's Two Ways Together Framework as the foundation for cooperation between the two governments on service delivery

43 Australian Government and Northern Territory Government, *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005-2010,* schedule 2.3, 6 April 2005, available online at: http://www.oipc.gov.au/publications/PDF/IndigenousAffairsAgreement.pdf.

44 Australian Government and Queensland Government, *Agreement on Aboriginal and Torres Strait Islander Service Delivery Between The Commonwealth of Australia and The Government of Queensland 2005-2010,* paras 16-22, 5 December 2005, available online at: www.oipc.gov.au/publications/PDF/IndigenousAffairsAgreementQLD.pdf.

to Aboriginal communities, including through Shared Responsibility Agreements.[45]

The NSW Government's Operational Guidelines for SRAs require NSW government agencies to satisfy themselves that there has been a proper consultative process with Indigenous peoples in developing an SRA.[46]

- *The Bilateral Agreement with the South Australian Government*: commits both governments to 'work with Indigenous people to determine arrangements for engagement at the local and/ or regional levels' and in acknowledgement of the large proportion of Indigenous people who reside in urban areas in South Australia to ensure that modified arrangements are put in place for engagement in urban areas.[47] Consistent with this, the South Australian government commenced a four month consultation process with Indigenous communities in October 2006 to identify an appropriate structure for a state-wide Aboriginal Advisory Council.[48] I commend the Government of South Australia for undertaking this initiative.
- *The Bilateral Agreement with the Western Australian Government*: Commits both governments to work with Indigenous people to determine effective arrangements for engagement, through the conduct of consultations with Indigenous communities.[49] In August 2006, the Western Australian government also commenced a consultation process to identify better ways to engage with Indigenous leaders and to identify long-term strategies to strengthen the participation of Aboriginal people in the state's development. This process is due to conclude by 31 August 2008. [50] I commend the West Australian Government for undertaking this initiative.

It is unclear how any engagement arrangements agreed at the state level, such as the processes currently underway in South Australia and Western Australia, will link to the federal level. It can be expected, however, that there will be a connection due to the commitments made in the bilateral agreements. It remains to be seen whether such cooperation is forthcoming from the federal government once the models freely chosen by Indigenous peoples have been revealed – particularly if these models extend beyond the acceptable parameters for the federal

45 Australian Government and New South Wales Government, *Overarching Agreement on Aboriginal Affairs Between the Commonwealth of Australia and The State of New South Wales 2005-2010*, para 32, 17 April 2006, available online at: http://www.oipc.gov.au/publications/PDF/NSW_IndigAgreement.pdf.

46 NSW Department of Aboriginal Affairs, *Operational guidelines for NSW government officers negotiating shared responsibility agreements*, available online at: http://www.daa.nsw.gov.au/data/files//operational guidelinesforSRAs.pdf.

47 Australian Government and South Australian Government, *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and The State of South Australia 2006-2011,* paras 20 and 24, 17 April 2005, available online at: http://www.oipc.gov.au/publications/PDF/SA_IndigAgreement.pdf.

48 Weatherill, Jay (MP), *SA Aboriginal Advisory Council*, Press Release, 23 October 2006, available online at: www.ministers.sa.gov.au/news.php?id=814.

49 Australian Government and Western Australian Government, *Bilateral Agreement on Indigenous Affairs between the Commonwealth of Australia and The State of Western Australia 2006-2010,* July 2006, available online at: www.oipc.gov.au/publications/PDF/SA_IndigAgreement.pdf.

50 Western Australian Parliament, *Parliamentary Question without notice Lieutenant General John Sanderson - Appointment*, Hon Giz Watson, 14 September 2006, available online at: www.parliament.wa.gov.au/pq/qsearch.nsf/e55da5ba38cfb7c548256d870006876b/a24afc2daa865cf5482571ed007b9bd4?OpenDocument.

government as laid down in their Guidelines for Regional Indigenous Engagement Arrangements.

It remains unfortunate that priorities have been identified through the bilateral agreements without Indigenous participation and engagement and that there continues to be a lack of any mechanism to facilitate Indigenous participation as the agreed actions for inter-governmental cooperation are undertaken..

Engagement with Indigenous peoples at the local level – Indigenous perspectives on Shared Responsibility Agreements

Over the first two years of the new arrangements, there has been considerable effort devoted to developing Shared Responsibility Agreements (SRAs) with Indigenous communities and organisations. This stands in marked contrast to the lack of activity in ensuring the existence of regional mechanisms for Indigenous participation and engagement.

This section of the report considers what lessons can be learnt from this local level engagement, particularly in light of the concerns at the inappropriate mechanisms and processes for engagement that currently exist at the regional, state and national levels.

Why focus on SRAs?

Considerable emphasis has been placed on SRAs by the Office of Indigenous Policy Coordination since the inception of the new arrangements.

They have been described as forming one of the beacons of innovation that they hope will be the hallmark of the new arrangements. SRAs have been identified as having the potential to open up communities to new streamlined forms of service delivery that 'cut red tape' and address the longstanding problems of accessibility of mainstream programs, by 'harnessing the mainstream'. Officers responsible for negotiating SRAs within regional ICCs are optimistically named 'solution brokers' in accordance with these expectations.

SRAs have also been prominent due to the policy emphasis within them on mutual obligation: they have been promoted as one of the key approaches for addressing passivity in communities by instilling a culture of reciprocity, through mutual obligation for the delivery of services over and above basic citizenship entitlements.

As such, SRAs provide one of the main tools through which regional Indigenous Coordination Centres engage with Indigenous communities or organisations at the local level, alongside the continued administration of existing grant processes.

In both practical terms and also the 'publicity' of the new arrangements, SRAs have occupied an importance that far outweighs the percentage of expenditure that they represent.

This is the primary reason why there should continue to be detailed attention and analysis devoted to the effectiveness of this program.

SRAs have emerged out of the COAG trial model and were quickly applied more broadly prior to that model being evaluated and its particular challenges identified, such as the high input costs and intensive effort required for engagement prior to the delivery of services hitting the ground in communities.

The previous two *Social Justice Reports* have highlighted the significant challenges for SRAs to meet the expectations placed upon them by the government – both legal, in ensuring compliance with human rights and specifically the *Racial Discrimination Act 1975* (Cth), and practical, in ensuring sound engagement with Indigenous communities to ensure that the process can contribute to the long term needs of those communities rather than distracting attention and effort away from the urgent needs of communities.

As the previous chapter of this report notes, the initial focus on SRAs has produced only modest outcomes in relation to improving mainstream accessibility. This has been hampered by limited flexibility at the regional level, with all SRAs originally having to be sent back to Canberra for approval prior to proceeding, no matter what level of expenditure was involved.

Similarly, the definitions of and approaches to SRAs have continuously changed, with current references to 'single issue' SRAs, comprehensive SRAs, holistic SRAs and with the additional blurring of distinctions between SRAs and Regional Partnership Agreements. This lack of clarity and singular focus is consistent with the instability that characterises the new arrangements more than two years into their implementation (and as discussed in detail in the previous chapter).

There has also been a tendency for particular SRAs to blur the boundaries of what is acceptable in terms of service provision for basic entitlements to communities. The application of mutual obligation principles within agreements has also been problematic on occasion, and has moved away from the initial intention of supporting communities to become active participants to being perceived as providing a punitive approach to service delivery.

The *Social Justice Report 2005* gave extensive consideration to the Shared Responsibility Agreement (SRA) making process. It included human rights guidelines for the process of making SRAs as well as guidelines to guide the content of SRAs.[51]

The report also identified a number of 'follow up actions' that my Office would undertake over the subsequent period in relation to SRAs. These included that my Office would monitor the SRA process, including by:

- considering the process for negotiating and implementing SRAs;
- considering whether the obligations contained in agreements are consistent with human rights standards;
- establishing whether the government has fulfilled its commitments in SRAs; and
- consulting with Indigenous peoples, organisations and communities about their experiences in negotiating SRAs.[52]

51 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, pp140-146.

52 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney, 2005, Follow Up Actions 2-4, pp iii – iv.

I have continued to monitor SRAs over the past year through a three stage process.

First, the Office of Indigenous Policy Coordination has forwarded copies of all SRAs to my Office. This arrangement will no longer be necessary as all SRAs are now published online on the OIPC website at: http://www.indigenous.gov.au/sra.html.

Second, a national survey was conducted with Indigenous communities and organisations who had entered into an SRA. My office received many responses to the survey, and Indigenous people from numerous communities also contacted staff in my office to discuss their SRA in more detail.

Third, I sought first hand information from Indigenous organisations and communities by means of interview based case studies. My staff visited some communities and organisations from which we had received responses through the survey, and conducted interviews in order to enhance the feedback already obtained from the surveys. These interviews provide a richer qualitative sampling of community perspectives on SRAs.

So what then have been the outcomes of SRAs to date for Indigenous peoples, *as defined by Indigenous peoples?*

This section of the report provides the outcomes of the national survey of communities who have entered into SRAs as well as of specific case studies which provide further specific information about the challenges faced during the negotiation process.

Through both of these processes the purpose was to find out directly from Indigenous peoples about their experiences and identify whether they were satisfied with the process. Some of the questions I was interested in asking through the survey and case studies include:

- Has the community been satisfied with the outcomes of the SRA?
- How did the community come to enter the SRA and how did they find the process?
- Did the service as outlined in the SRA get delivered to the community?
- What supports, if any did the community receive from government?
- What were the critical factors for the community in achieving the objectives of the SRA?
- Has the SRA had longer term benefits – e.g. simplified service delivery, improved communication with government?

The outcomes of the national survey are discussed first, followed by the case studies. This section of the report then ends by drawing together the implications from these to guide the SRA process into the future.

Findings of the national survey of Indigenous communities that have entered into Shared Responsibility Agreements

• Introduction and Survey methodology

A national survey of Indigenous groupings that had entered into a SRA was conducted between 4 September 2006 and 15 November 2006. The survey results reflect the perceptions and understanding of the SRA process by those Indigenous communities, organisations, families and individuals who had entered into an agreement.

I invited all communities who had entered into an SRA before 31 December 2005 to complete a survey about the process involved in developing and implementing their SRA. The cut off date was chosen to ensure that there had been sufficient time for the SRA to come into effect and for its objectives to be realised.

The survey consisted of 27 questions, with a combination of standard response questions and open questions to gain contextual qualitative information. All of the questions gave respondents the opportunity to add their own information.

The survey focused on the content of the SRA, the negotiation process and the community's views on the SRA process. The full survey questionnaire is reproduced as **Appendix 3** of this report.

The survey was undertaken on a voluntary basis. Participants were informed that their responses were to be kept confidential and all responses would be sufficiently de-identified to preserve their privacy, and in turn enable them to offer frank feedback on the SRA process.

To increase accessibility for communities and organisations, the survey was posted on the HREOC website. Each community representative was able to complete and submit the entire survey online. I sent a letter to the communities before the survey was posted, explaining why I was interested in conducting the survey and encouraging communities to participate. Paper copies were also available on request and my staff also assisted some respondents to complete the survey over the phone.

The survey sample includes SRAs signed before 31 December 2005. For this period there were 108 SRAs finalised, involving 124 communities.

In addition to communities that had entered into a SRA prior to 31 December 2005, the Survey results include data relating to a further four SRAs in four communities who had entered into SRAs in early 2006. These communities had been referred to the online Survey forms by other communities that had been invited to submit results.

At the close of the survey, responses had been received relating to 67 SRAs finalised prior to 31 December 2005, and 71 SRAs in total.[53]

Based on 67 SRAs, out of a possible 108 SRAs prior to 31 December 2005, the survey had a 62% response rate. This is considered a very good response rate, especially

53 Some communities had more than one SRA in place in the community and duplicated their response for each SRA negotiated during the period. Due to this, the 78 responses received were collapsed, yielding 63 survey responses that represented the 71 SRAs.

given that some of the SRAs were for relatively small projects and the survey required at least an hour to complete.

In disseminating the survey there was two interesting administrative issues faced:

- The OIPC and ICC did not have an accurate record of signatories to SRAs. The OIPC could not identify the relevant contact people for each SRA. This required working with each regional ICC to identify the relevant organisations or communities in order to distribute the Survey. During this process, it was not possible for the ICC or OIPC to identify all signatories to SRAs.
- Some communities refused to participate in the survey on the basis that: a) the SRA in their community was for such an insubstantial sum of money that they felt they were already required to over-report and spend too much time in relation to the agreement; and b) for some communities, the SRA had been dependent on a particular individual who had left the community since the SRA was signed. In this situation, some communities stated they had insufficient knowledge about the SRA to comment on its effectiveness – the SRA clearly had no relevance or currency in those communities.

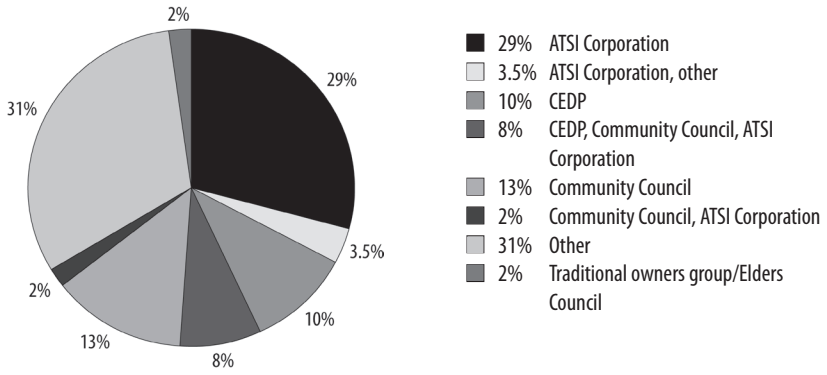
• Key Features of SRAs – Survey responses

The greatest numbers of survey respondents were from Western Australia with 21 responses (32%) and the Northern Territory with 15 responses (24 %). Respectively, 10 (16%) were from Queensland, 8 (13%) South Australia, 6 (10%) NSW, 3 (5%) Tasmania, and no responses from Victoria. The high response rates for Western Australia were not surprising given the large number of SRAs in operation during the survey period.

To understand what type of communities or community organisations have been utilising SRAs, the survey asked respondents to describe their organisation. **Graph 1** below shows that 29% of the respondents described their organisation as an Aboriginal/ Torres Strait Islander corporation, and 13% as a Community Council. A large number of organisations (31%) fell into the 'other category'. This included a range of organisations including schools, Aboriginal housing services, charitable trusts, a police unit or other organisations which fell into a number of different categories.

While the survey did not specifically ask whether the organisation responding was Indigenous community controlled, 7 schools and 1 police unit completed the survey in relation to the SRA they had negotiated. In relation to the SRA with the police unit, further discussions with an Indigenous organisation in that community which had a specific role in the SRA revealed that they had had no involvement in its development.

Graph 1: Description of the organisation entering into the SRA



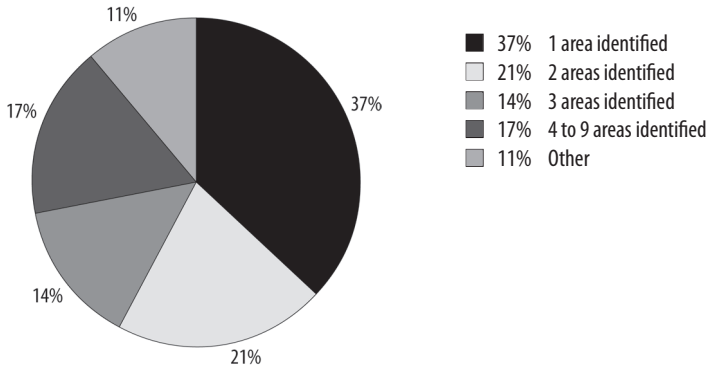
The survey asked respondents to identify what the SRA is about, selecting from a list of identified categories. The categories were:

- capacity building;
- municipal services;
- sport and recreation;
- health and nutrition;
- community revitalisation;
- cultural activities;
- leadership activities;
- housing;
- economic development;
- family wellbeing;
- law and order and
- other.

Respondents were able to select as many of the subject areas that they felt applied to their SRA.

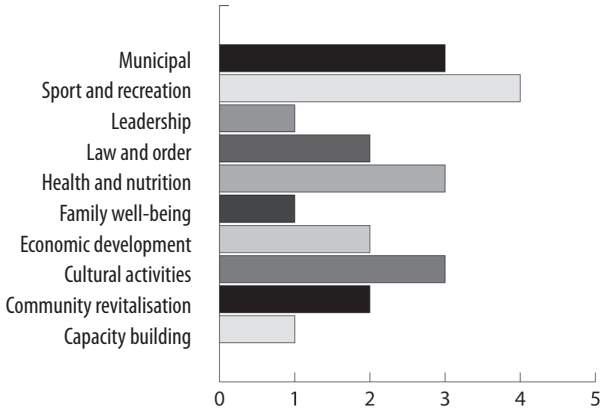
As shown below in **Graph 2**, 37% of respondents identified a single category, while the remainder reported that their SRA fell into a number of different categories. There were no clear patterns arising from how the communities described their SRAs, which in itself may reveal something about community perceptions of the SRAs. This may suggest that many communities perceive the aims of the SRA as much broader than a single issue.

Graph 2: What is the SRA about? Number of areas identified by respondents



Of those 37% of respondents that were able to categorise their SRA into a single subject area, **Graph 3** shows the spread of SRA subject areas.

Graph 3: What is the SRA about? Single subject area descriptions



As shown in Graph 2, a large number of communities listed more than category to describe their SRA. Given the unique combinations nominated by respondents no clear groupings arise but a further breakdown is provided in Table 1 below. **Table 1** shows how many communities nominated each category. The most reported category was 'other' (24 respondents), followed by capacity building and cultural activities (18 respondents).

Table 1: What is the SRA about?

Category	Frequency
Cultural revitalisation	18
Capacity building	18
Sport and recreation	17
Health and nutrition	16
Community revitalisation	12
Family wellbeing	10
Leadership	10
Law and order	5
Municipal services	6
Economic development	8
Other	24

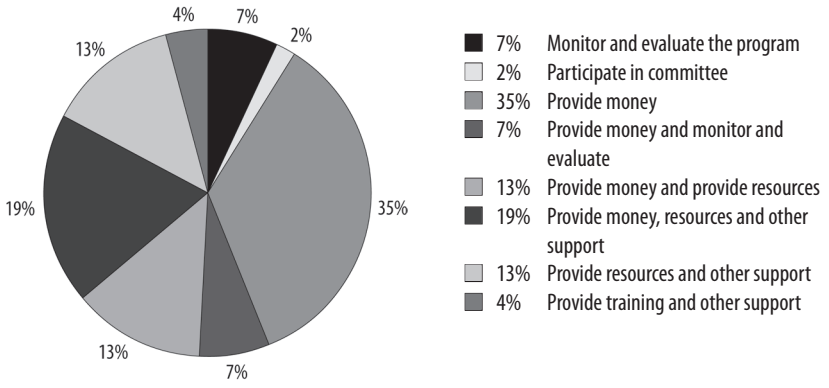
• Obligations contained in SRAs

As SRAs impose obligations on both parties entering into the agreement, respondents were asked to describe the respective obligations of the federal government, state governments and community.

In relation to the federal government, **Graph 4** shows that 35% of communities report that the federal government contributed money to either fund a salary or a specific project. The next most common obligation (19%) was a combination of money, resources such as infrastructure, equipment, staff or consultants and any other form of support.

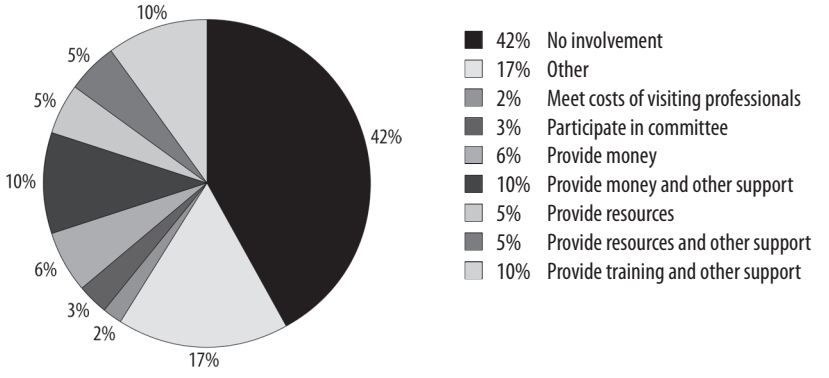
The range of different federal obligations reported by communities suggests that at least in principle, the federal government is committing to a greater range of support mechanisms. This result appears to suggest that through these SRAs the government is moving away from purely providing funding, to greater involvement in the actual implementation of a program. This may be through monitoring and evaluation, provision of resources and infrastructure, as well as training and participation in steering or other committees.

Graph 4: Commonwealth government obligations under the SRA



Given that SRAs are a federal government initiative it is not surprising, that almost half (42%) of respondents reported no state government involvement or obligations in the agreement. **Graph 5** illustrates the various obligations of state governments under the SRAs, according to the survey responses.

Graph 5: State government obligations under the SRA



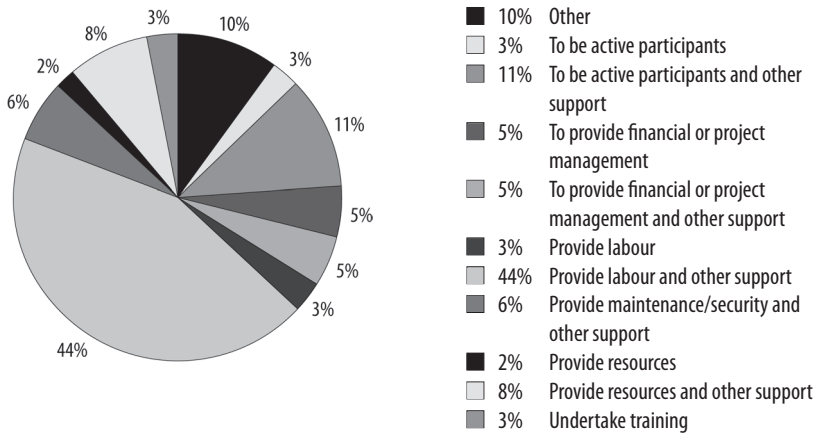
The absence of state government participation in many SRAs may reflect the simple, single issue nature of the SRAs that have been negotiated to date.[54] As the process becomes more sophisticated and 'comprehensive SRAs' begin to emerge, it is anticipated that the level of state government involvement will increase.

Some communities reported positive interactions with state governments and constructive use of state government obligations in SRAs. For instance, one community used the SRA process as an opportunity to develop Memorandums of Understanding (MoUs) with state government partner agencies to improve service delivery and coordination. One respondent also reported that the state government made the major contribution, with the federal government taking a less active role, namely, only participating in steering committees. This may be entirely appropriate, depending on the individual needs of each community and each SRA.

The very nature of SRAs bestows obligations on communities in return for the benefit negotiated with government. As shown in **Graph 6** below, the respondents reported a wide range of obligations.

74% of communities reported that they were required to fulfil two or more different obligations. The most commonly reported obligation was to provide labour and other support, which can include either one or a combination of the other obligations. Other obligations set out in the survey were, to be active participants in the community, to provide maintenance and security, to organise sporting and recreational activities or to undertake training.

Graph 6: State government obligations under the SRA



54 Australian Government, FaCSIA, Office of Indigenous Policy, "*Indigenous Affairs Arrangements*", Canberra, August 2006, available online at: http://oipc.gov.au/About_OIPC/Indigenous_Affairs_Arrangements/OIPC_Book.pdf.

A large number of communities listed more than one obligation. This is represented in Graph 6 as 'other support'. A further breakdown provided in **Table 2** below shows how many communities nominated each category. The most reported community obligation was to provide labour (31 respondents), closely followed by providing financial or project management (29 respondents).

Table 2: Community Obligations

Community Obligation	Frequency
Provide labour	31
Provide financial or project management	29
To be active participants in the community	20
To provide maintenance and security	19
Other	18
To provide resources	17
To undertake training	16
To organise sporting or recreational activities	14

Most of the respondents were able to categorise their obligations. However, those that provided additional information gave another dimension on the nature and scope of community's obligations. In particular, one community reported obligations on individuals to participate in health treatment, health education and be supported by family during this treatment in return for treatment facilities and support.

Another community reported that in return for a municipal service, community members were obligated, among other requirements, to actively work on addressing substance misuse issues. Addressing substance misuse is a complex, often entrenched and resource intensive process. There is concern that this sort of obligation may be disproportionate to the obligation and commitment made by the federal government, particularly if the SRA is not accompanied by related services and programs. This may ultimately place an unfair burden on Indigenous communities and has the potential to fail and consequently discredit the Indigenous participants, not the funding party.

Given the large proportion of communities obligated to provide labour and other resources, it is not surprising that 61% of respondents reported that their local CDEP scheme is involved in activities for the SRA. A further 29% reported no CDEP involvement and 10% of the respondents didn't know if the CDEP were involved in the SRA.

Of note is the very low number of respondents who reported that the federal government agreed under the SRA to increase CDEP places in the community. Only three communities indicated a government commitment to increase places,

combined with other obligations. As noted in last year's *Social Justice Report*, it is important that if an SRA requires CDEP labour from the community, this should be negotiated so that the SRA does not result in the re-allocation of necessary places away from existing activities, rather than resulting in the provision of additional SRA CDEP places.[55]

• Monitoring process for the SRA

To ensure obligations are being met by all parties, monitoring and evaluation is crucial to the SRA process. Nearly all of the respondents reported some form of monitoring of the SRA, with a small number of nil responses, or respondents unsure about the exact process. On the whole, most respondents appear satisfied with the processes in place.

Almost a third of the respondents specifically reported that their local Indigenous Coordination Centre (ICC) is involved in the monitoring and evaluation of the SRA. Once again, most descriptions of their role was favourable although one community did express concern, describing their monitoring process as:

> … to be hounded by the ICC Broker to spend the money and only in a particular way or process. Our organisation had to carry all the administration costs as well - no provision for that by the ICC broker or the SRA.

However, most of the monitoring processes in place did not appear to be too onerous on the community. Many communities seem to have incorporated monitoring and reporting into existing meetings or providing data and documentation that should be readily accessible. Other examples of monitoring processes included:

- monthly steering committee meetings;
- council and community meetings included discussion and monitoring of the SRA;
- quarterly or monthly progress reports on project, often completed by the community project worker;
- provision of photos documenting work completed;
- provision of financial records related to the project;
- provision of statistics, for instance, about the number of participants in a project or any improvements against agreed performance indicators;
- participant satisfaction surveys; and
- consultations and interviews with relevant staff working on the project.

• The negotiation process for the SRA

SRAs are a new way for government to engage with Indigenous communities about their needs. In last year's report I set out guidelines for agreement making that incorporates the free, prior and informed consent of communities.[56] This year, through the national survey, I have been able to examine how communities feel

55 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney 2005, p142.

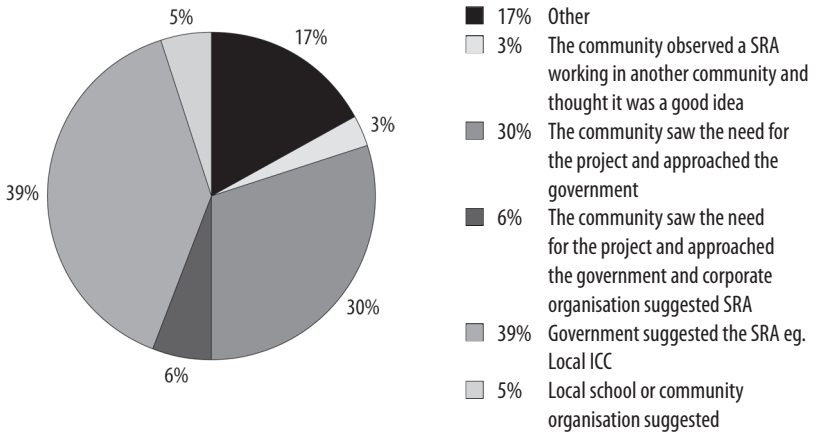
56 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC, Sydney 2005, p142.

the negotiation process is working for them, and in turn how it upholds these key human rights principles.

When asked why communities decided to negotiate an SRA most indicated a particular community need or service delivery gap that they thought could be addressed by the SRA. It is noted that five respondents (8% of the sample) stated that they entered into the SRA negotiations as they felt they had no other alternative to access much needed funding.

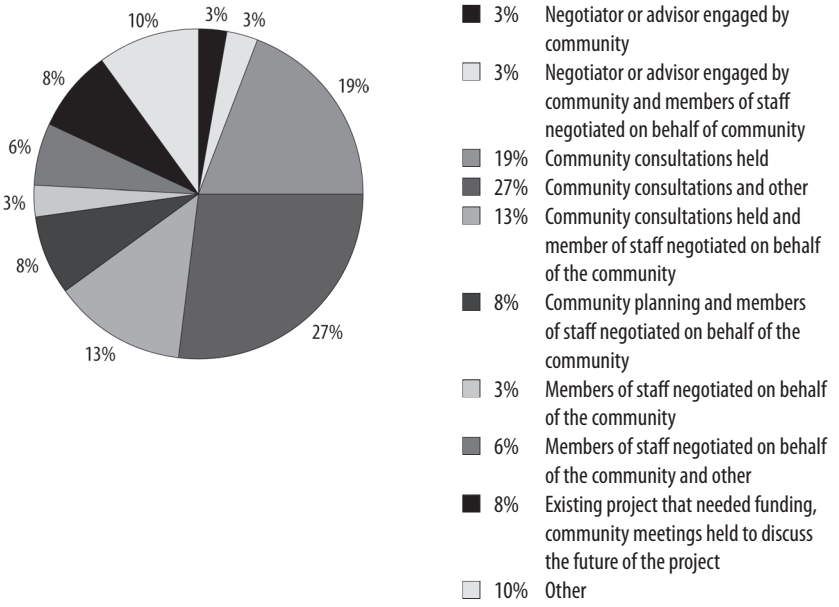
In the survey I was interested in how the SRA negotiation process was initiated and progressed. As illustrated in **Graph 7** below, 39% of respondents indicated that the government, usually through the local ICC, approached the community and suggested the SRA. The next most frequent initiation process was by the community identifying a need itself and then approaching government (30%).

Graph 7: Who suggested the SRA?



Once the SRA had been suggested, **Graph 8** shows that 19% of the respondents reported that community consultations were undertaken in preparation for the negotiation process. Community consultations were used to help prepare the community negotiators for the SRA negotiation and to discuss the content of the SRA and the obligations on the community. A further 27% of respondents stated that community consultations were held in combination with another method of preparation, such as community planning or engaging a negotiator. The exclusive use of professional negotiators or advisors occurred in a small number of reported SRAs (3%). Communities were much more likely to utilise members of staff from their organisation to negotiate on behalf of the community, in conjunction with community consultation or community planning processes or negotiators, totalling 33% of all respondents.

Graph 8: How did the community prepare to make the SRA?

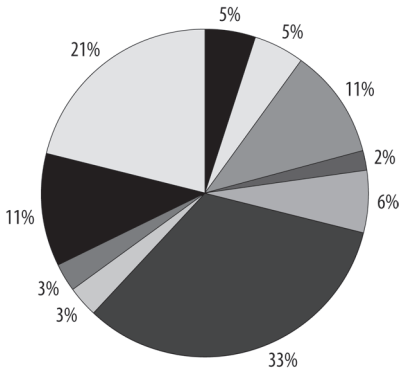


In recognition of the possible complexities and barriers impacting on effective negotiation, the survey also asked participants about any assistance they received from government to facilitate the process. **Graph 9** illustrates these results.

The local ICC seems to have been most instrumental, with 33% of the respondents reporting that a staff member from the local ICC assisted in writing a community plan, with a further 3% providing resources as well. Respondents identified that a Solution Broker from the local ICC was used in 5% of cases. Solution brokers from the ICC, in addition to other support/ specialist consultant from the ICC were used in 16% of the cases reported. These results suggest that there is not an understanding of the concept of 'solution brokers' among Indigenous communities, as in most instances 'a staff member from the local ICC' will be a solution broker.

11% of the communities surveyed stated that they received no assistance to facilitate the SRA. Through a correlation of answers, it is clear that communities that received no assistance were more likely to be dissatisfied with the SRA process overall.

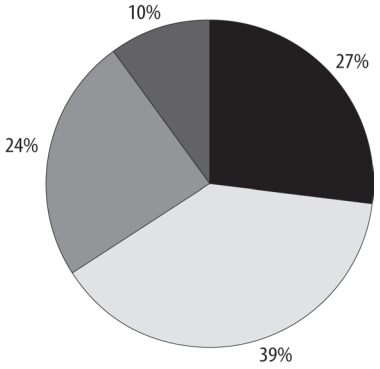
Graph 9: What assistance was provided to negotiate the SRA?



- 5% Solution broker from ICC
- 5% Solution broker from ICC and specialist consultant from ICC
- 11% Solution broker and other support
- 2% Specialist consultant from ICC
- 6% Specialist consultant from ICC and other support
- 33% Staff member from local ICC helped write a community plan
- 3% Staff member from local ICC helped write a community plan and resources provided
- 3% Resources provided
- 11% No assistance
- 21% Other

The federal government designed SRAs seems to be a responsive, flexible way for Indigenous communities to access government assistance. They aim to cut down 'red tape' and therefore should occur in a timely manner. **Graph 10** shows that 10 % took less than 1 month, 27% took up to 3 months to negotiate, 39% took 3-6 months and 24% took 6-12 months. Notably, one respondent indicates that the process has 'gone on for 18 months and there is still no sign off'.

Graph 10: How long did the negotiations for the SRA take?

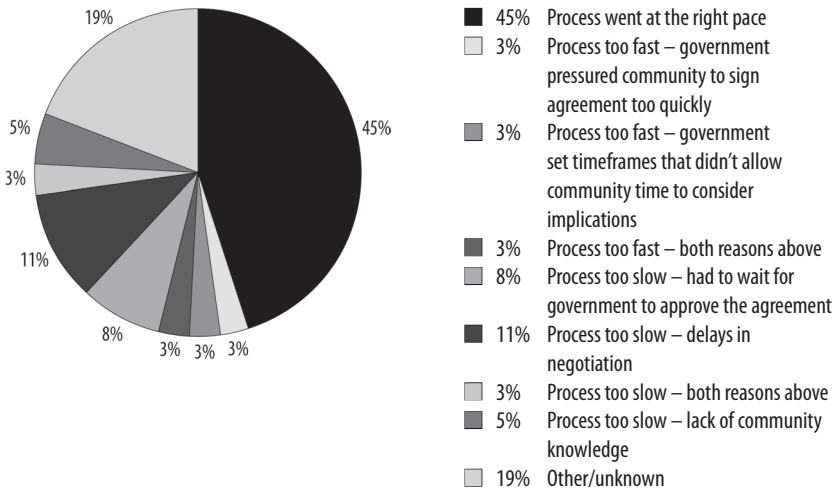


- 27% 1-3 months
- 39% 3-6 months
- 24% 6-12 months
- 10% less than 1 month

While the amount of time spent negotiating the SRA is one indicator of efficient processes, another significant consideration is whether the community considered the negotiation timeline appropriate. If the process is too slow there can be frustration that can ultimately undermine the relationship between an Indigenous community and government. Conversely, if the process moves too quickly, a community may be unable to consider the full implications of the SRA, compromising their free, prior and informed consent to the SRA. The measure of efficiency must then be once the community has signed off on the SRA and the time it takes for the delegate to consider, approve and release funds.

Graph 11 shows community perceptions of the timeline for negotiating the SRA. 45% of the communities felt that the process went at the right pace for them. 27% felt the process was too slow; either as the community was ready to finalise the agreement but had to wait for the government to approve the agreement; there were delays during the negotiation process which meant that the agreement took longer than it should have; there was a lack of community knowledge; or a combination of all these factors. 9% of the respondents found the process too fast and felt either that the government had pressured the community to finalise and sign the agreement too quickly; that the government had set timeframes that did not allow enough time for the community to consider the implications of the proposed obligations; or both.

Graph 11: Was the timeline appropriate for negotiating the SRA?

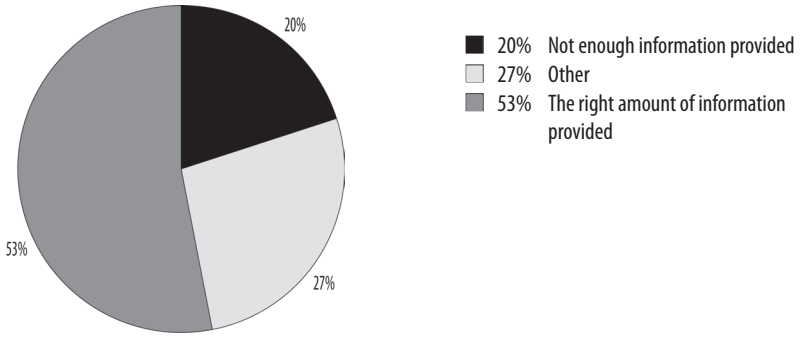


In order to ascertain whether the free, prior and informed consent of Indigenous communities was sought, the survey asked about the amount of information provided to the community during the SRA negotiation process. **Graph 12** shows that 53% of communities felt that they had received the right amount of information about SRAs; this is a disturbingly low figure for this question.

20% of the respondents didn't feel the community had enough information. For instance, one community specifically stated, 'All we knew was it was a funding grant, it only became apparent later that it was a SRA when they came visiting to monitor the activities'. This statement implies that the community was not aware of their respective obligations under the SRA until ICC staff visited to monitor the activities. 27% of respondents responded 'other', many of who acknowledged that the SRA process was new and not enough was really known by both sides at that juncture.

Some respondents commented that information needs to be in a more accessible format. This sentiment was echoed by the 6% of respondents who thought that too much information was provided about SRAs.

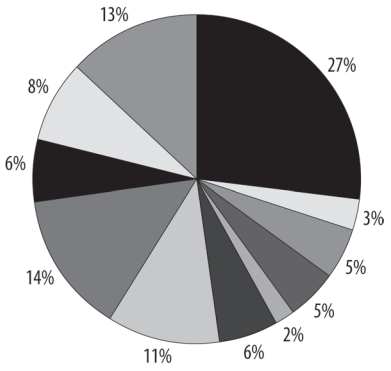
Graph 12: Was the right amount of information provided?



Relating again to free, prior, informed consent, the survey asked how approval was sought for the SRA and how community members were informed of their obligations. **Graph 13** below shows the results. The community board/ council approved 27% of the SRAs in the survey sample, and were involved in a further 27% of approvals, combined with approval from the CEO and/ or Chairperson, or a community meeting.

Significantly, 8% of the respondents reported no approval from the community. Two of the SRAs which did not receive community approval appear to have been negotiated by non Indigenous organisations. The survey does not, however, enable us to determine the quality of the consultation process leading to approval. In one reported case where a non-Indigenous organisation appeared to have negotiated the SRA, the only form of consultation reported was a morning tea to go through the SRA with stakeholders so that they could approve and sign the document.

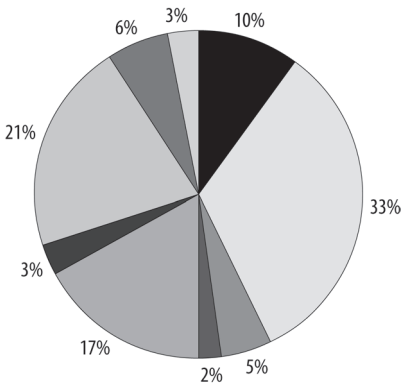
Graph 13: How was the SRA approved?



- 27% Board/Council
- 3% Board/Council and CEO
- 5% Board/Council, CEO and Chairperson
- 5% Board/Council and Chairperson
- 2% CEO
- 6% Chairperson
- 11% Community meeting
- 14% Community meeting and Board/ Council
- 6% Community meeting and other
- 8% No approval sought
- 13% Other

Multiple methods have been used to inform community members of their obligations under the SRA, as shown in **Graph 14**. The most popular (33%) was a community meeting, combined with some other method such as displaying a copy of the SRA in the community centre, providing a copy to community members or providing information at board or council meetings.

Graph 14: What has been done to inform the community of their obligations?



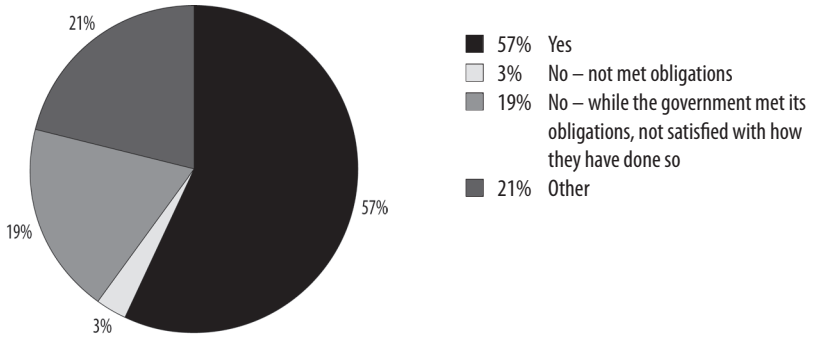
- 10% Community meeting
- 33% Community meeting and other methods
- 5% A copy given to all community members
- 2% Copy displayed in community centre
- 17% Copy displayed in community centre and other
- 3% Information provided at Board/Council meeting
- 21% Other
- 6% Progress of the SRA discussed at monthly community meetings
- 3% Progress discussed at monthly community meetings and information at Board/Council meeting

• Delivery of commitments and community satisfaction with the SRA process

One indicator of general community satisfaction was whether or not the federal government had met its obligations under the SRA. **Graph 15** shows 57% of communities reported that they were satisfied with how the government had met its obligations. Only 3% reported that the government had not met its obligations, but 19% reported that while the government had met its obligations, they were not satisfied with how they had done so. That nearly one quarter of respondents were unhappy with the nature of how government met its obligations is of significant concern.

When asked to explain their answer, very few respondents with positive feedback provided explanation. Those with less positive perceptions cited issues around lack of recurrent funding; unreasonable reporting and administration requirements; inflexibility once the SRA is signed off; lack of ongoing government support to make the SRA work and an unequal relationship between communities and government, with communities facing a heavier burden of obligation under the SRA than government stakeholders.

Graph 15: Are you satisfied with how the government has met its obligations?



Communities were also asked to identify and rate the three main positive impacts of SRAs on their relationship with the federal government. All but five of the survey respondents were able to identify some positive impact on the relationship. Common themes in the responses were:

- greater accountability of government to the community;
- local and accessible staff to assist the community from the ICC;
- greater awareness of government functions, relevant policies and programs;
- better communication between government and communities;
- greater understanding of the SRA process;

- more consultation; and
- improved linkages with other government departments.

When asked about the three main negative impacts on their relationship with the federal government, almost 70% of the respondents did not list any issues, implying that the majority of survey respondents ultimately saw the SRA process as having either no effect, or a positive effect on their existing relationship with the federal government.

Of those 30% that did report that the SRA had a negative impact on their relationship with the federal government, issues were raised around:

- Unclear expectations, according to two respondents, governments 'keep moving the goal posts' and therefore it is difficult for communities to understand and fulfil their obligations under the SRA.
- Lack of flexibility in the relationship between the community and the government. This was commented on by three respondents who noted that when circumstances necessitated that the SRA change, the government was unwilling to do so. For example, in one SRA the community had agreed to renovate an old building to be converted for use as a school. Once the agreement had been signed, it was found that the building would require repairs far beyond the capacity of the community and as agreed upon in the SRA. No additional funding was supplied to the project and the organisation was then required to 'pick up the pieces' and find the additional funds for the project to go ahead.
- Lack of cultural awareness and the unique needs of each community, or as one community described government practice, 'putting everyone in the same category'.
- Lack of recurrent funding impacting on the sustainability of project.
- Perception that a failure to enter into an SRA may jeopardise other funding applications.
- A perceived condescending attitude of government.

All but three communities were able to identify positive impacts on the community resulting from the SRA. Most were outcomes related to the actual SRA, ranging from modest impacts such as children being able to play basketball to increases in school support and retention, better access to nutritious food and reductions in juvenile offending. Some respondents also noted an increase in community pride and cohesion and a sense of ownership of the SRA. One community reported 'confidence in the government post ATSIC' and another suggested the process has encouraged them to undertake another SRA.

Some communities saw SRAs as a way to increase accountability, with one community stating:

> The SRA is a fantastic tool to develop a range of 'tied outcomes', not only for the Indigenous community/organisation but also for the other stakeholders such as federal departments, state and territory agencies and other stakeholders.

Other communities felt that the SRA was a good concept that could work, but had concerns about the implementation. For instance:

> The idea of SRAs is good but it has to be done properly. It has to help the community to have sole commitment to make sure that their part of the deal is done properly. If only there is enough money (because) this is the best way to in which the community can learn to stand on their own feet.

50% of the respondents reported some negative impacts as a result of entering into the SRA. The most common concern was the short term nature of the funding effecting the sustainability of projects and creating, according to one respondent, 'false hope'. One community in particular notes that if a SRA fails:

> … it effects other programs. They become very disappointed about everything…It is hard to start another project because the trust and the faith in doing something are not there anymore.

Particularly in remote areas, there was a perception among communities that support needed to be in place for 'at least three years' to yield any positive change. One respondent stated that:

> My concern is that SRAs are often short term fixes or band aid solutions. What most organisations need is reliable, ongoing and viable funding to enable forward planning to take place in projects to assist Indigenous communities.

Another common theme was under funding and under resourcing, with communities either needing to make up the short fall or reduce the scope and expectations of the SRA project. One example of this relates to a SRA for a swimming pool where the funding did not take into account the additional power costs and required staffing levels to operate the swimming pool. As a result, the community did not have adequate resources to meet all the swimming pool costs from the SRA and was required to keep the swimming pool operational through other funds.

Similarly, another community noted that during the time that passed between negotiating the SRA and actually commencing the project, the costs involved had substantially increased and the short fall had to be made up by the community. As most communities do not have ready access to discretionary funds, there is potential to misuse funding provided for another purpose to prop up the SRA.

Other negative impacts included confusion in the community about the SRA, and the amount of time and resources spent on administration. One respondent sums up this perception, 'SRAs are very time consuming for not a lot of return'. Some communities suggested that this could be overcome through additional support to assist in meeting reporting commitments, or reducing the frequency of reporting.

There is also a sense among a small number of communities that the SRA was not actually addressing the cause of the issue. One respondent stated that the SRA:

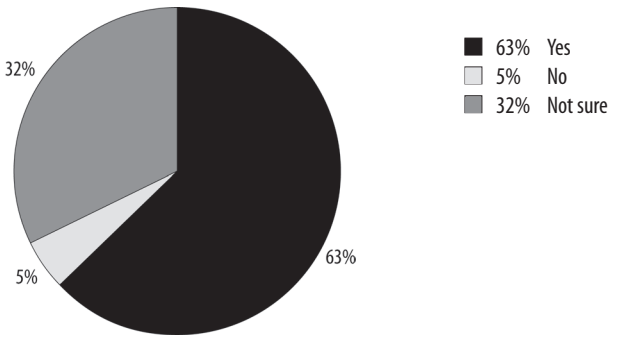
> … does not address the core issues - people raise their very real concerns, often pouring out their hearts, and think their views are being taken into account and then NOTHING (emphasis in the original).

In some ways, this may reveal more about community perceptions of SRAs and the lack of accurate information they have received about the scheme, than the actual SRA. Given that SRAs provide 'a discretional benefit in return for community obligations … (in) the form of extra services, capital or infrastructure *over and above*

essential services or basic entitlements'[57] it is unlikely that SRAs do in fact have the capacity to address complex, entrenched problems, at least in their current form. It is therefore imperative that government works with communities to properly inform them about reasonable expectations of the SRA scheme.

Finally, communities were asked whether they would enter into another SRA. **Graph 16** shows 63% stated they would, 5% would not and 32% were not sure.

Graph 16: Would you enter into another SRA?

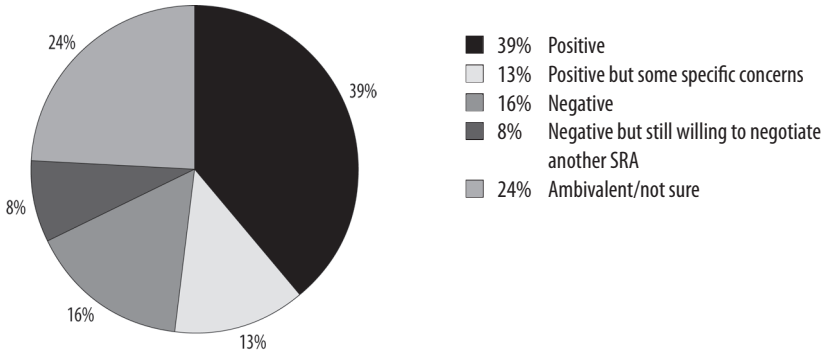


An analysis of quantitative and qualitative responses, looking at indicators of satisfaction such as any positive changes in the community, the relationship with the federal government, whether obligations have been met, whether the community would enter into another SRA and any other comments, is demonstrated below in **Graph 17**.

Accordingly, 39% of participants were generally positive about the SRA process. A further 13% were also positive but noted some significant areas of concern around the process or negotiation of community obligations. 16% were negative about the process and another 8 % also gave substantial negative feedback, but stated that they would probably enter into anther SRA. The remaining 24% were quite ambivalent about the process or there was not enough information in the survey response to categorise the feedback.

57 Australian Government, Australian Public Service Commission, Secretaries Group on Indigenous Affairs, *Bulletin 1- March 2005,* available online at: www.apsc.gov.au/indigenousemployment/bulletin0105.htm.

Graph 17: Overall feedback on the SRA?



• Lessons learnt from entering a SRA

In order for the SRA process to function it is important that communities are well resourced and have the capacity to negotiate an appropriate agreement. The survey asked respondents what communities or organisations need to successfully negotiate a SRA. While this varied across communities, commonly reported themes were:

- community input;
- community leadership;
- sufficient information about the SRA;
- good literacy skills;
- a professional/ skilled negotiator;
- sufficient time to consult and consider the implications;
- communication between the government and community;
- long term financial support to ensure the SRA project is viable;
- involvement of state and local government;
- a clear timeframe;
- outcomes that are realistic and can be measured;
- good management practices in the community/organisation, and
- experience with grant administration and financial accountability.

While the survey did not ask the respondents whether they in fact thought their community possessed these qualities, it is probably safe to assume that some capacity building and community development will need to take place if communities are to feel confident in negotiating SRAs.

Many of the respondents also noted how important a good, open relationship with the local ICC was in negotiating the SRA. Related to this, a few respondents called for greater 'backbone' for the ICC to make decisions rather than referring back to head office. However, it should be noted that financial delegation to ICC managers has increased in the past year which may partially address this in the future. There

was also a general concern that ICC staff needed to better understand community development principles to ensure that the SRA best addresses community advancement.

• Survey conclusions

The survey has provided valuable feedback about how SRAs are being negotiated and implemented in a wide range of communities across the nation. From the survey responses it appears that the majority are generally positive about the process and report improvements in the relationships with government. Many communities are enthusiastic about their ability to access flexible funding tied to their own initiatives and all parties should be commended for developing some innovative projects.

There are also valuable lessons to be learnt from the feedback provided in the survey. The quality of support, consultation and information is very important and could be improved. There were instances reported in the survey where no support was given to communities to negotiate the agreement and even more worrying, some communities report feeling rushed through the process with inadequate time to consider the full implications of the SRA. Communities need to give their free, prior and informed consent when they are negotiating these agreements. Support, consultation and accessible information are therefore imperative if this is to be achieved.

The effective participation of Indigenous communities in the negotiation process is not only important to achieve good outcomes, but is also an issue in human rights compliance. Those communities that report feeling rushed or ill informed may not have had the opportunity to give their full, prior and informed consent as required by human rights standards.

The role of the local ICCs has been generally praised by the respondents and seems to be working as an effective link between government and local Indigenous communities in this area of service delivery.

However, community confidence and satisfaction in the SRA process seems to be limited by the short term nature of the funding, the bureaucratic burden of additional paperwork, disproportionate accountability requirements, lack of flexibility once the agreement is signed and unrealistic expectations of the community party of the SRA.

Not all respondents had strong views, with the survey picking up on a significant degree of ambivalence towards the process. For these respondents, SRAs may seem to be just another government programme that may or may not assist them. Many were pragmatic, recognising that they had no real alternatives to access fund and were willing to utilise the scheme to the best advantage of their community.

A common theme among respondents is the need for communities to have significant capacity to consult with community members, strong leadership and governance, experience in management and administration and strong negotiating skills to gain a good, fair SRA. There seems to be considerable scope for further community development and capacity building (for community and ICC staff) to enable communities to make the most the SRA scheme and promote social justice for Indigenous communities.

Overall, the Survey results suggest that SRAs have the potential to create or improve relationships between the government and communities when they are done well. Done poorly or without adequate consultation, they have the potential to create disenchantment amongst the community that may prove difficult to shift in the future.

The potential benefits of SRAs can quickly dissipate, particularly where agreements relate to one off, short term projects and in the absence of ongoing interaction. SRAs can provide an entry point into genuine consultative processes at the community level – so long as the momentum and goodwill created in communities is acted upon in a timely manner and on a basis of mutual benefit and partnership.

Text Box 1: Selected quotes from survey respondents about SRAs

Positive impact on community relationship with the federal government

'Establishment of a positive professional relationship and networks with government departmental officers in several portfolios.'

'We see government officials more regularly.'

'Confidence in engagement with government post ATSIC.'

Positive outcomes from the SRA

'The children have enjoyed going to school because of the bikes and equipment.'

'Assisted with much needed accommodation.'

'Pride by the elders in the role they play.'

'Improved self esteem for local Indigenous people and the delivery of practical and relevant training developments programs which have resulted in real employment outcomes for members of the local Indigenous community.'

'Better health for community members.'

'A community response to solve issues in the community.'

Concerns about the SRA process

'SRAs are very time consuming for not very much reward.'

'The process of the SRAs has not been successfully explained. Key personnel deal with the bureaucracy and then have the task of explaining the process to communities. Not enough real education/promotional material available.'

'My concern is that SRAs are often quick fixes or band aid solutions. What most organisations need is reliable, ongoing and viable funding to enable forward planning to take place in projects to assist Indigenous communities.'

'I felt that the accountability should be proportionate to the amount of funds sought eg. Targets/reports/school visits etc for $10,000 seems over the top when schools have several small grants to manage.'

'Shared responsibility is only shared if both parties truly understand what they have negotiated. There is no way this has happened in this instance.'

Case studies of specific SRAs

This section contains the outcomes of three community consultations conducted in late 2006. My aim was to select three communities and organisations in which the SRAs reflect different subject matters and also to sample communities and organisations that represented different types of organisations and relative remoteness. The three case studies are:

- Girringun Aboriginal Corporation, Cardwell, Queensland;
- Cape Barren Island, Tasmania; and
- Baddagun Aboriginal Organisation, Innisfail, Far North Queensland.

The case studies provide a more detailed perspective on the specific challenges faced in negotiating an SRA from the perspective of Indigenous community organisations. They provide specific examples that complement the survey results. I anticipate that further case studies will be undertaken and reported in my 2007 Social Justice Report.

• Case Study 1: Girringun Aboriginal Corporation, Cardwell, Queensland

a) Background

This case study is based on interviews conducted with Mr Phil Rist, the CEO of Girringun Aboriginal Corporation.

Girringun Aboriginal Corporation, located in Cardwell, between Cairns and Townsville, is a community based organisation formed from nine cultural-linguistic groups (Bandjin, Djiru, Girramay, Gugu Badhun, Gulgnay, Jirrbal, Nywaigi, Waragamay and Warungnu) of that region, and representing the interests of the traditional owners of those groups.

Girringun entered into a SRA on 3 March 2005 with the Commonwealth Government through the Townsville ICC, and with the Queensland Government through the Department of Aboriginal and Torres Strait Islander Policy.

The SRA provided funding to enable the organisation to develop a corporate plan, to strengthen governance structures, provide a forum to negotiate with the different levels of government, and to develop a document that can be used as a community resource and which outlines a longer term vision for the community.

The SRA was also meant to enable Girringun to engage a project officer to develop the organisation's corporate plan. In this SRA, the Commonwealth provided $64,996, and the State Government provided in-kind support including training for a project officer to participate in a project steering committee.

Girringun works within a strong cultural context, and draws on this to develop innovative approaches to the many challenges its communities face. One such approach is based on outstations, which are community settlements on country. Phil Rist provided an idea as to how some of the many critical issues facing the community such as health, education and justice might be addressed by further involving these outstations:

> It's the fact that you're on country, contributing to the health of your country that contributes to your wellbeing. The outstation program, it could address this sort of thing, and make them feel good at the same time …. They're back on their country doing this stuff; but it's also a wellbeing thing, it's a health thing, and it's making them feel a lot better.

As with the other case studies, the SRA for Girringun was introduced into a context in which the organisation was already involved in negotiations with the Australian and Queensland governments for a range of issues. As Phil Rist recalled:

> … our SRA was for extensive consultation with the community to gauge what the community's concerns were regarding a whole range of issues: health, justice, education, the whole box and dice.

Prior to the introduction of the SRA, Girringun had already been participating in a 'negotiating table', which is a forum established to enable the community organisation to conduct ongoing discussions with government. As Phil Rist explained:

> Our SRA complemented the 'negotiating table'. In this context, we negotiated with the commonwealth about money for a corporate plan before the SRA was even mentioned. So we got the money, and that process was happening.

b) Positive aspects of the SRA

For Girringun, there was a positive aspect to the SRA in that it presented a good opportunity to facilitate community discussions, and the preparation of a community plan that dealt with a range of important issues:

> So in that document (the corporate plan), through the consultation process, within our crowd, we raised those issues, but we also looked at within the plan, hopefully, ways of addressing some of those issues. So on that aspect it was good, and yes I would go for another SRA …. We've got a document; we've gone through the community consultation, we've got a document that highlights their concerns, and possible ways of how we can address them. So from that sense it's been a success.

Another benefit of the SRA 'is that it informs the community negotiating table'. Phil Rist explained that: 'So we've done that; we've completed that. That particular SRA is finished. It continues to direct and inform the negotiating table as far as state agencies go. So although it's finished, it still has a life as far as directing where we go with the whole thing, you know'.

Although in principle the SRA had presented a useful opportunity to further focus the ongoing discussions, the CEO expressed some cynicism at the introduction of these kinds of agreements: 'Then all of a sudden, 'hey, I know what, why don't we make this a SRA!"

A similar view had been put by other communities and organisations regarding their perspectives on SRAs. There was a sense in which the SRA is regarded by Girringun as an opportunistic device introduced by government to promote its own achievements in Indigenous affairs:

> So there was already that process, which had been going for two or three months at the time. And to be honest, that SRA could not have happened at all, because we were going to achieve it (the corporate plan); we were going to have a document

> anyway, whether we signed off on this SRA or not. I think this was just a way of the government saying 'we've got another SRA; we've signed an SRA with Girringun'. It was going to happen anyway.

This cynicism was supported by the fact that for Girringun, the SRA to develop its community plan was not an initiative from the community. As Phil Rist explained: 'Government came to us'. This in itself was not necessarily a problem, especially in the vacuum left by the loss of ATSIC, and as long as the opportunity presented by an SRA could be effectively harnessed by Girringun in order to meet its own goals. Phil Rist elaborated:

> With the demise of ATSIC, a lot of us in the community thought this might not be a bad thing. They've taken away our entitlements, our government structures; they've taken away our national voice. This might be an opportunity for us to get some direct funding into the organisation and some direct outcomes.

It was in this context that the Australian government seemed to be articulating views that were in accord with Girringun's own notion of how funding should be provided to Indigenous organisations:

> …the government were saying all the things we wanted to hear, 'oh, we want grass roots … so that money can easily flow to the grass roots mob, and where there's good governance structures in place, good accountability, and well functioning boards in place, that's where we want the money to go'. So all the rhetoric was there, and we thought, 'oh this is not too bad, might turn out to be alright after all'.

c) Concerns about the SRA

Despite this positive sounding 'rhetoric', in Phil Rist's view, Girringun nonetheless faced many problems in translating rhetoric into effective actions from the government: 'we're still waiting. We're a grass roots organisation, but we still struggle to find where the money is'.

A major concern expressed by Girringun, which was also found in discussions with other Aboriginal organisations for these case studies, is that the SRA process introduced into the community a sense that some real actions might be forthcoming from government to address the community problems.

As Phil Rist explained: 'What we do is raise peoples' expectations through this consultation process; so we've got to be careful how we manage that'. Yet these raised expectations also have the potential to bring about great disappointment and frustration:

> So if our mob have said 'we've talked about this, we've gone through this process, we thought we were going to get some outcome from this thing, but we're still none the better off, what the hell is going on here?
>
> And then that dissatisfaction starts to eat away at our mandate, for whatever reason. And then no longer have we got the mandate to negotiate on behalf of our mob, and it really becomes a problem.
>
> The government, to some degree, both the state and federal, have backed us into a corner … but they've also raised expectations with this SRA. So it really calls for a strategic approach on out part, how we sell that process to our mob, with the view of not raising expectations, maintaining our mandate, and trying to implement a process that will deliver some good outcomes for us.

The ways in which these unmet expectations were experienced by Girringun is illustrated by the establishment of the negotiating table. Phil Rist explained this point:

> I'll give you my view of what I thought the negotiating table was. The SRA with that document (the corporate plan) has achieved its goal. We've got a document there, so that's fine, and it's informed the negotiating. My idea of the negotiating table was that at the end of the day was that more resources were going to come to this sort of thing because we've jumped through the hoops of government monitoring; we've got a community or corporate plan. We've got a good board, we've got financial accountability; we've done all that sort of stuff. But we still struggle to attract funds for long term sustainability.

The problem for Girringun is that the SRA had provided funding and support for a negotiating forum for the community to discuss a range of issues of critical importance, and to develop a community or corporate plane based on these discussions. But there was inadequate scope within the SRA to provide follow up implementation and ways of addressing the issues raised during the negotiations and in the corporate plan:

> We've got the document, the corporate plan. It's raised issues. … What I thought would be an outcome of the negotiating table was the position at Girringun (to deal with education issues). We've highlighted the problem in the corporate plan; let's negotiate through the negotiating table about ways of fixing that. And what I thought was a way of fixing it was for a position based here at Girringun that would go and talk to education providers, and investigate ways of addressing that problem, and start to implement, start to initiate some of that stuff.

One of the major flaws, from Girringun's perspective, was that the SRA provided no for ongoing positions within the organisation. This meant that the Girringun has been unable to achieve its longer term goals, thus casting considerable doubt on the usefulness of the SRA process:

> But what we've got through the corporate plan, through the negotiating table is again, expectations. Well, we've come to a full stop, because they (government) say we can't employ someone to do it; and what we've got instead is already stretched personnel here trying to fulfil those expectations, and trying to look at implementing programs. So it's compounded the problem even further, and that's right across the board, whether it's education, whether it's health…

The negotiations to develop SRAs exposed many of the problems Indigenous people encounter in their dealings with government:

> In spite of all the problems out there – government keeps changing the goal posts … in spite of all that we still managed to progress, to go forward, with no uncertainty about positions here; uncertainty about whether they're going to be here next year.

This ad hoc nature of government relations with Girringun creates an uncertainty that impacts significantly on the latter's capacity to operate over the long term as a viable community organisation. Girringun operates on project based funding, which covers wages and on-costs, but does not provide for core funding for the organisation's long term economic sustainability:

> The way the government's dealt with it at the moment, with project based funding, we can put in for a project, but we get a person on board, and it's only for the life of that project, and that person's gone again.

A common problem for organisations such as Girrungun is that many members of the community of which it is a part feel alienated from government. As Phil Rist put it:

> But governments have got to remember that we're dealing with people – a lot of our people haven't got the basic understanding of the … I'm not saying that in a bad way … but it's a fact that a lot of our people don't have a basic understanding of government protocol.

This is an ongoing concern: 'That's the sort of stuff that we've got to be careful about, because we have been consulted to death, and there are no real outcomes'.

During the negotiations with government Girringun had argued for funding support for the ongoing economic and cultural sustainability of the organisation. Phil Rist said:

> One of the main things we said we wanted through the negotiating table was core funding for the long term sustainability of this organisation. The Plan is great; put that Plan on the table here. But if we don't address the long term sustainability of this organisation it's worth nothing…
>
> It's been a struggle at times to maintain the enthusiasm, commitment to the long term sustainability, to maintain (a) relationship with the ICC. But we have to maintain a relationship: what hope do we have if we start bagging them? … There's no point doing that. So it's really stretched the relationship at times. But we have to (maintain a relationship), we have to keep going. Because it's not in the best interests of everybody if we started bagging ICC staff; they're guided by guidelines and policies as well.

Although the SRA provided a useful avenue through which the ongoing negotiations with government could be focussed, there were some issues raised about the relative mandates of the community, and of the government when negotiating. Phil Rist explained that the government had indicated it had some concerns about the nature of Girringun's authority, or mandate for negotiating:

> Government always comes to us and says to us, when (Girringun's CEO and Chairman) walk into a room, we want to be comfortable with the fact that you blokes have the mandate from your mob, to talk to us at the negotiating table. And that's always one of their fundamental expectations of us as office bearers of this organisation.

In other words, the government had indicated that it thought Girringun's representatives at meetings did not have sufficient authority from the wider Aboriginal community of which it is a part, to participate in negotiations with government. This suggests a fundamental inequality in negotiating, which goes to the heart of prior informed consent issues. However, as Phil Rist elaborated, Girringun in turn, also had some concerns about the government's mandate:

> It's a problem, because they demand a mandate of us, but they themselves (government) don't have a mandate. We've managed to get together nine traditional owner groups, and elected a board that represents those nine groups, and speak

> with one voice. In some places you're flat out getting two families together. But here we have made a major achievement getting nine groups together.

Phil explained that there are some problems with the same ICC officers not attending meetings, and a lack of continuity:

> Surely, if the CEO and Chairman of our organisation can go to those meetings as decision makers on behalf of our mob, surely we can expect our equal from those organisations to do the same. What it tells our Board and our hierarchy is that – or it could be perceived as … they're (the government) not taking us seriously, if they just send a junior officer to deal with it.
>
> …in the light of what could be seen as lack of actions or outcomes, we still have to maintain our relationship with those officers.
>
> Girringun had its mandate questioned; which they (the Board? the Elders?) found ironic, when they (the government) themselves don't have the mandate.

The Girringun CEO made another observation about the unequal relations between the government and Girringun in terms of mandate and authority:

> Girringun operates over a huge area based on traditional boundaries that go into the Cairns region and into the Townsville region. When we get DATSIP (State Department of Aboriginal and Torres Strait Islander Policy) come along, and they're from the Townsville office, and we put a question to them, we say 'Mr DATSIP, how are you going to address this problem in our area to the north here?' (and DATSIP says) 'Oh, well, we're going to have to talk to Cairns DATSIP'.

Girringun's concern here is that the government officer from a specific regional office felt a need to obtain authority from another office before being able to make a decision, or to have the authority to voice an opinion; whereas Girringun already has the authority for its whole organisation and region. Phil Rist continued:

> So that is another problem; they're broken up into administrative boundaries, and the problems associated with that. They demand it (the mandate) of us, but they haven't got it themselves. And that's even with education, health, the whole lot.

There were also concerns at the lack of understanding about community and cultural matters by government. Girringun is under increasing pressure to conform more closely to the requirements of a white business entity, with little or no scope for integrating community or cultural matters into its operation. It used to be a place where Elders could meet around a campfire, and where they had felt a sense of place and belonging. As Phil Rist explained:

> We've got a fireplace at the back here, and very early in the piece when a lot of our Elders were still alive – there's a few left, but a lot of them have gone, and there's a fireplace at the back there, and it's there for a reason. They said to us here, said to me, 'we don't want this place to become another big white bureaucratic thing. We want to be able to come down here, and to sit down near that fire there, and smell that smoke come through it, feel that smoke there, so we know that this is still our place'. So that's a very symbolic thing, that fireplace; it's there, but it's never been lit for a long time. And we're kicking and screaming, trying to fight this government urge to make us another white bureaucratic system. We're being dragged further and further away from that campfire. And that fire's out; and now we're becoming this office –where's our human rights in that? And I don't know how we get that back; I don't know how we make government understand that. We can find a balance, but we have got to also give a bit. I know it is taxpayers' money.

d) Follow up by government

As with the other case studies, governments had not provided sufficient follow up of the SRA:

> It's sort of ad hoc. There was no structured follow up to it; there was no structured lead up to it. That's the way government is doing business now. They just get people to sign it: 'that's another SRA signed with people'.

Asked if Girringun would pursue a different approach in negotiating with government for another SRA, Phil Rist replied:

> … well, I would have a very clear direction going into one, with always the option of pulling out. We'd have to be very clear about what this SRA is going to achieve for us, how it's going to achieve it, and some clear product including implementation, a whole process. I think it would work; I think you can make it work.

Girringun's CEO expressed some frustration at the government priorities being directed to Cape York Peninsula:

> The government is looking at long term sustainability but they're focusing on Cape York. What about organisations outside the Cape?
>
> I don't have a problem with my brothers and sisters on the Cape. What I do have a problem with is that rural traditional owners are falling through the cracks, because they think we can access mainstream services. I know people in our communities who won't go to the doctor because it's not culturally appropriate. And they've got mens problems or womens issues; they die because its not culturally appropriate for them to access mainstream services.
>
> But there isn't a focus on rural traditional owners, because the common thinking is that they can access mainstream just like everybody else.

These comments echo those by Gerry Surha of Baddagun organisation in Innisfail (in case study 3 below). Similarly, that organisation seems caught in a situation in which there is a perceived priority given to Cape York Peninsula communities. For Girringun, location is thought to be a problem, as Cardwell is between two major centres, Townsville and Cairns, which impacts on the relative access the organisation has to services:

> We're remote. Townsville don't want us, so their services don't come up as far; Cairns don't want to come down. There's a high population of Aboriginal and Torres Strait Islander people living in this area here that aren't being serviced properly.

Phil Rist explained that this remoteness is one of the reasons Girringun has taken on a role in the region as a provider of services for the Aboriginal and Torres Strait Islander community. Phil Rist mentioned another project that Girringun is involved in which had some more positive features than the SRA process.

The example given is called the Cardwell Indigenous Ranger Unit (CIRU) project, which is aimed at developing a partnership between Girringun, the Great Barrier Reef Marine Park Authority (GRMPA), and Queensland Parks and Wildlife Service, for joint management in conservation and Indigenous heritage. The approach used for CIRU is called 'adaptive management': 'there's always a commitment by those agencies to get there … and we adapt as we go along'.

For this CIRU project: 'one of the good things about it is that the ownership is shared amongst us all; there's another reason why people are committed to that, is because we share ownership of it; it's not just Girringun, it's all of us'.

The problems in program and service delivery by governments in the region prompted Phil Rist to comment further on the role of Girringun. He suggested that this organisation is well placed for government to enter into negotiations with. He said that Girringun can play a key role, following the loss of ATSIC as a peak Indigenous organisation. As a regional, community based organisation with a good record in the region, he argued, Girringun presents a good opportunity for the government to invest in for the provision of services and other community based initiatives:

> There's a really good opportunity for the government to fill that void to some degree with the demise of ATSIC and regional councils. At the moment, who do they have if they want to talk to Traditional Owners? They might go to land councils. Apart from that, where do they go to? And there's no peak organisation at the moment. There's no structure in place where they can go. It's in their best interests as well to look at organisations like Girringun. Because they've got a problem, and staring them right in the face is a solution, a possible solution, but they're not prepared to invest in it, for the long term sustainability of the organisation that could fulfil that role. Girringun here, we're a land and sea centre, but we do so much else as well, for a huge geographical area. It makes very good sense to invest in that organisation, because in this particular area we are a point of contact, and we are grass roots. So it makes good sense to invest in an organisation, that's if you want us.

• Case Study 2: Cape Barren Island Aboriginal Association, Tasmania

Cape Barren Island Aboriginal Association is an organisation formed in 1972 representing the approximately 80 members of the Aboriginal community on the island. The Association is managed by an Aboriginal management committee.

Cape Barren Island Aboriginal Association negotiated 3 SRAs with the Australian Government, although only two of the SRAs were community based initiatives. One SRA was for 'economic sustainability growing from a stable and affordable power supply'; another was for a 'community wellbeing centre'; and the third, to address family violence.

Both the SRA for the community wellbeing centre, and the one to address family violence were signed on 2 June 2005. The former was with the Australian government, represented by the Departments of Health and Ageing, and Education, Science and Training, and the Office of Indigenous Policy Coordination (OIPC). The family violence SRA was agreed with the Australian Department of Immigration, Multicultural and Indigenous Affairs (now the Department of Immigration and Citizenship and whose relevant responsibilities have been transferred to the Department of Families, Communities and Indigenous Affairs), and the Tasmanian Department of Premier and Cabinet.

Sue Summers, the Administrator of the Association, provided detailed background to the three SRAs that were negotiated by this community. Other members of the community were also present and participated in the interviews.

a) Process for negotiating a SRA for power supply

Because of its remoteness, the cost of supplying electricity to Cape Barren Island is high. It is for this reason that the community had sought to obtain subsidised costs.[58] Despite ongoing discussions and negotiations over a considerable length of time, and with a wide range of stakeholders, the SRA for the power supply was not concluded, for reasons that Sue Summers explained in some detail.

The history of Cape Barren community's attempts to negotiate for a more affordable power supply go back some years, to the late 1990s or early 2000s. The existing power station, utilising a combination of diesel and wind, was built from infrastructure funding resulting from the 1991 *Aboriginal Deaths in Custody Report* recommendations:

> However, 'no recurrent funding was ever provided to maintain or run the power station. To this day it runs purely on what we can get in revenue from our customers. So we own the power station and we run it'.

Sue explained that when Tasmanian power was privatised in the mid-nineties, and split up into Hydro Tasmania and Aurora Energy, a Community Service Obligation Agreement (CSO) was drawn up for the islands of Bass Strait, 'but apparently this is the islands of the Bass Strait except Cape Barren'.

King and Flinders Islands, known collectively as the Bass Strait Islands (BSI), have an arrangement with the power supply authorities that enable them to receive power at subsidised costs. Electricity is supplied by Hydro Tasmania, using a combination of wind and diesel, while the business arm, Aurora Energy provides 'operational, distribution and retail services under contract to Hydro Tasmania'. Since 1998 the BSI have had subsidised electricity supplied to them under a CSO contract with the Tasmanian Government.[59] Sue Summers remarked on this: 'no one had questioned before why Cape Barren wasn't part of that CSO'.

When this question was put to the relevant authorities, the reply was that this was because responsibility for Aboriginal communities rested with the Commonwealth government (the CSO was with the Tasmanian State Government). The Commonwealth did, however, pursue discussions with Cape Barren Island community in regard to a Council of Australian Governments (COAG) trial site:

> That was the beginning: they came and they talked about COAG and about all the great things they were going to do, and a new way of doing business, and how levels of government were going to work together to provide really good outcomes for Aboriginal communities.

Sue Summers commented that 'I took it for somewhat of a test case as to how levels of government were going to work together to provide really good outcomes for Aboriginal communities'. It was thought that the COAG trial, and the then newly introduced SRAs might offer an opportunity for the Cape Barren Island Aboriginal community to work with governments to obtain a CSO in order to receive subsidised power. The Administrator explained the importance of obtaining subsidised costs for power to the community:

58 Tasmanian Department of Infrastructure, Energy and Resources, *Review of Electricity Arrangements on the Bass Strait Islands*, Discussion Paper, Working Group of Officials, September 2006, p14.

59 Tasmanian Department of Infrastructure, Energy and Resources, *Review of Electricity Arrangements on the Bass Strait Islands*, Discussion Paper, Working Group of Officials, September 2006, p14.

> Very early on in the piece, for all of the people that live here, the cost of providing energy to their household is probably something in the area of forty to fifty percent of their net income. That's because ... the power here only really provides for electric lights and appliances. You couldn't afford to use power for heating or for hot water.

While the idea of a SRA for affordable power seemed reasonable at first, as Sue Summers pointed out, '…it was later on that I realised, well, no, they're not going to come to the party on this because you can't have a SRA for essential services'.

The problem now was that both state and federal governments were saying that they did not have responsibility for providing recurring funding to the Cape Barren Island community for power generation:

> … it is conflict between the state and federal levels of government; where there is conflict, well, if your Shared Responsibility Agreement is not the right mechanism to bring into practice the COAG way of doing business, what is?

As with many Indigenous communities and organisations, Cape Barren had already been engaged in discussions with governments and others before the introduction of SRAs. Sue Summers explained:

> The timeframe with the Shared Responsibility Agreement in its various forms really wasn't that long. But there had been, over time, even before we started talking about SRAs, many community discussions with what was then ATSIC, and the senior management of what was then the National Community Housing and Infrastructure Program (CHIP), and community consultations with Hydro Tasmania and Aurora and all sorts of things; so there had been a lot of consultations.

The Administrator thought that one of the problems is that although there may be discussions at one level through the COAG process 'I'm sure that they are not filtering it down properly through either the federal or state bureaucracy'.

Although there had been lengthy discussions between the Cape Barren Island community, the electricity supply companies, the State Government, and the Australian Department of Families, Communities and Indigenous Affairs (FACSIA), eventually these failed to reach any agreement regarding power supply to the island. This was despite the community having provided some funding to support those negotiations. Overall, the Administrator felt that, through the community's experiences with SRAs 'I'm not sure they're necessary', she had the feeling that 'they've actually run their course'.

b) Negotiating a SRA for a Health and Wellbeing Centre

The community achieved more success negotiating a Shared Responsibility Agreement for a Health and Wellbeing Centre. This SRA was signed on 2 June 2005.

The community had funds it had acquired from the Office of Aboriginal and Torres Strait Islander Health (OATSIH), and some for an aged care program. For a long time, the Administrator explained, the community had wanted to develop an appropriate space where community health and wellbeing activities could take place. When SRAs were introduced, the community thought this might present an opportunity to work with a number of government departments, to move ahead with the health and wellbeing centre:

> What the idea was – having discovered that no way could I get these government departments to agree to put their money in together – then came Shared Responsibility Agreements. Let's have the State, the Feds, and everybody help us to use up this surplus, give us a bit more if we need it, to get up the building that would in fact be able to be used for the oldies, and for the councillors if they came in – a whole range of, if you like, social health and wellbeing stuff.

There were discussions and negotiations about coordinating government departments, and some additional offers of funding. However, the negotiations ran into some difficulties.

The community wanted to renovate an old building in order to develop the health and wellbeing centre, but had some difficulties reaching agreement with government departments in regard to the way this would proceed. Another problem occurred when the project was already at a relatively advanced stage. Work on the development of the centre was delayed because difficulties were experienced with regard to dealing with ATSIC over the assets that were held in the building. The community at that stage experienced very real frustration, as Sue Summers explained:

> It didn't really impact on the community, except that people were getting very anxious towards the end, (wondering) 'is this really going to happen?' We'd been talking about this Health and Wellbeing thing for quite a long time before, and even before we started… SRA was the way to go. Before that we couldn't get anybody to talk together about pooling their funds. And so again, this reinforced for me that idea that, alright, you know, the (commonwealth) government think tank comes up with an idea – this is a great way to do business: 'Let's sort out our own issues with the state, and how we spend what Aboriginal funding, and so on … but it wasn't really happening.

For Sue Summers, and the Cape Barren Island community generally, although there was much benefit in pursuing a SRA in order to develop an idea that had arisen from the community, there were many hurdles in actually bringing this about, and working with governments.

> With the Health and Wellbeing stuff, that was the stupidest thing. The community had a really good idea. It was going to be something that was of value to the whole community. It was going to save money for governments at all levels. And right at the eleventh hour, the federal government departments decide to start arguing among each other about petty things like 'It's our house (the building that the community wanted to redevelop), you can't use it for that; you cant use OATSIH money to do up our old ATSIC place'.

c) The Family Violence SRA

The third SRA that the Cape Barren Island community signed was the only one of the three that had not been negotiated as a community based initiative.

The impetus for a SRA to deal with family violence grew out of a COAG trial within North Eastern Tasmania that commenced during the latter part of 2003 and into 2004. In a parallel development, the Tasmanian Government, through the Department of Justice, was initiating a program called *Safe at Home*, as a series of measures aimed at supporting the *Family Violence Act 2004*. Sue Summers explained

that there was a sum of $140,000 allocated to address family violence, which was 'part of these elusive pooled funds from the COAG trials'.

However, according to Ms Summers and other community members, this was an inappropriate allocation of funding, because Cape Barren Island community does not have problems with family violence (although it would no doubt benefit from preventative measures); and also because the idea for this SRA was not initiated by the community. As Sue Summers put it:

> It's a waste of the taxpayers' money to put $140,000 into a community – and we only got it during this year in the finish, and we are now being harassed to spend it before the end of the financial year, and we are trying to find meaningful ways of spending that money, that relate to the COAG Family Violence trials.

There was a concern that the wider community may have developed an adverse and incorrect image of the Cape Barren Island Aboriginal community:

> This was all going to be to reduce the level of family violence; we kept saying, you can't reduce what isn't really there. And we said 'let's say that we're going to develop programs that address the underlying causes of …. What we didn't want was to have on anybody's website, or publicly, or in the Social Justice Commissioner's report, that gives the impression that Cape Barren Island was absolutely awash in all sorts of drugs, alcohol and violence.

As another community member said:

> We're stuck in the middle of this. The SRA came along and it has nothing to do with what we're about. We've always been vulnerable. It's just another mechanism to keep us suppressed.

• Case Study 3: Baddagun Aboriginal Organisation, Innisfail, Far North Queensland

a) Background

This case study is based on interviews with Mr Gerry Surha, the CEO of Baddagun Aboriginal Organisation at Innisfail in far North Queensland. Baddagun is a small family owned and operated Aboriginal organisation, with five members involved in the business.

Baddagun was established in 2002 to provide business and training opportunities for the community, especially young people, and to promote cultural activities, including dance and other cultural performances. The Baddagun Performers perform at Paronella Park, a tourism operation a few kilometres north of Innisfail town. The Performers are seven people, drawn mainly from the Jirrnul/Ma:Mu group: 'they're doing all right; that's seven young people that are not sitting around at home and don't smoke'.

The Baddagun Aboriginal Organisation entered into a SRA with the Cairns Indigenous Coordination Centre (ICC) on 9 May 2005. The purpose of the SRA was to provide funding to upgrade community facilities for cultural performances; a bus to transport performers, and a project manager. The organisation also obtained funding from the ICC for some printing machines to print designs on canvas and

other materials, as part of its goal of establishing itself as a viable Aboriginal business and cultural organisation.

The community in which Baddagun operates is based predominantly on Ma:Mu/ Jirribul and Yidintji language groups, as with many Aboriginal communities, suffers from lack of opportunities, drug and alcohol abuse, crime and low self esteem. Gerry explained:

> We have these issues too with our own people. We have to get off from keeping our people in that safety zone (of dependency). Because that safety zone entails money from my bank. Bottom line, straight to the point: we're all coming from hardship, drugs and alcohol. My people are dying every day. But we have to put our hands up now, and a lot of people don't like that… because the future is not having that safety net all the time for my countrymen.

In Gerry Surha's view it had been hoped that the SRA might provide an opportunity for Baddagun to address some of these difficult community social problems.

When interviewed, Gerry Surha had quite a negative view about the SRAs. In part this was because the cyclone that hit Innisfail in March 2006 had had a devastating impact on not only the entire community, but also on Baddagun.

b) Process in negotiating the SRA

For the SRA that provided a community bus for Baddagun, Gerry explained that his organisation had been approached by an officer from the Cairns ICC to commence the negotiations that led to the agreement. This is the case in many SRAs: there was a pre-existing level of engagement between individuals in the ICC, who had perhaps been in ATSIC previously, and who had built up a long term relationship with Aboriginal communities, and members of the Aboriginal community.

In the discussions between Baddagun and the ICC, Gerry explained, there were some concerns about the SRA guidelines, and a perceived lack of fit between those guidelines and the requirements of the community. Gerry expressed frustration at the overall involvement from the ICC, commenting that the SRA was 'just a cover for the government to say 'look, we're doing this for the community', whereas 'behind the scenes, it's not the real thing … because they don't follow up on anything'.

The comments by Baddagun about a lack of follow-up from government perhaps reflect a common concern among many Aboriginal communities and organisations that have entered into SRAs, that these agreements had raised expectations within the community, including longer term aspirations, which in the end are unfulfilled. The SRA with Baddagun resulted only in the government providing the community bus. The organisation had also sought capital for infrastructure, and for ongoing funds to operate the business, but was unsuccessful. According to Gerry Surha, 'they (government) came up with the bus, and that was basically it'.

There were also some positive aspects about the SRA. The introduction of these kinds of agreements presented an opportunity for the Aboriginal community to negotiate directly with individuals from the government, as Gerry explained:

> …. you could speak one on one, you know, in regards to what your family group or the individual wanted to do. In that regard, to a lot of us in the community, that was a breakthrough – dealing with individuals. You're talking directly with that person. That was one of the good things about it, because you didn't have

to get permission from the community, because no-one agrees anymore in the community; there are all different factions: same as this one – there's six different family groups.

c) Negative aspects of the SRA

Baddagun's experience generally with SRAs was negative. Gerry Surha felt that the process took too long. The negotiations were difficult and lengthy, and the organisation had some doubts about it succeeding. A very real problem is that once the equipment (the bus, and subsequently the printing machines) has been successfully agreed to and acquired by the organisation, there was then no possibility of trading it or selling it, should the community no longer require it or be able to use it. The SRAs, according to Gerry, had a caveat stating that the equipment cannot be used as assets: 'What is the use of giving it to us and putting a caveat on it: you can't use it as assets'.

Gerry Surha had many concerns about the nature of engagement with the ICC in Cairns. The lack of information provided by the government about SRAs is 'pretty horrific'. He thought there are insufficient Aboriginal people employed in the government agencies, who have the 'knowledge to give us feedback, updates and basic information'. There was a lack of incentives for Aboriginal people, especially young people, to work in the ICC and its predecessor ATSIC, 'because there's too much crap going on; young people say we want a job that's 'real', where we know we can be looked after'.

In Gerry's view, the government's dealings with the community had caused some frustration: 'You ring Canberra and ask for information, and they say 'go through the Regional Office''. He said 'they say they have a capacity to do a number of things, but they're limited in what they can deliver in regards to what they say they can do for you. So they contradict themselves. You've got to chase them up all the time'. This is particularly a problem for the Elders, as Gerry said, 'you know, they're shy, they won't deal with them (the government)'.

There was a greater need for the government to 'sit down and talk with the grass roots people and see what they want'. Aboriginal people are seeking opportunities; including running their own businesses, which in turn can provide employment opportunities for the community. A lot of young Aboriginal people are leaving rural areas such as Innisfail for the cities in search of employment. Gerry Surha thought that the government should provide incentive schemes to attract young people.

A real frustration for Baddagun is that because it is operated as a business organisation, rather than as a not for profit, it is not eligible for funding under certain government defined social program categories. Yet it also misses out on funding under economic programs, because it does not have the ongoing income required to be eligible under that scheme. This raises a problem in that the funding and projects available through the SRA for Baddagun is short term, and very limited in what it provides, so ongoing, long term funding is difficult to access: 'you're stuck in between again'.

After cyclone Larry, Baddagun was in a particularly precarious situation in regard to its capacity to operate as a viable business organisation. It had received no funding from post-cyclone recovery sources, to enable it to re-establish itself following

the devastation from the cyclone. This created a difficult context in which to seek funding from government to facilitate its day to day, and longer term goals.

Gerry Surha commented on problems with the government funding that is provided generally for Aboriginal community programs and projects, and on the government's poor coordination of them. For the SRA, the levels of funding were not agreed to as a result of equitable negotiating processes. Although Baddagun had submitted a budget for the project, ultimately it was the government that then decided on the amount that would be provided. Government support for Baddagun has been problematic, with only partial or inadequate funding. Baddagun needs sufficient funding to enable it to become established as a viable business entity – an outcome that could take some years to achieve.

Gerry Surha thought that much of the government funding goes to the wrong projects: 'a lot of those have crashed already'. He said the way that programs and projects had been funded by the government has the potential to cause division in the community: 'we get the feeling that what this is going to create is a division between black and white communities again'. He elaborated:

> We're feeling alienated, that because we're black, we're not going to get that help; and then for all the white fellas in the community they're feeling pissed off because a lot of the money that the tax payers dollars are going into goes down the streets, are white elephants, and that's the community programs. There are some good community programs that are really honest, and keep their books up to scratch; but there's a lot out there that the government needs to pull the whip out and take people to court.

Baddagun had experienced many problems not only with funding from government, but also with lack of coordination by the ICC. Gerry Surha felt that the ICC should have worked more closely with the CDEP 'to get a better deal with us'. He expressed his disappointment at this, as he thought that it should have been the ICC's responsibility to coordinate the funding from different government departments and agencies. He explained his frustrations:

> They're (the ICC) supposed to coordinate that, but they're not good at coordination, because I personally coordinated everyone else – DEWR, CDEP, etc. That's their job; it's a huge job, and so much pressure; I'm really worn out now. Because the cyclone hit, we had a big clean up job, we've got no income coming in now. With the bus, we can't hire it out, trade it, up-grade it. It's only 16 months old, but what will we do with it? It costs that much in fuel, insurance, to register: the tyres alone…
>
> 'I mean, we don't know the workings of government; that's what the ICC is there for, to help us put together the deal. Why is it called the ICC? It should have been called something else. I don't think that name is appropriate'.

Gerry outlined what he perceived to be additional problems in the ICC, stating that that organisation 'has a lot of influence over other organisations' (such as housing). He thought the ICC should be more focused on its core task of coordinating, and his frustration was in the fact that he felt he had to do a lot of the coordinating work that the ICC should have been doing.

An important issue concerns the need to have Indigenous people working in the ICC who understand the community:

> You only talk to white fellas now (who) only see you as numbers – there's no looking beyond that. The numbers, to keep their jobs. The government has to put their thinking cap on and start listening, because you have to look beyond numbers.

Another concern was about the lack of real training and long term goals in SRA projects. Gerry Surha said '99% of the people that are part of these projects will come out of these projects in twelve months time, and be lined up at the dock here'. He elaborated:

> And you ask them what they've done, and they'll say 'oh, we planted a tree'. But what did you learn about that tree when you planted it? What was the name of that tree? What process did you use? The learning capacity has been taken out of the projects through lack of information, communication and supervision.

d) Follow-up by government

A theme common to all the case studies is the inadequate follow up by government departments following the signing of a SRA. While Baddagun engaged a voluntary project manager under the auspices of the SRA, the government did not follow up on outcomes and progress.

Gerry Surha explained: 'when the project manager finished, DEWR changed its rules and regulations; we only got money for the bus'. Baddagun had quite a lot to say about the lack of follow up by government: 'our predicament is twofold, because we're not a community organisation, so there's less chance that they're going to follow up, because we're a business'.

Baddagun is focused on creating the potential for individuals within the community, especially young people so that they are able to gain skills, training and employment opportunities. In Gerry Surha's view there was a strong sense that funding had been misdirected under ATSIC, and since, with money going to organisations and individuals who were not progressing the projects and programs for which they had received the funding. He felt that government should instead be funding 'people who are genuine'. As he explained:

> A lot of people think they're just going to get handouts, and get their business going … There is a need to look at people who are genuine. As you know, as we all know in the community, there were a lot of businesses set up under ATSIC that were totally dependent on handouts.

Baddagun aims to earn its own money:

> For that to happen it (government) has to address all the issues now that we're talking about, SRAs, …. Lack of information, lack of consultation. They need to talk to the real people on the ground; specifically targeting the people in the communities that are proactive, not talk to the people that are sitting on the riverbank drinking all the time..

There are also some issues about the geographical locations of communities and organisations in which SRAs have been signed, and which organisations and communities engage with government in regard to the SRAs. Gerry explained that

Baddagun had been rated a low priority, in contrast to Cape York Peninsula: 'We keep getting told (by DEWR and others) that the Cape's a priority'.

Baddagun's experience mirrors that of others, and suggests that the SRAs are limited in terms of their capacity to provide real, long term funding, capital and opportunities. The SRAs are, in this view, 'short-sighted'. Gerry Surha explained:

> Our frustration with the SRAs is that the amount of money that they (government) continually put into the same community organisations for programs that are continually going nowhere. It's just another ATSIC in some respects. Because those programs – they only go about six months; blackfellas aren't going to get any work out of it. They need to close it up and look at something else.

• Shared Responsibility Agreements – some common elements

The case studies vividly illustrate in practical terms the benefits and problems that are being encountered through SRAs. They reflect a number of similar concerns and issues. For example, they reveal a preparedness for Indigenous communities to engage with the government to address longstanding concerns at the community level. The direct engagement of the SRA model, free of intermediaries, offers much potential to improve the reach and outcomes of government programs and services.

This is, however, a double edged sword. It means that when communities engage in the SRA process they have high expectations about what will be achieved. Having been listened to, communities expect government to act and to do so in a sustained manner, not just as a one off. The risk of the SRA process is that it will raise expectations that the government has no intention of ever meeting, leaving communities frustrated and potentially feeling disempowered.

Community perspectives on what their SRA was about also suggest that Indigenous communities view their circumstances in a more holistic manner. So where the government may see the SRA as being a 'single issue' or one off project, the community sees the SRA within the broader context of the overall needs of the community. The SRA process overall was seen to be ad hoc, short sighted, and devoid of meaningful approaches that can address fundamental economic viability and sustainability for Indigenous peoples. This was also borne out in the survey (though in less explicit terms than through the interviews).

The Girringun SRA provides a perfect example of the challenges for government in this regard: having engaged in an extensive process to identify the needs of the community, the SRA was then incapable of delivering on the aspirations of the communities involved. The damage this can result in is not limited to the trust relationship with government – it has a consequential impact on community organisations such as Girringun, who can lose credibility within their community for not delivering. This devalues a valuable community resource and does not capitalise on the existing capacity within the community.

The Government must avoid the trap, as set out in the words of Phil Rist of Girringun, where Indigenous communities are 'consulted to death and there are no real outcomes.' So-called 'single issue' SRAs in particular have an increased risk of alienating Indigenous communities in this way.

Outcomes of SRAs also need to be defined in a way that they are delivering the maximum benefit to the community, not merely based on a strict compliance mentality. For example, once a SRA has been entered into, there can be a lack of flexibility to amend the terms and conditions, even notwithstanding the very real possibility of changed circumstances and/or needs by the Aboriginal community or organisation. In Baddagun's case, Cyclone Larry had had a devastating effect on the community, and on the Aboriginal peoples' capacity to use the bus for the cultural performances; yet the SRA was unable to provide for renegotiating the terms and conditions for the bus.

As the case studies suggest, some SRAs relate to projects that were either underway or where the community had already been looking for assistance. They can in some instances amount to a 're-badging' of an existing process. This is not a problem *per se*, particularly as it may reveal an ability from the ICC to tap into the expressed needs and wants of a community. On the other hand, it may also reflect a lack of genuine engagement which may also mean that it is less easy to build on the foundations of the SRA within a community.

The Cape Barren Island experience also suggests that communities are crying out for direct engagement by governments. This can also lead to an inappropriate use of the SRA process, such as the discussions on the power station. Having identified an issue of such importance to the community, the ICC should be working to address the complex jurisdictional issues involved in exercise of its whole of government coordination role – boundaries need to be clearer to ensure that SRAs are not seen as the default process for addressing such complex issues for which the SRA program is clearly not designed.

The interviews also demonstrate the enormity of the task being undertaken by Government through SRAs. The process would benefit from a clear focus that recognises the importance of building on the existing resources and capacity within communities; on adopting a development approach to nurture and grow this capacity; and of committing to a long term engagement and investment in communities, rather than seeing outcomes as 'one-off'.

Addressing the fundamental flaw of the new arrangements – Ways forward

> As Indigenous peoples, we must be able to effectively participate in decision making that affects our lives. This is not merely an aspiration or something that would be desirable – it is more than this. It is an essential element for successful Indigenous policy. This requirement… is (also) strongly supported in international human rights law.[60]

This chapter has revealed significant flaws in the current administration of the new federal service delivery arrangements. The absence of processes for Indigenous participation at the regional level connected to broader policy development processes at the national level is a contradiction at the heart of the new whole of government approach. Despite the relative newness of the whole of government

60 Calma, T., *Launch of the Social Justice Report 2005 and Native Title Report 2005*, Sydney, 31 March 2006, p4, available online at: www.humanrights.gov.au/speeches/social_justice/sj_nt_reports_05.html.

arrangements, there has been sufficient time for this issue to be addressed. The failure to do so reflects the insufficient efforts of the Government and the lack of priority that they have afforded to address this fundamental issue.

As outlined at the beginning of this chapter, this situation is inconsistent with the legislative requirement 'to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'.[61] It is also inconsistent with the repeated commitments of the Government, including at the level of the Council of Australian Governments.

The making of commitments to the Australian public and to Indigenous peoples matters. Such commitments are not intended to make the government feel good by their mere existence. The satisfaction and pride should come from solemnly upholding the commitments that have been made – by proving that this time, the commitments actually matter.

The lack of effective participation of Indigenous peoples in decision making processes is also inconsistent with Australia's human rights obligations and inconsistent with a human rights based approach to development.

Requirements for effective participation relate variously to the rights to self-determination, non-discrimination and equality before the law, as well as to the right of cultural minorities to enjoy and practice their culture. It is also central for the effective enjoyment of economic, social and cultural rights – such as the right to the highest attainable standard of health and education.

When Australia most recently appeared before the United Nations Committee on the Elimination of Racial Discrimination in March 2005, they expressed concern that the abolition of ATSIC may lead to inadequate processes to comply with Australia's human rights obligations. The Committee stated:

> 11. The Committee is concerned by the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the main policy-making body in Aboriginal affairs consisting of elected indigenous representatives. It is concerned that the establishment of a board of appointed experts to advise the Government on indigenous peoples issues, as well as the transfer of most programmes previously provided by ATSIC and Aboriginal and Torres Strait Islander Service to government departments, will reduce participation of indigenous peoples in decision making and thus alter the State party's capacity to address the full range of issues relating to indigenous peoples. (Articles 2 and 5)
>
> The Committee recommends that the State party take decisions directly relating to the rights and interests of indigenous peoples with their informed consent, as stated in its General Recommendation 23 (1997). The Committee recommends that the State party may reconsider the withdrawal of existing guarantees for the effective representative participation of indigenous peoples in the conduct of public affairs as well as in decision and policy-making relating to their rights and interests.[62]

61 *Aboriginal and Torres Strait Islander Act 2005* (Cth), section 3(a), Available online at: www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/889B9887C357132ECA257227001E0801/$file/AbTorStrIsland2005.doc.

62 United Nations Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States Parties under Article 9 of the Convention – Concluding observations of the Committee on Australia*, UN Doc: CERD/C/AUS/CO/14, March 2005, available online at: www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/fff3368f665eaf93c125701400444342/$FILE/G0541073.pdf.

There concern that the new processes 'will reduce participation of indigenous peoples in decision making and thus alter the State party's capacity to address the full range of issues relating to indigenous peoples' has been borne out.

The necessity to ensure the effective participation of Indigenous peoples also comes from practical experience.

Much of the failure of service delivery to Indigenous people and communities, and the lack of sustainable outcomes, is a direct result of the failure to engage appropriately with Indigenous people and of the failure to support and build the capacity of Indigenous communities. It is the result of a failure to develop priorities and programs in full participation with Indigenous communities.

Put simply, governments risk failure if they develop and implement policies about Indigenous issues without engaging with the intended recipients of those services. Bureaucrats and governments can have the best intentions in the world, but if their ideas have not been subject to the 'reality test' of the life experience of the local Indigenous peoples who are intended to benefit from this, then government efforts will fail.

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

In the *Social Justice Report 2004,* I set out the challenge for the new arrangements to ensure that obligations relating to the effective participation of Indigenous peoples are met as follows:

> A clear challenge for the new arrangements is to ensure that Indigenous peoples can effectively participate in decision making processes that affect their daily lives. This participation needs to be at a national level, in order to influence the setting of priorities, as well as at the state, regional and local levels. Indigenous representation participation is not an either/or choice between national, regional and local level processes.
>
> In announcing that it intended to abolish ATSIC at the national and regional level, the Government stated that it intends to address the issue of Indigenous participation through the new arrangements by:
>
> - Appointing a National Indigenous Council of Indigenous experts to advise the Government in their individual capacities and not in a representative capacity;
> - Indicating that it will support the creation of a network of regional representative Indigenous bodies by 1 July 2005 to interact with the Government and utilising existing ATSIC Regional Council structures until then; and
> - Negotiating agreements at the regional level with the representative Indigenous body and at the local level with Indigenous communities.
>
> The question is whether this combination of mechanisms is adequate to ensure the effective participation of Indigenous peoples in decision making processes.
>
> At this stage, these proposed new mechanisms are either not in place or have not been in place for long enough to allow an understanding as to how they will actually operate and interact with the Government and with Indigenous communities.

Accordingly, my comments here are preliminary in nature and will need to be revisited in twelve months time when all aspects of the new arrangements are in place…

Under the International Convention on the Elimination of All Forms of Racial Discrimination… Australia has undertaken to provide equality before the law and not to discriminate on the basis of race…

The Committee on the Elimination of Racial Discrimination has noted that indigenous peoples across the world have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and that as a consequence, the preservation of their culture and their historical identity has been and still is jeopardized. To address this, the Committee has called upon States parties to the Convention to:

> '… ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent'.[63]

When Australia… appeared before this Committee in March 2000, the Committee expressed concern at the inequality experienced by Indigenous people in Australia and recommended that the Government not institute 'any action that might reduce the capacity of ATSIC to address the full range of issues regarding the indigenous community'.[64]

In his submission to the Senate inquiry into the ATSIC Amendment Bill, my predecessor as Social Justice Commissioner stated that the replacement of ATSIC with a non-elected, appointed advisory council might raise concerns of lack of compliance with Australia's international human rights obligations.[65] This does not mean that the Government should not be advised by a specialist advisory body such as the National Indigenous Council. It does mean, however, that reliance *solely* on such a mechanism will not be considered sufficient to ensure the effective participation of Indigenous peoples in decision making and hence to meet Australia's international obligations.

As noted above, however, the new arrangements do not rely on the establishment of the National Indigenous Council as the sole mechanism for the participation of Indigenous peoples. It is intended to be accompanied by support for regional representative structures and the engagement of Indigenous peoples through agreement making at the regional and local level. These provide the potential for appropriate types of participation of Indigenous peoples at the local and regional levels, depending on how they are implemented.

I am concerned, however, that there are not clear linkages between the processes for engagement of Indigenous peoples and communities at the local and regional levels to a process for engagement at the national level.

One of the principle findings of the ATSIC Review was the lack of connection between ATSIC's national representative structure (the Board of Commissioners)

63 Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII – Indigenous people*, 18 August 1997, UN Doc: A/52/18, annex V, para 4(d), available online at: http://www1.umn.edu/humanrts/gencomm/genrexxiii.htm

64 Committee on the Elimination of Racial Discrimination, *Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc: CERD/C/304/Add.101, 19/04/2000, para 11, available online at: http://www.unhchr.ch/tbs/doc.nsf/0/eb3df96380faaf97802568ac00544c55?Opendocument

65 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Senate Select Committee on the Administration of Indigenous Affairs Inquiry into the ATSIC Bill and the administration of Indigenous programs and services by mainstream departments*, 7 July 2004, pp7-8.

> and regional representative structures (Regional Councils) and local communities. It considered a number of options for creating a continuum of representation between these levels. The Review Team stated that 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'.[66]
>
> The new arrangements do not address this issue. They maintain a demarcation between processes for setting policy at the national level with processes for implementing policy and delivering services at the regional and local levels. While the new arrangements are based on a 'top down' and 'bottom up' approach, this is in terms of government coordination and not in terms of Indigenous participation. The model sees Indigenous participation as coming from the 'bottom up' through the local and regional mechanisms. It does not then provide mechanisms for directly linking these processes to the national level so that they might influence directions and priorities at the highest level.[67]

Two years on from this statement, it is now clear that the new arrangements are fundamentally flawed and do not ensure the effective participation of Indigenous peoples in decision making that affects our daily lives.

The demarcation between the national and regional and local levels is problematic given that the new arrangements are premised on the basis of partnerships and genuine engagement of Indigenous people and communities. It is difficult to see how this engagement can take place if the relationship is limited to those issues that have been identified and imposed through a 'top down' approach.

This pre-empts the outcomes of such engagement and negotiation. It also has the potential to undermine a sense of ownership and responsibility at the community and individual level. This in turn, is fundamentally inconsistent with a policy agenda that promotes mutual obligation and reciprocity.

When we consider the benefits and problems of the Shared Responsibility Agreement making process, we need to be aware of these broader, structural problems at the regional and national levels. As this chapter shows, there have been some positive developments through the SRA process – although these are tempered by concerns about the ad hoc and short term nature of the program, and its limited potential to create sustained improvement in communities.

Put bluntly, we need to ask: is this focus of the Government on the absolute minutia of detail in communities appropriate given the absence of the necessary systems to support long term improvements at a regional and national level? In other words, is the focus on SRAs akin to shuffling the deckchairs while the Titanic sinks?

Indigenous communities and the Australian public alike needs to be satisfied that the time spent by government on SRAs is well spent and that they would not be better off focussing on the systemic problems of the new arrangements.

While SRAs are a relatively low cost program, making up a tiny proportion of federal expenditure on Indigenous issues, they are resource intensive in terms of the time and capacity of government officials and of communities. Unless they can

66 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, pp104-105.

67 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, HREOC Sydney 2004, p105.

demonstrate long term and sustained improvements for Indigenous communities they may not represent value for money.

There remains an urgent need for staffing and resources to prioritise the development of mechanisms for engagement with Indigenous communities at the regional and national levels. SRAs should not detract from this priority.

Recommendation 4: Directed to the Australian Public Service Commission (APSC) and Secretaries Group on Indigenous Affairs

That the Secretaries Group request the Australian Public Service Commissioner to conduct a confidential survey of staff in Indigenous Coordination Centres to identify current issues in the implementation of the new arrangements and the challenges being faced in achieving whole of government coordination. This survey should be conducted by the APSC in furtherance of the Management Advisory Committee's *Connecting Government* report.

In light of the concerns raised in this chapter, I have chosen to make the following recommendation. The content of the recommendation is similar to that of recommendation 4 of the *Social Justice Report 2005*.[68] I have also chosen to identify some mechanisms for achieving the recommendation.

Recommendation 5: Directed to the Ministerial Taskforce on Indigenous Affairs and National Indigenous Council

That the Ministerial Taskforce on Indigenous Affairs acknowledge that the absence of mechanisms at the regional level for engagement of Indigenous peoples contradicts and undermines the purposes of the federal whole of government service delivery arrangements.

Further, that the Ministerial Taskforce direct the Office of Indigenous Policy Coordination to address this deficiency as an urgent priority, including by:

- consulting with Indigenous communities and organisations as to suitable structures, including by considering those proposals submitted to the government for regional structures;
- utilising the Expert Panels and Multiuse List of community facilitators / coordinators to prioritise consideration of this issue; and

68 That recommendation stated: 'That the federal government in partnership with state and territory governments prioritise the negotiation with Indigenous peoples of regional representative arrangements. Representative bodies should be finalised and operational by 30 June 2006 in all Indigenous Coordination Centre regions'.

- funding interim mechanisms to coordinate Indigenous input within regions and with a view to developing culturally appropriate models of engagement.

Further, that the National Indigenous Council request the OIPC to report quarterly on progress in developing regional engagement arrangements and the mechanisms put into place to facilitate Indigenous participation in this process.

Chapter 4

International developments on the rights of indigenous peoples – Closing the 'protection gap'

In recent years there have been significant developments at the international level that impact upon the recognition and protection of the human rights of indigenous peoples. Most notably, there have been: i) reforms to the machinery of the United Nations (UN) and the emphasis given to human rights within that system; ii) the making of global commitments to action, through the Millennium Development Goals (MDGs) and the Second International Decade of the World's Indigenous People; and iii) the further elaboration of human rights standards as they apply to indigenous peoples. These developments address the dual needs of ensuring that UN processes are more accessible and better address the needs of indigenous peoples; and recognising that there are additional indigenous-specific protections that are required if the human rights of indigenous peoples are to be fully realised.

Developments in both of these areas in recent years have begun to provide a solid platform for the protection of the human rights of indigenous peoples into the future, through international processes as well as within countries. This is despite there remaining significant challenges – such as the need to finalise the *Declaration on the Rights of Indigenous Peoples*.

Much of the focus at the international level has now begun to address the need for implementation. There exists concern at the existence of a 'protection gap' between the rhetoric and commitments of governments relating to the human rights of Indigenous peoples and the activities of governments on the ground. This 'protection gap' exists due to limited consideration of the government's human rights obligations in the settling of policy and delivery of programs as they affect indigenous Australians.

Increasingly, developments at the international level have emphasised the need to close this 'protection gap' by activating the commitments of governments to human rights. There is a clear need to create a direct relationship between the commitments and obligations taken on by our government at the international level and the policies and programs on Indigenous issues within Australia.

This chapter sets out those key developments that have occurred at the international level, particularly in the past three to five years.[1] It also considers the status of those critical issues that remain under consideration within the UN system and that will have significant implications for the recognition of indigenous rights into the future.

Recent developments emphasise the importance of adopting a partnership approach that secures the effective participation of indigenous peoples. Accordingly, this chapter also considers what actions ought to be taken within Australia, by governments and by our Indigenous communities and organisations, to facilitate improved partnerships with Indigenous peoples and ultimately to address the 'protection gap' between international standards and commitments, and domestic processes.

International developments on the rights of indigenous peoples

The human rights of indigenous peoples[2] are firmly on the agenda of the United Nations. We are currently seeing the results of the advocacy of countless indigenous peoples at the United Nations (UN) level for more than 20 years come to fruition.

This is not to say that the acknowledgement sought by indigenous peoples has been met or that it will be fully met. Such acknowledgement hangs in the balance as the General Assembly of the UN continues to deliberate on the *Declaration on the Rights of Indigenous Peoples* until late 2007. It also depends on the implementation of the reform process to the UN generally, such as through the consolidation of mechanisms for participation by indigenous peoples into the new UN Human Rights Council.

But despite this, there have been substantial gains in the recognition of indigenous rights and the importance attached to them throughout the UN system. There is also significant potential for improved protection of indigenous rights through the reforms to the UN framework and mechanisms that are currently underway.

Recent developments can be categorised as follows:

- reforms to the machinery of the United Nations (UN) and the emphasis given to human rights within that system;
- the making of global commitments to action, through the Millennium Development Goals (MDGs) and the Second International Decade of the World's Indigenous People; and

1 From time to time the Aboriginal and Torres Strait Islander Social Justice Commissioner has included a review of international developments within the annual *Social Justice Report*. This chapter updates developments since the previous review, which was included as Chapter 6 of the *Social Justice Report 2002*. The Social Justice Commissioner also maintains an international developments website, available online at: www.humanrights.gov.au/social_justice/internat_develop.html.

2 The term 'indigenous peoples' is used in this report when referring generically to indigenous peoples at the international level. The term 'Indigenous peoples' (capitalised) is used when specifically referring to a particular grouping, such as the Indigenous peoples of Australia. See further the note on terminology contained at the front of this report for details on the use of the term 'indigenous' as opposed to Aboriginal or Torres Strait Islander.

- the further elaboration of human rights standards as they apply to indigenous peoples, particularly as it relates to securing the effective participation of indigenous peoples in decision-making processes as well as recognising the need to protect indigenous peoples' collective rights.

There remain challenges relating to these developments. Most notably:

- ensuring indigenous perspectives in the human rights system of the United Nations into the future;
- integrating indigenous perspectives into the MDG process;
- implementing the objectives and Program of Action for the Second Decade for the Worlds Indigenous People; and
- achieving final acceptance of the Declaration on the Rights of Indigenous Peoples by governments in a manner that maintains the integrity of the Declaration, and then ensuring that the Declaration is implemented both internationally and domestically.

This part of the chapter reviews recent developments and reflects on the current challenges being faced at the international level in the ongoing task of securing recognition of the rights of indigenous peoples. It is intended to provide a tool for indigenous peoples to have a greater awareness of international issues and international processes, which can then be utilised within their communities.

1) United Nations Reform and human rights

Over the past two years the UN system has continued to implement a substantial program of reform.[3] This has largely resulted from the outcomes of the UN World Summit held in New York in September 2005. The reform process sets the broader framework within which to consider the level of protection that is provided for the human rights of indigenous peoples worldwide.

• The 'In larger freedom' report and World Summit

In early 2005, the then Secretary General of the UN, Kofi Annan, released a report outlining his vision for the United Nations into the future. Titled *In larger freedom: towards development, security and human rights for all*,[4] the report took stock of progress towards achieving the outcomes of the UN Millennium Summit of 2000, including the Millennium Development Goals.[5] The report and its proposals for reform formed the basis of deliberations at the World Summit of leaders at UN headquarters in New York in September 2005.

The Secretary-General focused on the structural change required at the UN level to revitalise international cooperation and to ensure that the machinery of the UN

3 The process of reforming the United Nations has been underway for some time, with recent reforms having their genesis in the mid-1990s. For background and further detail see: www.un.org/reform/.

4 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

5 The Millennium Development Goals are discussed in detail in the next section of this chapter.

was capable of supporting the achievement of the MDGs. The Secretary-General set out the challenge faced by the UN in the introduction to the report:

> Five years into the new millennium, we have it in our power to pass on to our children a brighter inheritance than that bequeathed to any previous generation… If we act boldly — and if we act together — we can make people everywhere more secure, more prosperous and better able to enjoy their fundamental human rights.
>
> All the conditions are in place for us to do so… In an era of global abundance, our world has the resources to reduce dramatically the massive divides that persist between rich and poor, if only those resources can be unleashed in the service of all peoples. After a period of difficulty in international affairs, in the face of both new threats and old ones in new guises, there is a yearning in many quarters for a new consensus on which to base collective action. And a desire exists to make the most far-reaching reforms in the history of the United Nations so as to equip and resource it to help advance this twenty-first century agenda.[6]

There were two key aspects to the Secretary-General's proposals that have influenced the reforms that were subsequently agreed at the World Summit. First, he sought to achieve better integration of the objectives of the UN by recognising the equal importance of efforts to protect human rights, alongside focussing on development and security. This focus required an 'upgrading' of the importance of human rights in the overall operations of the UN system. Second, he also sought to address the problem of lack of implementation by governments of their substantial commitments and legal obligations, particularly in relation to human rights as well as the achievement of the MDGs.

The Secretary-General's proposals were focused across three key objectives for UN activity:

- freedom from want (through making the right to development a reality for everyone, including through achievement of the MDGs);
- freedom from fear (addressing security through improved international consensus and implementation); and
- freedom to live in dignity (by making real the commitments of governments to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms).

The Secretary-General's report sets forth how the foundation of any reform has to acknowledge the inter-relationship between these issues. It states that 'Not only are development, security and human rights all imperative; they also reinforce each other'.[7] Accordingly:

> we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed. In this new millennium, the work

6 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, paras 1-2, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

7 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, para 16, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

> of the United Nations must move our world closer to the day when all people have the freedom to choose the kind of lives they would like to live, the access to the resources that would make those choices meaningful and the security to ensure that they can be enjoyed in peace.[8]

The report therefore recommended changes to the UN human rights mechanisms. In particular it called for the establishment of a Human Rights Council, which would replace the existing Commission on Human Rights. The creation of a Council would see human rights elevated to a higher level within the UN structure.[9] As the Secretary-General explained:

> The establishment of a Human Rights Council would reflect in concrete terms the increasing importance being placed on human rights in our collective rhetoric. The upgrading of the Commission on Human Rights into a full-fledged Council would raise human rights to the priority accorded to it in the Charter of the United Nations. Such a structure would offer architectural and conceptual clarity, since the United Nations already has Councils that deal with two other main purposes — security and development.[10]

This reform would also be accompanied by other measures – such as a continued focus on harmonising the working methods of the human rights treaty committee system, and by increasing, in a sustainable way, the capacity of the Office of the High Commissioner for Human Rights.

The Secretary-General made clear that such reform needed to be accompanied by a redoubling of efforts by governments to meet their human rights obligations:

> When it comes to laws on the books, no generation has inherited the riches that we have. We are blessed with what amounts to an international bill of human rights, among which are impressive norms to protect the weakest among us, including victims of conflict and persecution… But without implementation, our declarations ring hollow. Without action, our promises are meaningless.[11]
>
> The time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service. **We must move from an era of legislation to an era of implementation.** Our declared principles and our common interests demand no less.[12]

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8 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, para 17, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

9 The Commission on Human Rights was a functional Commission that reported to the Economic and Social Council (which in turn reports to the General Assembly of the UN). By replacing this with a Human Rights Council, human rights would be elevated within the UN structure as the Council would report directly to the General Assembly and exist at an equal level to that of the Economic and Social Council.

10 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, para 1. The creation of the Council would also seek to address growing criticisms of the ineffectiveness of the Commission on Human Rights, such as the politicization of human rights issues and lack of genuine scrutiny of rights abuses by States (governments).

11 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, paras 129-130, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

12 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, para 113, available online at: www.un.org/largerfreedom/ accessed 21 February 2007. Emphasis added.

The Secretary-General referred to this as the **'implementation challenge'**. He further elaborated this challenge in relation to the Millennium Development Goals as follows:

> The urgent task in 2005 is to implement in full the commitments already made and to render genuinely operational the framework already in place… The September summit must produce a pact for action, to which all nations subscribe and on which all can be judged. The Millennium Development Goals must no longer be floating targets, referred to now and then to measure progress. They must inform, on a daily basis, national strategies and international assistance alike. Without a bold breakthrough in 2005 that lays the groundwork for a rapid progress in coming years, we will miss the targets. Let us be clear about the costs of missing this opportunity: millions of lives that could have been saved will be lost; many freedoms that could have been secured will be denied; and we shall inhabit a more dangerous and unstable world.[13]

Many of the proposals of the Secretary-General contained in the *In larger freedom* report were adopted at the World Summit in September 2005, particularly those related to human rights.[14]

The World Summit resolved:

- to strengthen the United Nations human rights machinery with the aim of ensuring effective enjoyment by all of all human rights and civil, political, economic, social and cultural rights, including the right to development; and
- to integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system.[15]

The Summit also supported 'stronger (UN) system-wide coherence' including by 'strengthening linkages between the normative work of the United Nations system and its operational activities' and 'ensuring that the main horizontal policy themes, such as sustainable development, human rights and gender, are taken into account in decision-making throughout the United Nations'.[16]

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13 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, para 72, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

14 *2005 World Summit Outcome: Resolution adopted by the General Assembly,* UN Doc: A/Res/60/1, 24 October 2005. This is not to say that the Summit process and outcomes were not without controversy. Not all proposals for reform put forth by the Secretary-General were successful and the process and subsequent implementation of the decisions on reforms to the human rights system that took place after the Summit were extremely fraught, time consuming and full of controversy.

15 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, paras 123 and 126, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

16 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, para 169, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

To achieve this, the World Summit agreed to replace the Commission on Human Rights with a new Human Rights Council.[17] The General Assembly subsequently adopted a resolution establishing the Council and establishing its functions in March 2006.[18]

• The creation of the Human Rights Council

The creation of the Human Rights Council, and the settling of its working methods, has been the main focus of activity in the UN human rights system since the World Summit.

The Human Rights Council was created as a subsidiary of the General Assembly of the UN (i.e., it is at a higher level than the Commission on Human Rights was). It retains many of the features of the Commission on Human Rights, including a focus on:

- promoting universal respect for human rights;
- addressing situations of violations of human rights, including gross and systematic violations; and
- promoting the effective coordination and mainstreaming of human rights within the United Nations system.

The resolution establishing the Council emphasises that it shall promote the indivisibility of all human rights: civil, political, economic, social and cultural rights, including the right to development.[19]

The functions of the Human Rights Council are set out in Text Box 1 below.

Text Box 1: Functions of the United Nations Human Rights Council[20]

(*a*) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;

(*b*) Serve as a forum for dialogue on thematic issues on all human rights;

(*c*) Make recommendations to the General Assembly for the further development of international law in the field of human rights;

17 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, paras 157-160, available online at: www.un.org/largerfreedom/ accessed 21 February 2007. The Summit also agreed to strengthen the Office of the High Commissioner for Human Rights through doubling its regular budget over the next five years (para 124) and to continue to improve the human rights treaty committee system (para 125).

18 *Human Rights Council: Resolution adopted by the General Assembly*, UN Doc: A/RES/60/251, 3 April 2006.

19 *Human Rights Council: Resolution adopted by the General Assembly*, UN Doc: A/RES/60/251, 3 April 2006. 'Indivisibility' means there is no hierarchy of human rights – all rights are of equal importance and should be protected equally.

20 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* UN Doc: A/59/2005, 21 March 2005, para 5, available online at: www.un.org/largerfreedom/ accessed 21 February 2007.

(*d*) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;

(*e*) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(*f*) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(*g*) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(*h*) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(*i*) Make recommendations with regard to the promotion and protection of human rights; and

(*j*) Submit an annual report to the General Assembly.

There are a number of significant differences between the Human Rights Council and its predecessor, the Commission on Human Rights. These include its increased status within the UN (due to being created at a higher level than the Commission had operated at) and the direct relationship that the Council enjoys with the General Assembly.

The other most significant difference between the Human Rights Council and the Commission on Human Rights is the addition of a new function as set out at paragraph (e) above – namely, the universal periodic review process.

The Secretary-General explained the purpose of this new function is to make explicit the role of the Human Rights Council as a 'chamber of peer review'.[21] While there have for some time existed processes within the UN human rights system for dialogues between States on their human rights records, these processes have been criticised for being overtly political or ineffective (in the case of various procedures of the Commission on Human Rights) or have not been utilised (in the case of State-to-State complaint procedures under various human rights treaties).[22]

21 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, para 6.

22 As an example of a State to State complaint procedure see Article 41, International Covenant of Civil and Political Rights.

The new universal periodic review function is intended to foster the capacity of the Human Rights Council to provide a forum for the regular scrutiny of the human rights records of all Member States of the UN. As the Secretary-General has stated:

> (The universal periodic review mechanism's) main task would be to evaluate the fulfilment by all States of all their human rights obligations. This would give concrete expression **to the principle that human rights are universal and indivisible.** Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as the right to development… Under such a system, every Member State could come up for review on a periodic basis.[23]

This mechanism is intended to 'complement but… not replace'[24] reporting procedures under human rights treaties. Those reporting procedures arise from 'legal commitments and involve close scrutiny of law, regulations and practice with regard to specific provisions of those treaties by independent expert panels'.[25] By contrast:

> Peer review would be a process whereby States voluntarily enter into discussion regarding human rights issues in their respective countries, and would be based on the obligations and responsibilities to promote and protect those rights arising under the Charter and as given expression in the Universal Declaration of Human Rights. Implementation of findings should be developed as a cooperative venture, with assistance given to States in developing their capacities.
>
> Crucial to peer review is the notion of universal scrutiny, that is, that the performance of **all** Member States in regard to **all** human rights commitments should be subject to assessment by other States. The peer review would help avoid, to the extent possible, the politicization and selectivity that are hallmarks of the Commission's (on Human Rights) existing system… The findings of the peer reviews of the Human Rights Council would help the international community better provide technical assistance and policy advice.[26]

Under the periodic review process, every State would regularly be reviewed every four years. This would reinforce that domestic human rights concerns are truly matters of legitimate international interest.

The Secretary-General argued that this review process 'would help keep elected members accountable for their human rights commitments'.[27] Under the resolution establishing the Human Rights Council, members elected to the Council are required to 'uphold the highest standards in the promotion and protection of human rights',

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23 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, para 6.

24 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, para 7.

25 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, para 7.

26 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, paras 7-8. Emphasis added.

27 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General, Addendum – Human Rights Council, Explanatory note by the Secretary-General*, UN Doc: A/59/2005/Add.1, 23 May 2005, para 8.

to 'fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership'.[28]

Similarly, when casting votes in elections for the Council, members of the UN are required to 'take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto'. They may also by a two-thirds majority of the General Assembly 'suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights'.[29]

The processes for the conduct of the universal periodic review mechanism are to be developed within the first year of the Council's operation (i.e., by June 2007). The detail of how the Council will perform this function remains to be settled.[30]

Non-government organisations and Indigenous Peoples Organisations have identified the universal periodic review process as a significant process for improving the scrutiny of human rights issues within the Human Rights Council. In particular, it has the potential to provide a powerful tool for highlighting ongoing concerns about Indigenous rights.[31]

It remains to be seen how open the process for participation in the universal periodic review will be made (such as by enabling interventions by non-government organisations (NGOs) in any dialogue process, or the making of submissions for consideration as part of the review). Current discussions in Geneva on this process are considering the involvement of independent experts in preparing analytical and evaluative documents as the basis for the review, identifying key issues for dialogue, drafting the final report with conclusions and recommendations and follow up actions.

Regardless of the formal procedures adopted, however, the review process will provide an opportunity to focus international attention on the human rights records of all States. At its most limited, this could occur through the preparation of parallel reports on key issues of human rights compliance by non-government organisations. At best, it could be facilitated through direct participation of NGOs and of independent UN experts in the review processes within the Council.

As such, this mechanism should provide an opportunity to create a connection between domestic policy debate and international dialogue about the human rights record of a country. This potential is discussed further in Part 2 of this chapter.

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28 *Human Rights Council: Resolution adopted by the General Assembly*, UN Doc: A/RES/60/251, 3 April 2006, para 9. The members 'shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms': *Human Rights Council: Resolution adopted by the General Assembly*, UN Doc: A/RES/60/251, 3 April 2006, para 7.

29 *Human Rights Council: Resolution adopted by the General Assembly*, UN Doc: A/RES/60/251, 3 April 2006, para 8.

30 For up to date details on the operation of the Human Rights Council visit: www.ohchr.org/english/bodies/hrcouncil/.

31 This will particularly be the case once the Declaration on the Rights of Indigenous Peoples has been approved by the General Assembly of the UN, as the Declaration would appropriately be considered as identifying 'obligations and responsibilities to promote and protect' human rights arising under the Charter of the UN.

The timetable for which countries will be subject to the review process in what year has not been settled as yet. However, it has been agreed that every year both countries that are currently members of the Human Rights Council as well as non-members of the Council will be included in the annual list for review.

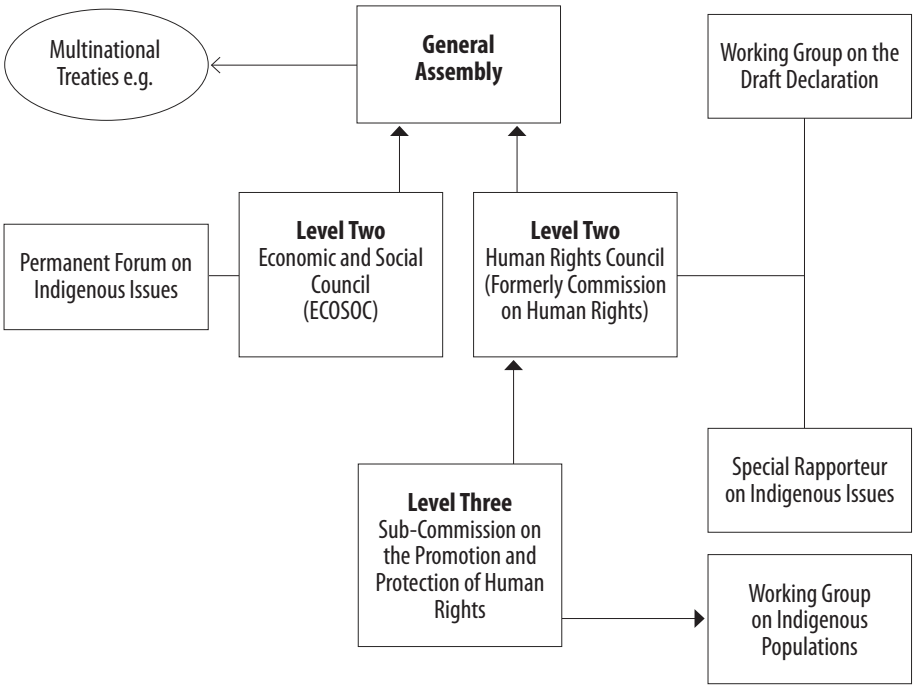
The fact that Australia is not currently a member of the Council, and is unlikely to become one until at least 2015, will not prevent the possibility of Australia being reviewed under this process in the next year or two.[32]

• Indigenous participation in the processes of the Human Rights Council

In establishing the Human Rights Council, it was decided that all the existing processes of the Commission on Human Rights would be retained for a minimum period of twelve months.

As a result, the UN structure as it currently exists and as it relates specifically to indigenous peoples is shown in Diagram 1 below.

Diagram 1: Overview of Indigenous mechanisms within the UN system, with a focus on human rights procedures



32 Australia falls within the Western Europe and Other States regional grouping for the purposes of membership. Traditionally, Australia, the United States of America, New Zealand and Canada form part of the 'Other States' group and rotate membership. Canada is confirmed as a member of the Council until 2009, and the CANZ group has decided that New Zealand will be the candidate for the following two terms (ie, 6 years from 2009).

From an Indigenous perspective, this means that the Human Rights Council has retained, but is currently considering the future status of, the following relevant mechanisms:

- *The system of Special Rapporteurs who report to the Human Rights Council*: These Special Rapporteurs are appointed as experts and provided with a mandate which they exercise independently of the Council. It includes Rapporteurs on specific issues such as health, housing, education and so forth. These Rapporteurs are obliged to consider the distinct problems of discrimination against Indigenous peoples within their mandated areas. It also includes the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, who prepares a report to the Council each year (usually on a chosen topic or theme), can receive complaints (or communications) from indigenous peoples, and who can also conduct country visits.[33]
- *The Sub-Commission on the Protection and Promotion of Human Rights*: The Sub-Commission is comprised of a number of independent experts who provide advice to the Council (and formerly the Commission on Human Rights) on key issues. The Sub-Commission's members have initiated and prepared numerous reports on indigenous human rights issues over the years, such as on indigenous peoples' relationship to land; treaties between States and indigenous peoples; and indigenous peoples' permanent sovereignty over natural resources.[34]
- *The Working Group on Indigenous Populations (WGIP):* The WGIP consists of five members of the Sub-Commission, who report back to the Sub-Commission and through it to the Human Rights Council. Through open meetings (usually lasting for one week annually in Geneva that occurs mid-year) the Working Group has facilitated the participation of indigenous peoples in reviewing the extent to which indigenous peoples enjoy human rights globally, as well as identifying areas for the further development of human rights standards relating to indigenous peoples. Most notably, it has produced the initial version of the Declaration on the Rights of Indigenous Peoples, as well as guidelines and draft principles relating to numerous issues, such as indigenous heritage protection, and the principle of free, prior and informed consent.[35]

The Working Group on the Declaration on the Rights of Indigenous Peoples also continued to exist when the Human Rights Council was created. However, with the adoption by the Human Rights Council of the Declaration on the Rights of Indigenous Peoples in June 2006, the mandate of the Working Group was fulfilled and the Working Group ceased to exist.

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33 For information on the role and activities of the Special Rapporteur see further: www.ohchr.org/english/issues/indigenous/rapporteur/.

34 For information on the role and activities of the Sub-Commission see further: www.ohchr.org/english/bodies/subcom/index.htm.

35 For information on the role and activities of the Working Group see: www.ohchr.org/english/issues/indigenous/groups/groups-01.htm. For an overview of the achievements of the WGIP over its 24 sessions, see: *Information on achievements of the Working Group*, UN Doc: **E/CN.4/Sub.2/AC.4/2006/CRP.1, 30 June** 2006, and *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006)*, UN Doc: A/HRC/Sub.1/58/22, 14 August 2006, Annex 3.

These procedures and mechanisms within the UN human rights system are also supplemented by the work of the UN Permanent Forum on Indigenous Issues.

As shown in Diagram 1, the Permanent Forum is a specialist body of the Economic and Social Council (ECOSOC). Accordingly, it is not subject to the review of human rights mechanisms. It does, however, have a broad mandate which includes consideration of human rights issues (alongside issues relating to economic and social development, culture, the environment, education and health).

The functions of the Permanent Forum differ from those of the human rights mechanisms that relate to indigenous issues noted above. This is because it is focused on providing expert advice and recommendations on indigenous issues to the ECOSOC, as well as to the various programmes, funds and agencies of the United Nations; and on raising awareness and promoting the integration and coordination of activities relating to indigenous issues within the United Nations system. It does not, therefore, primarily focus on reviewing situations of abuses of human rights or on standard setting. The work of the Permanent Forum on Indigenous Issues is discussed further in the next section of this chapter.

In accordance with the resolution establishing the Human Rights Council, a review has commenced to recommend whether and how any of the existing human rights mechanisms should be improved or rationalized.[36] Any modification proposed to the existing practices must, however, 'maintain a system of special procedures, expert advice and a complaint procedure'.[37]

As a consequence of this review of all the human rights mechanisms and procedures, the Human Rights Council will be determining by mid-2007 the existence of processes which enable specialist input on indigenous human rights issues. They will also be determining the ongoing processes that enable the participation of indigenous peoples in the revised human rights structure.

The indigenous specific procedures of the Human Rights Council (or the Commission on Human Rights as it then was) were most recently reviewed in 2003 and 2004. The specific focus of that review was to identify any duplication in mandates and procedures and the potential for rationalising processes.[38]

The review noted the existence (at the time) of four mechanisms within the United Nations system that deal specifically with indigenous issues (namely, the WGIP, Special Rapporteur, Permanent Forum on Indigenous Issues and Working Group on the Draft Declaration). The 2003 report noted the distinct and complementary mandates of these four mechanisms.[39] The 2004 report then found that:

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36 An intergovernmental working group was established in June 2006 to conduct this review. See further Resolutions A/HRC/1/L.6 and A/HRC/1/L.14.

37 *Human Rights Council: Resolution adopted by the General Assembly*, UN Doc: A/RES/60/251, 3 April 2006, para 6. These processes are variously referred to as 'mandates, mechanisms, functions and responsibilities'.

38 This was in accordance with paragraph 8 of ECOSOC Resolution 2000/22. This required a review of existing mechanisms across the UN within 2 years of the creation of the Permanent Forum on Indigenous Issues. See: Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004 and Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2003/72, 23 June 2003.

39 See in particular Annex A in Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2003/72, 23 June 2003.

> The two Working Groups, the Special Rapporteur and the Permanent Forum each have a unique and specific mandate within the United Nations system. However, it is also evident that in accomplishing its mandate one mechanism could touch upon subject matters that might be the primary concern of another mechanism. This in itself should not be characterized as an overlap of mandates, but rather as an acknowledgement and reinforcement of the interrelated nature of the many issues facing indigenous peoples. Should any rationalization or streamlining of indigenous mechanisms take place, the unique and specific activities undertaken by each mechanism should be taken into account.[40]

The 2004 Report noted the strong support for the role of the Special Rapporteur,[41] as well as for the continuation of the WGIP by most indigenous organisations and some Member States.[42] As noted in the *Social Justice Report 2002,* Australia was among a handful of Member States who opposed the continued existence of the WGIP, alongside the United States of America.[43] The 2004 Report also noted strong support for the role of the Permanent Forum on Indigenous Issues, and for it to be 'the focal point for indigenous issues within the United Nations system'.[44]

The 2004 report also found that:

> Although examined under a different mandate, similar themes are being considered by both the (WGIP) and the Permanent Forum. The themes of Working Group meetings of the last four years have been reflected in substance in the reports and recommendations emerging for the Forum during its first three sessions. As human rights is one of the mandated areas of the Permanent Forum, it has become the practice of indigenous delegates attending the Permanent Forum since the first session to set their suggested recommendations in context by providing a review of developments from the various indigenous regions and their homelands. Coordination of the themes of the Working Group, the Special Rapporteur and the Permanent Forum would seem desirable, in order to avoid duplication and to promote effectiveness.[45]

The report concluded that:

> The increased attention being given to indigenous issues within organizations of the United Nations system is a welcome development. The United Nations should continue to mainstream indigenous issues and to expand its programmes and activities for the benefit of indigenous peoples in a coordinated manner… it is clear that every effort must be made to ensure coordination among (the various mechanisms), while recognizing the specific tasks that each is mandated to perform.[46]

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40 Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004, para 41.

41 Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004, para 43.

42 Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004, para 42.

43 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC Sydney 2002, pp215-216.

44 Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004, para 44.

45 Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004, para 45.

46 Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council – Report of the Secretary-General*, UN Doc: E/2004/85, 6 July 2004, para 50.

Importantly, the UN World Summit in September 2005 had highlighted the ongoing importance of addressing indigenous peoples' human rights and for maintaining processes for the participation of Indigenous peoples. The Summit reaffirmed:

> our commitment to continue making progress in the advancement of the human rights of the world's indigenous peoples at the local, national, regional and international levels, *including through consultation and collaboration with them*, and to present for adoption a final draft United Nations declaration on the rights of indigenous peoples as soon as possible.[47]

The current review by the Human Rights Council of all existing human rights mechanisms and procedures must be seen in the light of the 2004 review of Indigenous mechanisms, and the ongoing commitment to advancing the human rights of Indigenous peoples in the World Summit document.[48]

As part of the process of reviewing the existing mechanisms, the Human Rights Council has requested advice from the Sub-Commission on the Protection and Promotion of Human Rights outlining its vision and recommendations for future expert advice to the Council, as well as indicating the status of ongoing studies and an overall review of activities.

Indigenous organisations have provided input into this process through the submission of information to the Working Group on Indigenous Populations (WGIP) at its 24th session in July 2006. An overview of the concerns of Indigenous organisations relating to the ongoing mechanisms for Indigenous participation and for ongoing scrutiny of indigenous issues by the Human Rights Council is provided in Text Box 2 below.

Text Box 2: Summary of proposals by Indigenous Peoples for future United Nations mechanisms to protect and promote the human rights of Indigenous Peoples[49]

- The Human Rights Council should affirm that the human rights of indigenous peoples will continue to be a distinct and ongoing thematic area of its work.
- It should lay to rest any insecurities among indigenous peoples that the United Nations reform process and ongoing reorganization of the United Nations

47 *2005 World Summit Outcome: Resolution adopted by the General Assembly,* UN Doc: A/Res/60/1, 24 October 2005, para 127. Italics added. Note: the use of the phrase 'Indigenous peoples' in the Summit Outcome Document represents a significant shift in the recognition provided to Indigenous peoples by the UN. The phrase 'peoples' (as opposed to 'people') denotes acceptance of a collective status for Indigenous nations, and hence the applicability of the principle of self-determination. This had also been recognised in the Programme of Action for the Second International Decade of the World's Indigenous People. The usage of 'peoples' was not an oversight –the implication of using the phrase 'peoples' and whether to include it had been debated in the General Assembly in relation to the Program of Action for the Second International Decade.

48 This commitment is also clear in the General Assembly's resolutions establishing the Second International Decade of the World's Indigenous People and the Programme of Action for the Second Decade. These are discussed further in the next section of this report.

49 Extracted from: *Communication Of the Indigenous Peoples' Caucus to the President of the Human Rights Council on future United Nations mechanisms to protect and promote the human rights of Indigenous Peoples*, Annex 4 in *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006)*, UN Doc: A/HRC/Sub.1/58/22, 14 August 2006.

human rights structures could lead to the diminution or disappearance of existing positive functions which are central to the advancement of the rights of indigenous peoples.

- The Human Rights Council should establish an appropriate subsidiary body on Indigenous Peoples, in fulfilment of all areas of its mandate. In doing so, the Human Rights Council should draw on the advice and assistance of human rights experts, including the growing number of experts among indigenous peoples.
- Existing United Nations arrangements for indigenous peoples have differentiated functions with complementary mandates which do not duplicate each other. Any future arrangements should enhance and not diminish the existing functions provided by:
  - the Working Group on Indigenous Populations,
  - the Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples and
  - the United Nations Permanent Forum on Indigenous Issues.
- The adoption of the United Nations Declaration on the Rights of Indigenous Peoples means that the Human Rights Council could undertake useful work to promote its implementation, e.g. by providing guidelines for the implementation of specific articles or rights within the Declaration.
- The Declaration warrants the continuation and enhancement of appropriate mechanisms within the United Nations human rights system with the necessary focus and expertise on the rights of indigenous peoples.
- The Indigenous Peoples' Caucus has identified a number of areas in which further standard-setting and/or review of developments on indigenous peoples' rights is needed, including:
  - Guidelines for the implementation of free, prior and informed consent of indigenous peoples to policies, programmes and projects affecting their rights, lands and welfare;
  - The human rights of indigenous women and children and youth;
  - Indigenous health, housing, education and other economic, social and cultural rights;
  - Examining international standards applicable to development programmes and projects affecting indigenous peoples, and their adequacy for protecting and promoting their human rights;
  - The human rights impacts on indigenous peoples in relation to the production, export and unregulated use of banned toxics and pesticides;
  - The impacts of militarization on the human rights of indigenous peoples;
  - The ongoing human rights impacts of colonial laws and policies on indigenous peoples and possible remedies;
  - The marginalization of indigenous peoples in the negotiation and implementation of peace accords and agreements between Governments and armed groups, and their impacts on the human rights of indigenous peoples; and
  - Administration of justice for indigenous peoples.

- Access to all future mechanisms should be open to all indigenous peoples' organizations, and fostering their full and effective participation through written and oral interventions. Indigenous peoples' attendance and full participation at these meetings should continue to be supported by the United Nations Voluntary Fund for Indigenous Populations, and that the mandate of the Voluntary Fund be amended to enable this to happen.

The independent experts of the WGIP have also made a series of recommendations to the Sub-Commission (and for consideration by the Human Rights Council) identifying the specific needs for continued expert advice on indigenous issues.[50]

In common with Indigenous organisations, the WGIP recommend that 'Indigenous issues' should be automatically included in the agenda of all the substantive sessions of the Human Rights Council as a separate agenda item. They also recommend that all special procedures of the Human Rights Council and human rights treaty-monitoring bodies should consider indigenous issues in exercising their mandates.[51]

The WGIP acknowledge the role of the Permanent Forum (including providing advice to the UN directly from indigenous experts, although the Permanent Forum is not a human rights body); and the Special Rapporteur (particularly in relation to advice on the implementation in practice of human rights norms relating to indigenous groups). They state that these mechanisms do not, however, provide the necessary coverage for all human rights issues for Indigenous peoples into the future.

In particular, they argue the ongoing need for:

- ***An expert human rights body focused on indigenous issues:*** to consider recent developments on issues which may need to be brought to the attention of the Human Rights Council. Such a body would need to address issues on which there is no study to date, and to address these developments in as dynamic a way as possible, including by means of interactive exchanges. The WGIP have also identified a range of specific areas where the advice of an expert body in the human rights of indigenous peoples could be useful. They include contributing to securing the implementation of the goals of the Second International Decade of the World's Indigenous People, assisting the Office of the United Nations High Commissioner for Human Rights in the field of technical assistance in relation to indigenous peoples and possibly contributing to the Universal Periodic Review process of the Human Rights Council.

50 See further: *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006),* UN Doc: A/HRC/Sub.1/58/22, 14 August 2006, Annex 3 and Annex 4.

51 *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006),* UN Doc: A/HRC/Sub.1/58/22, 14 August 2006, Annex 3 and Annex 4.

- ***Action-oriented in-depth studies of specific issues affecting the rights of indigenous peoples.*** Such studies would explore what is needed to achieve full legal recognition and implementation in practice of the rights of indigenous peoples, with conclusions and recommendations which are submitted to a superior body for discussion and action. This is not within the mandate and/or the current practice of the Permanent Forum or the Special Rapporteur. The WGIP has identified many issues which still require in depth studies. The WGIP members argue that the Special Rapporteur and the Permanent Forum do not have the time or the adequate mandates or resources to engage in such studies.
- ***Ongoing standard-setting processes.*** The adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the Council should not be the end of standard-setting activities within the United Nations system in the field of indigenous rights. There is a need for the drafting of codes of good practice and guidelines with regard to implementation. Such codes are a bridge between a norm and its implementation in practice. Certain concepts in the United Nations Declaration on the Rights of Indigenous Peoples would benefit from guidelines on implementation.[52] Such codes need to be drafted by experts in human rights generally, as well as by experts in indigenous issues, with the close involvement of the representatives of as many indigenous peoples and organizations as possible. Standard-setting and the drafting of such codes or guidelines is not within the mandate of either the Permanent Forum or the Special Rapporteur, and they would not have the time to undertake the task.[53]

To achieve this, the WGIP have recommended that:

- there should be an expert body providing advice on the promotion, implementation and protection of the rights of indigenous peoples;
- this expert body should produce in-depth, action-oriented reports and studies and to engage in the elaboration of norms and other international standards relating to the promotion and protection of the rights of indigenous peoples;
- this expert body should be assisted by the widest possible participation of indigenous peoples and organizations; and
- should report to the Human Rights Council through a wider human rights advisory expert body.[54]

52 As examples of standard setting work that could be undertaken to support the implementation of the Declaration on the Rights of Indigenous peoples (once adopted by the General Assembly) see the 'Minority Profile and Matrix' implementation tool: Economic and Social Council, *Reviewing the promotion and practical realization of the Declaration on the Rights of persons belonging to national or ethnic, religious and linguistic minorities*, UN Doc: E/CN.4/Sub.2/2006/3, 23 June 2006.

53 Recommendations of the Working Group on Indigenous Populations with regard to the two documents which the Human Rights Council asked the Sub-Commission on the Promotion and Protection of Human Rights to submit, contained in *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006)*, UN Doc: A/HRC/Sub.1/58/22, 14 August 2006, Annex 3 and Annex 4.

54 Recommendations of the Working Group on Indigenous Populations with regard to the two documents which the Human Rights Council asked the Sub-Commission on the Promotion and Protection of Human Rights to submit, contained in *Report of the Working Group on Indigenous Populations on its twenty-fourth session (Geneva, 31 July-4 August 2006)*, UN Doc: A/HRC/Sub.1/58/22, 14 August 2006, Annex 3 and Annex 4.

The comments from the Indigenous Peoples Caucus and the recommendations of the WGIP indicate what is at stake with the current review process being undertaken by the Human Rights Council.

The preliminary conclusions of the Working Group established by the Human Rights Council to review the existing mechanisms suggests that the Sub-Commission will be abolished and replaced with a new body, likely to be called the 'Expert Advisory Body' or the 'Human Rights Consultative Committee.'[55] The role and functions of this body are yet to be settled, and it is unclear whether it will include a specific focus on Indigenous issues. It is also unclear whether it will replicate the consultative processes that exist through an Indigenous specific advisory body such as the Working Group on Indigenous Populations.

In all likelihood, the biggest threat will come to the continued existence of the Working Group on Indigenous Populations. The need for such a body – either in its existing format or in a revised structure – is clearly articulated above.

The challenge that has emerged through the current human rights reform process is to maintain the capacity for direct participation of and engagement with Indigenous peoples on human rights issues within the structures of the newly created Human Rights Council.

It would be totally unacceptable if one of the outcomes of the reform process was to limit the capacity of indigenous peoples' participation. Indeed, such an outcome would be contrary to the commitments made at the World Summit to advance recognition of indigenous peoples' human rights through participatory processes. It would also contradict commitments made by the General Assembly of the UN in relation to the Second International Decade of the World's Indigenous Peoples, as well as be inconsistent with the emerging processes for implementing a rights based approach to development (discussed further in the next section).

• Integrating human rights across the activities of the United Nations

Accompanying these reforms to the UN structure have been sustained efforts to mainstream human rights across the UN by integrating them into all policies and programs.

This has occurred through the increased recognition of the right to development and the entrenchment within the UN of a human rights based approach to development and poverty eradication.

This has been accompanied by an increased recognition of the right of Indigenous peoples to effective participation in decision making that affects them. These developments have in turn begun to crystallise in a growing acceptance of the emerging concept of free, prior and informed consent.

55 Human Rights Council, *Intersessional open-ended intergovernmental Working Group on the implementation of operative paragraph 6 of General Assembly resolution 60/251established pursuant to Human Rights Council decision 1/104 – Summary of the discussion on expert advice*, UN Doc: A/HRC/3/CRP. 4, 30 November 2006, available online at: www.docip.org/Human%20Rights%20Council/Session3/5. Summary-Expert%20advice.pdf.

Previous *Social Justice Reports* and *Native Title Reports* have discussed at length the right to development as well as the adoption by the UN agencies of the *Common Understanding of a Rights Based Approach to Development Cooperation*.[56] In summary:

- The Declaration on the Right to Development (DRD) was adopted by the UN General Assembly in 1986. The right to development is recognised as an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, through which all human rights and fundamental freedoms can be fully realised.
- Accordingly, development is defined as a process which belongs to people, not to States. Article 2(1) of the Declaration states that 'The human person is the central subject of development and should be the active participant and beneficiary of the right to development.'
- Article 1 of the Declaration also makes it clear that the goal of development is the realisation of all human rights and fundamental freedoms. Development must be carried out in a way which respects and seeks to realise people's human rights. Thus development is not only a human right in itself, but is also defined by reference to its capacity as *a process* to realise all other human rights.
- This emphasises the universality and indivisibility of human rights: it focuses on improving all rights, civil and political, as well as economic, social and cultural. The preamble to the Declaration notes that the development process 'aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from'.
- The right to development therefore encompasses the following issues for Indigenous peoples:
  - ensuring development is non-discriminatory in its impact and in its distribution of benefits;
  - requires free and meaningful participation by all people in defining its objectives and the methods used to achieve these objectives;
  - is directed towards the goal of realizing the economic, social, and cultural rights of people;
  - facilitates the enjoyment of indigenous peoples' cultural identity, including through respects the economic, social and political systems through which indigenous decision-making occurs; and

56 See for example, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2003*, HREOC Sydney 2003, Chapter 3; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2005*, HREOC Sydney 2005, Chapter 4; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC Sydney 2005, pp51-52. See also the discussion of the Common Understanding in Chapter 2 of this Report.

  - is self-determined development, so that peoples are entitled to participate in the design and implementation of development policies to ensure that the form of development proposed on their land meets their own objectives and is appropriate to their cultural values.[57]

- The importance of ensuring effective enjoyment of the right to development for all peoples has been an ongoing commitment of the UN for some time. It was affirmed in the Vienna Declaration at the World Conference on Human Rights in 1993 (Article 10 states that the right to development is 'a universal and inalienable right and an integral part of fundamental human rights'). It is also integral to the Millennium Development Goals process (discussed further below) and its importance was recently reiterated at the World Summit in 2005.
- The UN agencies have committed to ensuring that all their policies and programming are consistent with the right to development through the adoption in 2003 of the *Common Understanding of a Rights Based Approach to Development Cooperation*.[58]
- The Common Understanding requires that all programmes should contribute to the realisation of human rights; and be guided by human rights standards at all phases of development and planning. It recognises that people should be recognised as active participants in their own development and not as passive recipients. Accordingly, the Common Understanding emphasises the importance of process (through participation and empowerment) as well focusing on marginalised communities, through the adoption of targets and goals that are aimed at reducing disparities in the enjoyment of rights.

These developments to implement into practice the key elements of the right to development place considerable emphasis on participation of affected peoples and individuals.

As recent *Social Justice Reports* and *Native Title Reports* have documented, Australia's existing human rights treaty obligations also emphasise rights of Indigenous peoples to effective participation in decision-making that affects them, either directly or indirectly.[59]

Both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have interpreted common Article 1 of the international covenants (the right of all peoples to self-determination) as applying to the situation of indigenous peoples.[60] Through a number of individual communications and general recommendations, the Human Rights Committee has also elaborated on the scope of Article 27 of the International Covenant on Civil and Political Rights

57 For a detailed discussion applying these principles within the Australian context see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2003*, HREOC Sydney 2003, Chapter 1. See also: ME Salomon and A Sengupta, *The Right to Development: Obligations of States and the Rights of Minorities and Indigenous Peoples*, Issues Paper, Minority Rights Group International, 2003.

58 The Common Understanding is discussed in detail in Chapter 2 of this report.

59 See for example, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2000*, HREOC Sydney 2000, Chapters 3 and 4; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC, Sydney, 2002, Chapter 2 and p188.

60 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC, Sydney, 2002, pp13-19.

(the protection of minority group rights) and its application to the land and resource rights of Indigenous communities, and the positive obligation on States to protect Indigenous cultures.[61] The Committee has indicated that in determining whether the State has violated the rights of indigenous peoples under Article 27, it will consider whether measures are in place to ensure their 'effective participation' in decisions that affect them.[62]

Similarly, the Committee on the Elimination of Racial Discrimination (CERD) has issued a General Recommendation emphasising that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) places obligations on States who are parties to the Convention to take all appropriate means to combat and eliminate racism against indigenous peoples. It has called on States to:

a) recognise and respect indigenous peoples distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

b) ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous identity;

c) provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

d) ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and *that no decisions directly relating to their rights and interests are taken without their informed consent*; and

e) ensure that indigenous communities can exercise their rights to practice and revitalise their cultural traditions and customs, to preserve and practice their languages.[63]

The CERD has also, under its early warning/ urgent action procedure and periodic reporting mechanism, highlighted the necessity for the informed consent of indigenous peoples in decision-making that affects their lives as an integral component of the right to equality before the law (under Article 5 of the ICERD).[64]

These developments in international law (through binding treaty obligations) and UN policy and practice demonstrate the increased acknowledgement and reliance on human rights as providing a framework for proactively addressing existing inequalities within society and for recognising and protecting the distinct cultures of Indigenous peoples. And there are increasing expectations that this be done on the basis of full and effective participation of affected indigenous peoples.

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61 For an overview of the Human Rights Committee's jurisprudence on Article 27 see Jonas, W, *The recognition of distinct cultural rights in international law,* Speech, Lanzhou China 17 June 2000, Available online at: www.humanrights.gov.au/speeches/social_justice/recognition_of_cultural_rights.html, accessed 21 February 2007.

62 *Lansman et al v Finland No. 2*, (25 November 1996) CCPR/C/58/D/671/1995, para 10.7.

63 Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII – Indigenous Peoples*, UN Doc CERD/C/51/Misc.13/Rev.4, 18 August 1997, para 4. Emphasis added.

64 See for example, Committee on the Elimination of Racial Discrimination (CERD), *Decision 2(54) on Australia – Concluding observations / comments*, UN Doc: CERD/C/54/Misc.40/Rev.2, 19/3/1999; CERD, *Concluding observations – Australia*, UN Doc: CERD/C/304/Add.101, 19/4/2000.

These developments have been reflected upon by the various indigenous mechanisms within the UN. Both the Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues have given detailed consideration to the development through the UN processes and international law of an emerging **principle of free, prior and informed consent**.

In particular, the following studies and workshops have been conducted that have advanced the understanding of the principle of free, prior and informed consent:

- The WGIP released a preliminary working paper in 2004 on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources, to provide a framework for the drafting of a legal commentary by the Working Group on this concept.[65]
- The Permanent Forum on Indigenous Issues conducted the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples in January 2005. The workshop was a recommendation of the third session of the Permanent Forum, with the issue having arisen continually throughout the first three sessions of the Forum from 2002-2004.[66]
- The Permanent Forum Secretariat co-convened a workshop with my Office at the International Engaging Communities Conference in Brisbane in 2005, titled *Engaging the marginalized: Partnerships between Indigenous Peoples, governments and civil society*. The workshop developed Guidelines for engagement with indigenous peoples based on international law and practice, and informed by the principle of free, prior and informed consent.[67]
- The WGIP issued a revised working paper on the principle of free, prior and informed consent of indigenous peoples for its 2006 session. Contributions were invited to identify best practice examples to govern the implementation of the principle of free, prior and informed consent of indigenous peoples in relation to developments affecting their lands and natural resources.[68]

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65 Working Group on Indigenous Populations, *A preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept*. UN Doc E/CN.4/Sub.2/AC.4/2004/4, 8 July 2004, available online at http://www.ohchr.org/english/issues/indigenous/docs/wgip22/4.pdf, accessed 21 February 2007.

66 Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, UN Doc E/C.19/2005/3, 17 February 2005, available online at www.humanrights.gov.au/social_justice/conference/engaging_communities/report_of_the_international_workshop_on_fpic.pdf, accessed 21 February 2007.

67 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Partnerships between Indigenous Peoples, governments and civil society*, United Nations Workshop on Engaging the Marginalised, 2005 International Conference on Engaging Communities, Brisbane, Australia, 15 August 2005. Conference proceedings are available online at www.humanrights.gov.au/social_justice/conference/engaging_communities/index.html#link1 accessed 21 February 2007.

68 Working Group on Indigenous Populations, *Standard-setting: Legal commentary on the concept of free, prior and informed consent. Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of Implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources*, UN Doc: **E/CN.4/Sub.2/AC.4/2005/WP.1, 14 July 2005, available online at** www.ohchr.org/english/issues/indigenous/docs/wgip24/2005-wp1.doc, accessed 21 November 2007.

- The WGIP also released at its 2006 session a working paper on draft principles and guidelines on the heritage of indigenous peoples that places considerable emphasis on the need to respect the principle of free, prior and informed consent.[69]

Both the Permanent Forum and the WGIP have emphasised that the principle of free, prior and informed consent is not a newly created right for indigenous peoples. Instead, it brings together, or synthesises, the existing legal obligations of States under existing international law (such as the provisions outlined above relating to self-determination, cultural and minority group rights, non-discrimination and equality before the law).[70] In addition, the principle of free, prior and informed consent:

- Has been identified as an integral component in the implementation of obligations under Article 8(j) of the Convention on Biological Diversity. It's key elements are reflected in the *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact assessments Regarding Developments Proposed to take place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*.[71]
- Is explicitly named in relation to indigenous peoples in existing international treaties such as *ILO Convention (No.169) Concerning Indigenous and Tribal Peoples in Independent Countries* (see Articles 6 and 7 for example).[72]

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69 Working Group on Indigenous Populations, *Standard setting: future priorities for standard-setting activities. Review of the draft principles and guidelines on the heritage of indigenous peoples*, UN Doc: E/CN.4/Sub.2/AC.4/2006/5, 16 June 2006.

70 For an overview of the existing human rights obligations and jurisprudence relating to the principle of free, prior and informed consent see: Working Group on Indigenous Populations, *Standard-setting: Legal commentary on the concept of free, prior and informed consent. Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of Implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources*, UN Doc: **E/CN.4/Sub.2/AC.4/2005/WP.1, 14 July** 2005, paras 10-27; and **Commission on Human Rights, Working Group on Indigenous Populations,** *Standard-Setting, Legal Commentary on the Concept of Free, Prior and Informed Consent*, UN Doc E/CN.4/Sub.2/AC.42005/WP.1, 14 July 2005, available online at www.ohchr.org/english/issues/indigenous/docs/wgip24/2005-wp1.doc, accessed 21 February 2007.

71 As adopted in 2000. The guidelines set out processes 'whereby local and indigenous communities may have the option to accept or oppose a proposed development that may impact on their community': Secretariat of the Convention on Biological Diversity, *Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*, Montreal, Canada 2004, p9, available online at: www.biodiv.org/doc/publications/akwe-brochure-en.pdf, accessed 21 February 2007.

72 Article 6 refers to the principle of free and informed consent in the context of establishing mechanisms for free participation at all levels of decision-making in "elective institutions and administrative bodies responsible for policies and programmes which concern (indigenous peoples)". The article also refers to consultations through representative institutions whenever consideration is being given to legislative or administrative measures which may directly affect indigenous peoples. Article 7 provides: "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions, and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the fullest extent possible ,over their own economic, social and cultural development. In addition they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development, which may affect them directly… Governments shall ensure that whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities".

- Is also referred to in several contexts in the United Nations Declaration on the Rights of Indigenous Peoples, as adopted by the Human Rights Council in June 2006 (see Articles 11, 21 and 31 for example).

As the Secretariat of the Permanent Forum have noted:

> The principle of free prior and informed is increasingly emerging as a practical methodology within the UN system for designing programs and projects, which either directly or indirectly affect indigenous peoples. It is also a mechanism for operationalizing the human-rights based approach to development.[73]

The Working Group on Indigenous Populations explains the importance of the application of the principle of free, prior and informed consent to indigenous peoples as follows in Text Box 3.

Text Box 3: The principle of free, prior and informed consent and Indigenous peoples[74]

Substantively, the right of free, prior and informed consent is grounded in and is a function of indigenous peoples' inherent and prior rights to freely determine their political status, freely pursue their economic, social and cultural development and freely dispose of their natural wealth and resources – a complex (series) of inextricably related and interdependent rights encapsulated in the right to self-determination, to their lands, territories and resources, where applicable, from their treaty-based relationships, and their legitimate authority to require that third parties enter into an equal and respectful relationships with them based on the principle of informed consent.

Procedurally, free, prior and informed consent requires processes that allow and support meaningful and authoritative choices by indigenous peoples about their development paths.

In relation to development projects affecting indigenous peoples' lands and natural resources, the respect for the principle of free, prior and informed consent is important so that:

- Indigenous peoples are not coerced, pressured or intimidated in their choices of development;
- Their consent is sought and freely given prior to the authorization and start of development activities;

73 Secretariat of the Permanent Forum on Indigenous Issues, *Engaging Indigenous Peoples in governance processes: International legal and policy frameworks for engagement*, Background Paper submitted for United Nations Workshop on Engaging the Marginalised, 2005 International Conference on Engaging Communities, Brisbane, Australia, 15 August 2005, p4. Available online at: www.humanrights.gov.au/social_justice/conference/engaging_communities/unpan021100.pdf.

74 Extracted from: Working Group on Indigenous Populations, *Standard-setting: Legal commentary on the concept of free, prior and informed consent. Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of Implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources*, UN Doc: **E/CN.4/Sub.2/AC.4/2005/WP.1, 14 July 2005, paras 56-58, p15.**

- Indigenous peoples have full information about the scope and impacts of the proposed development activities on their lands, resources and well-being; and
- Their choice to give or withhold consent over developments affecting them is respected and upheld.

Human rights, coupled with best practices in human development, provide a comprehensive framework for participatory development approaches which empower the poorest and most marginalized sections of society to have a meaningful voice in development. Indeed, this is integral to a human rights-based understanding of poverty alleviation as evidenced by the definition of poverty adopted by the Committee on Economic, Social and Cultural rights: "in light of the International Bill of Rights, poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights (E/C.12/2001/10, para. 8).

Moreover, the realization of human rights requires recognition of conflicts between competing rights and the designing of mechanisms for negotiation and conflict resolution. More specifically, human rights principles require the development of norms and decision-making processes that:

- Are democratic and accountable and enjoy public confidence;
- Are predicated on the willingness of interested parties to negotiate in good faith, and in an open and transparent manner;
- Are committed to addressing imbalances in the political process in order to safeguard the rights and entitlements of vulnerable groups;
- Promote women's participation and gender equity;
- Are guided by the prior, informed consent of those whose rights are affected by the implementation of specific projects;
- Result in negotiated agreements among the interested parties; and
- Have clear, implementable institutional arrangements for monitoring compliance and redress of grievances.

While the WGIP has focused on the application of the principle of free, prior and informed consent in relation to land and resources, the Permanent Forum on Indigenous Issues has considered the application of the principle across a broader range of issues. They note it applies:

- In relation to indigenous lands and territories; including sacred sites (may include exploration, such as archaeological explorations, as well as development and use);
- In relation to treaties, agreements and other constructive arrangements between states and indigenous peoples, tribes and nations;
- In relation, but not limited to, extractive industries, conservation, hydro-development, other developments and tourism activities in indigenous areas leading to possible exploration, development and use of indigenous territories and/or resources;

- In relation to access to natural resources including biological resources, genetic resources and/or traditional knowledge of indigenous peoples, leading to possible exploration, development or use thereof;
- In relation to development projects encompassing the full project cycle, including but not limited to assessment, planning, implementation, monitoring, evaluation and closure – whether the projects be addressed to indigenous communities or, while not addressed to them, may affect or impact upon them;
- In relation to UN agencies and other intergovernmental organizations who undertake studies on the impact of projects to be implemented in indigenous peoples territories;
- In relation to policies and legislation dealing with or affecting indigenous peoples; and
- In relation to any policies or programmes that may lead to the removal of their children, or their removal, displacement or relocation from their traditional territories.[75]

The Permanent Forum have identified the common elements of the principle of free, prior and informed consent as those set out in Text Box 4 below.

Text Box 4: Elements of a Common Understanding of the principle of free, prior and informed consent[76]

What?

Free should imply no coercion, intimidation or manipulation;

Prior should imply consent has been sought sufficiently in advance of any authorization or commencement of activities and respect time requirements of indigenous consultation/ consensus processes;

Informed – should imply that information is provided that covers (at least) the following aspects:

a. The nature, size, pace, reversibility and scope of any proposed project or activity;
b. The reason/s or purpose of the project and/or activity;
c. The duration of the above;
d. The locality of areas that will be affected;
e. A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle;

75 Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, UN Doc E/C.19/2005/3, 17 February 2005, para 45.

76 Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, UN Doc E/C.19/2005/3, 17 February 2005, paras 46-48.

f. Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others); and

g. Procedures that the project may entail.

Consent

Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest holders. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth as appropriate. This process may include the option of withholding consent.

Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.

When?

FPIC should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.

Who?

Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. In FPIC processes, indigenous peoples, UN Agencies and governments should ensure a gender balance and take into account the views of children and youth as relevant.

How?

Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.

Procedures/Mechanisms

- Mechanisms and procedures should be established to verify FPIC as described above, including mechanisms of oversight and redress, such as the creation of national mechanisms.
- As a core principle of FPIC, all sides of a FPIC process must have equal opportunity to debate any proposed agreement/development/project. "Equal opportunity" should be understood to mean equal access to financial, human and material resources in order for communities to fully and meaningfully debate in indigenous language/s as appropriate, or through any other agreed means on any agreement or project that will have or may have an impact, whether positive or negative, on their development as distinct peoples or an impact on their rights to their territories and/or natural resources.

- FPIC could be strengthened by establishing procedures to challenge and to independently review these processes.
- Determination that the elements of FPIC have not been respected may lead to the revocation of consent given.

The principle of free, prior and informed consent has recently received important international endorsement by the United Nations General Assembly. In adopting the program of action for the Second International Decade of the World's Indigenous People, five key objectives were agreed for the Decade. They include:

> Promoting the full and effective participation of indigenous peoples in decisions which directly or indirectly affect them, and to do so in accordance with the principle of free, prior and informed consent.[77]

The Program of Action for the Second International Decade was adopted by consensus. In other words, no governments expressed objections to this objective. All governments have committed to advance this objective internationally and through their domestic policies and programmes over the course of the International Decade.

The principle of free, prior and informed consent has emerged as a primary focus for discussion in advancing the rights of indigenous peoples, particularly in relation to land and resources, heritage protection, intellectual property and biological diversity. The exact content of the principle, however, will continue to be debated and negotiated in international forums in the coming years.[78]

2) The making of global commitments to action – The Millennium Development Goals and the Second International Decade of the World's Indigenous People

As noted earlier in this chapter, the Secretary-General of the UN laid down the 'implementation challenge' for the global community in his *In larger freedom* report in preparation for the World Summit in 2005. He stated:

> When it comes to laws on the books, no generation has inherited the riches that we have… But without implementation, our declarations ring hollow. Without action, our promises are meaningless.[79]

77 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para 9, available online at www.un.org/esa/socdev/unpfii/en/second_programme_of_action.htm, accessed 22 November 2006.

78 Canada, Australia, New Zealand and the United States of America, for example, have raised their opposition to this principle and identified this as one of the principle reasons for opposing the adoption of the Declaration on the Rights of Indigenous Peoples. See for example, the joint statement by Australia, New Zealand and the USA on free, prior and informed consent, delivered at the 5th session of the Permanent Forum on Indigenous Issues, 22 May 2006, available online at www.docip.org/Permanent%20Forum/pfii5_185.PDF, accessed 22 November 2006; and Statement by Ambassador Paul Meyer (Canada) to the 1st session of the Human Rights Council, 29 June 2006, available online at www.docip.org/Human%20Rights%20Council/Session1/Intervention%20avant%20le%20vote/5.Canada.pdf, accessed 22 November 2006.

79 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* 21 March 2005, UN Doc: A/59/2005, paras 129-130, available online at www.un.org/largerfreedom/, accessed 21 February 2007.

> The time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service. We must move from an era of legislation to an era of implementation. Our declared principles and our common interests demand no less.[80]

He also defined the challenge as to 'implement in full the commitments already made and to render genuinely operational the framework already in place'.[81]

For indigenous peoples, there currently exist two frameworks at the global level which provide a focal point for this implementation challenge:

- the Millennium Development Goals, as agreed at the Millennium Summit in 2000 and due to be achieved by 2015; and
- the Second International Decade of the World's Indigenous People, as agreed in 2004 and also due to end by 2015.

For indigenous peoples, a focus on implementation through these frameworks is particularly crucial. This is due to considerable concern at the limited achievements of the First International Decade of the World's Indigenous People from 1995 – 2004. Principle among the concerns about the Decade was that governmental action did not match the rhetoric and commitments made to any significant degree.

Similarly, the resolution affirming the Program of Action for the Second International Decade noted ongoing concerns about 'the precarious economic and social situation that indigenous people continue to endure in many parts of the world in comparison to the overall population and the persistence of grave violations of their human rights' and accordingly 'reaffirmed the urgent need to recognize, promote and protect more effectively their rights and freedoms'.[82]

Concerns have also been expressed at the absence of Indigenous participation in the formulation of the Millennium Development Goals (MDGs). There has been identified an ongoing need to ensure that the MDGs are culturally relevant and able to assist the situation of indigenous peoples.

These concerns have been at the forefront of discussions during the establishment of the Second International Decade of the World's Indigenous People in 2004 and the approval of a Program of Action for the Decade in 2005.

International efforts over the past two years have sought to ensure that the MDG process and the Second International Decade are mutually reinforcing and complementary in their focus, in order to maximise the opportunities to advance the situation of Indigenous peoples. The Permanent Forum on Indigenous Issues, in particular, has led these efforts.

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80 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* 21 March 2005, UN Doc: A/59/2005, para 139, available online at www.un.org/largerfreedom/, accessed 21 February 2007.

81 *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General,* 21 March 2005, UN Doc: A/59/2005, para 72, available online at www.un.org/largerfreedom/, accessed 21 February 2007.

82 United Nations, General Assembly, *Draft Programme of Action for the Second International Decade of the World's Indigenous Peoples*, 18 August 2005, UN Doc A/60/270, preamble, available online at http://www.tebtebba.org/tebtebba_files/unpf/pf5/N0546496-PoA%20of%202nd%20Decade.pdf, accessed 22 February 2007.

• The Millennium Development Goals and Indigenous peoples

At the United Nations Millennium Summit in September 2000, world leaders agreed to a set of time bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women.[83] These are commonly referred to as the Millennium Development Goals (MDGs). At the Millennium Summit, world leaders committed to the achievement of the goals by 2015.

The purpose of the MDGs is set out in the Millennium Declaration as follows:

> We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.[84]

There are eight MDGs, supported by 18 targets and 48 indicators. The 8 MDGs and 18 targets are set out in Text Box 5 below.

Text Box 5: The Millennium Development Goals

Goal 1. Eradicate extreme poverty and hunger

Target 1: Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day.

Target 2: Halve, between 1990 and 2015, the proportion of people who suffer from hunger.

Goal 2. Achieve universal primary education

Target 3: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

Goal 3. Promote gender equality and empower women

Target 4: Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.

Goal 4. Reduce child mortality

Target 5: Reduce by two thirds, between 1990 and 2015, the under-five mortality rate.

Goal 5. Improve maternal health

83 United Nations General Assembly, *United Nations Millennium Declaration*, UN Doc: A/RES/55/2, 18 September 2000, available online at http://unstats.un.org/unsd/mdg/Resources/Static/Products/GAResolutions/55_2/a_res55_2e.pdf, accessed 22 February 2007. The goals were proposed by the Secretary-General of the UN, Kofi Annan, in his report *We the peoples: The role of the United Nations in the twenty-first century,* UN Doc: A/54/2000, 27 March 2000. For general background see: United Nations, *Fact sheet: The Millennium Development Goals*, United Nations Department of Public Information, New York, October 2002, available online at www.un.org/millenniumgoals/MDGs-FACTSHEET1.pdf, accessed 22 February 2007.

84 United Nations General Assembly, *United Nations Millennium Declaration*, UN Doc: A/RES/55/2, 18 September 2000, para 11.

Target 6: Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio.

Goal 6. Combat HIV/AIDS, malaria and other diseases

Target 7: Have halted by 2015 and begun to reverse the spread of HIV/AIDS.

Target 8: Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases.

Goal 7. Ensure environmental sustainability

Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.

Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation.

Target 11: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers.

Goal 8. Develop a global partnership for development

Target 12: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system. Includes a commitment to good governance, development and poverty reduction – both nationally and internationally.

Target 13: Address the special needs of the least developed countries. Includes: tariff and quota-free access for least developed countries' exports; enhanced programme of debt relief for heavily indebted poor countries (HIPC) and cancellation of official bilateral debt; and more generous ODA for countries committed to poverty reduction.

Target 14: Address the special needs of landlocked developing countries and small island developing States (through the Programme of Action for the Sustainable Development of Small Island Developing States and the outcome of the twenty-second special session of the General Assembly).

Target 15: Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.

Some of the indicators listed below are monitored separately for the least developed countries (LDCs), Africa, landlocked developing countries (LLDCs) and small island developing States (SIDS).

Target 16: In cooperation with developing countries, develop and implement strategies for decent and productive work for youth.

Target 17: In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.

Target 18: In cooperation with the private sector, make available the benefits of new technologies, especially information and communications.

The Millennium Declaration agreed on a series of 'fundamental values to be essential to international relations in the twenty-first century' which underpinned the commitments made in the Declaration, including the MDGs. These agreed values are:

- **Freedom.** Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.
- **Equality.** No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.
- **Solidarity.** Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.
- **Tolerance.** Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.
- **Respect for nature.** Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.
- **Shared responsibility.** Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.[85]

The Millennium Declaration also reaffirmed the commitment of all Member States to the purposes and principles of the Charter of the United Nations, and rededicated States to support all efforts to uphold, *inter alia*, respect for human rights and fundamental freedoms, and respect for the equal rights of all without distinction as to race, sex, language or religion.

These guiding principles and commitments are repeated here as they indicate that the purposes of the Millennium Summit, as encapsulated in the MDGs, are intended to apply and to benefit *all* people. This is in accordance with the understanding that human rights are universal, inalienable and indivisible.

It is important to recall this, as the focus in implementing the MDGs to date has been almost exclusively on the developing world.

The role of developed nations in implementing the MDGs has focused on 'making the case for aid and for urgent debt relief; ensuring that aid is allocated to sectors and services relevant to the Millennium Development Goals; and opening markets

85 United Nations General Assembly, *United Nations Millennium Declaration*, UN Doc: A/RES/55/2, 18 September 2000, para 6.

more widely to developing countries, especially the least developed countries'.[86] The MDGs have been treated by developed nations as a matter of foreign policy and not as a series of goals and targets to which they are committed to meeting within their own borders and for their own people.

Accordingly, the initial implementation phase of the MDGs has overlooked the relevance and importance of the goals for indigenous peoples within developed countries, including Australia.

Text Box 6 extracts the comments of Indigenous delegates from Australia that were presented to the Permanent Forum on Indigenous Issues on the difficulties in implementing the MDGs in the Australian context.

Text Box 6: The Millennium Development Goals and Australia[87]

1. **Indigenous peoples in Australia suffer significant disparities in the enjoyment** of economic, social and cultural rights, as reflected in several of the MDGs (particularly goals 2 (universal primary education), 4 (child mortality), 5 (maternal health) and 6 (HIV/AIDS, malaria and other diseases)).
2. **These disparities tend to be masked at the international level due to the lack** of disaggregation of data? and the comparative high level of enjoyment of rights by non-Indigenous Australians. As an example, the 17 year life expectancy gap between Indigenous and non-Indigenous Australians is not given proper acknowledgement internationally such as through the World Development Report as this data is not disaggregated in the World Development Index.
3. **As a result, there is insufficient recognition that there are challenges for** meeting the MDGs for Indigenous peoples in Australia. Concern was expressed that Australia treats the MDGs as a matter of foreign policy, relevant only to Australia's international aid programme.
4. **Related to these issues, concern was expressed that the MDGs do not** 'capture' the systemic discrimination and marginalisation that is experienced by Indigenous peoples in Australia and in other countries. The MDGs need to be made more culturally relevant to indigenous peoples so that they address those issues that affect indigenous peoples, such as loss of land, identity, language, disempowerment, captivity and stolen generations.
5. **There is currently an absence of mechanisms in Australia for Indigenous** peoples to be active participants in the planning, design, implementation, monitoring and evaluation of policies, programmes and projects. This is particularly the case with the absence of Indigenous representative structures at a national and regional level.

86 Permanent Forum on Indigenous Issues, *Indigenous Peoples and the Millennium Development Goals*, Website, available online at: www.un.org/esa/socdev/unpfii/en/mdgs.html.

87 Extracted from: Indigenous Peoples' Organisations of Australia Human Rights Network, *Report of consultations on the 5th session of the Permanent Forum on Indigenous Issues: 27-28 April 2006*, HREOC Sydney 2006.

6. There is a need for Australian governments to adopt a human rights based approach to development to underpin poverty eradication strategies. This requires recognition of Indigenous peoples as distinct peoples and the respect for their individual and collective human rights.
7. The meeting noted that Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives. Such participation should be based on the principle of free, prior and informed consent.

Recommendations:

i. That the PFII emphasise that the achievement of Millennium Development Goals is an objective for all States, not just some States. It is not justified for some States to take the view that, because they are 'developed' States, they do not have targets to achieve. States with Indigenous Peoples, such as Australia, have much to achieve under the Millennium Development Goals.
ii. That the PFII recommend that States work in partnership with Indigenous Peoples to identify key indicators and goals that are culturally relevant to Indigenous Peoples to measure progress in the implementation of the Millennium Development Goals.
iii. That the PFII recommend that the Millennium Development Goals are implemented in a manner consistent with the Programme of Action for the Second Decade of the World's Indigenous People, to ensure both programs are working together for successful outcomes for Indigenous Peoples in their communities.
iv. In the implementation of the Second Decade Program of Action, there must be agreed 'plans of action' designed and implemented at the national level, as recommended in Paras. 91 – 99 of the Programme. Such plans must be pursued by tri-partite partnership by Indigenous Peoples, States and country-based UN and international agencies.

Specifically in relation to Goals 4-6, the following comments were noted relating to Aboriginal and Torres Strait Islander health.

> In Australia, unacceptable health disparities persist between Aboriginal and Torres Strait Islander (Indigenous) peoples and non-Indigenous Australians. The significance and extent of these disparities is most often lost when Australia provides health statistics and social data to international reporting bodies and other agencies, as the relatively small proportions represented by Indigenous specific data (where available) is swamped by the overall health, and improving outcomes, for the population as a whole.
>
> This longstanding and entrenched inequality constitutes a threat to the survival of Aboriginal and Torres Strait Islander peoples, their languages and cultures, and does not provide Aboriginal and Torres Strait Islander peoples with the ability to live safe, healthy lives in full human dignity.
>
> A rights based approach to health programming is essential to achieve lasting improvements in Indigenous health within the shortest possible timeframe and on a basis of equality. At present, Aboriginal and Torres Strait Islander peoples do not receive equality of opportunity in the provision of primary health care services and health infrastructure.

A rights based approach requires the adoption of a holistic understanding of Indigenous health, which addresses physical, spiritual, cultural, emotional and social well-being, community capacity and governance.

There are significant disparities in under-5 year old mortality rates for Indigenous infants in Australia. While these rates are not as high as for infants in developing nations, the disparities in morbidity and mortality from largely preventable illness and infectious diseases are disproportionately high. Low birth weight, poor nutritional status and failure to thrive contribute to a cycle of impaired development, suboptimal immune status and increased susceptibility to infections. There is also an increasing body of evidence that suggests early childhood diseases and nutritional disadvantage are significant antecedents to the development of chronic disease in later life.

Recommendations (extract only)

v. That the UNPFII encourage governments to incorporate the principles of the MDGs into domestic policy for indigenous peoples in order to facilitate and accelerate the reduction in disparities for health and social justice indicators. There is also a need for the development of culturally appropriate and country specific targets, which reflect the circumstances of indigenous peoples. Many developed countries, including Australia, treat the Millennium Development Goals as foreign policy, with no consideration given to the potential for operationalising these international principles on a domestic level.

vii. That the UNPFII promote a human rights based approach to development and fully incorporate the right to health as a tool to progress and strengthen policy formulation and service implementation, in order to improve health outcomes for indigenous populations.

viii. That the PFII encourage States to establish, with the effective participation of indigenous peoples, specific timelines, benchmarks and targets for the achievement of indigenous health equality. These should be based on performance indicators, disaggregated by region and indigenous status. Governments should be required to provide regular reports to the PFII (and other appropriate national and international agencies, particularly the WHO).

ix. Given the global similarities in health outcomes for indigenous peoples, UN agencies and WHO should prioritise the establishment of specific procedures and mechanisms for addressing indigenous health, and for monitoring outcomes at the country level.

The Permanent Forum on Indigenous Issues, in exercising its role of coordinating UN activity on Indigenous issues, has focused on the application of the MDGs to indigenous peoples. In 2002 it established the Inter-Agency Support Group on Indigenous Issues (IASG). This is an ongoing Group comprised of the various UN agencies and funds, which meets annually in order to support and promote the mandate of the Permanent Forum within the UN system. The IASG has provided important analysis of the application of the MDGs to the situation of Indigenous peoples.

In its 2004 workshop report, the IASG noted the following concerns about the MDG process as it has applied to indigenous peoples to date:

> The Support Group considers that indigenous and tribal peoples have the right to benefit from the Millennium Development Goals, and from other goals and aspirations contained in the United Nations Millennium Declaration, to the same extent as all others. However, as the 2005 review of the implementation of the Millennium Development Goals nears, it appears from the available evidence that indigenous and tribal peoples are lagging behind other parts of the population in the achievement of the goals in most, if not all, of the countries in which they live, and indigenous and tribal women commonly face additional gender-based disadvantages and discrimination.
>
> Detailed information and statistics describing their situation are often lacking... Lack of adequate disaggregated data is a problem for the achievement of the Millennium Development Goals. Nevertheless, the information available — both statistics that do exist and experience acquired in the course of our work — indicates that these peoples rank at the bottom in terms of the social indicators in virtually every respect.
>
> Concern has also been expressed that the effort to meet the targets laid down for the achievement of the Millennium Development Goals could in fact have harmful effects on indigenous and tribal peoples, such as the acceleration of the loss of the lands and natural resources on which indigenous peoples' livelihoods have traditionally depended or the displacement of indigenous peoples from those lands.
>
> Because the situation of indigenous and tribal peoples is often not reflected in statistics or is hidden by national averages, there is a concern that efforts to achieve the Millennium Development Goals could, in some cases, have a negative impact on indigenous and tribal peoples while national indicators apparently improve.
>
> While the Millennium Development Goals carry a potential for assessing the major problems faced by indigenous peoples, the Millennium Development Goals and the indicators for their achievement do not necessarily capture the specificities of indigenous and tribal peoples and their visions. Efforts are needed at the national, regional and international levels to achieve the Millennium Development Goals with the full participation of indigenous communities — women and men — without interfering with their development paths and their holistic understanding of their needs. Such efforts must take into account the multiple levels and sources of the discrimination and exclusion faced by indigenous peoples.[88]

The Permanent Forum on Indigenous Issues has also argued that:

> indigenous peoples… are often the most marginalized populations in society, deprived of their right to development, including access to education, healthcare, water and participation in policy processes affecting their lives. It is clear that, the indicators of achieving the MDGs must be reviewed to capture the specificities of indigenous and tribal peoples and their visions.[89]

88 Economic and Social Council, *Report of the Inter-Agency Support Group on Indigenous Issues on its 2004 session*, UN Doc: E/C.19/2005/2, 14 February 2005, Annex 2, paras 4-6, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N05/237/10/PDF/N0523710.pdf?OpenElement.

89 Permanent Forum on Indigenous Issues, *Indigenous Peoples and the Millennium Development Goals,* Website, available online at: www.un.org/esa/socdev/unpfii/en/mdgs.html.

These concerns were re-iterated at the launch of the Second International Decade of the World's Indigenous People in New York in May 2006.[90]

Ms Mililani Trask, representing the Global Indigenous Peoples' Caucus, noted that 'the effort to meet the targets laid down for MDGs could in fact have harmful effects for indigenous peoples such as the acceleration of loss of lands and natural resources or the displacement from those lands.' She argued that the MDG indicators need to be redefined to be relevant to indigenous peoples by taking into consideration:

> culturally appropriate indicators, redefining the process of impoverishment caused by dispossession of ancestral lands, loss of control over natural resources and indigenous knowledge, devastating social and environmental impacts, impacts from militarization and conflict and forced assimilation into the mainstream society and integration into the market economy.[91]

She also stated that:

> The current MDG poverty indicator of living with $1/day cannot capture nor adequately reflect poverty as perceived by Indigenous Peoples'. Poverty alleviation must start from Indigenous Peoples own definitions and indicators of poverty. Governments speak of 'poverty' while Indigenous Peoples speak of 'rights'. Within indigenous territories, poverty is also defined by power deficits, lack of self-determination, marginalization and lack of mechanisms for meaningful participation and access to decision-making processes…
>
> The human-rights based approach to development is essential to the achievement of the MDGs. The MDGs must therefore be firmly grounded on a rights-based approach, to have meaning for Indigenous Peoples.[92]

The report of the fifth session of the Permanent Forum (conducted in 2006) states that:

> there is a clear need to redefine approaches to the implementation of the Goals so as to include the perspectives, concerns, experiences and world views of indigenous peoples. Statements also confirmed that there was a need for indigenous peoples to provide their own definitions of poverty and development and that there should be full and effective participation of indigenous peoples in the implementation of the Goals.[93]

The Permanent Forum also recommended that:

> self-determination, free, prior and informed consent and accountability form the basis of, and prerequisite for, any relationship that can be called a true partnership for development, and urges all States, indigenous peoples, United Nations bodies,

90 See in particular the joint intervention by over 100 hundred Indigenous organisations submitted to the Permanent Forum on Indigenous Issues: *Joint statement on the Draft UN Declaration on the Rights of Indigenous Peoples and Millennium Development Goals: Importance of a human rights-based approach*, 22 May 2006.

91 Mililani Trask, *Comments on behalf of the Global Indigenous Peoples' Caucus at the launch of the Second International Decade of the World's Indigenous People*, United Nations General Assembly, 12 May 2006, available online at: www.docip.org/Permanent%20Forum/pfii5_8.PDF.

92 Mililani Trask, *Comments on behalf of the Global Indigenous Peoples' Caucus at the launch of the Second International Decade of the World's Indigenous People*, United Nations General Assembly, 12 May 2006, available online at: www.docip.org/Permanent%20Forum/pfii5_8.PDF.

93 Permanent Forum on Indigenous Issues, *Report on the fifth session (15-26 May 2006)*, UN Doc: E/2006/43, para 4.

international development agencies, corporations and the private sector, as well as civil society, to uphold these vital principles.[94]

The Permanent Forum have identified that the next step in redressing these concerns is to facilitate processes for indigenous peoples 'to identify gaps in existing indicator frameworks, examine linkages between quantitative and qualitative criteria, and propose the development of indicators that are culturally-specific, measure exclusion, and reflect the aspirations of indigenous peoples'.[95]

To date, they have convened two regional meetings to progress this: one for the Latin American and Caribbean region (held at Puerto Cabezas, Nicaragua in September 2006)[96] and the other in Ottawa, Canada in March 2006 focusing specifically on the situation of indigenous peoples in developed countries, including Australia.[97]

The Ottawa meeting identified numerous challenges at the national and international level in developing appropriate indicator frameworks and linking these to the Millennium Development Goals. They noted that:

- The purpose of data collection and indicators is to ensure that States are meeting their constitutional and legal responsibilities towards indigenous peoples. States can tend to focus on developing indicators, but not focus sufficiently on the interventions required to meet targets tied to indicators. Indicators development should ultimately result in benefits to indigenous peoples by informing linkages between program outputs to outcomes. This is consistent with international standards and the human rights principle of progressive realization of economic, social and cultural rights.
- Indicators must place significant emphasis on indigenous peoples' inherent values, traditions, languages, and traditional orders/systems, including laws, governance, lands, economies etc. Collection of data and development of indicators should, therefore, also represent indigenous peoples' perceptions and understanding of well-being. It was noted, however, that not everything relating to indicators development undertaken by governments is relevant to indigenous peoples and not everything that indigenous peoples perceive can be measured.
- Indicators should also focus on the interplay between indigenous and non-indigenous systems (social, political and economic, colonization, industrialization) that result in a series of impacts, such as racism and discrimination, migration to urban centre's, youth suicide and disconnection to land and culture.
- Indicators that demonstrate inequities and inadequacies in government funding for indigenous peoples' programming and services should also be developed. This data can be illuminating by linking funding levels to mandated areas of government responsibility, assessing their

94 Permanent Forum on Indigenous Issues, *Report on the fifth session (15-26 May 2006),* UN Doc: E/2006/43, para 11.

95 See further: www.un.org/esa/socdev/unpfii/en/workshops.html.

96 See further: www.un.org/esa/socdev/unpfii/en/workshops.html.

97 Permanent Forum on Indigenous Issues, *Report of the meeting on Indigenous peoples and indicators of well-being*, UN Doc: E/C.19/2006/CRP.3, 20 April 2006, Available online at www.un.org/esa/socdev/unpfii/documents/workshop_indic_report.doc, accessed 26 February 2007.

accountability and projecting demand and other impacts into the future.

- There should be a balance of comparative indicators to assess well-being among non-indigenous and indigenous peoples, and indigenous-specific indicators based on indigenous peoples' visions and understandings of well-being.[98]

The Workshop recommended that 'the United Nations should identify and adopt appropriate indicators of indigenous identity, lands, ways of living, and indigenous rights to, and perspectives on, development and well-being' and that these indicators should by applied in performance measurement and monitoring processes by the UN system, as well as its member States, intergovernmental organizations and other development institutions.[99]

Accordingly, the Workshop proposed a series of indicators that could be further considered at the national and international level based on the two key themes of:

- Identity, Land and Ways of Living; and
- Indigenous Rights to, and Perspectives on, Development.

The Workshop noted that 'more exact indicators need to be developed in a measurable form, with full participation by indigenous peoples from all regions'.[100] The proposed indicators relate to the following issues:

- Maintenance and development of Traditional Knowledge, Traditional Cultural expressions and practices;
- Use and intergenerational transmission of indigenous languages;
- Support of, and access to, bilingual, mother tongue, and culturally appropriate education;
- Ownership, access, use, permanent sovereignty of lands, territories, natural resources, waters;
- Health of communities – including community safety, community vitality, and support for safe and culturally appropriate infrastructure;
- Health of ecosystems;
- Patterns of migration;
- Indigenous governance and management systems;
- Free, prior, informed consent, full participation and Self-determination in all matters affecting indigenous peoples' well-being;
- Degree of implementation/compliance with international standards and agreements relating to indigenous peoples' rights; and

98 Permanent Forum on Indigenous Issues, *Report of the meeting on Indigenous peoples and indicators of well-being*, UN Doc: E/C.19/2006/CRP.3, 20 April 2006, paras 9-20.

99 Permanent Forum on Indigenous Issues, *Report of the meeting on Indigenous peoples and indicators of well-being*, UN Doc: E/C.19/2006/CRP.3, 20 April 2006, para 33.

100 Permanent Forum on Indigenous Issues, *Report of the meeting on Indigenous peoples and indicators of well-being*, UN Doc: E/C.19/2006/CRP.3, 20 April 2006, para 34.

- Government funding for indigenous peoples' programs and services.[101]

Within the Australian context, there exist detailed indicator frameworks for various sectors. Most important among these is the *Overcoming Indigenous Disadvantage Framework*, as endorsed by the Council of Australian Governments.[102]

The Steering Committee for Government Service Provision, which produces the biennial *Overcoming Indigenous Disadvantage Report* against the indicator framework, has noted difficulties and data limitations in presenting some areas of the framework. Importantly, these include the identification of alternative indicators 'that would more clearly reflect outcomes for Indigenous people' and the adequacy of indicators for measuring Indigenous culture and health.[103]

In particular, the Committee has undertaken consultations, including with Indigenous peoples to identify ways of improving the following current indicators relating to Indigenous culture:

- Indigenous cultural studies in school curriculum and involvement of Indigenous people in development and delivery of Indigenous studies;
- Proportion of people with access to their traditional lands;
- Participation in organised sport, arts or community group activities; and
- Governance arrangements.

It has also identified potential additional indicators relating to heritage, language and recognition of Indigenous culture and law.[104]

Guidance is provided in addressing these difficult issues through the Ottawa Workshop's proposed indicators of indigenous identity, lands, ways of living, and indigenous perspectives on development and well-being.

The focus at the UN level, primarily due to the efforts of the Permanent Forum on Indigenous Issues, is firmly on ensuring that Indigenous peoples are able to enjoy the benefits of the Millennium Development Goals process through international efforts and domestic action. The process of developing a series of culturally based indicators to complement the MDGs is underway at the international level, and will continue to gain prominence in the coming years.

These developments provide valuable guidance in assessing the appropriateness of indicator frameworks within Australia; as well as assessing the policy basis of program interventions by governments, so as to establish whether they are consistent with a rights based approach to development and sufficiently target overcoming existing inequalities in the enjoyment of rights by Indigenous peoples in Australia.

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101 Permanent Forum on Indigenous Issues, *Report of the meeting on Indigenous peoples and indicators of well-being*, UN Doc: E/C.19/2006/CRP.3, 20 April 2006, pp 10-14.

102 See further: www.pc.gov.au/gsp/indigenous/index.html, and *Social Justice Report 2005*, HREOC, Sydney, 2005, Chapter 3.

103 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous disadvantage: Key indicators, Request for comment – March 2006*, Productivity Commission, Melbourne 2006, p3, available online at: www.pc.gov.au/gsp/indigenous/consultation2006/consultationpaper.pdf.

104 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous disadvantage: Key indicators, Questionnaire – March 2006*, Productivity Commission, Melbourne 2006, pp 3-10, available online at: www.pc.gov.au/gsp/indigenous/consultation2006/consultationquestionnaire.pdf.

• The Second International Decade of the World's Indigenous People

On 20 December 2004, the UN General Assembly proclaimed the Second International Decade of the World's Indigenous People (the Second Decade). The Second Decade commenced on 1 January 2005 and runs until 2015. It provides a focal point for all UN activity on Indigenous peoples over the next decade, as well as the efforts of governments through international cooperation and within countries.

The Decade follows on from the International Year for the World's Indigenous People in 1994 and the 1st International Decade of the World's Indigenous People which took place from 1995-2004.

While there had been some notable positive developments during the 1st International Decade (such as the establishment of the Permanent Forum and the creation of the role of Special Rapporteur on Indigenous Issues), there was widespread concern that this progress was not sufficient to meet the objectives of the 1st Decade.[105]

In particular, indigenous peoples were concerned at the slow progress of action within the UN to implement the 1st Decade's objectives (primarily due to financing restraints) as well as limited actions at the national level. One of the primary objectives of the 1st Decade was not met – namely, the finalisation and adoption of the Declaration on the Rights of Indigenous Peoples.

In establishing the Second Decade, the UN General Assembly expressed its concern at 'the precarious economic and social situation that indigenous people continue to endure in many parts of the world in comparison to the overall population and the persistence of grave violations of their human rights', and reaffirmed 'the urgent need to recognize, promote and protect more effectively their rights and freedoms'.[106]

Accordingly, the preliminary focus in establishing the goal and objectives of the Second Decade has been on ensuring that the commitments made by governments and the UN are action-oriented and focused on implementation.

The Permanent Forum has stated its intention to use its coordination role within the UN to promote an integrated approach to the Second Decade and the MDGs, so that they are complementary and mutually reinforcing. The Program of Action for the Second Decade also notes:

> that given that the time frame for the implementation of the Millennium Development Goals is the same as that of the Second Decade, the MDGs and the Permanent Forum's focus and recommendations on them should also inform the plan of action for the Second Decade.[107]

The Program of Action for the Second International Decade of the World's Indigenous People was approved by consensus by the UN General Assembly on

105 For an overview of the concerns of Indigenous Peoples Organisations see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC, Sydney, 2002, pp193-200.

106 United Nations General Assembly, Resolution – *Second International Decade of the World's Indigenous People*, UN Doc: A/RES/59/174, 20 December 2004, available online at: www.un.org/esa/socdev/unpfii/en/second.html.

107 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para 4.

21 November 2005. The approval of the Program of Action followed extensive consultations on a draft program.[108]

A copy of key provisions of the Program of Action for the Decade is included as Appendix 4 to this report. The goal and objectives of the Second Decade are set out in Text Box 7 below.

Text Box 7: The goal and objectives of the Second International Decade of the World's Indigenous People[109]

Goal

The goal of the Second Decade **is the further strengthening of international cooperation for the solution of problems faced by indigenous people** in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities.

Themes

Proposed mottos for the Second Decade are "Partnership for further action", "Human rights in practice", "Engagement for action" and "Agenda for life".

Objectives

The Program of Action for the Second Decade approves **five key objectives** for the Decade**.** These are:

i. Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects.
ii. Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent.
iii. Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples.
iv. Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth.

108 This included an open invitation to all Governments as well as Indigenous organisations to submit proposals for inclusion in the Program in February 2005; discussion on this theme at the Permanent Forum in May 2005 and the Working Group on Indigenous Populations in July 2005; the circulation of a draft program for further comment to all governments as well as Indigenous organisations in May 2005; the revision of this following the Permanent Forum meeting in May 2005 and posting of a revised program on the internet, with further comments sought from all governments as well as Indigenous organisations. See further: United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, paras 5-7.

109 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, paras 1, 8-10.

v. Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

The five key objectives cut across the various areas of the goal for the Decade (health, human rights etc). The five objectives also cut across the means set by the General Assembly for the achievement of the goal, namely action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities.

The adoption of these objectives and the Program of Action by consensus is significant. **Australia, for example, has agreed to work within this framework in its international cooperation activities as well as its domestic advancement of Indigenous issues.**

In the discussion in the General Assembly following the adoption of the Program of Action for the Decade, Australia made a statement clarifying its position on the Decade. The statement provides Australian Government's agreement to the Program of Action, while noting the following:

> 6. Ms. Nassau (Australia) said that, while her delegation supported the Second International Decade of the World's Indigenous People and initiatives to raise the profile of indigenous people internationally, such as the Permanent Forum on Indigenous Issues, it disagreed with some elements of the Programme of Action for the Second Decade (A/60/270). Her delegation could not agree to encourage States to ratify the draft convention on the protection of the diversity of cultural contents and artistic expressions, as stated in paragraph 14 of the Programme, as it had concerns that that might allow States to implement measures which conflicted with their obligations under other international agreements, particularly on trade and intellectual property. Her delegation was also concerned by the extensive references to the undefined principle of free, prior and informed consent.
>
> 7. She noted a factual error in paragraph 58 of the Programme of Action regarding the Convention on Biological Diversity and the Cartagena Protocol on Biosafety. The reference to "protection" should be amended to read "respect, preservation and maintenance" in keeping with article 8 (j) of the Convention. *Notwithstanding those points, Australia would join the consensus on the draft resolution, which reflected its commitment to advancing indigenous issues over the coming decade.*[110]

The Program of Action proposes a range of activities in relation to culture, education, health, human rights, the environment and social and economic development.[111] These are divided up into activities at the international and the national levels, as well as activities aimed at Indigenous Peoples Organisations. These are reproduced in **Appendix 4** of this report.

110 United Nations General Assembly, *Summary record of the 45th meeting: 3rd Committee,* held at United Nations Headquarters, New York, on Monday, 21 November 2005, General Assembly, 60th session, UN Doc: A/C.3/60/SR.45, 8 December 2005, available online at: http://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/611/94/doc/N0561194.DOC?OpenElement. Emphasis added.

111 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, paras 21-90.

The Program of Action also outlines a series of mechanisms for implementing and monitoring progress on the Second Decade.[112] These include that:

- All agencies (including UN agencies, governments, indigenous and non-government organisations) adopt plans of concrete activities with specific benchmarks to implement the goal, objectives and programme of action of the Second Decade, and to do so on a basis of gender equality.
- All activities should be undertaken on the basis of the full and effective participation of indigenous peoples. It is suggested that indigenous organizations should establish a council of indigenous peoples in each region or subregion at the international level with a mandate of evaluating on an ongoing basis the degree to which the goal, objectives and programme of action of the Second Decade are being realized.
- Similar Committees of indigenous peoples should be established at the national and local level to monitor the implementation of the programme of action domestically.
- It is recommended that Governments should establish national focal points on indigenous issues and on the Second Decade and intensify coordination and communication at the national level among relevant ministries, agencies and local authorities.
- It is recommended that tri-partite committees should be established at the country level composed of governments, indigenous peoples and United Nations country offices to promote implementation of the objectives of the Second Decade.

What should be clear from the Program of Action is that governments are expected to promote the achievement of the objectives of the Second Decade through both international means, as well as their domestic activities.

These objectives and agreed actions were ultimately adopted by consensus. **All** governments, ***including Australia***, have taken on commitments to advance the Second Decade on the basis of mutual respect and in good faith.

Efforts by the Australian government since it made this commitment have been extremely poor. The new arrangements at the federal government level for the delivery of services to Indigenous peoples provides a vehicle for advancing the objectives and activities contained within the Second Decade's Program of Action in a coordinated manner (as proposed above). The current lack of engagement by the federal government on the Second Decade and proposed ways of addressing this are discussed later in this chapter.

Overall, the objectives and Program of Action of the Second Decade provide a focused framework for achieving the protection of the rights of indigenous peoples internationally and domestically over the coming decade.

It highlights important principles for the **process** of engaging with indigenous peoples (on a non-discriminatory basis, with recognition of the distinct cultures of indigenous peoples and on the basis of the full and effective participation of

112 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, paras 91-99.

indigenous peoples in decision making), as well as focusing on the achievement of **outcomes** for improving the currently parlous state of enjoyment of human rights by indigenous peoples (with targets and benchmarks for achievement, and strong monitoring and accountability mechanisms conducted in partnership with Indigenous peoples).

As noted above, there are also currently concerns about the lack of focus on the implementation of the MDGs in developed countries despite the clear application of these goals to the situation of indigenous peoples (and clear statements about the universality of the outcomes sought through the MDG process).

The timing for achievement of the MDGs aligns with the timing for the Program of Action for the Second Decade. The commitments made through the Second Decade provide a further opportunity to ensure that efforts to address the MDGs also specifically emphasise the particular concerns and issues faced by indigenous peoples.

The combination of these two frameworks – the MDGs and the Second Decade – provide a powerful tool to assist in policy development and program planning over the coming years.

3) Developments in recognition of the rights of Indigenous Peoples

The advocacy of indigenous peoples at the international level can broadly be categorised as addressing the following inter-related purposes:

1) *Ensuring processes exist at the international level for the direct engagement and effective participation of indigenous peoples*, so that we have a direct role in determining priorities at the international level for the recognition and protection of our rights;
2) *Ensuring that UN programs and existing human rights obligations are accessible to us,* in other words, to ensure that we actually benefit from UN activity (such as through the implementation of the MDGs) and that governments faithfully implement their human rights obligations so that we are able to enjoy our rights on an equal basis to all other members of society; and
3) *Ensuring that our distinct cultural characteristics as indigenous peoples are recognised and protected in international law.*

The first of these purposes is integral to the achievement of the other two – the direct participation of indigenous peoples plays a central role in ensuring that policies and programs are appropriately targeted and meeting the actual needs of indigenous communities.

The second of these purposes can be progressed through a focus on closing the implementation gap that exists between the situation of indigenous peoples and the application of existing standards and programs to this situation.

The third purpose, however, requires more than the application of existing programs and human rights standards to the situation of indigenous peoples. It requires the

identification and elaboration of specific forms of protection that are required for Indigenous peoples if we are to fully enjoy all of our human rights.

In other words, it requires the recognition of specific human rights standards for indigenous peoples.[113]

The recognition of human rights standards that are specific to indigenous peoples has been, and continues to be, controversial. There are, however, precedents for the recognition of specially elaborated human rights standards that should be remembered and which place this controversy into perspective.

As noted by Asjborn Eide and Erica-Irene Daes, there are four categories of human rights that have emerged in the international human rights system to date. These are:

a) **The general, [individual]… human rights to which everyone is entitled**, found in the Universal Declaration on Human Rights and elaborated in subsequent instruments, such as the two International Covenants of 1966…

b) **The additional rights specific to persons belonging to national or ethnic, religious or linguistic minorities**, found in article 27 of the International Covenant on Civil and Political Rights (ICCPR), the Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities ("Minority Declaration"), and in several regional instruments dealing with the rights of persons belonging to minorities. They are formulated as rights of persons and therefore individual rights. States (do, however,) have some duties to minorities as collectivities…[114]

   Special minority rights can be claimed by persons belonging to national or ethnic, linguistic or religious minorities, but also by persons belonging to indigenous peoples. The practice of the Human Rights Committee under article 27 of the ICCPR bears this out…[115]

c) **The special rights of indigenous peoples** and of indigenous individuals, found in the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and – if and when adopted – in the draft Declaration on the Rights of Indigenous Peoples, adopted by the Working Group on Indigenous Populations (WGIP) in 1993 and now

113 Note that there is a dynamic interchange between these objectives. For example, the standard-setting processes of the Declaration on the Rights of Indigenous Peoples and the elaboration of indigenous specific rights in the WGIP and Permanent Forum have had an impact on the interpretation of existing human rights standards, with a resultant broadening in the coverage of those provisions. This broadened coverage might not, however, have occurred *without* this emphasis on developing Indigenous specific rights.

114 Eide, A and Daes, E, *Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc: E/CN.4/Sub.2/2000/10, 19 July 2000, para 2**.**

115 Eide, A and Daes, E, *Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc: E/CN.4/Sub.2/2000/10, 19 July 2000, para 18.

before the Commission on Human Rights. They are mostly rights of groups ("peoples") and therefore collective rights…[116]

The rights of indigenous peoples, which, under present international law, are found only under ILO Convention No. 169, can only be asserted by persons belonging to indigenous peoples or their representatives. Members of non-indigenous minorities cannot assert the(se) rights ...[117]

d) The rights of peoples as provided for in common article 1 to the two International Covenants of 1966. These are solely collective rights...[118]

There is still no consensus as to which collectivities are the beneficiaries of the right to self-determination under article 1.[119]

The specific rights of minorities and indigenous peoples in categories b) and c) above, are qualified by the requirement that their enjoyment shall not prejudice the enjoyment by all persons of the universally recognized human rights and fundamental freedoms (in category a) above).

In other words, while there are specific rights to protect the distinct cultural characteristics of minorities and indigenous peoples there is no scope for them to do so to the detriment of other people or to impede the rights of individuals within those groups.

Further, the International Council on Human Rights Policy has described the necessity for a particular group or category of people to have additional, specifically defined forms of recognition as due to the existence of 'normative protection gaps' in the international system. They explain this as follows:

> A "normative gap" exists when a recurrent event (or act or structural factor) deprives human beings of their dignity. Even when existing instruments provide protection in certain respects, in many cases a new or more comprehensive instrument is required to frame the rights of an affected group more clearly or in human rights terms. Such standards enable members of the group to protect their rights more effectively and clarify the duties of states at the same time.
>
> In this context, it is sometimes suggested that the first years of standard-setting generated foundation standards that applied to all human beings, whereas later standards provided more detailed protection to specific groups. The International
>
> Covenants adopted in 1966 protected women and children on the same terms as all people, for example. However, new instruments such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW, 1979) and the *Convention on the Rights of the Child* (CRC, 1989) subsequently became necessary to (a) identify principles specific to the group (*e.g.* the best interest of the child), (b) recognise new rights (*e.g.* the right of children not to be separated from their

116 Eide, A and Daes, E, *Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc: E/CN.4/Sub.2/2000/10, 19 July 2000, para 2.

117 Eide, A and Daes, E, *Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc: E/CN.4/Sub.2/2000/10, 19 July 2000, para 19.

118 Eide, A and Daes, E, *Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc: E/CN.4/Sub.2/2000/10, 19 July 2000, para 2.

119 Eide, A and Daes, E, *Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc: E/CN.4/Sub.2/2000/10, 19 July 2000, para 21.

parents against their will, or the reproductive rights of women), and (c) specify duties of States that were not defined clearly in the general instruments (*e.g.* the duty to eliminate stereotyped roles for men and women or the duty to ensure that discrimination against women does not occur in the private sphere, in addition to the public sphere).

Disability might be an example of a current "normative gap" of this type. Existing human rights norms, notably the principle of non-discrimination, protect the rights of people with disabilities. However, welfare approaches to disability, combined with low awareness of human rights in public institutions, are so entrenched that it is reasonable to claim that the rights of people with disabilities are not properly protected. The *Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities* (Convention on the Rights of Persons with Disabilities) aims to fill this gap.[120]

For many years, indigenous peoples have been arguing that they suffer from such a normative protection gap in the international human rights system.

Indigenous peoples have suffered discrimination as a result of colonisation and dispossession, yet continue to maintain their status as distinct peoples. While Indigenous peoples are fully entitled to and protected by existing human rights standards, the reality is that these have not fully addressed the consequences of the violation of indigenous peoples rights in the past and have not been successful in protecting the cultures of indigenous peoples.

The reason for this is that most human rights standards are individual in nature, and offer limited protection to the collective rights of indigenous peoples – such as to lands, territories and resources.[121]

Accordingly, a process began over twenty years ago to elaborate specific human rights norms that are applicable to indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples is the product of this process.

An overview of the process leading to the creation of the Declaration is provided in the *Social Justice Report 2002*.[122] The process by which the Declaration was negotiated is unique in that Indigenous peoples and States had an equal role in formulating the Declaration under the auspices of the Working Group on Indigenous

120 International Council on Human Rights Policy, *Human rights standards – learning from experience*, International Council on Human Rights Policy, Versoix, Switzerland 2006, pp7-9, available online at: www.ichrp.org/public/publications.php?id_projet=19&lang=AN.

121 As noted in section 1 of this chapter, there have been some positive developments in providing this recognition through the various human rights treaty committees in the past decade. These Committees have provided recognition to the rights of indigenous peoples to effective participation in decision-making that affects them. The treaty committees have recognised that the protection of the rights to land and resources of indigenous peoples is an integral component of obligations to ensure equality before the law and non-discrimination, as well as to protect the cultures of minority groups. The Committee on the Elimination of Racial Discrimination (CERD) has issued a General Recommendation on Indigenous People which emphasises in paragraph 4(a) that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) places obligations on States to 'recognise and respect indigenous peoples distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation'. This recognition through the existing human rights treaties is extremely important. It is not, however, sufficient to address the scope of the normative protection gap that currently exists for indigenous peoples, particularly due to the individual nature of existing human rights protections and also the requirement that a country has ratified the relevant treaty for these obligations to be enlivened (and therefore the protections available to apply universally to indigenous peoples).

122 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, HREOC Sydney 2002, pp185-189.

Populations. For the past eleven years the Declaration has been negotiated through a Working Group on the Declaration established by the Commission on Human Rights. Ensuring equal participation of indigenous peoples and States has been a consistent feature of this process.

The preamble of the Declaration identifies:

> that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.[123]

And that there is an:

> urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and for their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.[124]

The Declaration on the Rights of Indigenous Peoples seeks to elaborate the rights of indigenous societies at a collective level (i.e. in addition to the rights of indigenous individuals to existing human rights standards). As the preamble to the Declaration also states:

> *Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,
>
> *Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

The Declaration, as approved by the Human Rights Council, has 46 substantive articles and 23 preambular paragraphs.[125] It is divided into the following broad thematic areas:

- *Over-arching principles* (Articles 1-6): The rights of indigenous peoples to the full enjoyment of all human rights, non-discrimination, self-determination and autonomy, maintenance of Indigenous institutions, and the right to a nationality.
- *Life, integrity and security* (Articles 7-10): Freedom from genocide, forced assimilation or destruction of culture, forced relocation from land, right to integrity and security of the person, and right to belong to an indigenous community or nation.
- *Cultural, spiritual and linguistic identity* (Articles 11 – 13): Rights to practice and revitalize culture and the transmission of histories, languages etc; and

123 Preamble, *United Nations Declaration on the Rights of Indigenous Peoples*, as adopted by the UN Human Rights Council on 29 June 2006, UN Doc: A/HRC/1/L.3, 23 June 2006, Annex, available online at: www.ohchr.org/english/issues/indigenous/docs/wgdd2006/18-rev1.doc.

124 Preamble, United Nations Declaration on the Rights of Indigenous Peoples, as adopted by the UN Human Rights Council on 29 June 2006, UN Doc: A/HRC/1/L.3, 23 June 2006.

125 The Declaration, as approved by the Human Rights Council, is available online at: www.ohchr.org/english/issues/indigenous/docs/declaration.doc.

the protection of traditions, sites, ceremonial objects and repatriation of remains.

- *Education, information and labour rights* (Articles 14-17): Right to education, including to run own educational institutions and teach in language; cultures to be reflected in education and public information; access to media (both mainstream and indigenous specific); and rights to protection of labour law and from economic exploitation.
- *Participatory, development and other economic and social rights* (Articles 18-24): Rights to participation in decision-making, through representative bodies; rights to their own institutions to secure subsistence and development; special measures to be adopted to address indigenous disadvantage and ensure non-discriminatory enjoyment of rights; guarantees against violence and discrimination for women and children; right to development; and access to traditional health practices and medicines.
- *Land, territories and resources rights* (Articles 25-32): rights to maintain traditional connections to land and territories; for ownership of such lands and protection of lands by State; establishment of systems to recognize indigenous lands; rights to redress and compensation for lands that have been taken; conservation and protection of the environment; measures relating to storage of hazardous waste and military activities on indigenous lands; protection of traditional knowledge, cultural heritage and expressions and intellectual property; and processes for development on indigenous land.
- *Indigenous institutions* (Article 33 – 37): Rights to determine membership and to maintain institutions (including judicial systems), to determine responsibilities of individuals to their communities, to maintain relations across international borders, and right to the recognition of treaties, agreements and other constructive arrangements with States.
- *Implementation of the Declaration* (Articles 38 – 42): States and UN agencies to implement the provisions of the Declaration, including through technical and financial assistance; access to financial and technical assistance for Indigenous peoples to implement the Declaration; and conflict resolution processes to be established that are just and fair.
- *General provisions of the Declaration* (Articles 43-46): The provisions of the Declaration are recognized as minimum standards and apply equally to Indigenous men and women; the standards recognized in the Declaration may not be used to limit or diminish indigenous rights, and must be exercised in conformity with the UN Charter and universal human rights standards; the provisions in the Declaration to be interpreted in accordance with principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.[126]

126 For a detailed description of the Declaration's structure (prior to the changes accepted by the Human Rights Council) see: Pritchard, S., *An analysis of the United Nations Draft Declaration on the Rights of Indigenous Peoples*, ATSIC Canberra 1999. See also: Charters, C, 'The rights of Indigenous peoples', New Zealand Law Journal, October 2006, pp 335-337.

Text Box 8 below identifies the key features of the Declaration.

Text Box 8: Key features of the Declaration on the Rights of Indigenous Peoples[127]

1. The Declaration affirms that indigenous peoples make a unique contribution to the diversity and richness of civilizations and cultures, which constitutes the common heritage of humankind. The Declaration promotes and enhances the plurality of societies.
2. The Declaration is of utmost importance to combat discrimination against indigenous peoples created by more than five centuries of racism, marginalization and exclusion. The Declaration explicitly encourages harmonious and cooperative relations between States and indigenous peoples. Every provision of the Declaration will be interpreted consistent with the principles of justice, democracy, respect for human rights, non-discrimination and good faith.
3. The Declaration is a reaffirmation of the commitment of the international community to respect cultural diversity and the right to be different.
4. The Declaration is based upon principles of partnership, consultation and cooperation between indigenous peoples and States. This is fully consistent with the theme of Second International Decade of the World's Indigenous People's "Partnership for Action and Dignity" adopted by the UN General Assembly in 2005.
5. The Declaration is an aspirational human rights instrument of great value for all. It establishes a valuable framework for resolving issues and achieving the common objectives of the international community and the UN Charter.
6. The Declaration does not create new rights. It elaborates upon existing international human rights norms and principles as they apply to indigenous peoples.
7. The Declaration promotes equality and non-discrimination for all. The Declaration is essential for the survival, dignity and well-being of indigenous peoples of the world.
8. The Declaration strengthens the international human rights system as a whole.
9. The Declaration recognizes the application of the right of self-determination to Indigenous peoples, exercised in conformity with international law and consistently with the Charter of the United Nations.
10. The Declaration is among the first international human rights instruments to *explicitly* provide for the adoption of measures to ensure that indigenous women and children enjoy protection and guarantees against all forms of violence.

Having initially been drafted by the five independent experts of the UN Working Group on Indigenous Populations, the Declaration had been approved by the Sub-Commission on the Protection and Promotion of Human Rights in 1994 (after 9

127 This Text Box is adapted (with some additions) from Global Indigenous Peoples Caucus, *Fact sheet – The Declaration on the Rights of Indigenous Peoples*, available online at: http://www.ipcaucus.net/IK_1.html.

years of consideration) and then sent forward for consideration by the Commission on Human Rights (CHR).[128]

The CHR established a Working Group to consider the Draft Declaration in 1995. The Working Group on the Draft Declaration met for 11 sessions from 1995 – 2006, with a version of the Declaration ultimately adopted by the Human Rights Council (the replacement structure to the CHR) on 29 June 2006.[129] At present, the Declaration is to be considered for approval and subsequently entry into force by the UN General Assembly during its current session (due to end in approximately September 2007).

The conduct of the negotiation sessions of the Working Group on the Draft Declaration provides an important context to understand the current deliberations on the Declaration at the General Assembly level of the UN, and the position of the Australian government on the Declaration.

The process leading to the approval of the Declaration by the Human Rights Council was difficult. The Working Group on the Draft Declaration operated on a consensus basis. In the first 9 years of negotiations, consensus was reached on 2 out of 45 articles of the Declaration (with no consideration having been given to the preambular paragraphs of the draft Declaration).

There were, however, major advances in the six weeks of negotiations that comprised the 10th and 11th session of the Working Group held between September 2004 and February 2006.

At the 10th session, a group of countries (led by New Zealand and Norway) introduced an amended text for the Declaration for consideration in the negotiations. This text was intended to provide a 'compromise' that bridged the differing positions of governments and indigenous peoples into a revised version of the Declaration which they hoped would meet broad consensus. The introduction of this text, while of concern to most indigenous participants, provided a new dynamic in the negotiations to consider alternative wording for the Declaration.

There was a significant focus during the 10th session on reaching consensus on a range of articles of the Declaration to demonstrate to the CHR that the process was making positive progress towards finalisation. By the end of the session, 'broad agreement' had been reached on 13 preambular paragraphs and 14 articles of the Declaration.[130] Some of these provisions were in their original form in the Declaration whereas others involved some changes to the text that the negotiations had revealed were broadly acceptable to governments and Indigenous organisations.

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128 For an overview of the history of the Declaration see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, pp 11-19, 210-215. See also: Calma, T, *Indigenous peoples and the right to self-determination*, Speech, International Law Association (Australian Division) and HREOC workshop: *Indigenous Peoples and Sovereignty – does sovereignty mean secession?,* HREOC, Sydney, 10 November 2004, available online at: www.humanrights.gov.au/speeches/social_justice/sovereignty_seminar.html.

129 Human Rights Council, *Resolution 2006/2 – Working group of the Commission on Human Rights to elaborate a draft Declaration in accordance with paragraph 5 of the General Assembly resolution 49/214 of 23 December 1994*, UN Doc: A/HRC/1/L.3, 23 June 2006, available online at: www.ohchr.org/english/issues/indigenous/docs/declaration.doc.

130 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its tenth session*, UN Doc: E/CN.4/2005/89, 28 February 2005, para 48, available online at: www.ohchr.org/english/issues/indigenous/groups/sessions-02.htm.

Despite this progress, these provisions were not able to be provisionally adopted prior to the conclusion of the 10th negotiation session.

As a consequence of this as well as the progress made on other provisions of the Declaration, the Chairman of the Working Group noted that significant progress had been made and differing positions were narrowing. On this basis, he stated that he was ready to make a contribution towards reaching consensus in the form of a 'Chairman's Text' to be considered by the working group. The intention was to 'capture the many good elements that had been brought forward during the session' and to utilise these proposals as a 'basis for further work'.[131]

The 'Chairman's Text' formed the basis of discussion at the 11th session in December 2005 and January/February 2006. This text compared the original text of the Declaration with all the proposals made during the negotiation sessions. It then included the Chairman's proposed text for each article based on his assessment of what was capable of meeting with consensus, as well as based on addressing the concerns of States in relation to the original provisions of the Declaration.

The Chairman's text was therefore comprised of a mixture of text from the original Declaration and new text based on the suggestions made during the negotiations (particularly at the 10th session). Discussions were focused on this text at the 11th (and final) session of negotiations in 2005 and 2006.

Consensus was reached on the majority of the Declaration by the end of the 11th session in February 2006. There were also numerous articles on which consensus was close, usually being prevented by only a few delegations.[132]

The following provisions of the Declaration reached consensus:[133]

- Preambular paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 16, 17, 18, 18bis, and 19; and
- Articles 1, 2, 4, 6, 7, 9, 14, 15, 16, 17, 18, 19, 22, 22bis, 23, 24, 37, 40, 41, 42 and 44.[134]

The Chairman noted that the following provisions were also extremely close to consensus:

- Articles 12, 13 and 20;[135] and

131 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its tenth session*, UN Doc: E/CN.4/2005/89, 28 February 2005, para 59.

132 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, paras 11-26, available online at: www.ohchr.org/english/issues/indigenous/groups/groups-02.htm.

133 Note: the numbering of Articles and paragraphs refers to the existing ordering of the Declaration at the time of negotiations – these have varied slightly in the subsequent official version of the Declaration. The Articles are referred to in the thematic clusters in which they were considered.

134 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 25. Note: Articles 5 and 43 were provisionally adopted in earlier sessions of the Working Group and can be added to this list.

135 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 25.

- Articles 10, 21, 26 bis, 28 bis and 38.[136]

He also noted that consensus was prevented on the following provisions due to concerns from usually one delegation in relation to the inclusion of just one word or phrase:

- **Articles 32 and 34 (concerning the word 'collective'); Article 33 (concerning** the word 'spirituality'); and paragraph 2 of article 35 (concerning the phrase 'border control laws').[137]

The Chairman also noted that further negotiation was not required on the following provisions (although they were not finally agreed as some delegations would only accept these provisions if their concerns relating to other provisions were met):

- Preambular paragraphs 8 and 10,[138] 12, 14, 15 and 15bis[139]; and
- Preambular paragraphs 6 and 13 and Article 36 (with the exception of one governmental delegation that did not agree to the consensus on these provisions).[140]

The Chairman summarised the outcomes in relation to the remaining provisions of the Declaration as follows:

- Articles 3 and 31 (self-determination): 'consensus could be reached (on Article 3) on the basis that article 31 be placed immediately after article 3'.[141]
- Article 45 (general provisions of the Declaration): the Chairman would provide 'a compromise text on the basis of the proposal that emerged from the consultations' during the session.[142]
- Articles 25-30 (land and resources): the Chairman considered there was a 'constructive outcome' in the negotiations on Articles 28 and 29 and this would be reflected in the report; and 'outstanding issues still remained regarding articles 25, 26, 27 and 30'.[143]

136 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 24.

137 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 21.

138 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 24.

139 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 19.

140 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 23.

141 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 20.

142 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 22.

143 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 24.

This summary shows the substantial consensus reached on the Declaration during the session. It also shows that the provisions on which there remained a lack of consensus (even where such consensus was held up by a small group of governments) are the most controversial provisions of the Declaration. These relate to self-determination, land and resource rights and what are known as the 'general provisions' of the Declaration.

Notably, the Australian government was an active participant in the negotiations and was part of the consensus on the majority of the Declaration. The Australian government was also one of a handful of States that maintained objections to the proposed text of the provisions listed above (relating to self-determination, land and resource rights and the general provisions).

At the end of the 11th session of negotiations, the Chairman informed the working group that he would be preparing a revised version of the Chairman's Text which would reflect the consensus on provisions during the session, as well as including his revised 'proposals regarding articles that were still pending, based on the discussions held during the sessions'.[144] He further noted that his revised Chairman's Text 'would be presented to the Commission on Human Rights with the hope that it would be considered as a final compromise text' and be adopted accordingly.[145]

It was indeed the revised Chairman's Text that was adopted by the Human Rights Council (which had replaced the Commission on Human Rights) on 29 June 2006.

On the adoption of the Declaration by the Human Rights Council, the Global Indigenous Peoples Caucus made the following comments:

> The roots of the present Declaration go back to 1974. In 1977, the pivotal gathering of Indigenous peoples here at the United Nations prompted the world community to turn their attention to Indigenous Peoples in the Americas.
>
> We persisted in our efforts and remained vigilant against some of the most formidable state forces in the world.
>
> We relied upon our ability to engage in substantive debate, with positions that remain consistent with international law.
>
> One of the most important outcomes has been that throughout all of our expressions, sometimes in our own languages, we have succeeded in educating the international community about the status, rights and lives of indigenous peoples in every corner of world.
>
> The true legacy of the Declaration will be the way in which we, the indigenous peoples of the world, in partnership with States, breathe life into these words.
>
> The real test will be how this will affect the lives of our people on a daily basis.
>
> While these are distinct and fundamental individual and collective human rights, it is their implementation at the community level, which will have an impact and give our children hope for a future where their lives and identity will be respected globally.

144 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 28.

145 Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 on its eleventh session*, UN Doc: E/CN.4/2006/79, 22 March 2006, para 30.

We express our wish as Indigenous Peoples for harmony in accordance with the natural world and hope that our multiple futures as Indigenous Peoples and States are brought together to embrace the positive contribution that we make to humankind.[146]

Text Box 9: The Declaration on the Rights of Indigenous Peoples is 'a historic document, out of a historic process.' Why the Declaration is important[147]

The following comments are extracted from a presentation by the Office of the High Commissioner for Human Rights on the Declaration on the Rights of Indigenous Peoples at a seminar convened in New York on 4 November 2006.

This is an historic development. The adoption of this instrument (by the Human Rights Council) represents a lot of years of work, by a lot of people. It has been a process that involved representatives of the indigenous community, delegations of Member States and NGOs, all working together – as is often the case in a human rights realm – **to bring about some normative clarity on what is required.**

Kofi Annan, UN Secretary General, has made a point of his mission in the last two terms, to'democratize' the way the UN goes about its work. That is, leadership is firmly in the hands of the Member States, as represented by their delegations, and that other voices – **non-governmental voices, specialist voices, indigenous voices – also contribute valuable information in the fora of this institution. Here, in the** development of this Declaration, is a case in point.

It is clear that the Declaration is not a treaty. One would be fair in asking the question 'well if it is not a treaty with binding legal obligations, what is the value of this instrument?' and I say these following points.

(1) It is an extremely useful tool for those of us who work in human rights. It is, in many ways, a 'harvest' that has reaped existing 'fruits' from a number of treaties, and declarations, and guidelines, and bodies of principle, but, importantly, also from the jurisprudence of the Human Rights bodies that have been set up by the UN and charged with monitoring the implementation of the various treaties.

(2) The rights contained in the Declaration are not new. There are no new rights in the Declaration from our perspective. They are rights that have been codified by the member States of this organization in countless treaties and have existed for the entire life of this organization since the adoption of the universal declaration of HR. But they are rights that have been violated – if we are to be frank, with impunity – vis-a-vis Indigenous Peoples for as long as these rights have existed. So the Declaration does something that is very useful.

146 Global Indigenous Peoples' Caucus, *Closing statement – Human Rights Council*, 30 June 2006, available online at: www.humanrights.gov.au/social_justice/drip/closing.html.

147 Extracted from Mokhiber, C, *Declaration a historic document, out of a historic process*, Panel Presentation, New York, 4 November 2006, available online at: http://www.ipcaucus.net/Mokhiber.html. For further information on the panel discussion see; http://www.ipcaucus.net/Panel_061026.html.

It helps us to clarify what are the normative implications and the operational requirements of the existing catalogue of human rights standards that have been adopted by the UN over the years. This clarification occurs in a way that is 'situation-specific', explaining how these pre-existing rights apply to the very particular case of Indigenous peoples around the world.

(3) The Declaration is not just a re-statement of existing rights, although it does not create any new rights. It is a remarkably clear articulation of the nature of the obligations and entitlements that attach to those pre-existing rights in the case of Indigenous Peoples. If you look at the instrument you will see the practical value of language that is drawn from the jurisprudence and helps us to understand those rights better, language like 'free, prior and informed consent', language like 'just and fair compensation' and language like 'fair and independent process'. These are not new concepts but they are very well articulated in the declaration.

(4) The Declaration is a comprehensive standard on human rights. It covers the full range of rights of Indigenous Peoples – in fact, rights of all of us but as they relate to Indigenous Peoples. It catalogues the kinds of violations that have historically plagued and, sadly, continue to plague Indigenous Peoples around the world. In particular, there are attacks upon their culture, their land, their identity, and their own voice. The Declaration has remarkable detail on issues like 'cross-border' relations and discrimination suffered by indigenous groups. In short the Declaration lays out the minimum standards for the survival, dignity and well being of Indigenous Peoples. That, itself, is language taken from the Declaration and is proof enough of the practical value of the instrument.

(5) The Declaration does not take an 'either/or' approach that historically has been forced on Indigenous Peoples around the world. Indigenous Peoples, for example, were forced to either be restricted to 'reserves' or to suffer discrimination before official state institutions. This Declaration incorporates 'choice' as a fundamental element to which we are all entitled. You can see that the declaration looks both at respect for indigenous institutions, on the one hand, but also equality before official institutions on the other hand. It looks at both the recognition of Indigenous identity, on the one hand, but also the right to national citizenship on the other hand. It looks at respect for traditional justice systems, on the one hand, but also requires access to national justice systems on the other hand. This very balanced 'choice' approach to human rights is codified in countless instruments but now we have it very clearly laid out in regard to the long struggles of Indigenous Peoples.

The Declaration was adopted by the Human Rights Council with 30 votes in favour, 2 against, 12 abstentions and three voting countries absent.[148] The 2 votes against were by Canada and the Russian Federation.[149]

The Canadian government had indicated in debates prior to the vote on the Declaration that its principle concern was the lack of time for consideration of the revised Chairman's Text of the Declaration. On 27 June 2006 they stated:

148 Only the 47 elected members of the Human Rights Council can vote.

149 For further information see: Statement by Ambassador Paul Meyer (Canada) to the 1st session of the Human Rights Council, 29 June 2006, available online at www.docip.org/Human%20Rights%20Council/Session1/Intervention%20avant%20le%20vote/5.Canada.pdf, accessed 22 November 2006.

> The conclusions and proposals of the Chairperson-Rapporteur reflect (recent) progress. There are, however, some key issues, such as the section on lands, territories and resources, where the provisions are unclear and open to competing interpretations.
>
> The Chairperson-Rapporteur has proposed language on several key issues that requires discussion among all parties. Such discussion on this latest draft has not taken place… As such, Canada would like some more time to work with other Member States and Indigenous peoples to arrive at a more workable document…
>
> We are simply asking for more time.[150]

Australia had presented its objections to the Declaration in a joint statement with the governments of New Zealand and the United States of America.[151] It argued that the Chairman's text provides 'a basis for further consideration and work. But it does not enjoy consensus' and argued that 'the current text is confusing and would risk endless and conflicting interpretations and debate on its application'.[152]

The government noted its principle objections to the Declaration were as follows:

- In relation to **self-determination** that 'the provisions for articulating self-determination for Indigenous Peoples inappropriately reproduce common Article 1 of the Covenants. Self-determination in the Chair's Text could be misrepresented as providing a unilateral right of self-determination and possible secession upon a specific subset of the national populace, thus threatening the political unity, territorial integrity and the stability of existing UN Member States'.[153]
- In relation to **lands, territories and resources** that 'they ignore the contemporary realities in many countries with indigenous populations, by appearing to require the recognition of indigenous rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous (Article 26). Such provisions would be both arbitrary and impossible to implement'.[154]
- In relation to the **status of individual rights**, that 'important provisions of the Chair's Text are potentially discriminatory. It seems to be assumed that the human rights of all individuals, which are enshrined in international law, are a secondary consideration in this text. The intent of the Working Group is that was not that collective rights prevail over the human rights of individuals, as could be misinterpreted in Article 34 of the text and elsewhere'.[155] They also argued that the Chair's Text 'appears

150 Human Rights Council, *Statement to the Human Rights Council by the Canadian Delegation – Working Group on the Draft Declaration on the Rights of Indigenous Peoples*, 27 June 2006, pp1-2, available online at: www.docip.org/Human%20Rights%20Council/Session1/cddh1_2.pdf.

151 While none of these countries have been elected as members of the Human Rights Council, they will be able to vote on the Declaration at the General Assembly.

152 Human Rights Council, *Joint statement by Australia, New Zealand and the United States of America on the Chair's text on the Declaration on the Rights of Indigenous Peoples*, 27 June 2006, p1, available online at: www.docip.org/Human%20Rights%20Council/Session1/cddh1_22.pdf.

153 Human Rights Council, *Joint statement by Australia, New Zealand and the United States of America on the Chair's text on the Declaration on the Rights of Indigenous Peoples*, 27 June 2006, p1.

154 Human Rights Council, *Joint statement by Australia, New Zealand and the United States of America on the Chair's text on the Declaration on the Rights of Indigenous Peoples*, 27 June 2006, p2.

155 Human Rights Council, *Joint statement by Australia, New Zealand and the United States of America on the Chair's text on the Declaration on the Rights of Indigenous Peoples*, 27 June 2006, p2.

> to confer upon a sub-national group, a power of veto over the laws of a democratic legislature (Article 20) … One group in society (cannot) have rights that take precedence over those of others'.[156]

These concerns are poorly argued and unjustified. They should be rejected outright as they do not interpret the Declaration according to principles of good faith, respect for human rights, equality and non-discrimination. To interpret in accordance with these principles would be consistent with principles of international law as well as consistent with Article 46 of the Declaration.

Some particular concerns with the views put by the Australian government are as follows.

- In relation to **self-determination**, the government freely admits in their statement that to interpret the right of self-determination for Indigenous peoples as providing a unilateral right of self-determination and possible secession would **misrepresent** the Chair's Text. That is, it would amount to a misinterpretation of the provisions of the Declaration. It is also unclear what the government means by the phrase a 'unilateral right of self-determination'. What is clear however, is that international law does not support a unilateral right to secession.
- Indigenous organisations and other governments have consistently pointed out that the Declaration also provides guarantees against secession, such as through the preamble where it notes that 'nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law' and Article 46(1) which provides that 'Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations'.[157]
- The debates on self-determination during the negotiations also demonstrated a high degree of consensus about the applicability of self-determination to indigenous peoples. The dispute about self-determination centres on the attempt by some States to limit the potential scope of this right, not whether it applies at all. Some States argued that the purpose in the Declaration is to affirm the existence of the right for indigenous peoples, not resolve broader issues on its application, which the Declaration makes clear, will be done in accordance with international law. The Declaration also provides, in Articles 40 and 46, that any disputes that subsequently arise between Indigenous peoples and States should be resolved through 'just and fair procedures for the

156 Human Rights Council, Joint statement by Australia, New Zealand and the United States of America on the Chair's text on the Declaration on the Rights of Indigenous Peoples, 27 June 2006, p2. See also the joint statement by Australia, New Zealand and the USA on free, prior and informed consent, delivered at the 5th session of the Permanent Forum on Indigenous Issues, 22 May 2006, available online at www.docip.org/Permanent%20Forum/pfii5_185.PDF, accessed 22 November 2006.

157 For a detailed analysis of this issue see further: Calma, T (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Indigenous peoples and the right to self-determination*, Speech, International Law Association (Australian Division) and HREOC workshop: *Indigenous Peoples and Sovereignty – does sovereignty mean secession?*, HREOC, Sydney, 10 November 2004, available online at: www.humanrights.gov.au/speeches/social_justice/sovereignty_seminar.html.

resolution of conflicts and disputes with States' as well as being resolved 'in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.' Compliance with these principles is expected from both States *and* indigenous peoples.

- Many States indicated their preference for any concerns to be addressed through positive language (that affirms both the existence of the right and highlights the value of establishing new partnership relationships between indigenous peoples and the State, which contributes to preserving territorial integrity and avoids confrontation) rather than by seeking to introduce limitations which may result in the future in discriminatory treatment.[158] This positive approach is reflected in the provisions of the Declaration, such as:
  - the principles in Article 46 outlined above;
  - the requirement also set out in Article 46 that the rights in the Declaration shall only be subject to limits that are non-discriminatory and which are 'strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others';
  - the preamble where it notes the right of indigenous peoples to 'freely determine their relationships with States in a spirit of coexistence, mutual benefit and full respect' and that the recognition of the rights of indigenous peoples in this declaration (including recognition of their right to self-determination) will 'enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith'.
- In relation to the concerns on **lands, territories and resources,** the specific concern outlined above cannot be seen as a reasonable or good faith interpretation of the provisions of the Declaration (as is expected in international law and as outlined in other provisions of the Declaration). The provisions of the Declaration must be read in the context of other provisions relating to land which provide for just and fair processes to be established to delineate indigenous land (Article 27) as well as for processes for redress and compensation (Article 28) which enable such concerns to be addressed on the basis of mutual respect and good faith.
- It has also been noted that there are 'precedents in international law and abundant arguments in doctrine and in practice (ILO Convention 169, decisions of the Inter-American Court of Human Rights and others)

158 For an overview of this debate see further: Commission on Human Rights, *Conference Room Paper – 11th session of the Working Group on the Declaration on the Rights of Indigenous Peoples: International workshop on the draft United Nations Declaration on the Rights of Indigenous Peoples, Patzcuaro, Michoacán, Mexico, 26 – 30 September 2005*, UN Doc: E/CN.4/2005/WG.15/CRP.1, 29 November 2005, pp4-5, available online at: www.ohchr.org/english/issues/indigenous/docs/wgdd2005/crp1.doc.

which are sufficiently clear' that the terminology used in the Declaration does not jeopardize the territorial integrity of the State.[159]

- In relation to the **status of individual rights**, this argument is patently absurd and incorrect. The Declaration notes in the preamble, for example, that 'indigenous individuals are entitled without discrimination to all human rights recognized in international law'. Article 1 of the Declaration also states that 'Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law'. The collective rights of indigenous peoples are to be applied consistently with individual rights and on a basis that does not impede the rights of indigenous individuals.

On these issues, I agree fully with the comments of Professor Rodolfo Stavenhagen, the United Nations Special Rapporteur on Indigenous Issues, when he stated to the Human Rights Council that:

> In response to the concerns of some States regarding issues of sovereignty and territorial integrity, the Special Rapporteur considers that **no country has ever been diminished by supporting an international human rights instrument; rather the contrary is the case.**[160]

A joint intervention at the Permanent Forum on Indigenous Issues in May 2006 and at the Human Rights Council in June 2006 was made by approximately 100 Indigenous organisations. It noted the following critical points on the Declaration in relation to the position of Australia, New Zealand and the Untied States of America:

> 17. To date, we have heard dissent from only a few States – generally those countries who possess dismal human rights records relating to indigenous peoples. For example, in regard to the United States, New Zealand and Australia, all of these States are either now or have been the subject of "early warning and urgent action" procedures by the Committee on the Elimination of Racial Discrimination.
>
> 18. Regrettably, key positions that are advanced by these States regarding the collective human rights of Indigenous peoples are most often discriminatory. They are not consistent with the Purposes and Principles of the *U.N. Charter* or with international law and its progressive development. Nor are these positions compatible with their existing international obligations.
>
> 19. We strongly urge the United Nations not to accommodate such discriminatory voices by delaying the adoption of the *Declaration*. In the

159 See further: Commission on Human Rights, *Conference Room Paper – 11th session of the Working Group on the Declaration on the Rights of Indigenous Peoples: International workshop on the draft United Nations Declaration on the Rights of Indigenous Peoples, Patzcuaro, Michoacán, Mexico, 26-30 September 2005*, UN Doc: E/CN.4/2005/WG.15/CRP.1, 29 November 2005, pp6-7.

160 Emphasis added. As quoted in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Commissioner praises United Nations Human Rights Council for adopting the Declaration on the Rights of Indigenous Peoples,* Statement, 30 June 2006, available online at: www.humanrights.gov.au/media_releases/2006/47_06.htm.

Programme of Action for the Second International Decade of the World's Indigenous People, the General Assembly has stipulated that the "draft [*Declaration*] shall not fall below existing international standards".

20. In the March 2006 General Assembly resolution that creates the Human Rights Council, it is specified that the Council is "responsible for promoting universal respect for the protection of all human rights ... for all, without distinction of any kind". The discriminatory and lesser standards being proposed by a few States would thus be inconsistent with the mandate of the Council.[161]

The Declaration was sent by the Human Rights Council to the General Assembly of the UN for adoption.

On 28 November 2006, the Third Committee of the General Assembly decided to defer consideration of the Declaration 'to allow time for further consultations'. It noted, however, that the General Assembly would 'conclude consideration of the Declaration before the end of (the General Assembly's) sixty-first session' (in approximately September 2007).[162]

The Australian Government supported delaying consideration of adoption of the Declaration.

At the time, I noted that:

> It is frustrating that countries such as Namibia (who introduced the resolution in the Third Committee) have raised concerns about the Declaration that have been debated ad nauseum in the working group negotiations over the past decade (Namibia chose not to participate in those negotiations).
>
> I am concerned that the Declaration has been stalled on the basis of arguments that have been roundly rejected by indigenous peoples over 11 years of negotiations. For example, Indigenous delegations have previously stated that any recognition of a right to self-determination in the Declaration should be done in accordance with international law and pose no threat to the territorial integrity of nation States. There is a triple guarantee of this in the Declaration.[163]

I also expressed my concern that any further discussions on the Declaration should be conducted with the full participation of Indigenous peoples. As I noted:

> Let us remember that we are currently in the second International Decade for the World's Indigenous People. The resolution adopting the Decade was adopted unanimously and is based on a theme of partnership with Indigenous peoples. The Program of Action for the Decade also recognises the status of Indigenous peoples as 'peoples' in international law – again, something that was adopted by general consensus.

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161 Joint intervention by numerous Indigenous organisations at the Permanent Forum on Indigenous Issues under Agenda item 4(b), *The Draft U.N. Declaration on the Rights of Indigenous Peoples and Millennium Development Goals: Importance of a Human Rights-Based Approach*, 22 May 2006, available online at http://www.hreoc.gov.au/social_justice/drip/joint_statement.html, accessed 6 March 2007.

162 UN Doc: A/C.3/61/L.57/Rev.1, 21 November 2006, available online at: www.un.org/Docs/journal/asp/ws.asp?m=A/C.3/61/L.57/Rev.1. For an overview of the debate in the Third Committee see: www.un.org/News/Press/docs/2006/gashc3878.doc.htm.

163 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Statement on the Declaration on the Rights of Indigenous Peoples*, 29 November 2006, available online at: www.humanrights.gov.au/media_releases/2006/97_06.htm.

> Given this recognition, it would be inconceivable and completely inappropriate for any future discussions on the Declaration to exclude indigenous peoples.
>
> I also call on the Australian Government to actively engage with Indigenous peoples in Australia in relation to the Declaration. We know that the majority of the Declaration is supported by our government – as they joined in the consensus agreement on over two thirds of the Declaration's provisions in the final session of the working group negotiations earlier this year.
>
> However, the Australian Government's objections to the Declaration need to be laid out publicly – article by article – so they can be debated with Indigenous peoples and tested against Australia's existing international human rights obligations.[164]

That is the current status of the Declaration. It awaits decision in the latter part of 2007 by the General Assembly. The outcome of that decision will be critical for indigenous peoples.

4) Summary of international developments – the current situation

This chapter has highlighted the large scope of activities taking place within the UN system that relate to the recognition of the rights of indigenous peoples.

• UN Reform processes

The United Nations reform process sets the broader framework within which to consider the level of protection that is provided for the human rights of indigenous peoples worldwide.

The *In larger freedom* report, by the Secretary-General of the UN, sets out the 'implementation challenge' for governments to make commitments such as the Millennium Development Goals meaningful. It challenges governments to no longer treat the Millennium Development Goals as 'floating targets, referred to now and then to measure progress'. Instead, they must inform, on a daily basis, national strategies and international assistance alike.

It also challenges governments 'to be held to account for respect of the dignity of the individual, to which they too often pay only lip service' and to 'move from an era of legislation to an era of implementation'.

The UN World Summit in September 2005 responded with all governments agreeing to integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system.

The World Summit also highlighted the ongoing importance of addressing indigenous peoples' human rights and for maintaining processes for the participation of indigenous peoples. It reaffirmed the commitment of all governments to continue advancing the human rights of the world's indigenous peoples at the local, national, regional and international levels, including through consultation and collaboration with them.

164 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Statement on the Declaration on the Rights of Indigenous Peoples*, 29 November 2006, p1.

The Summit ultimately agreed to structural reforms to the UN which recognise the equal importance of human rights alongside development and security. Principally, this involved agreement to the upgrading of the Commission on Human Rights into a full-fledged Human Rights Council.

The creation of the Human Rights Council provides opportunities for indigenous peoples to further promote their human rights, particularly through the new universal periodic review mechanism.

The modalities of how the Human Rights Council will operate, and the continuation of various subsidiary and advisory bodies remains to be determined.

Indigenous peoples have advocated that any future arrangements should enhance and not diminish the existing functions provided by the Working Group on Indigenous Populations, the Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples and the United Nations Permanent Forum on Indigenous Issues.

Further, indigenous peoples have argued that the UN should lay to rest any insecurities among indigenous peoples that the United Nations reform process and ongoing reorganization of the United Nations human rights structures could lead to the diminution or disappearance of existing positive functions which are central to the advancement of the rights of indigenous peoples.

The challenge that has emerged through the current human rights reform process is therefore to maintain the capacity for direct participation of and engagement with indigenous peoples on human rights issues within the structures of the newly created Human Rights Council.

This is particularly crucial as there remain many issues that require the further elaboration of indigenous rights through the international human rights system. These include guidelines on the protection of indigenous heritage, the application of the principle of free, prior and informed consent, and the guidelines and monitoring for the implementation of the Declaration on the Rights of Indigenous Peoples.

• The mainstreaming of human rights across the UN and participatory development practices

Accompanying these reforms to the UN structure have been sustained efforts to mainstream human rights across the UN by integrating them into all policies and programs.

This has occurred through the increased recognition of the right to development and the entrenchment within the UN of a human rights based approach to development and poverty eradication.

The Declaration on the Right to Development (DRD) provides the platform that 'The human person is the central subject of development and should be the active participant and beneficiary of the right to development'.

The UN agencies have committed to ensuring that all their policies and programming are consistent with the right to development through the adoption in 2003 of the *Common Understanding of a Rights Based Approach to Development Cooperation*. This ensures that active participation is central to the development, implementation and monitoring of all development programs.

This has been accompanied by an increased recognition, including under human rights treaties, of the right of indigenous peoples to effective participation in decision making that affects them and to the applicability of the right of self-determination to indigenous peoples.

These developments have in turn begun to crystallise into a growing acceptance of the emerging concept of free, prior and informed consent. This principle is increasingly emerging as a practical methodology within the UN system for designing programs and projects, which either directly or indirectly affect indigenous peoples. It is also a mechanism for operationalising the human-rights based approach to development.

Both the Permanent Forum and the WGIP have emphasised that the principle of free, prior and informed consent is not a newly created right for indigenous peoples. Instead, it brings together, or synthesises, the active legal obligations of States under existing international law (such as the provisions relating to self-determination, cultural and minority group rights, non-discrimination and equality before the law).

Procedurally, free, prior and informed consent requires processes that allow and support meaningful and authoritative choices by indigenous peoples about their development paths.

In relation to development projects affecting indigenous peoples' lands and natural resources, the respect for the principle of free, prior and informed consent is important so that:

- Indigenous peoples are not coerced, pressured or intimidated in their choices of development;
- Their consent is sought and freely given prior to the authorization and start of development activities;
- Indigenous peoples have full information about the scope and impacts of the proposed development activities on their lands, resources and well-being;
- Their choice to give or withhold consent over developments affecting them is respected and upheld.

The principle of free, prior and informed consent has recently received important international endorsement by the United Nations General Assembly. The Program of Action for the Second International Decade of the World's Indigenous People includes the objective of 'promoting the full and effective participation of Indigenous peoples in decisions which directly or indirectly affect them, and to do so in accordance with the principle of free, prior and informed consent'.

These developments in international law (through binding treaty obligations) and UN policy and practice demonstrate the increased acknowledgement and reliance on human rights as providing a framework for proactively addressing existing inequalities within society and for recognising and protecting the distinct cultures of Indigenous peoples. And there are increasing expectations that this be done on the basis of full and effective participation of affected Indigenous peoples.

• Global commitments to action: The MDG's and Indigenous peoples

The Millennium Development Goals, as agreed in 2000, are intended to apply and to benefit *all* people. This is in accordance with the understanding that human rights are universal, inalienable and indivisible.

Concerns remain that after 5 years of implementation, there is insufficient focus on the application of the MDGs to indigenous peoples and also to within developed countries.

The Inter-Agency Support Group on Indigenous Issues (IASG) has noted that it appears from the available evidence that indigenous and tribal peoples are lagging behind other parts of the population in the achievement of the goals in most, if not all, of the countries in which they live, and indigenous and tribal women commonly face additional gender-based disadvantages and discrimination.

There are also concerns that the effort to meet the targets laid down for the achievement of the Millennium Development Goals could in fact have harmful effects on indigenous and tribal peoples, such as the acceleration of the loss of the lands and natural resources on which indigenous peoples' livelihoods have traditionally depended or the displacement of indigenous peoples from those lands.

While the Millennium Development Goals carry a potential for assessing the major problems faced by indigenous peoples, the Millennium Development Goals and the indicators for their achievement do not necessarily capture the specificities of indigenous and tribal peoples and their visions. Efforts are needed at the national, regional and international levels to achieve the Millennium Development Goals with the full participation of indigenous communities without interfering with their development paths and their holistic understanding of their needs. Such efforts must take into account the multiple levels and sources of the discrimination and exclusion faced by indigenous peoples.

The Permanent Forum have identified that the next step in redressing these concerns is to facilitate processes for indigenous peoples 'to identify gaps in existing indicator frameworks, examine linkages between quantitative and qualitative criteria, and propose the development of indicators that are culturally-specific, measure exclusion, and reflect the aspirations of indigenous peoples'.

A preliminary series of indicators for consideration at the national and international level, and application in developed countries, has been suggested based on the two key themes of Identity, Land and Ways of Living; and Indigenous Rights to, and Perspectives on, Development.

For Indigenous peoples in Australia, there remains insufficient recognition that there are challenges for meeting the MDGs. Australia treats the MDGs as a matter of foreign policy, relevant only to Australia's international aid programme.

There is currently an absence of mechanisms in Australia for Indigenous peoples to be active participants in the planning, design, implementation, monitoring and evaluation of policies, programmes and projects. This is particularly the case with the absence of Indigenous representative structures at a national and regional level.

There is a need for Australian governments to adopt a human rights based approach to development to underpin poverty eradication strategies. This requires recognition of Indigenous peoples as distinct peoples and the respect for their individual and collective human rights.

• Global commitments to action: The Second International Decade of the World's Indigenous People

On 20 December 2004, the UN General Assembly proclaimed the Second International Decade of the World's Indigenous People. The Decade commenced on 1 January 2005 and runs until 2015. The Decade provides a focal point for all UN activity on indigenous peoples over the next decade, as well as the efforts of governments through international cooperation and within countries.

The focus in the preliminary stages of the Decade has been on ensuring that the commitments made by governments and the UN are action-oriented and focused on implementation.

The goal of the Second Decade is the further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development

The Program of Action for the Second Decade approves **five key objectives** for the Decade**.** These are:

i. Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects.

ii. Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent.

iii. Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples.

iv. Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth.

v. Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

The Program of Action proposes a range of activities in relation to culture, education, health, human rights, the environment and social and economic development. These are divided up into activities at the international and the national levels, as well as activities aimed at Indigenous Peoples Organisations.

The Program of Action also outlines a series of mechanisms for implementing and monitoring progress on the Second Decade. These include that:

- All agencies (including governments, Indigenous and non-government organisations) adopt plans of concrete activities with specific benchmarks to implement the programme of action of the Second Decade;
- All activities be undertaken on the basis of the full and effective participation of indigenous peoples, with Indigenous organizations establishing mechanisms in each region to evaluate on an ongoing basis the degree to which the programme of action of the Second Decade is being realized;
- Committees of Indigenous peoples should be established at the national and local level to monitor the implementation of the programme of action domestically;
- Governments should establish national focal points on indigenous issues and on the Second Decade and intensify coordination and communication at the national level among relevant ministries, agencies and local authorities; and
- Tripartite committees should be established at the country level composed of governments, indigenous peoples and United Nations country offices to promote implementation of the objectives of the Second Decade.

Overall, the objectives and the Program of Action of the Second Decade provide a focused framework for achieving the protection of the rights of indigenous peoples internationally and domestically over the coming decade.

It highlights important principles for the **process** of engaging with indigenous peoples (on a non-discriminatory basis, with recognition of the distinct cultures of indigenous peoples and on the basis of the full and effective participation of indigenous peoples in decision making), as well as focusing on the achievement of **outcomes** for improving the currently parlous state of enjoyment of human rights by indigenous peoples (with targets and benchmarks for achievement, and strong monitoring and accountability mechanisms conducted in partnership with indigenous peoples).

International efforts over the past two years have sought to ensure that the MDG process and the Second International Decade are mutually reinforcing and complementary in their focus, in order to maximise the opportunities to advance the situation of indigenous peoples.

The Permanent Forum has stated its intention to use its coordination role within the UN to promote an integrated approach to the Second Decade and the MDGs, so that they are complementary and mutually reinforcing.

• Recognition of Indigenous specific rights

Indigenous peoples have advocated the need for additional, specifically defined forms of recognition due to the existence of a 'normative protection gap' in the international system.

The reason for this is that most human rights standards are individual in nature, and offer limited protection to the collective rights of indigenous peoples – such as to lands, territories and resources.

The process of elaborating specific human rights norms that are applicable to indigenous peoples began over 20 years ago. The outcomes of this advocacy are reflected in the UN Declaration on the Rights of Indigenous Peoples.

The Declaration is of utmost importance to combat discrimination against indigenous peoples. It explicitly encourages harmonious and cooperative relations between States and indigenous peoples. Every provision of the Declaration has been designed to be interpreted consistent with the principles of justice, democracy, respect for human rights, non-discrimination and good faith.

The Declaration is also:

- a reaffirmation of the commitment of the international community to respect cultural diversity and the right to be different;
- based upon principles of partnership, consultation and cooperation between indigenous peoples and States; and
- an aspirational human rights instrument that establishes a valuable framework for resolving issues and achieving the common objectives of the international community and the UN Charter.

The Declaration does not create new rights. It elaborates upon existing international human rights norms and principles as they apply to indigenous peoples. The Declaration was adopted by the Human Rights Council on 29 June 2006 and is currently being considered by the General Assembly of the UN.

There exists substantial consensus on the vast majority of the provisions of the Declaration, with a small group of States maintaining objections.

Notably, the Australian government was an active participant in the negotiations and was part of the consensus on the majority of the Declaration. The Australian government was also one of a handful of States that maintained objections to the proposed text of the provisions relating to self-determination, land and resource rights and the general provisions.

The Australian government concerns have been poorly argued at the international level and are unjustified. They should be rejected outright as they do not interpret the Declaration according to principles of good faith, respect for human rights, equality and non-discrimination. The government's interpretation is not in accordance with principles of international law or consistent with Article 46 of the Declaration.

In relation to these objections, the United Nations Special Rapporteur on Indigenous Issues has argued that no country has ever been diminished by supporting an international human rights instrument; rather the contrary is the case.

Closing the 'protection gap' – Implementing a human rights based approach to Indigenous policy and service delivery in Australia

The outline of international developments in this chapter shows that the human rights of indigenous peoples have received extensive consideration in recent years.

Through a range of processes and mechanisms, States have entered into a broad range of commitments relating to the human rights of indigenous peoples. Some of these emerge through commitments to action – such as through the World Summit outcomes, the Millennium Development Goals and the Program of Action for the Second International Decade of the World's Indigenous People – whereas others relate to human rights obligations and international law, such as the developments through the UN human rights treaty committees, and the standard setting work of the Special Rapporteur, WGIP and Permanent Forum on Indigenous Issues.

Through these processes, governments of the world have agreed to actively engage with indigenous peoples locally to promote and implement the commitments they have made at the international level. As an example and as outlined in detail above, governments have committed to:

- achieve the Millennium Development Goals by 2015;
- adopt plans of concrete activities with specific benchmarks to implement the goal, objectives and programme of action of the Second Decade;
- establish national focal points within government on indigenous issues and on the Second Decade, as well as establish consultative processes (such as tri-partite committees with indigenous peoples and the UN) to promote implementation of the objectives of the Second Decade;
- adopt targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks; and
- develop strong monitoring mechanisms and accountability at the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

In addition, the human rights based approach to development has come to the fore of international discussion (with the World Summit outcomes emphasising achievement of the right to development as an essential component of the universality and inter-dependence of human rights).

In practical terms, there are clear commitments by governments to adopt a participatory approach to development, with active engagement of indigenous peoples, and through the negotiation of benchmarks and targets.

• The 'protection gap' in Australia

The previous chapters of this report have outlined in detail concerns about domestic policy making and program delivery. There is a clear lack of consistency between existing policies and approaches to Indigenous issues with these international legal obligations and developments.

It is clear to me that there is limited consideration of the government's human rights obligations in the settling of policy and delivery of programs as they affect indigenous Australians. As noted in previous chapters, there is a fundamental lack of processes for engagement with Indigenous peoples at the regional and national level. State wide processes also rely on bilateral agreements between the states and territories and the Commonwealth, which see no role in priority setting for Indigenous peoples. Previous tri-partite processes at the state level have by and large been discontinued in the absence of the Aboriginal and Torres Strait Islander Commission (ATSIC).

It is totally unacceptable for any government participating in UN processes to stand up, hand on heart, and pledge to undertake a range of actions in their domestic activities and then to comprehensively fail to act. In the Australian situation, there has been no observable and/ or transparent attempt to consider the implications of the commitments entered into at he UN General Assembly (such as through the Program of Action for the Second International Decade or the MDGs). These commitments are made to the citizens of Australia and to other States in good faith. They are intended to form a basis for action at all levels.

How can it be acceptable for Australia to commit to contributing to the achievement of the Millennium Development Goals by 2015 in Africa, and to not commit to doing the same within our borders in relation to a small percentage of the total population? It is a policy absurdity.

As I argued in the introduction to this report, the lack of consideration of a human rights based approach to Indigenous affairs and the failure to explicitly ensure consistency with Australia's human rights obligations, amounts to bad policy.

This situation is not unique to Australia. A major concern at the international level is the lack of implementation of human rights in domestic situations. As the then Secretary General of the United Nations, Kofi Annan puts it, 'the time has come for Governments to be held to account for respect of the dignity of the individual, to which they too often pay only lip service' and to do so by moving 'to an era of implementation'.

In his first report to the General Assembly, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples also noted that:

> Violations of the human rights of indigenous people occur for a variety of reasons… Although in some cases they are being tackled through specific programs and proposals, in many other cases rhetoric is failing to result in action, and needs are being neglected, particularly when it comes to protection.[165]

165 General Assembly, *The situation of human rights and fundamental freedoms of indigenous peoples – Report of the Special Rapporteur*, UN Doc: A/59/258, 12 August 2004, para 66, available online at http://daccessdds.un.org/doc/UNDOC/GEN/N04/458/74/PDF/N0445874.pdf?OpenElement, accessed 6 March 2007.

The Special Rapporteur has also stated that:

> the problem of a 'protection gap' between existing human rights legislation and specific situations facing indigenous people is indeed of major significance and presents a challenge to international mechanisms for the effective protection of human rights.[166]

And further, that:

> A matter of crucial importance… is the growing gap between legislation on indigenous rights… and the real, day-to-day situation of indigenous people in their communities.
>
> All the indicators suggest that the main problem is not a lack of suitable legislation (although much remains to be done in that regard), but shortcomings in terms of implementation, the efficiency of institutions and the procedures and mechanisms for the full realization of human rights.[167]

As noted throughout this chapter, the implementation gap has been highlighted as one of the most significant challenges for the UN and the international human rights system to address into the future.

What is the reasoning for this lack of implementation of Indigenous rights domestically in Australia and what are its implications?

One reason has to be the coordinating role of the Office of Indigenous Policy Coordination (OIPC). While OIPC does have a section with responsibilities relating to indigenous rights, reconciliation and repatriation of human rights, it is not active in promoting awareness of indigenous rights developments or the commitments of government across the bureaucracy. As a consequence, OIPC does not utilise its role as the coordinator of whole of government activity to ensure that a proactive approach is adopted to recognising Indigenous human rights and to implementing the commitments of the government undertaken within international fora.

While the delegate representing the Australian government will transmit a 'cable' at the conclusion of an international forum, there is no other mechanism known to be taking place domestically where all departments and agencies working with Indigenous peoples are provided with advice and directions that elaborate on the rights to development and other emerging human rights standards. Consequently, the disconnect between the domestic and international systems is not being addressed. To this end, it may be of benefit for the Secretaries of the Department of Foreign Affairs and/or AusAid to participate in the Secretaries Group on Indigenous Affairs to ensure greater consistency between international and domestic processes.

Further, there is a clear scepticism or even unwillingness from senior bureaucrats with OIPC to implement Australia's human rights obligations. In a recent meeting,

166 Commission on Human Rights, *Human rights and indigenous issues – Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, UN Doc: E/CN.4/2002/97, 4 February 2002, para 102, available online at http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/fef67856bf0a29aac1256ba000566817/$FILE/G0210629.pdf, accessed 6 March 2007.

167 General Assembly, *The situation of human rights and fundamental freedoms of indigenous peoples – Report of the Special Rapporteur*, UN Doc: A/60/358, 16 September 2005, paras 69-70, available online at http://daccessdds.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement, accessed 6 March 2007.

a senior bureaucrat described obligations relating to effective participation and obtaining consent (in relation to 99 year leasing – an issue that has the potential to impact significantly on generations of Indigenous communities) as 'touchy feely' stuff. The clear impression was that it was unimportant and a distraction. He went so far as to say that what Indigenous peoples need is for governments to come in and 'shock them' into action through extreme (punitive and non-participatory) measures as they have done in Balgo (WA) and Wadeye (NT).

While this view is patently absurd, it reflects a broader problem within government. This is that human rights are seen as a prescriptive framework that is focused on *what you can't do* and on a compliance mentality. The limited efforts to engage with human rights principles are at the most crude and basic level, such as crafting measures so that they can avoid or limit accusations of racial discriminatory treatment.

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

Human rights as an enabling framework promotes active engagement through partnerships, shared decision making and ultimately shared responsibility for outcomes. This is emphasised by a motto for the Second International Decade; 'partnership for action'.

By comparison, the current approach of the federal government pre-determines the priorities without engagement of Indigenous peoples, and therefore provides a *passive* system for service delivery and policy design. The irony of this approach is that it is a system which constantly attacks Indigenous peoples for being passive recipients, and yet it is in itself, resistant to any form of active engagement.

Ultimately, this domestic view of human rights is increasingly out of step with international developments on human rights standards. It is an increasingly untenable approach and will continue to be the subject of international scrutiny and concern.

We can, for example, expect that Australia will continue to be subject to concerns of non-compliance with human rights obligations by various treaty committees. Such scrutiny will intensify as human rights standards relating to Indigenous peoples become more widely accepted and common practice through international cooperation.

We can also expect that over time it will become a source of scrutiny through the universal periodic review mechanisms of the Human Rights Council – at which point it should be clear to the government that the concerns are objectively based and applied equally to all countries.

Indigenous peoples in Australia are in a particularly invidious position. Unlike other settler states such as Canada, New Zealand and the USA, who entered into treaties with Indigenous peoples, we have no formalised basis for engagement with Indigenous peoples. This makes the situation in Australia particularly disadvantageous towards Indigenous peoples and automatically creates a gap between principles of international law and domestic legal practice.

But Indigenous peoples in Australia are also disadvantaged because we exist in a so-called developed country – meaning that UN activity and international cooperation is directed outwards and not towards the existence of substantial inequality and poverty within our borders.

When we examine the developments in UN policies and programs we see that most are directed towards developing nations, with less scrutiny of the inequality and absence of a rights based approach to development within developed nations. This makes building on the widespread reforms in UN practice difficult; as there is no UN presence within Australia through which to operationalise a rights based approach to development, to focus on the implementation of the MDGs, or to implement the Second International Decade's Programme of Action.

This is not to say that the principles don't apply – clearly they do. And they are *intended* to apply. But it places increased emphasis on the role of government and leaves it less susceptible to alternative approaches through international cooperation.

• Bridging the 'protection gap' – the role of NGOs and the Indigenous community sector

Somehow we need to break this 'protection gap' by holding the government to implementing its obligations in good faith. But we can also break the 'protection gap' by focusing the efforts of civil society, the non-government and Indigenous community sectors, on adopting a rights based approach and learning from best practice frameworks, such as those that we export or experience through our international development work.

I am convinced that a primary barrier to achieving this is the existence of an information gap within civil society on human rights. There is a lack of understanding about human rights by Indigenous peoples and of how to apply them in advocacy and policy.

This is difficult to redress when government has closed off options for Indigenous participation in policy making processes and for representative structures. Government currently provides only limited support to Indigenous communities to build their capacity to understand and advocate for their rights. This limitation exists based on the misguided and fundamentally flawed view expressed to me by senior bureaucrats that if this information is provided it would empower Indigenous individuals and communities and see them challenge approaches adopted (often unilaterally) by government.

This places greater responsibilities on Indigenous organisations and non-government organisations to facilitate access to information and capacity building for Indigenous communities if Indigenous peoples are to have the capacity to be truly self-determining.

The Second International Decade provides us with an opportunity and the framework to focus our efforts to address this issue.

As noted earlier in the chapter, the Program of Action for the Second Decade establishes a series of objectives to be met through adopting partnerships between governments, civil society and Indigenous peoples. It also recommends:

- The adoption by governments and Indigenous peoples of plans of concrete activities with specific benchmarks to implement the goal, objectives and programme of action of the Second Decade;
- The establishment of Committees of Indigenous peoples at the national and local level to monitor the implementation of the programme of action domestically;
- The establishment of national focal points on indigenous issues and on the Second Decade within government departments, with improved coordination at all levels of government; and
- The establishment of tri-partite committees at the country level composed of governments, indigenous peoples and United Nations country offices to promote implementation of the objectives of the Second Decade.

Clearly, the government should designate a central focal point to coordinate governmental activities on the Second Decade. This focal point should be utilised to increase awareness of Indigenous rights and to bridge the gap between commitment and implementation that currently exists. This focal point should also consult with Indigenous organisations on proposed activities for the Second Decade, consistent with the requirements for full and effective participation that are outlined in the Program of Action for the Second Decade.

However, we should not wait for government. To do so would not demonstrate the active participation of Indigenous peoples.

There is much to be gained through partnerships between Indigenous organisations, research institutes and universities, Indigenous legal and medical services and the broader non-government sector (for example through those development, aid and human rights organisations who are members of the Australian Council For International Development).[168]

HREOC has commenced with a process to build such partnerships, through the re-convening of what used to be known in ATSIC as the Indigenous Peoples Organisations Network (IPO Network).

In 2006, the federal government confirmed the receipt of limited funding for HREOC to administer for 'the purpose of funding Indigenous participation in relevant international deliberations', and which could include 'educative and capacity building initiatives'.[169] The funding is administered by the Aboriginal and Torres Strait Islander Social Justice Commissioner.[170]

In accepting the funding, which is of such a limited amount that it is not possible to replicate the level of engagement and support previously provided by ATSIC, I noted that:

> I see a need for any project on international engagement by Indigenous peoples to create a stronger connection between activities at the international level and

168 Information available online at: www.acfid.asn.au/.

169 Attorney-General, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Funding for Indigenous Participation in International Deliberations*, 6 December 2005.

170 The activities to which funding is allocated is discussed annually in the Annual Report of the Human Rights and Equal Opportunity Commission, available online at: www.humanrights.gov.au/publications/index.html#annrep.

> engagement with Indigenous communities domestically. This includes through facilitating domestic consultations to inform international participants and to engage with government prior to international dialogues taking place, as well as providing mechanisms for feedback and disseminating information on the outcomes of international deliberations back to Indigenous organisations and communities.
>
> Accordingly, I place much importance on conducting educative and capacity building initiatives domestically as part of any process for international engagement. I will seek to ensure this balance between domestic engagement and international participation is met through the funding available.[171]

I also noted that:

> … in addition to seeking further funding being transferred on an ongoing basis (by the government)… HREOC will also (seek) to build partnerships with NGOs and discuss funding on an ad-hoc basis with the relevant departments which now have ongoing responsibility for various international processes through the new service delivery arrangements for Indigenous affairs at the federal level.[172]

The government responded by stating that they 'agree with you that a balance must be struck between Indigenous engagement in international events, and the domestic educational and capacity building measures necessary to make this engagement effective'.[173]

They also noted that 'under the new arrangements… the departments with policy responsibility for international events will be responsible for providing the necessary assistance to facilitate appropriate Indigenous attendance at international events.' In other words, that responsibility for funding Indigenous participation lies with the relevant department who was allocated the relevant program previously administered by ATSIC.

At the same time as providing this funding, the Government also made a contribution to the United Nations Voluntary Fund for Indigenous Populations to assist the participation of Indigenous peoples fro the Pacific region in UN fora. The contribution was a one off payment of $5,000.

In the first year of this funding to HREOC, I decided to provide funding contributions towards attendance at the UN Permanent Forum on Indigenous Issues and to convene the IPO Network for consultations prior to that meeting. It is the intention that the IPO would then meet twice annually, with occasional meetings on specific, urgent issues.

Accordingly, I am seeking to undertake a facilitation and coordination role to link international engagement and domestic processes. Over time, I intend to:

- Demonstrate that international engagement is of mutual benefit for the government, with the consequence that increased funding is contributed by the government to a more appropriate and sustainable level. The IPO

171 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Correspondence with Attorney-General on Indigenous Participation in International Deliberations,* 3 March 2006.

172 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Correspondence with Attorney-General on Indigenous Participation in International Deliberations,* 3 March 2006.

173 Attorney General, *Correspondence with Aboriginal and Torres Strait Islander Commissioner – Response to the Aboriginal and Torres Strait Islander Commissioner's letter regarding Funding for Indigenous Participation in International Deliberations*, 31 March 2006.

Network would meet prior to major international events, and so provide an opportunity for government engagement with Indigenous groups prior to them attending meetings. This will provide the opportunity to engage with Indigenous peoples and understand Indigenous positions on particular issues, and where there are differences in position, to create a space for dialogue and the realisation of common ground. There is not a culture of this type of engagement and so this will take time.

- Identify the responsible line agencies for funding within government and to make these channels known to Indigenous organisations so that government does not avoid its funding responsibilities by having no clear process or mechanism in place for considering funding applications.
- Build an Indigenous network based on partnership to engage in Indigenous rights issues and developments, and to disseminate this information through their networks.
- Seek an active partnership, including financial, with the non-government and corporate sectors for international participation.
- Build a strategic alliance with the NGO sector. There is an extensive range of human rights NGOs who are interested in Indigenous issues and who would welcome input from Indigenous organisations as to priorities and approaches to Indigenous human rights issues.
- Utilise these mechanisms to disseminate information to improve the linkages between the international and domestic arenas. Already, my office maintains a detailed website which is updated semi-regularly with international developments on Indigenous rights as a resource.

The IPO Network process is in a formative stage. It is hoped that over time it will provide an effective forum for the dissemination of information about international developments, as well as an opportunity for direct participation of Indigenous organisations in advocating for their rights and promoting implementation of their rights within Australia.

Conclusion and recommendations

We have much to learn from international experience and a distance still to travel to ensure that our domestic policy frameworks are consistent with our human rights obligations. The Second International decade for the World's Indigenous People provides a pathway for advancing discussions on these issues and also to map a way forward to ensure that the 'protection gap' that presently exists within Australia can be eliminated.

To advance the issues raised in this chapter, I make the following recommendations for action. I have included reference to which departments and agencies should take the lead in the implementation of these recommendations.

Recommendation 6: Directed to the Office of Indigenous Policy Coordination

That the federal government identify a focal point to coordinate, on a whole of government basis, its Program for the Second Decade of the World's Indigenous Peoples. The focal point should consult with Indigenous organisations in determining the activities to be undertaken for the Decade, in accordance with the goal, objectives and Program of Action for the Decade. The Government's Program should specifically respond to the items identified in the Program of Action for the Second Decade, rather than being a general thematic response. The Program should also be operational within this financial year.

Further, that the government allocate specific funding for the conduct of activities for the Second Decade, as determined through the consultations with Indigenous peoples.

Recommendation 7: Directed to the Office of Indigenous Policy Coordination and Department of Foreign Affairs and Trade

That the federal government specify the process for consideration of funding for engagement in international deliberations and identify focal points within each federal department or agency (for example, the relevant contact point within the Department of the Environment and Heritage for engagement on issues relating to the Convention on Biological Diversity).

Recommendation 8: Directed to the Indigenous Peoples Organisations Network and Australian Council for International Development

That the non-government sector, led by members of the Australian Council for International Development as appropriate, engage with Indigenous organisations and the IPO Network to build partnerships for the implementation of the Second International Decade (as well as highlighting the relevance of the Millennium Development Goals to the situation of Indigenous peoples in Australia).

Recommendation 9: Directed to the Department of Foreign Affairs and Trade, AusAid and Office of Indigenous Policy Coordination

That the Department of Foreign Affairs, in conjunction with the Social Justice Commissioner, conduct regular briefings for all agency heads on developments on the rights of Indigenous peoples, including the right to development (including the human rights based approach to development), Millennium Development Goals and Second International Decade for the World's Indigenous People. The Secretaries Group on Indigenous Affairs would be the appropriate body to receive these briefings.

Further, that AusAid be invited to contribute to the Secretaries Group on Indigenous Affairs to identify lessons that can be learned from Australia's international development activities for policy-making on Indigenous issues within Australia.

Appendix 1

Chronology of events relating to the administration of Indigenous affairs: 1 July 2005 – 30 June 2006

This appendix provides an overview of the main events with regard to the administration of Indigenous affairs to 30 June 2006. It commences with a summary table and is followed by a detailed description of each event.

Date	Event/summary of issue
1 July 2005 *NSW Government officials move into Australian Government Indigenous Coordination Centres.*	Officials from the New South Wales Government will be placed in Indigenous Co-ordination Centres (ICC's) which are run by the Australian Government from today.[1]
3 July 2005 *NAIDOC week 2005 commences.*	NAIDOC Week celebrations commence with the theme of "Our future begins with solidarity". The Australian Government provides funding for the annual National NAIDOC Awards Ceremony and Ball.[2]
11 July 2005 *Indigenous Disadvantage Report reinforces the need for change.*	The Steering Committee for the Review of Government Services Provision (SCRGSP) releases the Overcoming Indigenous Disadvantage Report. The Report highlights the unacceptable levels of disadvantage faced by Aboriginal and Torres Strait Islander Australians.[3]

1 Minister for Immigration and Multicultural and Indigenous Affairs. *Minister welcomes important step in cooperation with States.* Media Release ID: vIPS 24/05. 1 July 2005.

2 Minister for Immigration and Multicultural and Indigenous Affairs, *Minister welcomes start of NAIDOC Week 2005,* Media Release ID: vIPS 23/05, 3 July 2005.

3 Minister for Immigration and Multicultural and Indigenous Affairs, *Indigenous Disadvantage Report reinforces the need for change,* Media Release ID: vIPS 27/05, 11 July 2005. Aboriginal and Torres Strait Islander peoples are herein referred to as Indigenous peoples.

20 July 2005 *Indigenous Youth Leaders 2005 Announced.*	The Australian Government appoints 17 Indigenous youth leaders to the National Indigenous Youth Leadership Group (NIYLG) 2005-06. The appointments were preceded by a call for nomination earlier in the year. The focus of the group will be the promotion of issues of relevance to young Indigenous Australians.[4]
27 July 2005 *Tri-State Disability Strategic Framework agreed to by three governments.*	The Northern Territory, Western Australia and South Australia Governments sign off on an agreement to assist in the delivery of disability services to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Lands.[5] Through the establishment of this framework the three Governments aim to recognise and acknowledge the links between the Indigenous people of the NPY Lands and to further recognise that state and territory borders should not serve as an impediment to accessing disability services
12 August 2005 *First Australian Regional Partnership Agreement signed off.*	The Ngaanyatjarra Council signs off on the first Regional Partnership Agreement (RPA) in Australia today. The RPA commits all parties that are signatories to work together to improve essential services. The agreement applies to twelve communities in the Ngaanyatjarra Lands.[6]
12 August 2005 *New Indigenous Employment Strategy for the Australian Public Service announced.*	The Australian Government announces a new Indigenous Employment Strategy for the Australian Public Service. The strategy will provide additional funding of $2.15 million a year for three years to improve employment opportunities for Aboriginal and Torres Strait Islander peoples in the Australian Public Service (APS).[7]
7 September 2005 *Reforms to native title announced.*	The Attorney-General announces reforms to the native title system which are designed to promote the resolution of native title issues through negotiation and agreement making rather than through litigation.

4 Parliamentary Secretary for Children and Youth Affairs, *Indigenous Youth Leaders 2005 Announced,* Media Release, 20 July 2005.

5 Northern Territory, Minister for Family and Community Services, *Northern Territory signs up to historic tri-State agreement,* Media Release, 27 July 2005.

6 Minister for Immigration and Multicultural and Indigenous Affairs, *Minister Vanstone congratulates Ngaanyatjarra People on first Regional Partnership Agreement,* Media Release ID: vIPS 32/05, 12 August 2005.

7 Prime Minister of Australia, *New Indigenous Employment Strategy for the Australian Public Service,* Media Release, 12 August 2005.

7 September 2005 (continued) *Reforms to native title announced.*	There are six inter-connected aspects to the reforms: 1. Native Title Representative Bodies (NTRB's) – measures to improve the effectiveness of NTRBs . 2. Native title respondents – amending the guidelines for the financial assistance program to encourage agreement making rather than litigation. 3. Technical amendments to the *Native Title Act 1993* (Cth) - preparation of draft legislation for consultation. 4. Claims resolution process – an independent review. 5. Prescribed Bodies Corporate (PBCs) – an examination of the current structures and processes. 6. Increased dialogue and consultation with State and Territory governments to promote and encourage more transparent practices in the resolution process.[8] The State and Territory Native Title Ministers Group will meet in Canberra later this month with the Attorney-General to discuss the proposed changes.[9]
12 September 2005 *$9.5 million to tackle petrol sniffing announced by Australian Government.*	The Australian Government announces a $9.5 million boost in funding to tackle petrol sniffing in Central Desert Indigenous communities. Senior policing, justice, health and community services officials from the governments of the Northern Territory, South Australia and Western Australia support an eight point plan proposed by the Australian Government.[10]
19 September 2005 *Inaugural meeting of the National Indigenous Youth Leadership Group.*	The Parliamentary Secretary for Children and Youth hosts the inaugural meeting of the National Indigenous Youth Leadership Group (NIYLG), which was formed in July 2005.[11] The NIYLG brings together 17 Indigenous young people, aged 18 to 24 years, from diverse backgrounds, employment, location and interests, to meet with the Australian Government to discuss their unique experiences and their expectations of the group.

8 Attorney General's Department, *Practical reforms to deliver better outcomes in Native Title,* Media Release 163/2005, 7 September 2005.

9 Attorney General's Department, *Native Title Ministers' Meeting*, Communiqué, 16 September 2005, Canberra, available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_Nativetitleministersmeeting-communique-16September2005 accessed 16 January 2007.

10 Minister for Immigration and Multicultural and Indigenous Affairs, *Government Announces an Extra $9.5 Million to Combat Petrol Sniffing,* Media Release ID: vIPS 33/05, 12 September 2005.

11 Parliamentary Secretary for Children and Youth, *Fresh new look at young Indigenous issues,* Media Release, 19 September 2005.

4 October 2005 *Australian and Northern Territory Governments fund family violence projects.*	The Australian and Northern Territory Governments jointly provide $3.2 million for three new projects to tackle family violence and abuse in Indigenous communities. The projects include: • *Interventions for Children*, a program to develop and deliver therapeutic interventions for children exposed to family violence; • *Jiban Gubalewei (Peace at Home),* which will establish a new integrated Police and Community Services centre addressing family violence and child abuse in the Katherine and Borroloola region; and • *Empowering Indigenous Communities*, which will pilot a method to monitor and respond to changing levels of local violence in six remote communities.[12]
5 October 2005 *Initiatives to support home ownership on Indigenous land announced.*	The Australian Government announces initiatives to support home ownership on Indigenous land throughout Australia. The initiatives include: • An initial allocation of a $7.3 million addition to the Home Ownership Programme run by Indigenous Business Australia (IBA) for a new programme targeted to Indigenous Australians living on communal land. Under this program people can borrow money from the IBA at concessional interest rates. • An initial allocation of up to $5 million from the Community Housing and Infrastructure Programme to reward good renters with the opportunity to buy the community house they have been living in at a reduced price. • Use of the Community Development Employment Project (CDEP) to start building houses, support home maintenance, and to maximise employment and training opportunities. These Australia wide measures add to the changes to tenure arrangements on Aboriginal land in the Northern Territory which were also announced today.[13]

12 Minister for Community and Family Services, *Australian and NT Governments step up the battle against Indigenous family violence,* Media Release, 4 October 2005.

13 Minister for Immigration and Multicultural and Indigenous Affairs, *Initiatives support home ownership on Indigenous land,* Media Release ID: vIPS 34/05, 5 October 2005.

5 October 2005 *Changes to Aboriginal Land Rights (Northern Territory) Act 1976 announced.*	The Minister for Immigration and Multicultural and Indigenous Affairs announces changes to the *Aboriginal Land Rights (Northern Territory) Act 1976*. The stated aim of the changes is to help Indigenous peoples get greater economic benefits from their land. The changes will introduce tenure arrangements over entire township areas which are on Aboriginal owned land. The scheme will be a voluntary one.[14]
9 November 2005 *Indigenous Economic Development Strategy launched.*	The Australian Government launches the Indigenous Economic Development Strategy, a scheme to assist Indigenous Australians achieve economic independence. The strategy focuses on two key areas: work, and asset and wealth management. Under the work component of the strategy, the Government will promote a *Local Jobs for Local People* initiative. Indigenous communities, employers and service providers will work together to identify local employment and business opportunities and the training needed for jobseekers. Other initiatives in this area include: • developing targeted industry strategies to address regional employment needs; • continuation of the Community Development Employment Project (CDEP) reforms which began earlier this year; • improving linkages between Indigenous communities and vocational education and training bodies; and • training and support for local Indigenous business entrepreneurs. Asset and wealth management initiatives include: • increasing Indigenous home ownership; • increasing personal and commercial financial skills; and • exploring ways to increase economic development on Indigenous land.[15]

14 Minister for Immigration and Multicultural and Indigenous Affairs, *Reforming the NT Aboriginal Lands Act,* Media Release vIPS 40/05, 5 October 2005.

15 Minister for Immigration and Multicultural and Indigenous Affairs, *Indigenous Economic Development Strategy Launched,* Media Release ID: vIPS 38/05, 9 November 2005.

18 November 2005 *Reforms to the Aboriginal Land Rights (Northern Territory) Act 1976.*	The Minister for Immigration and Multicultural and Indigenous Affairs announces amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*. The key elements of the reform are: • facilitating economic development; • improving the mining provisions of the Act including devolving some powers from the Australian Government to the Northern Territory Government; • allowing for local Indigenous people to have more say over their affairs; • moving to performance based funding for Land Councils; • ensuring royalty payments are made in a transparent and accountable way; and • disposing of land claims which cannot legally proceed or would be inappropriate to grant.[16]
20 November 2005 *Secretaries Group on Indigenous Affairs releases its Annual Report on Indigenous Affairs 2004-05.*	The Secretaries Group on Indigenous Affairs releases its Annual Report on Indigenous Affairs for 2004-05. The focus of activities for the Group in the last year have been: • setting parameters for local engagement with Indigenous communities based on shared responsibility; • providing high-level guidance and oversight of Indigenous Co-ordination Centres; • developing an integrated Single Indigenous Budget Submission for consideration by the Ministerial Taskforce for Indigenous Affairs (MTF); and • establishing a performance monitoring and evaluation framework.[17]
22 November 2005 *Indigenous Legal Aid Services announced for the Northern Territory.*	The Attorney-General announces two successful tenderers for the provision of legal aid services for Indigenous Australians in the Northern Territory. The North Australian Aboriginal Justice Agency Ltd is the successful tenderer for the North Zone and the Central Australian Aboriginal Legal Aid Service Incorporated is the successful tenderer for the South Zone. Tenders were called for in August of this year.[18]

16 Minister for Immigration and Multicultural and Indigenous Affairs, *Reforming the NT Aboriginal Land Rights Act,* Media Release vIPS 40/05, 18 November 2005.

17 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05*, 20 November 2005, available online at: http://www.oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 21 December 2005.

18 Attorney General, *Indigenous Legal Services Announced for NT,* Media Release 210/2005, 22 November 2005.

23 November 2005 *Delivering Better Outcomes in Native Title – Update on Government's Plan for Practical Reform.*	The Attorney-General and Minister for Immigration and Multicultural and Indigenous Affairs issue a joint statement to outline more details about the changes to the administration of the native title system. The changes relate specifically to Native Title Representative Bodies (NTRB's). The changes for NTRB's are designed to: • enhance the quality of services by broadening the range of organisations that can undertake activities on behalf of claimants; • streamline the process for withdrawing recognition from poorly performing NTRBs and appointing a replacement; • put a time limit on the recognised status of NTRBs to ensure a focus on outcomes; and • provide NTRBs with multi-year funding to assist their strategic planning. Consultations are to be undertaken with NTRBs and stakeholders before the changes are formally introduced into Parliament next year.[19]
5 December 2005 *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Queensland signed.*	The Prime Minister and the Premier of Queensland announce a five-year bilateral agreement committing both governments to improving service delivery to Indigenous Queenslanders. The agreement commits the Australian and Queensland Governments to work together with Indigenous communities on service planning and delivery, investment and performance evaluation, and to reduce the bureaucratic load on communities. Under the agreement, the governments will work towards shared priorities, including those identified in the Overcoming Indigenous Disadvantage Report. These include: • early childhood development and growth; • early school engagement and performance; • positive childhood and transition to adulthood; • substance use and misuse; • functional and resilient families and communities; • effective environmental health systems; and • economic participation and development.[20]

19 Minister for Immigration and Multicultural and Indigenous Affairs, *Delivering Better Outcomes in Native Title – Update on Government's Plan for Practical Reform,* Media Release ID: vIPS 42/05, 9 November 2006.

20 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Queensland,* Media Release, 5 December 2005.

15 December 2005 *National Indigenous Council releases its inaugural Report Card.*	The National Indigenous Council (NIC) releases its Inaugural Report to the Australian Government. The report is a requirement of the terms of reference that established the NIC. The report summarises the work undertaken by the NIC from December 2004 to December 2005. The report has five main discussion areas: • a brief analysis of the new arrangements, the Ministerial Taskforce on Indigenous Affairs (MTF) and the Secretaries Group on Indigenous Affairs; • the role and meetings of the NIC throughout the previous year; • strategic advice given and partnerships entered into during the last twelve months by the NIC; • individual NIC members' reports; and • concluding remarks which provide a summary of the year's work.[21]
15 December 2005 *$23 million boost for training for Indigenous youth from remote communities.*	The Australian Government launches the Indigenous Youth Mobility Programme. $23.1 million has been allocated to provide 600 young Indigenous Australians with the opportunity to relocate to a major regional centre and train for a career by undertaking pre-vocational training, a new apprenticeship or tertiary level education.[22] The objectives of the Indigenous Youth Mobility Programme are to: • improve access to training and employment opportunities in major centres for young Indigenous Australians from remote communities; • increase the number of young Indigenous Australians participating in accredited training; • increase the number of Indigenous people employed in occupations in particular areas of community need such as trades, nursing, accountancy, business management and teaching, and; • support economic development in remote communities by building the capacity of local Indigenous youth to take up skilled jobs in their communities.[23]

21 National Indigenous Council, *Report to Government December 2004 to December 2005*, available online at http://www.atsia.gov.au/NIC/communique/PDFs/ReportCard2005.pdf accessed 16 January 2007.

22 Minister for Education, Science and Training, *$23 Million Boost for Training Indigenous Youth from Remote Communities,* Media Release: MIN 2053/05, 15 December 2005.

23 Department of Education, Science and Training, *Indigenous Youth Mobility Programme*, available on line at: http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/iymp/# accessed 20 December 2006.

22 December 2005 *Over $250 million in new Agreement on Indigenous housing and infrastructure.*	The Australian and Northern Territory (NT) Governments announce their *Agreement for the Provision of Housing and Infrastructure to Indigenous People in the Northern Territory 2005-2008*. The agreement provides that from 1 July 2006, the Northern Territory will manage the funding for Indigenous housing and housing infrastructure. The agreement forms the basis of a three year program worth $254 million that will for the first time combine the Australian and NT Governments' Indigenous housing resources to help provide better housing alternatives for Indigenous families across the NT.[24]
23 January 2006 *Indigenous Legal Aid Services announced for South Australia.*	The Attorney-General announces the Aboriginal Legal Rights Movement Incorporated is the successful tenderer for the provision of legal aid services to Indigenous Australians in South Australia. The Aboriginal Legal Rights Movement Incorporated has provided Indigenous legal aid services in the State since its incorporation in 1973.[25]
24 January 2006 *Indigenous Affairs moves to a new Federal Department (FaCSIA).*	The Prime Minister announces changes to the Ministry and the Administrative Arrangements Order. As part of the change the Office of Indigenous Policy Coordination is moved to the Family and Community Services Portfolio and a new Ministerial portfolio will be created to encompass Indigenous affairs.[26] The new Minister will head the newly formed Department of Families, Community Services and Indigenous Affairs (FaCSIA). This department was formerly known as the Department of Family and Community Services.
February 2006 *The passage of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) delayed until October 2006.*	The passage of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) through Parliament is delayed until October 2006. The Bill will commence on 1 July 2007 to coincide with the start of the 2007-08 financial year.[27]

24 Minister for Family and Community Services and Minister for Housing, *Over $250 million in new Agreement on Indigenous Housing and Infrastructure,* Joint Media Release, 22 December 2005.

25 Attorney-General, *Indigenous Legal Services announced for South Australia,* Media Release 005/2006, 23 January 2006.

26 Prime Minister of Australia, *Ministerial Changes,* Media Release, 24 January 2006.

27 Australian Government, Registrar of Aboriginal Corporations, *The Corporations (Aboriginal and Torres Strait Islander) Act 2006*, available on line at: http://www.orac.gov.au/about_orac/legislation/reform_act.aspx accessed 21 December 2006.

15 February 2006 *Social Justice and Native Title Reports 2005 tabled in Parliament.*	The Attorney-General tables the *Social Justice Report 2005* and the *Native Title Report 2005* in Parliament. The reports were prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner.[28]
8 March 2006 *Boost in Indigenous school retention rates.*	The Australian Bureau of Statistics releases the *Schools Report 2005* which shows that school retention rates among Indigenous students have climbed significantly over the past five years.[29]
28 March 2006 *Public Service boosts its intake of Indigenous graduates.*	The Australian Public Service has markedly increased its intake of Indigenous graduates following the success of the first year of the Australian Public Service Commission's Indigenous graduate recruitment initiative.[30]
12 April 2006 *National Aboriginal and Torres Strait Islander Health Survey indicates that Indigenous unemployment has fallen.*	The 2004-05 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) is released. It indicates that national unemployment for Indigenous persons aged 15 years and over has fallen to 15.4 per cent for 2004-2005. This result represents a fall of 7.5 percentage points, compared to the 2002 survey when Indigenous unemployment was measured at 22.9 per cent.[31] The survey was conducted in remote and non-remote areas of Australia, and was designed to collect a range of information from Indigenous Australians about health related issues, including health status, risk factors and socio-economic circumstances.[32]
17 April 2006 *Bilateral Agreement on Service Delivery to Indigenous communities in South Australia signed.*	The Prime Minister and the Premier of South Australia sign a five-year bilateral agreement committing both governments to improving service delivery to Indigenous communities in South Australia. This is a formal agreement by the Commonwealth and South Australian Governments to work together with

28 Attorney-General's Department, *Tabling of the Social Justice and Native Title Reports*, Media Release 013/2006, 15 February 2006.

29 Minister for Families, Community Service and Indigenous Affairs. *Boost in Indigenous school retention rates.* Media Release ID 09/06. 8 March 2006.

30 Minister for Employment and Workplace Relations, Minister Assisting the Prime Minister for the Public Service, *Public Service Boosts Its Intake of Indigenous Graduates*, Media Release 409/06, 28 March 2006.

31 Minister for Employment and Workplace Relations, Minister Assisting the Prime Minister for the Public Service. *Indigenous Unemployment Falling*. Media Release 086/06. 12 April 2006.

32 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004-05*, 11 April 2005, available online at http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B1BCF4E6DD320A0BCA25714C001822BC/$File/47150_2004-05.pdf accessed 20 December 2006.

17 April 2006 (continued) *Bilateral Agreement on Service Delivery to Indigenous communities in South Australia signed.*	Indigenous communities on service planning, delivery, investment and performance evaluation, and to reduce the bureaucratic load on communities. Under the agreement, the governments will work towards shared priorities, including those identified in the Overcoming Indigenous Disadvantage Report, as well as other identified priority areas including: • safer communities; • housing and infrastructure; • health and education; • homelessness; • economic development; • land, environment and culture; and • service delivery.[33]
17 April 2006 *Bilateral Agreement on Service Delivery to Indigenous peoples in New South Wales signed.*	The Australian and New South Wales Governments sign a five-year bilateral agreement committing both governments to improving service delivery to Indigenous communities in NSW. This is a formal agreement which commits the Australian and NSW Governments to work together with Indigenous communities on service planning and delivery, investment and performance evaluation, and to reduce the bureaucratic load on communities. Under the agreement, the governments will work towards shared priorities, including those identified in the Overcoming Indigenous Disadvantage Report, as well as other identified priority areas including: • building Indigenous wealth and employment; • promoting an entrepreneurial culture in Indigenous communities; • improving living conditions, health and social outcomes across a range of areas including early childhood health and intervention, improving literacy and numeracy, increasing school retention rates, reducing incarceration and the level of family violence; and creating safer communities. This is the fourth bilateral agreement to be signed under the Council of Australian Governments (COAG) Indigenous Service Delivery Framework.[34]

33 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in South Australia,* Media Release, 17 April 2006.

34 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in New South Wales,* Media Release, 17 April 2006.

28 April 2006 *New provider for NSW Indigenous legal aid services.*	The Attorney-General announces the Aboriginal Legal Service (NSW/ACT) Ltd. as the successful tenderer to provide Indigenous legal aid services in NSW and the Australian Capital Territory. The new Aboriginal Legal Service (NSW/ACT) Ltd merges the six existing Aboriginal and Torres Strait Islander Legal Services in New South Wales.[35]
9 May 2006 *Federal Budget 2006-07.*	Funding to Indigenous affairs in the 2006-07 Federal Budget, will total $3.3 billion. This is the result of allocating close to $500 million over five years in this Budget, with twenty four new initiatives across six portfolios.[36] The key budget measures within the Indigenous portfolio address four themes: 1. Measures Investing in People: these programs will include using sport to improve Indigenous young people's education and life prospects; the reform of the delivery capacity of Indigenous corporations; Indigenous community leadership; a family and community networks initiative; an Indigenous tutorial assistance scheme; an Indigenous boarding college and the establishment of a National Indigenous Scouting Programme. 2. Measures Addressing Economic Independence: initiatives will include improving the sustainability of community stores; the Home Ownership Program; enhanced opportunities for employment and participation in remote communities; extending the Family Income Management Programme; improving Indigenous health worker employment; continuing and expanding funding to the Remote Area Servicing, through ten established centres and two new centres; Cape York Institute welfare reform project; and Cape York Digital Network. 3. Measures Tackling Pressing Problems: funding will be allocated to reducing substance abuse; Indigenous Family Violence Prevention Legal Services; improving Indigenous access to health care services; additional Indigenous aged care places; Northern Territory

35 Attorney-General's Department, *New provider for NSW Indigenous legal services,* Media Release 069/2006, 28 April 2006.

36 Minister for Families, Community Services and Indigenous Affairs, *Budget delivers new opportunities for Indigenous Australians,* Media Release ID: 33/6, 9 May 2006.

9 May 2006 (continued) *Federal Budget 2006-07.*	Indigenous Interpreter Services; and improving the capacity of health workers in Indigenous communities; and 4. Other Measures: funding will be allocated to Reconciliation Australia; developing the 1967 referendum anniversary activities; and flexible funds for shared responsibility and agreement making.[37]
18 May 2006 *National plan for action against Indigenous violence and child abuse.*	The Australian Government invites State and Territory Governments to a summit to develop a national action plan to address community safety in Indigenous communities.[38]
23 May 2006 *OIPC releases a coordination evaluation plan for 2006-2009.*	The Office of Indigenous Policy Coordination (OIPC) releases a coordination evaluation plan for the whole of government activities in Indigenous affairs for 2006-2009. The paper provides an overview of the planned evaluation activities to be conducted during 2006-2009 by OIPC.[39]
31 May 2006 *Reforms to Aboriginal Land Rights (Northern Territory) Act 1976 introduced into Parliament.*	The Minister for Immigration and Multicultural and Indigenous Affairs introduces amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* into Parliament. The amendments were announced in October 2005. The changes to the *Aboriginal Land Rights (Northern Territory) Act 1976* will allow long term leases to be held over entire township areas; change the current processes for land development; and impact on the performance and accountability of Land Councils and royalty bodies.[40]

37 Minister for Families, Community Services and Indigenous Affairs, *Summary of Indigenous Measures,* Media Release ID: 33/6 Attachment, 9 May 2006.

38 Minister for Families, Community Services and Indigenous Affairs*, National plan for action against Indigenous violence and child abuse says Brough,* Media Release ID: 33/6, 9 May 2006.

39 Office of Indigenous Policy Coordination, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs*, 23 May 2006, available on line at: http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 21 December 2006.

40 Minister for Immigration and Multicultural and Indigenous Affairs, *Long term leases the way forward for NT Aboriginal townships,* Media Release ID: vIPS 35/05, 5 October 2005.

31 May 2006 (continued) *Reforms to Aboriginal Land Rights (Northern Territory) Act 1976 introduced into Parliament.*	The 2006-07 Budget allocated $107.5 million to the expansion of the Indigenous Home Ownership on Indigenous Land Program and a Home Purchase Incentive Scheme on Community Title Land.[41] The new tenure arrangements contained in the Bill will enable Aboriginal people in the Northern Territory to access these new programs.[42]
19 June 2006 *Forum on ending violence in Indigenous communities.*	Australians for Native Title and Reconciliation (ANTaR) and the Human Rights and Equal Opportunity Commission (HREOC) host a forum on ending violence in Indigenous communities at Parliament House in Canberra. The event is supported by the Australian Indigenous Doctors Association (AIDA), Australian Medical Association (AMA), Oxfam Australia and the Australian Principals' Associations Professional Development Council (APAPDC).[43]
21 June 2006 *The Australian Institute of Health and Welfare releases 'Australia's Health 2006'.*	The Australian Institute of Health and Welfare releases *Australia's Health 2006*, a comprehensive report on the health status of the Australian population and the factors that influence it, including health services and expenditures. The report states that Australia's Indigenous population continues to have a poorer standard of health than other Australians and there is still too little evidence that the health of Aboriginal and Torres Strait Islander peoples is improving. Death rates of Indigenous infants remain approximately three times those of other Australian infants, and about 70% of Indigenous Australians die before reaching 65, compared with a little over 20% for other Australians.[44]

41 Office of Indigenous Policy Coordination, *ALR Reforms: Questions and Answers on complementary measures to assist Indigenous home ownership,* available online at http://www.oipc.gov.au/ALRA_Reforms/QA_ComplimentaryMeasures.asp accessed 20 December 2006.

42 Minister for Families, Community Services and Indigenous Affairs, *Historic reforms to NT land rights,* Media Release, 31 May 2006.

43 ABC Message Stick, *National: Forum on Ending Violence in Indigenous Communities,* Media Release, 19 June 2006, available online at http://www.abc.net.au/message/news/stories/s1666291.htm accessed 21 December 2006.

44 Australian Government, Australian Institute of Health and Welfare, *Australia improves its health ranking,* Media Release, 21 June 2006.

26 June 2006 *Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities.*	An Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities is held involving Ministers from the Australian Government and all States and Territories. The Ministers agree that the levels of violence and child abuse in Indigenous communities warrant a comprehensive national response. The Communiqué released following the Intergovernmental Summit reconfirms the principles agreed by the Council of Australian Governments (COAG) in June 2004 under COAG's *National Framework on Indigenous Family Violence and Child Protection*, particularly that: • everyone has a right to be safe from family violence and abuse; • preventing family violence and child abuse in Indigenous families is best achieved by families, communities, community organisations and different levels of government working together as partners; • successful strategies to prevent family violence and child abuse in Indigenous families enable Indigenous people to take control of their lives, regain responsibility for their families and communities and to enhance individual and family wellbeing; and • the need to address underlying causes and to build strong and resilient families.[45]
27 June 2006 *Inquiry into Child Sex Abuse in Aboriginal communities in the Northern Territory.*	The Northern Territory Chief Minister announces an inquiry into child sexual abuse in NT Aboriginal communities.[46] The Inquiry will: • examine the size, nature and fundamental causes of the sexual abuse of Aboriginal children; • identify barriers and issues associated with the provision of effective responses; • consider methods, policies, procedures and resources of NT government agencies; and • consider how the NT Government can help support communities effectively to tackle child sexual abuse. The Inquiry will report to the Chief Minister by the end of April 2007.[47]

45 Minister for Families, Community Services and Indigenous Affairs, Minister Assisting the Prime Minister for Indigenous Affairs, *Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities Communiqué Safer Kids, Safer Communities,* Media Release, 26 June 2006.

46 Northern Territory Chief Minister, *Chief Minister orders inquiry into child sex abuse,* Media Release, 27 June 2006.

47 Northern Territory Chief Minister, *Inquiry into the Protection of Aboriginal Children from Sexual Abuse,* available at http://www.nt.gov.au/dcm/inquirysaac/ accessed 11 January 2007.

28 June 2006 *Indigenous Legal Aid Service Provider for Tasmania announced.*	The Attorney-General announces that the Tasmanian Aboriginal Centre Incorporated has been awarded the contract to provide legal aid services for Indigenous Australians in Tasmania. The Tasmanian Aboriginal Centre Incorporated has provided Indigenous legal aid services in Tasmania for more than 32 years.[48]
29 June 2006 *United Nations Human Rights Council adopts the Declaration on the Rights of Indigenous Peoples.*	The United Nations (UN) Human Rights Council adopts the Declaration on the Rights of Indigenous Peoples after more than twenty years of work by indigenous peoples and the UN system.[49] On 28 November, the Third Committee of the General Assembly adopted a resolution that defers the Assembly's consideration of the Declaration until the end of its current session, which will conclude in September 2007.[50]

48 Attorney-General's Department, *Indigenous Legal Aid service provider announced for Tasmania*, News Release 122/2006, 28 June 2006.

49 Human Rights and Equal Opportunity Commission, *Social Justice Commissioner praises United Nations Human Rights Council for adopting the Declaration on the Rights of Indigenous Peoples,* Media Release, 30 June 2006 available online at http://www.hreoc.gov.au/media_releases/2006/47_06.htm accessed 22 January 2007.

50 United Nations Permanent Forum available online at http://www.un.org/esa/socdev/unpfii/en/declaration.html accessed 22 January 2007.
See also United Nations Department of Public Information, *Press Conference on Declaration of Indigenous Peoples' Rights,* Media Release, 12 December 2006, available online at http://www.un.org/News/briefings/docs/2006/061212_Indigenous.doc.htm accessed 10 January 2007.

Further information on events relating to the administration of Indigenous affairs: 1 July 2005 – 30 June 2006

This section includes specific text references from the Social Justice Commissioner and HREOC but primarily all of the narrative has been extracted from the original sources referred too and reproduced in abbreviated form. As Social Justice Commissioner I am not endorsing or qualitatively assessing any government policy or practice in this section other than what can be specifically credited to me or my office.

Qualitative analysis of the policies and practices will be recorded in other sections and chapters of the Social Justice Report 2006.

1 July 2005 *NSW Government officials move into Australian Government Indigenous Coordination Centres.*	Officials from the New South Wales Government will be placed in Indigenous Co-ordination Centres (ICC's) which are run by the Australian Government from today.[51]

The Australian Government established 30 Indigenous Co-ordination Centres across Australia during 2004, the Minister for Immigration and Multicultural and Indigenous Affairs stated that having State Government officials working from the same premises as Australian Government officials in New South Wales will assist with co-ordination and service delivery under the new mainstream arrangements.[52]

3 July 2005 *NAIDOC week 2005 commences.*	NAIDOC Week celebrations commence with the theme of "Our future begins with solidarity". The Australian Government provides funding for the annual National NAIDOC Awards Ceremony and Ball.[53]

NAIDOC celebrations are held throughout Australia in the first full week of July each year to celebrate the history, culture and achievements of Indigenous peoples. The theme for 2005 is "Our future begins with solidarity".[54]

51 Minister for Immigration and Multicultural and Indigenous Affairs. *Minister welcomes important step in cooperation with States.* Media Release ID: vIPS 24/05. 1 July 2005.

52 Minister for Immigration and Multicultural and Indigenous Affairs. *Minister welcomes important step in cooperation with States.* Media Release ID: vIPS 24/05. 1 July 2005.

53 Minister for Immigration and Multicultural and Indigenous Affairs, *Minister welcomes start of NAIDOC Week 2005,* Media Release ID: vIPS 23/05, 3 July 2005.

54 Minister for Immigration and Multicultural and Indigenous Affairs, *Minister welcomes start of NAIDOC Week 2005,* Media Release ID: vIPS 23/05, 3 July 2005.

The winner of the Lifetime Achievement Award was Arthur Murray. Arthur Murray is best known for his campaign to stop Aboriginal deaths in custody. He became a national figure in the fight for justice to stop Aboriginal deaths in custody after losing his son Eddie in the 1980's.

This year's female Elder of the Year goes to Mary Jane Ware from South Australia (SA). Mary is affectionately known throughout SA as *Nanna Mary,* she has been involved in Croc Fests and local NAIDOC Week celebrations. Mary Ware recently gained her Masters of Education in Aboriginal Education.

This year's male Elder of the Year is Albert Holt, a Queensland man who was instrumental in establishing the first Murri Court in Queensland and who continues to fight to reduce the number of Indigenous peoples who come into contact with the criminal justice system, including prison.[55] Details of other winners can be found at http://www.naidoc.org.au/award_winners/default.aspx

11 July 2005 *Indigenous Disadvantage Report reinforces the need for change.*	The Steering Committee for the Review of Government Services Provision (SCRGSP) releases the Overcoming Indigenous Disadvantage Report. The report highlights the unacceptable levels of disadvantage faced by Indigenous Australians.[56]

The Overcoming Indigenous Disadvantage Report is the second report by the Steering Committee commissioned by the Council of Australian Governments and funded by the Australian Government. The report aims to provide indicators of Indigenous disadvantage 'that are of relevance to all governments and Indigenous stakeholders, and that can demonstrate the impact of programme and policy interventions'.

This report reveals mixed results. In some areas there have been improvements, but in others there has been little or no progress, or a backward trend is emerging.

Some economic indicators that show improvement include labour force participation, unemployment, and home ownership during the period 1994 to 2002. Social indicators that shows marked improvement during the same period are post secondary education participation and attainment.

In contrast, the report shows a concerning increase in relation to the following indicators: the proportion of Indigenous people who reported being victims of crime during the period 1994 to 2002, substantiated child protection notifications from 1999-2000 to 2003-2004, and imprisonment rates for Indigenous men and women during the period 2000–2004.

55 National NAIDOC week website, available on line at: http://www.naidoc.org.au/gallery/2005/ accessed 21 December, 2006.

56 Minister for Immigration and Multicultural and Indigenous Affairs. *Indigenous Disadvantage Report reinforces the need for change.* Media Release ID: vIPS 27/05. 11 July 2005.

Overall, a significant gap remains between Indigenous peoples and the rest of the population in all of the headline indicators, including those where improvement has been made.[57] The headline 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; hospitalisations for assault; victims rates for crime and imprisonment; and juvenile detention rates. [58]

A summary of key findings from the report include:

- The life expectancy of Indigenous people is estimated to be around 17 years lower than that for the total Australian population. Life expectancy at birth is 59 years for an Indigenous male compared with 77 years for males in the total population, and 65 years for Indigenous females compared with 82 years for females in the total population.[59]
- The proportion of the Indigenous population aged 15 years and over, reporting a disability or a long-term health condition was 37%. These proportions remained steady through both remote and non-remote areas. This figure does not include people with a psychological disability. The proportion of the Indigenous population aged 18 years and over in non-remote areas reporting a disability, including a psychological disability, was 49%, one third of whom had a core activity limitation. The core activity limitation can range from profound (always needing help or supervision) to mild (uses aids to assist in performing core activities). After adjusting for age differences, Indigenous people aged 18 years and over in non-remote areas were 1.7 times more likely than non-Indigenous people to report a disability which impacted on their core activities.[60]
- There was an increase in the proportion of year 3 students who achieved the writing benchmark: 77% in 2002 compared with 67% in 1999 and 65% in 2000. The proportion of year 5 Indigenous students who achieved the reading benchmark increased from 59% in 1999 to 68% in 2002. Of the students who commenced year 11 in 2001, 55% went on to complete year 12 in 2002 compared to 49% who commenced year 11 in 2000 and completed in 2001. From 2000 to 2004, Indigenous retention rates to year 12 increased from 36 to 40%. Nationally in 2004, Indigenous students were half as likely to continue to year 12 as non-Indigenous students.[61]

57 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 1.

58 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 4.

59 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 5.

60 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 6.

61 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 7.

- The proportion of Indigenous people over 15 years of age participating in post secondary education increased from 6% in 1994 to 12% in 2002. From 1994 to 2002, the proportion of Indigenous people with a certificate level 3 or above doubled from 8% in 1994 to 16% in 2002.[62]
- Nationally, the labour force participation rate for all Indigenous people aged 18 to 64 years has increased from 57% to 64% in 2002. From 1994 to 2002 there was a significant decline in the Indigenous unemployment rate. Between 1994 and 2002 overall employment rates rose from 68% to 80% of the Indigenous labour force. This improvement essentially results from increases in part-time employment (largely CDEP) rather than full-time work; there were over 36,000 CDEP participants at 30 June 2004. The age standardised unemployment rate in 2002 was 3.2 times higher for Indigenous than for non-Indigenous people.[63]
- There has been a slight increase in equivalised Indigenous real gross weekly household incomes since 1994; in 1994 gross weekly equivalised household income was $374 and in 2002 it was $394. In 2002, both household and individual incomes were lower on average for Indigenous than for other Australians.[64]
- Between 1994 and 2002, the proportion of Indigenous people aged 18 or over who were living in a household owned, or being purchased, by someone in that household rose from 22 to 27%. However, this compares poorly with a rate of 74% amongst non-Indigenous Australians.[65]
- Between 2001-02 and 2002-03, the rate of admissions for Indigenous suicide attempts increased from 2.8 to 3.2 per 100 but stayed at 1.4 per 1000 for non- indigenous peoples. Suicide death rates are much higher for Indigenous people, between 12 and 36 per 100,000 people, when compared with other people, between 11 and 16 per 100,000 people, in 1999-2003.[66]
- In 2003-04, the national rate of indigenous children who were the subject of protection because of abuse was three times the rate for other children.[67] Between 1999-2000 and 2003-2004 substantiated child protection notifications increased in most jurisdictions. It is not clear whether increased notifications result from increases in child abuse and/or more people reporting abuse.
- From 1999 to 2003 – in WA, South Australia, Northern Territory and Queensland (that is the five jurisdictions for which figures are available) – homicide rates for Indigenous people increased from six to 23 per 100,000, which was at least six times higher than for other Australians.

62 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 8.

63 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2005 Overview,* Productivity Commission, Canberra, 2005, p 9.

64 Minister for Immigration and Multicultural and Indigenous Affairs. *Indigenous Disadvantage Report reinforces the need for change.* Media Release ID: vIPS 27/05. 11 July 2005.

65 Minister for Immigration and Multicultural and Indigenous Affairs. *Indigenous Disadvantage Report reinforces the need for change.* Media Release ID: vIPS 27/05. 11 July 2005.

66 Titelius, R., 'Programs do little for Aboriginal life', *The West Australian*, Metro Section, 13 July 2005.

67 Titelius, R., 'Programs do little for Aboriginal life', *The West Australian*, Metro Section, 13 July 2005.

Nationally, in 2002-2003, Indigenous people were 12 times more likely to be hospitalised for assault injuries as non-Indigenous people.[68]

- The proportion of Indigenous people who reported being a victim of violence increased from 13 to 23% between 1994 and 2002. It is not clear whether increased rates of reporting reflect increases in crime and/or willingness to report. After adjusting for age differences between populations, both Indigenous men and women experienced more than double the victimisation rates of other men and women during 2002.[69]
- The rate of imprisonment for Indigenous women and men increased by 25% and 11% respectively over the period 2000 to 2004. As at 30 June 2004, the most serious offence of around one quarter of all Indigenous sentenced prisoners was 'acts intended to cause injury'.[70] Indigenous people were 11 times more likely than other Australians to be gaoled in June 2004 and Indigenous juveniles were 20 times more likely to be detained than other juveniles in June 2003.[71]

The Aboriginal and Torres Strait Islander Social Justice Commissioner, Reconciliation Australia and the Productivity Commission hosted a seminar, on 16 September 2005, on the Steering Committee for the Review of Government Service Provisions' report. All papers presented at the seminar along with pod casts of the proceedings are available online at: http://www.hreoc.gov.au/social_justice/conferences.html[72]

20 July 2005 *Indigenous Youth Leaders 2005 Announced.*	The Australian Government appoints 17 Indigenous youth leaders to the National Indigenous Youth Leadership Group (NIYLG) 2005-06. The appointments were preceded by a call for nomination earlier in the year. The focus of the group will be the promotion of issues of relevance to young Indigenous Australians.[73]

A new National Indigenous Youth Leadership Group (NIYLG) was announced by the Parliamentary Secretary for Children and Youth Affairs today. As the only Indigenous youth leadership group at the national level, members are consulted directly by the Australian Government about their experiences and perspectives on issues important to Aboriginal and Torres Strait Islander young people. The appointments followed a call for nominations in May 2005.

Young people are encouraged to develop their leadership skills and are provided with opportunities to develop mentoring relationships with high-profile Indigenous leaders. Through their participation in NIYLG, the members also promote positive

68 Titelius, R., 'Programs do little for Aboriginal life', *The West Australian*, Metro Section, 13 July 2005.

69 Minister for Immigration and Multicultural and Indigenous Affairs. *Indigenous Disadvantage Report reinforces the need for change.* Media Release ID: vIPS 27/05. 11 July 2005.

70 Minister for Immigration and Multicultural and Indigenous Affairs. *Indigenous Disadvantage Report reinforces the need for change.* Media Release ID: vIPS 27/05. 11 July 2005.

71 Titelius, R., 'Programs do little for Aboriginal life', *The West Australian*, Metro Section, 13 July 2005.

72 ABC Message Stick, Aboriginal and Torres Strait Islander Online, *National: Overcoming Indigenous Disadvantage, Key Indicators 2005*, 31 August 2005, available online at http://www.abc.net.au/message/news/stories/s1450310.htm accessed 21 December 2005.

73 Parliamentary Secretary for Children and Youth Affairs, *Indigenous Youth Leaders 2005 Announced,* Media Release, 20 July 2005.

images of Indigenous young people. Members of the group are drawn from across Australia including urban, regional and remote locations.

NIYLG members will work on projects based on their nominated areas of interest including youth leadership, cultural identity, education, employment and family violence. They will continue work with NIYLG in 2006 before presenting results and recommendations to the Australian Government at a later date.[74]

27 July 2005 *Tri-State Disability Strategic Framework agreed to by three governments.*	The Northern Territory, Western Australia and South Australia Governments sign off on an agreement to assist in the delivery of disability services to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Lands.[75] Through the establishment of this framework the three Governments aim to recognise and acknowledge the links between the Indigenous people of the NPY Lands and to further recognise that state and territory borders should not serve as an impediment to accessing disability services.

The Tri-State Disability Strategic Framework is a co-operative arrangement between the three Governments responsible for the provision of disability services to the people from the Ngaanyatjarra, Pitjantjajara and Yankunytjajara (NPY) lands. The Framework will guide the operations of the three jurisdictions in delivering disability services to people of the region for the next four years.

The NPY lands are home to 6,000 people in more than 20 communities and homelands. This Strategic Framework comes out of the formation of the Tri-State Disability Services Group (TSDG) in 2004. A Memorandum of Understanding was developed which articulated the shared objectives of the group, this agreement was signed off in November 2004.[76]

The principles which underpin the agreement are: to work together in partnership; the streamlining of services; improving access; getting better results and building on what already exists. The framework has four objectives:

- to strengthen mechanisms for enabling collaboration and cooperation between Western Australian, South Australian and Northern Territory governments;
- to develop integrated systems to facilitate joint planning, development and funding of services;
- to establish and apply consistent definitions and criteria for eligibility and access to services; and
- to improve systems of accountability and performance management.[77]

74 Parliamentary Secretary, *Indigenous Youth Leaders 2005 Announced,* Media Release, 20 July 2005.

75 Northern Territory, Minister for Family and Community Services, *Northern Territory signs up to historic tri-State agreement,* Media Release, 27 July 2005.

76 Northern Territory, Minister for Family and Community Services, *Northern Territory signs up to historic tri-State agreement,* Media Release, 27 July 2005.

77 Tjulngula (we are together) Tri-State Disability Strategic Framework 2005-2008, available on line at http://www.nt.gov.au/health/comm_svs/aged_dis_ccs/disable_svs/tda.rtf , accessed 9 January 2007.

12 August 2005 *First Australian Regional Partnership Agreement signed off.*	The Ngaanyatjarra Council signs off on the first Regional Partnership Agreement (RPA) in Australia today. The RPA commits all parties that are signatories to work together to improve essential services. The agreement applies to twelve communities in the Ngaanyatjarra Lands.[78]

The first Regional Partnership Agreement (RPA) in Australia has been negotiated between the Australian Government, the Western Australian Government and the Ngaanyatjarra Council. The RPA commits all parties to working together to improve essential services; develop a 20-30 year vision for the future; establish meaningful representative arrangements and reduce red tape. The RPA represents a commitment to twelve communities on the Ngaanyatjarra Lands.[79]

The agreement is designed to provide a mechanism for establishing a uniform Australian Government investment strategy across a region with respect to Indigenous affairs. The agreement is intended to provide a coordinated response to priorities identified for the region, thus eliminating duplication or gaps.

Regional Partnership Agreements (RPAs) form part of the Commonwealth Government's new arrangements for Indigenous affairs and service delivery. The terms of RPAs will comply with the 'Framework Principles for Government Service Delivery' agreed by the Council of Australian Government in June 2004.

12 August 2005 *New Indigenous Employment Strategy for the Australian Public Service announced.*	The Australian Government announces a new Indigenous Employment Strategy for the Australian Public Service. The strategy provides additional funding of $2.15 million a year for three years to improve employment opportunities for Aboriginal and Torres Strait Islander peoples in the Australian Public Service (APS).[80]

A new Indigenous Employment Strategy will receive additional funding of $2.15 million over the next three years to assist in improving employment opportunities for Aboriginal and Torres Strait Islander peoples in the Australian Public Service (APS).

78 Minister for Immigration and Multicultural and Indigenous Affairs, *Minister Vanstone congratulates Ngaanyatjarra People on first Regional Partnership Agreement,* Media Release ID: vIPS 32/05, 12 August 2005.

79 Minister for Immigration and Multicultural and Indigenous Affairs, *Minister Vanstone congratulates Ngaanyatjarra People on first Regional Partnership Agreement,* Media Release ID: vIPS 32/05, 12 August 2005.

80 Prime Minister of Australia, *New Indigenous Employment Strategy for the Australian Public Service,* Media Release, 12 August 2005.

This new program is one part of the reforms to achieve the mainstreaming of Indigenous affairs that commenced in 2004. It is now vital that Indigenous Australians are amongst the public servants who are responsible for implementing the vastly changed arrangements which are administered through mainstream public service agencies.[81]

The strategy has five elements:

- supporting the whole of government approach to Indigenous affairs, by building public sector capability to do Indigenous business;
- providing pathways to employment by removing barriers to the effective employment of Indigenous Australians;
- supporting employees by maximising their contribution to the workplace;
- supporting employees by helping them to align their Indigenous Employment strategies with their workforce planning and capacity building; and
- developing and strengthening cross-agency partnerships to support working together to promote Indigenous employment.[82]

7 September 2005 *Reforms to native title announced.*	The Attorney-General announces reforms to the native title system which are designed to promote the resolution of native title issues through negotiation and agreement making rather than through litigation. There are six inter-connected aspects to the reforms: 1. Native Title Representative Bodies (NTRBs) – measures to improve the effectiveness of NTRBs. 2. Native title respondents – amending the guidelines for the financial assistance program to encourage agreement making rather than litigation. 3. Technical amendments to the *Native Title Act 1993* (Cth) - preparation of draft legislation for consultation. 4. Claims resolution process – an independent review. 5. Prescribed Bodies Corporate (PBCs) – an examination of the current structures and processes. 6. Increased dialogue and consultation with State and Territory governments to promote and encourage more transparent practices in the resolution process.[83]

81 Prime Minister of Australia, *New Indigenous Employment Strategy for the Australian Public Service,* Media Release, 12 August 2005.

82 Australian Public Service Commission, *Employment and Capability Strategies for Aboriginal and Torres Strait Islander Employees,* August 2005, online http://www.apsc.gov.au/indigenousemployment/strategy0805.pdf accessed 16 January 2007.

83 Attorney General's Department, *Practical reforms to deliver better outcomes in Native Title,* Media Release 163/2005, 7 September 2005.

7 September 2005 (continued) *Reforms to native title announced.*	The State and Territory Native Title Ministers Group will meet in Canberra later this month, with the Attorney-General to discuss the proposed changes.[84]

This package of coordinated measures is aimed at improving the performance of the native title system under the *Native Title Act 1993* (Cth). The package has the goal of identifying and implementing improvements to processes for the recognition of native title and the resolution of disputes over land that may be subject to native title.

The reforms include:

1. Measures to improve the effectiveness of the Native Title Representative Bodies (NTRBs).

   Eligibility for recognition as an NTRB will be extended to organisations incorporated under the *Corporations Act 2001* (i.e. ordinary companies, rather than the current requirement that the organisation be incorporated under the *Aboriginal Corporations and Associations Act*).

   Currently, NTRBs, once recognised by the Government, are recognised indefinitely. In future, NTRB recognition will be for a fixed term from one to six years. There will also be a simplified process to allow the Minister to withdraw recognition of an NTRB that is not performing its statutory functions satisfactorily, or has serious financial irregularities.

   Funding will be made available on a multi year basis, rather than for a single year. This will assist NTRBs with their strategic planning.[85]

   In July 2007 all existing NTRBs will be automatically re recognised for fixed terms of up to six years. The terms will vary between NTRBs to allow future recognition processes to be staggered. This is to avoid system wide disruption.[86]

2. Amending the guidelines of the native title respondents financial assistance program to encourage agreement-making rather than litigation.

   It is proposed that reforms to the native title respondent funding program will strengthen its focus on resolution of native title issues through agreement making, in preference to litigation.

84 Attorney General's Department, *Native Title Ministers' Meeting*, Communiqué, 16 September 2005, Canberra, available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_Nativetitleministersmeeting-communique-16September2005 accessed 16 January 2007.

85 Office of Indigenous Policy Coordination, *Native Title Reforms,* available online at http://www.oipc.gov.au/NTRB_Reforms/QA_NTRBarrange.asp, accessed 9 January 2007.

86 Attorney-General's Department, *Native Title Reform,* available online at http://www.ag.gov.au/nativetitlesystemreform, accessed 22 November 2005.

A wide range of non-claimant parties (eg pastoralists, miners, local government and industry peak bodies) participate extensively in native title claims. However, given that the fundamentals of native title are settled, it is not necessary for non-claimant parties to litigate all stages of a legal matter where the law is not in dispute or their interests are already protected under the *Native Title Act* (Cth).

As with the other elements, any reforms to the existing arrangements for assistance to respondents will be directed towards securing improved performance from all elements of the system, and promoting agreement making wherever possible.[87]

3. Preparation of exposure draft legislation for consultation on possible technical amendments to the *Native Title Act 1993* (Cth) to improve existing processes for native title litigation and negotiation.

   A discussion paper setting out the proposed technical amendments to the *Native Title Act 1993* (Cth) was released for public comment on 22 November 2005. Stakeholder comments on those proposals and further suggestions for the amendments were requested by 31 January 2006. The Government is currently considering the responses received, and expects to release an exposure draft of the technical amendments early in the 2006-07 financial year.[88]

4. An independent review of native title claims resolution processes.

   The Claims Resolution Review was established by the Attorney-General to consider the process by which native title applications are resolved. The Review examined the roles of the National Native Title Tribunal (NNTT) and the Federal Court and considered measures for the more efficient management of native title claims within the existing framework of the *Native Title Act 1993* (Cth).

   The Attorney-General appointed two independent consultants, Mr Graham Hiley QC and Dr Ken Levy RFD, to undertake the Claims Resolution Review. Mr Hiley is a Queen's Counsel with extensive experience in native title and Aboriginal land rights law. Dr Levy is currently a part-time member of the Administrative Appeals Tribunal and was previously the Director-General of the Queensland Department of Justice.

   The consultants were overseen by a Steering Committee comprising a member of the NNTT, the Registrar of the Federal Court, an officer of the Australian Government Attorney-General's Department and an officer of the Office of Indigenous Policy Coordination in the Department of Families, Community Services and Indigenous Affairs.

   The Claims Resolution Review commenced in October 2005. The consultants provided their report to the Attorney-General on 31 March

87 Attorney-General's Department, *Assistance to respondents in native title claims,* available on line at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_Assistancetorespondentsinnativetitleclaims, accessed 9 January 2007.

88 Attorney-General's Department, *Native Title Reform: Practical reforms to deliver better outcomes in native title*, Media Release, 7 September 2005, available online at http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/AllDocs/75298785CC03B8B8CA257075001E522A?OpenDocument , accessed 9 January 2007.

2006. The Government released the Report of the Claims Resolution Review and the Government response to the Claims Resolution Review on 21 August 2006.

The consultants undertook extensive consultation with a broad range of native title stakeholders including Native Title Representative Bodies, State and Territory governments and respondent bodies including industry and pastoral representatives.

Written submissions to the Review were also invited. The closing date for submissions was 1 December 2005.[89]

5. An examination of current structures and processes of Prescribed Bodies Corporate (PBC's).

   An examination of the current structures and process of PBCs will take place between November 2005 and February 2006. The consultations will target the functions and governance model of PBCs with a range of stakeholders including existing PBCs, NTRBs, State and Territory governments and industry bodies taking part. This consultation process will seek to identify the needs and functions of PBCs and to assess the appropriateness of the current governance model for PBCs. The examination will also take into account the effect of the *Corporations (Aboriginal and Torres Strait Islander) Bill 2005*.

   Interested stakeholders are invited to contact the Native Title Unit in the Attorney-General's Department for more information on these consultations. The consultations will be facilitated by a steering committee, which comprises staff from the Office of Indigenous Policy Coordination, the Office of the Registrar of Aboriginal Corporations, and the Attorney-General's Department.[90]

6. Increased dialogue and consultation with State and Territory governments to promote and encourage more transparent practices in the resolution process.

   Government parties are major players in the native title system and have a major impact on how the system operates. States and Territories have day-to-day responsibility for land management and are the first respondents to the majority of native title claims. The Australian Government has overarching responsibility for the *Native Title Act 1993* (Cth). There is scope to improve the manner in which governments interact with each other and with other stakeholders in the native title system. The Australian Government believes that improved communication and transparency will have flow-on benefits for the system as a whole and will lead to faster and more affordable native title outcomes.

89 Attorney-General's Department, *Native Title Reform: Practical reforms to deliver better outcomes in native title,* Media Release, 7 September 2005, available online at http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/AllDocs/75298785CC03B8B8CA257075001E522A?OpenDocument , accessed 9 January 2007.

90 Attorney-General's Department, *Prescribed Bodies Corporate (PCBs)*, available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_Prescribedbodiescorporate(PBCs), accessed 10 October 2006.

On 16 September the Attorney-General will convene a meeting of all State and Territory ministers with native title responsibilities. The Native Title Ministers' Meeting will provide an opportunity for the Australian Government to promote the benefits of positive and transparent behaviours by other jurisdictions.[91]

12 September 2005 *$9.5 million to tackle petrol sniffing announced by Australian Government.*	The Australian Government announces a $9.5 million boost in funding to tackle petrol sniffing in Central Desert Indigenous communities. Senior policing, justice, health and community services officials from the governments of the Northern Territory, South Australia and Western Australia support an eight point plan proposed by the Australian Government.[92]

Federal, State and Territory agencies are working together to better co-ordinate and utilise services across the region. A key aspect involves listening to Indigenous communities to hear their ideas about how to stop petrol sniffing.

The new strategic approach agreed between the Australian Government and the South Australian, Western Australian and Northern Territory Governments involves an 8 point plan which covers:

- Consistent legislation – the Northern Territory, South Australia and West Australia will make it an offence to sell or supply volatile substances for sniffing.
- Appropriate levels of policing – including zero tolerance for traffickers.
- Further roll-out of non-sniffable petrol – such as *Opal* fuel, which does not give sniffers a 'high'.
- Alternative activities for young people.
- Treatment and respite facilities.
- Communication and education strategies.
- Strengthening and supporting communities.
- Evaluation – capturing and reviewing what works so that it can be applied elsewhere.

There are an estimated 600 Indigenous people in Central Australia believed to be petrol sniffers. Services will be targeted towards the needs of individual communities to address the range of ways petrol sniffing can impact on a community. Opal fuel is currently in 52 Indigenous communities.[93]

91 Attorney-General's Department, *Consultation with State and Territory Governments,* available online at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenouslawandnativetitle_Nativetitle_Consultationwithstateandterritorygovernments, accessed 9 January 2007.

92 Minister for Immigration and Multicultural and Indigenous Affairs, *Government Announces an Extra $9.5 Million to Combat Petrol Sniffing,* Media Release ID: vIPS 33/05, 12 September 2005.

93 Minister for Immigration and Multicultural and Indigenous Affairs, *Government Announces an Extra $9.5 Million to Combat Petrol Sniffing,* Media Release ID: vIPS 33/05, 12 September 2005.

19 September 2005 *Inaugural meeting of the National Indigenous Youth Leadership Group.*	The Parliamentary Secretary for Children and Youth hosts the inaugural meeting of the National Indigenous Youth Leadership Group (NIYLG) that was formed in July 2005.[94] The NIYLG brings together 17 Indigenous young people aged 18 to 24 years, from diverse backgrounds, employment, location and interests, to meet with the Australian Government to discuss their unique experiences and their expectations of the group.

The inaugural meeting of the National Indigenous Youth Leadership Group (NIYLG) was an orientation meeting which provided members with a background on government processes and the skills required for progressing important Indigenous youth issues with the Australian Government.

Members met with a former Parliamentary Secretary for Children and Youth Affairs and were also consulted by the Minister for Local Government, Territories and Roads about the Australian Government's position on the Tent Embassy. Guest speakers included two National Indigenous Council Members; government representatives from the Indigenous Coordination Centres and the Office of Indigenous Policy Coordination.

Members formed topic groups and nominated areas of interest, which they will progress during their term. The areas of interest including youth leadership, cultural identity, education, employment and family violence.[95]

4 October 2005 *Australian and Northern Territory Governments fund family violence projects.*	The Australian and Northern Territory Governments jointly provide $3.2 million for three new projects to tackle family violence and abuse in Indigenous communities. The projects include: • *Interventions for Children*, a program to develop and deliver therapeutic interventions for children exposed to family violence; • *Jiban Gubalewei (Peace at Home),* which will establish a new integrated Police and Community Services centre addressing family violence and child abuse in the Katherine and Borroloola region; and • *Empowering Indigenous Communities*, which will pilot a method to monitor and respond to changing levels of local violence in six remote communities.[96]

94 Parliamentary Secretary for Children and Youth, *Fresh new look at young Indigenous issue,* Media Release, 19 September 2006.

95 National Indigenous Youth Leadership Website, available online at http://www.thesource.gov.au/involve/NIYLG/whats_new.asp accessed 12 December 2006.

96 Minister for Community and Family Services, *Australian and NT Governments step up the battle against Indigenous family violence,* Media Release, 4 October 2005.

The projects are explained in more detail below:

- *Interventions for Children* will develop and deliver therapeutic interventions for children exposed to family violence and train workers in women's shelters, teachers and other service providers assisting children. The Australian Government is providing $200,000 during the next three years and the NT Government will provide $100,000.
- *Jiban Gudbalawei (Peace At Home)* will establish a new integrated Police and Community Services centre addressing family violence and child abuse in the Katherine and Borroloola region. The NT Government will provide $1.7 million in kind over three years to this project and the Australian Government will contribute $1 million.
- *Empowering Indigenous Communities* will pilot a method to monitor and respond to changing levels of local violence in six remote communities. The Australian Government has committed $60,000 over three years to the project and the NT Government will provide $100,000.[97]

5 October 2005 *Initiatives to support home ownership on Indigenous land announced.*	The Australian Government announces initiatives to support home ownership on Indigenous land throughout Australia. The initiatives include: • An initial allocation of a $7.3 million addition to the Home Ownership Programme run by Indigenous Business Australia (IBA) for a new programme targeted to Indigenous Australians living on communal land. Under this program people can borrow money from the IBA at concessional interest rates. • An initial allocation of up to $5 million from the Community Housing and Infrastructure Programme to reward good renters with the opportunity to buy the community house they have been living in at a reduced price. • Use of the Community Development Employment Project (CDEP) to start building houses, support home maintenance, and to maximise employment and training opportunities. These Australia wide measures add to the changes to tenure arrangements on Aboriginal land in the Northern Territory which were also announced today.[98]

97 Minister for Community and Family Services, *Australian and NT Governments step up the battle against Indigenous family violence,* Media Release, 4 October 2005.

98 Minister for Immigration and Multicultural and Indigenous Affairs, *Initiatives support home ownership on Indigenous land,* Media Release ID: vIPS 34/05, 5 October 2005.

These programs will be available to all States that follow the Australian and Northern Territory Government's lead to enable long term individual leases on Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976*. The programs are expected to commence in 2005-06 with full implementation from 2006-07.[99]

5 October 2005 *Changes to Aboriginal Land Rights (Northern Territory) Act 1976 announced.*	The Minister for Immigration and Multicultural and Indigenous Affairs announces changes to the Aboriginal Land Rights (Northern Territory) Act 1976. The stated aim of the changes is to help Aboriginal peoples to get greater economic benefit from their land. The changes will introduce tenure arrangements over entire township areas which are on Aboriginal owned land. The scheme will be a voluntary one.[100]

The changes to the *Aboriginal Land Rights (Northern Territory) Act* 1976 involve the introduction of a model similar to that which was proposed by the Northern Territory Government and supported by the National Indigenous Council. The changes include:

- The Northern Territory Government will establish an entity to talk with the Traditional Owners and the Land Council of a particular town area to obtain 99-year head-leases over township areas.
- The entity can issue long term sub-leases to town users without the need to negotiate on a case by case basis with Traditional Owners and Land Councils.
- The terms of the head-lease will be negotiated with the Traditional Owners and Land Councils, except for a statutory ceiling (five per cent of the land's value) on the annual rent payable to the Traditional Owners.[101]

9 November 2005 *Indigenous Economic Development Strategy launched.*	The Australian Government launches the Indigenous Economic Development Strategy, a scheme to assist Indigenous Australians achieve economic independence. The strategy focuses on two key areas: work, and asset and wealth management. Under the work component of the strategy, the Government will promote a *Local Jobs for Local People* initiative. Indigenous communities, employers and service providers will work together to identify local employment and business opportunities and the training needed for jobseekers.

99 Minister for Immigration and Multicultural and Indigenous Affairs, *Initiatives support home ownership on Indigenous land,* Media Release ID: vIPS 34/05, 5 October 2005.

100 Minister for Immigration and Multicultural and Indigenous Affairs, *Long term leases the way forward for NT Aboriginal townships,* Media Release vIPS 35/05, 5 October 2005.

101 Minister for Immigration and Multicultural and Indigenous Affairs, *Long term leases the way forward for NT Aboriginal townships,* Media Release vIPS 35/05, 5 October 2005.

9 November 2005 (continued) *Indigenous Economic Development Strategy launched.*	Other initiatives in this area include: • developing targeted industry strategies to address regional employment needs; • continuation of the Community Development Employment Project (CDEP) reforms which began earlier this year; • improving linkages between Indigenous communities and vocational education and training bodies; and • training and support for local Indigenous business entrepreneurs. Asset and wealth management initiatives include: • increasing Indigenous home ownership; • increasing personal and commercial financial skills; and • exploring ways to increase economic development on Indigenous land.[102]

A key finding of the *Overcoming Indigenous Disadvantage Key Indicators 2003 Report* is that economic development is central to the well-being of Indigenous Australians.[103]

A stated goal of the Australian Government's Indigenous policy is to increase Indigenous economic independence through reducing dependency on passive welfare and through stimulating employment and economic opportunities for Indigenous Australians.

The Indigenous Economic Development Strategy is a whole-of-government approach to removing barriers to Indigenous peoples achieving economic independence. The strategy aims to increase the level of Indigenous employment, self-employment and business development and to assist Indigenous Australians to participate in the broader economy.

The strategy will focus on two primary areas:

- Work - the strategy will aim to expand job opportunities for Indigenous Australians; and
- Asset and wealth management – through the provision of access to economic development opportunities, the expansion of home ownership programs and opportunities, changed land utilisation arrangements, and training in effective wealth management skills.

102 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2003,* Council of Australian Governments (COAG), November 2005. Data from the report related to 2001 Census data, available online at http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2003/keyindicators2003.pdf accessed 20 accessed 9 February 2006.

103 Minister for Immigration and Multicultural and Indigenous Affairs, *Indigenous Economic Development Strategy Launched,* Media Release ID: vIPS 38/05, 9 November 2005.

There are twelve initiatives under this strategy:

1. *Local jobs for local people* will aim to ensure that Indigenous Australians, particularly those in remote or rural communities, will have an equal chance to compete for and win local employment. *Local jobs for local people* will bring together all stakeholders in a local area to increase employment opportunities for local people.
2. Targeted industry strategies will aim to link Indigenous communities with high unemployment with industries which are operating within their region.
3. CDEP reform as outlined earlier this year in *Building on Success: CDEP Future Directions*.
4. The employment service performance initiative will aim to improve the ability of employment service providers to achieve better employment outcomes for Indigenous Australians, through the various job networks and through the establishment of Indigenous Employment Centres.
5. The Vocational Education and Training (VET) linkages initiative aims to make better use of the providers of education and training in structuring training and education that is matched to employer needs and requirements.
6. Developing enterprise opportunities, focused on areas of importance in communities, such as community stores, the initiative will encourage business development by Indigenous Australians.
7. The business leader initiatives will help Indigenous Australians by providing financial literacy training and by showcasing and promoting successful Indigenous businesses and business people.
8. General business support will be offered through the provision of a range of 'business tools' which will help Indigenous people to act on business opportunities and start up businesses.
9. Private sector involvement in home ownership and business development. This is one part of the strategy to increase home ownership on Indigenous land through increasing the involvement of the private sector in facilitating home ownership and small business formation.
10. Coordinated economic development on land. This a strategy aims to improve government coordination and to provide better access to economic development for Indigenous Australians.
11. Investment rules to improve returns from trusts and encourage investment of income from land. This initiative aims to help Indigenous Australians to obtain equity in larger local commercial opportunities and will hopefully lead to more effective use of land rights and native title. This links with the reforms to native title that were announced earlier in the year.
12. Skills to realise economic outcomes. In line with the reforms to native title, this initiative aims to improve economic development outcomes by improving the skills base of NTRB's, Land Councils and PBC's.[104]

104 Steering Committee for the Review of Government Service Provision, *Achieving Indigenous Economic Independence, Indigenous Economic Development Strategy,* An Australian Government Initiative, available online at http://www.workplace.gov.au/NR/rdonlyres/B7206570-9BFD-4403-B4A3-6649065FAE5A/0/IEDStrategyBooklet_revised_FINAL.pdf, accessed 9 January 2007.

18 November 2005 *Reforms to the Aboriginal Land Rights (Northern Territory) Act 1976.*	The Minister for Immigration and Multicultural and Indigenous Affairs announces changes to the *Aboriginal Land Rights (Northern Territory) Act 1976*.[105] The key elements of the reform are: • facilitating economic development; • improving the mining provisions of the Act including devolving some powers from the Australian Government to the Northern Territory Government; • allowing for local Indigenous people to have more say over their affairs; • moving to performance based funding for Land Councils; • ensuring royalty payments are made in a transparent and accountable way; and • disposing of land claims which cannot legally proceed or would be inappropriate to grant.[106]

Following consultation with stakeholders, reforms are to be introduced into the *Northern Territory Aboriginal Land Rights Act* which will enable greater economic development on Aboriginal land. The stated goal is to attain better economic outcomes for Traditional Owners, other Aboriginal people, the mining industry and Territorians in general.

The key elements of the reform are:

- Facilitating economic development.
- Improving the mining provisions of the Act including devolving some powers from the Australian Government to the Northern Territory Government.
- Allowing for local Indigenous people to have more say over their affairs.
- Moving to performance based funding for Land Councils.
- Ensuring royalty payments are made in a transparent and accountable way; and
- Disposing of land claims which cannot legally proceed or would be inappropriate to grant.[107]

20 November 2005 *Secretaries Group on Indigenous Affairs releases its Annual Report on Indigenous Affairs 2004-05.*	The Secretaries Group on Indigenous Affairs releases its Annual Report on Indigenous Affairs for 2004-05. The focus of activities for the Group in the last year have been: • setting parameters for local engagement with Indigenous communities based on shared responsibility;

105 Minister for Immigration and Multicultural and Indigenous Affairs, *Reforming the NT Aboriginal Land Rights Act,* Media Release vIPS 40/05, 18 November 2005.

106 Minister for Immigration and Multicultural and Indigenous Affairs, *Reforming the NT Aboriginal Land Rights Act,* Media Release vIPS 40/05, 18 November 2005.

107 Minister for Immigration and Multicultural and Indigenous Affairs, *Reforming the NT Aboriginal Land Rights Act,* Media Release vIPS 40/05, 18 November 2005.

20 November 2005 (continued) *Secretaries Group on Indigenous Affairs releases its Annual Report on Indigenous Affairs 2004-05.*	• providing high-level guidance and oversight of Indigenous Co-ordination Centres; • developing an integrated Single Indigenous Budget Submission for consideration by the Ministerial Taskforce for Indigenous Affairs (MTF); and • establishing a performance monitoring and evaluation framework.[108]

The Annual Report contains commentary on the new arrangements in Indigenous affairs which are being led by the Ministerial Taskforce on Indigenous Affairs (MTF). The MTF is chaired by the Minister for Immigration and Multicultural and Indigenous Affairs and comprises 10 ministers with lead responsibility in Indigenous affairs.

The MTF has set three key priorities for its work, in consultation with the National Indigenous Council (NIC). These priorities are:

- Early childhood intervention: a key focus will be improved mental and physical health, and in particular primary health and early educational outcomes.
- Safer communities: this includes issues of authority, law and order, but also focuses on dealing with issues of governance to ensure that communities are functional and effective.
- Building Indigenous wealth, employment and entrepreneurial culture: this is integral to boosting economic development and reducing poverty and passive welfare.

In their first year the Secretaries Group have focussed on key strategies, including:

- setting parameters for local engagement with Indigenous communities based on shared responsibility;
- providing high level guidance and oversight of Indigenous Coordination Centres;
- developing an integrated Single Indigenous Budget Submission for consideration by the MTF; and
- establishing a performance monitoring and evaluation framework.

As a practical means of harnessing both mainstream and Indigenous-specific programs, agencies are identifying portfolio experts to support whole-of-government work in ICC's.

The Department of Employment and Workplace Relations has appointed Solution Brokers at every ICC location. They are responsible for promoting and implementing innovative employment, participation, and training and enterprise opportunities for Indigenous Australians in their ICC region. These Solution Brokers work in a whole-of-government environment to contribute to the development of Shared Responsibility Agreements.

108 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05*, 20 November 2005, available online at: http://www.oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 21 December 2006.

Over the next year the Secretaries Group will continue to reform processes across policy development, project management and service delivery.[109]

22 November 2005 *Indigenous Legal Aid Services announced for the Northern Territory.*	The Attorney-General announces two successful tenderers for the provision of legal aid services for Indigenous Australians in the Northern Territory. The North Australian Aboriginal Justice Agency Ltd is the successful tenderer for the North Zone and the Central Australian Aboriginal Legal Aid Service Incorporated is the successful tenderer for the South Zone. Tenders were called for in August of this year.[110]

The North Australian Aboriginal Justice Agency Ltd is the successful tenderer for the North Zone – covering the Darwin, Nhulunbuy, Jabiru and Katherine regions. The organisation is an amalgamation of the three Aboriginal and Torres Strait Islander Legal Services in the northern regions of the Northern Territory – the North Australian Aboriginal Legal Aid Service (Darwin), Miwatj Aboriginal Legal Service Aboriginal Corporation (Nhulunbuy) and the Katherine Regional Aboriginal Legal Aid.

The Central Australian Aboriginal Legal Aid Service Incorporated is the successful tenderer for the South Zone – covering the Alice Springs, Tennant Creek and Apatula regions.

Both organisations have provided high quality and culturally sensitive services to Indigenous Australians within their regions for many years.

Organisations forming the North Australian Aboriginal Justice Agency have a combined total of 61 years experience and the Central Australian Aboriginal Legal Aid Service has been operating for 32 years.

The Central Australian Aboriginal Legal Aid Service offers a flexible model of service delivery to outreach communities such as Elliott, Ali-Curung and Ti Tree. This includes an after hours service, visiting clients in 'town camps', a 'drop-in' office environment and an 1800 free call number. The North Australian Aboriginal Justice Agency will similarly use outreach arrangements to service 15 'bush courts' in locations such as Maningrida, Borroloola and Groote Eylandt.

These organisations are best placed to provide culturally sensitive legal aid services to their respective zones and to respond to the complex challenges and changes affecting Indigenous Australians.

109 Secretaries' Group on Indigenous Affairs, *Annual Report on Indigenous Affairs 2004-05*, 20 November 2005, available online at: http://www.oipc.gov.au/performance_reporting/sec_group/ar2005/OIPC_Sec_Report05.pdf accessed 8 January 2007.

110 Attorney-General, *Indigenous Legal Services Announced for NT,* Media Release 210/2005, 22 November 2005.

23 November 2005 *Delivering Better Outcomes in Native Title – Update on Government's Plan for Practical Reform.*	The Attorney-General and Minister for Immigration and Multicultural and Indigenous Affairs issue a joint statement to outline more details about the changes to the administration of the native title system. The changes relate specifically to Native Title Representative Bodies (NTRB). The changes for NTRBs are designed to: • enhance the quality of service by broadening the range of organisations that can undertake activities on behalf of claimants; • streamline the process for withdrawing recognition from poorly performing NTRBs and appointing a replacement; • put a time limit on the recognised status of NTRBs to ensure a focus on outcomes; and • provide NTRBs with multi-year funding to assist their strategic planning. Consultations are to be undertaken with NTRBs and stakeholders before the changes are formally introduced into Parliament next year.[111]

The Australian Government also released a consultation draft of proposed guidelines for the Native Title Respondents' Financial Assistance Scheme to strengthen the focus of the scheme on agreement making over litigation. Submissions are encouraged from native title stakeholders, state and territory governments and respondent bodies before 10 February 2006.[112]

5 December 2005 *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Queensland signed.*[113]	The Prime Minister and the Premier of Queensland announce a five-year bilateral agreement committing both governments to improving service delivery to Indigenous Queenslanders. The agreement commits the Australian and Queensland Governments to work together with Indigenous communities on service planning and delivery, investment and performance evaluation, and to reduce the bureaucratic load on communities.

111 Minister for Immigration and Multicultural and Indigenous Affairs, *Delivering Better Outcomes in Native Title – Update on Government's Plan for Practical Reform,* Media Release ID: vIPS 42/05, 9 November 2005.

112 Minister for Immigration and Multicultural and Indigenous Affairs, *Delivering Better Outcomes in Native Title – Update on Government's Plan for Practical Reform,* Media Release ID: vIPS 42/05, 9 November 2005.

113 Australian Government and Queensland Government, *Agreement on Aboriginal and Torres Strait Islander Service Delivery Between The Commonwealth of Australia and The Government of Queensland 2005-2010*, available online at https://www.oipc.gov.au/publications/PDF/IndigenousAffairsAgreementQLD.pdf, accessed 16 January 2007.

5 December 2005 (continued) *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Queensland signed.*	Under the agreement, the governments will work towards shared priorities, including those identified in the Overcoming Indigenous Disadvantage Report. These include: • early childhood development and growth; • early school engagement and performance; • positive childhood and transition to adulthood; • substance use and misuse; • functional and resilient families and communities; • effective environmental health systems; and • economic participation and development.[114]

This is the second bilateral agreement signed under the Council of Australian Governments (COAG) Indigenous Service Delivery Framework. It builds on existing arrangements and bilateral agreements. The agreement establishes arrangements to engage with Aboriginal and Torres Strait Islander communities in Queensland and strengthens the partnership between the Queensland and Australian Governments.

Under the agreement, the governments will work towards shared priorities, including those identified in the *Overcoming Indigenous Disadvantage Report*, such as:

- early childhood development and growth;
- early school engagement and performance;
- positive childhood and transition to adulthood;
- substance use and misuse;
- functional and resilient families and communities;
- effective environmental health systems; and
- economic participation and development.

In addition, Australian and Queensland Government officials will be expected to coordinate their efforts at the state, regional and local level. This agreement will make it easier for communities to work with the Commonwealth and Queensland governments by establishing joint forums for engagement. Negotiation tables will continue to be the primary engagement mechanism for Indigenous communities in Queensland, as they allow direct communication between community members and governments about the major issues communities face.

Increased engagement between the governments and communities provides an opportunity for communities and governments to develop Shared Responsibility Agreements (SRAs) and thereby clarify agreed priorities and commitments.

The governments will streamline processes, increase funding flexibility and better target services to the Lockhart River community. Other locations that need concerted, coordinated action will be progressively identified.[115]

114 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Queensland,* Media Release, 5 December 2005.

115 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Queensland,* Media Release, 5 December 2005.

15 December 2005 *National Indigenous Council releases its inaugural Report Card.*	The National Indigenous Council (NIC) releases its Inaugural Report to the Australian Government. The report is a requirement of the terms of reference that established the NIC. The report summarises the work undertaken by the NIC from December 2004 to December 2005. The report has five main discussion areas: • a brief analysis of the new arrangements, the Ministerial Taskforce on Indigenous Affairs (MTF) and the Secretaries Group on Indigenous Affairs; • the role and meetings of the NIC throughout the previous year; • strategic advice given and partnerships entered into during the last twelve months by the NIC; • individual NIC members' reports; and • concluding remarks which provide a summary of the year's work.[116]

The report outlines the work undertaken by the NIC during its first year of operation. The report reiterates that the NIC was established as an intrinsic element of the new arrangements in Indigenous affairs, and that its main function is to provide advice to the Government through the Ministerial Taskforce on Indigenous Affairs. The NIC has assisted the Ministerial Taskforce on Indigenous Affairs in reviewing its priorities.

15 December 2005 *$23 million boost for training for Indigenous youth from remote communities.*	The Australian Government launches the Indigenous Youth Mobility Programme. $23.1 million has been allocated to provide 600 young Indigenous Australians with the opportunity to relocate to a major regional centre and train for a career by undertaking pre-vocational training, a new apprenticeship or tertiary level education.[117] The objectives of the Indigenous Youth Mobility Programme are to: • improve access to training and employment opportunities in major centres for young Indigenous Australians from remote communities;

116 National Indigenous Council, *Report to Government December 2004 to December 2005*, available online at http://www.atsia.gov.au/NIC/communique/PDFs/ReportCard2005.pdf, accessed 16 January 2007.

117 Minister for Education, Science and Training, *$23 Million Boost for Training Indigenous Youth from Remote Communities,* Media Release: MIN 2053/05, 15 December 2005.

15 December 2005 (continued) *$23 million boost for training for Indigenous youth from remote communities.*	• increase the number of young Indigenous Australians participating in accredited training; • increase the number of Indigenous people employed in occupations in particular areas of community need such as trades, nursing, accountancy, business management and teaching, and; • support economic development in remote communities by building the capacity of local Indigenous youth to take up skilled jobs in their communities.[118]

The new Indigenous Youth Mobility Programme is one part of the Government's Indigenous Australians Opportunity and Responsibility Commitment. It will assist Indigenous youth from remote Australia to receive training and employment opportunities to help them achieve their full potential.

The training opportunities could lead to occupations in high demand throughout remote Australian communities, such as trades, nursing, accountancy, business management and teaching. Participants may choose to return to their own communities to take up skilled jobs that are often filled by non-Indigenous workers, or pursue their careers elsewhere.

The new programme will try to ensure participants are provided with a comprehensive support network including safe accommodation (to be delivered by Aboriginal Hostels Limited), mentors, training and assistance in maintaining contact with their own communities.

The new providers will be based in Cairns, Townsville, Toowoomba, Newcastle, Dubbo, Canberra, Shepparton, Perth and Darwin.

The Foundation for Young Australians has been appointed as the programme administrator for the new Indigenous Youth Leadership Programme to support the education of 250 talented Indigenous young people. The Government has committed $12.9 million to the programme, which will incorporate the new National Indigenous Elders Advisory Group (NIEAG) to support the cultural integrity of the programme, and help design a mentoring strategy involving other Indigenous Australians.

Funding committed to these programmes is part of the Federal Government's $2.1 billion package for Indigenous education for 2005-08. The funding package is a 22.3% increase over the previous four year funding period.[119]

118 Indigenous Youth Mobility Programme, Australian Government, Department of Education, Science and Training, available on line at: http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/iymp/# accessed 20 December 2006.

119 Minister for Education, Science and Training, *$23 Million Boost for Training Indigenous Youth from Remote Communities,* Media Release, 15 December 2005, MIN 2053/05.

22 December 2005 *Over $250 million in new Agreement on Indigenous housing and infrastructure.*	The Australian and Northern Territory Governments announce their *Agreement for the Provision of Housing and Infrastructure to Indigenous People in the Northern Territory 2005-2008.* The agreement provides that from 1 July 2006, the Northern Territory will manage the funding for Indigenous housing and housing infrastructure. The agreement forms the basis of a three year program worth $254 million that will for the first time combine the Australian and Northern Territory (NT) Governments' Indigenous housing resources to help provide better housing alternatives for Indigenous families across the NT.[120]

The agreement provides that the Australian Government will invest $200 million in Indigenous housing, while the Northern Territory Government will be responsible for building new homes and upgrading existing homes in those communities where the demand is greatest. New homes will be designed to be safe, functional, sustainable and suitable for local conditions.

The agreement also places an emphasis on substantial upgrades, repairs and maintenance to ensure families have a safe and healthy environment in which to raise their children. The Governments believe that the pooling of their housing resources will streamline program delivery and enable the Territory Government to be more strategic and effective in the delivery of Indigenous housing services.[121]

23 January 2006 *Indigenous Legal Aid Services announced for South Australia.*	The Attorney-General announces that the Aboriginal Legal Rights Movement Incorporated is the successful tenderer for the provision of legal aid services to Indigenous Australians in South Australia. The Aboriginal Legal Rights Movement Incorporated has provided Indigenous legal aid services in the State since it's incorporation in 1973.[122]

120 Minister for Family and Community Services and Northern Territory Minister for Housing, *Over $250 Million in new Agreement on Indigenous Housing and Infrastructure,* Joint Media Release, 22 December 2005. Available at http://www.facs.gov.au/internet/minister1.nsf/content/22dec_housing_agreement.htm, accessed 12 January 2007.

121 Minister for Family and Community Services and Northern Territory Minister for Housing, *Over $250 Million in new Agreement on Indigenous Housing and Infrastructure,* Joint Media Release, 22 December 2005. Available at http://www.facs.gov.au/internet/minister1.nsf/content/22dec_housing_agreement.htm, accessed 12 January 2007.

122 Attorney-General, *Indigenous Legal Services announced for South Australia,* Media Release 005/2006, 23 January 2006.

The Aboriginal Legal Rights Movement Incorporated services a large geographical area that includes major towns and outlying communities in South Australia, such as Adelaide, Murray Bridge, Port Lincoln and Port Augusta. It also visits circuit and bush courts in locations such as Maitland, Berri and Yalata. The ALRM Incorporated is to commence providing legal aid services under the new contract from 1 February 2006.

24 January 2006 *Indigenous Affairs moves to a new Federal Department (FaCSIA).*	The Prime Minister announces changes to the Ministry and the Administrative Arrangements Order. As part of the change the Office of Indigenous Policy Coordination is moved to the Family and Community Services Portfolio and a new Ministerial portfolio will be created to encompass Indigenous affairs.[123] The new Minister will head the newly formed Department of Families, Community Services and Indigenous Affairs (FCaSIA). This department was formerly known as the Department of Family and Community Services.

The Office of Indigenous Policy Coordination will move to the Family and Community Services (FaCS) portfolio because of the concurrence with other FaCS programmes. The portfolio will be renamed Families, Community Services and Indigenous Affairs (FaCSIA) and the current portfolio of Immigration, Multicultural and Indigenous Affairs will be renamed Department of Immigration and Multicultural Affairs.

The Minister for Families, Community Services and Indigenous Affairs will also become Minister Assisting the Prime Minister for Indigenous Affairs. The swearing in ceremony will be held on 27 January 2006.[124]

The primary changes in the last twelve months involved the abolition of ATSIC and the transfer of $1.1 billion of ATSIC programmes to mainstream departments; the appointment of the National Indigenous Council (NIC); the preparation of a single budget submission by the Ministerial Taskforce on Indigenous Affairs (MTF); the establishment of 30 Indigenous Co-ordination Centres (ICC's); the completion of 120 Shared Responsibility Agreements (SRA's); the introduction of legislation to modernise the *Aboriginal Councils and Associations Act 1976* to improve governance and accountability; and significant changes to the *Aboriginal Land Rights(Northern Territory) Act 1976*.[125]

123 Prime Minister of Australia, *Ministerial Changes,* Media Release, 24 January 2006.

124 Prime Minister of Australia, *Ministerial Changes,* Media Release, 24 January 2006.

125 Minister for Immigration and Multicultural and Indigenous Affairs, *The Indigenous Affairs landscape has changed irrevocably and for the better,* Media Release, 24 January 2005.

February 2006 *The passage of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) delayed until October 2006.*	The passage of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) through Parliament is delayed until October 2006. The Bill will commence on 1 July 2007 to coincide with the start of the 2007-08 financial year.[126]

An independent review of the *Aboriginal Councils and Associations Act 1976* (Cth) (the ACA Act) was commissioned by the Registrar in 2001. The review began in February 2001, and led to the *Corporations (Aboriginal and Torres Strait Islander) Bill* 2006 being developed.

There were several rounds of consultations and two workshops in Alice Springs. In addition, questionnaires were sent to all associations incorporated under the ACA Act and to 345 Indigenous organisations incorporated under other national, state and territory legislation. There was extensive advertising in local and rural media, information sheets and consultation papers.

The Bill will replace the *Aboriginal Councils and Associations Act 1976* (Cth). Corporations will have up to two years to make the necessary changes to comply with the new law. This period will be known as the 'transitional period'.

The Bill allows for flexibility so that corporations can tailor their corporate governance practices to better suit their members and communities. Most corporations are likely to use the internal governance framework built into the bill, others will choose to modify it. Support and training will be available through the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations, to help them through the process where it is needed.

The Bill will give corporations the option to accept a minority of non-Indigenous members, and also to appoint or elect a minority of non-Indigenous people to the board. This will be a choice for members to make when they develop their constitutions.

The Bill includes increased rights for members, consistent with the *Corporations Act 2001* (Cth), and provides greater opportunities for members to act to protect their own interests. In addition, the Registrar will be able to act on behalf of members in circumstances where they are unable to do so, for example, in the case of an oppressed minority.

To protect the members of corporations, funding bodies and ultimately the Australian taxpayer, a range of offences are covered in the Bill. The offences largely reflect those set out in the *Corporations Act 2001* (Cth) and have been developed on the principle that similar obligations should attract similar consequences.[127]

126 Australian Government, Registrar of Aboriginal Corporations, *The Corporations (Aboriginal and Torres Strait Islander) Act 2006*, available on line at: http://www.orac.gov.au/about_orac/legislation/reform_act.aspx accessed 21 December 2006.

127 Senator for Queensland, Santo Santoro – Minister for Ageing, *Corporations (Aboriginal and Torres Strait Islander) Bill 2005*, Monday, 16 October 2006, available online at http://www.santosantoro.com/news/article.aspx?ID=615, accessed 16 January 2006.

15 February 2006 *Social Justice and Native Title Reports 2005 tabled in Parliament.*	The Attorney-General tables the *Social Justice Report 2005* and the *Native Title Report 2005* in Parliament. The reports were prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner.[128]

The *Social Justice Report 2005* provides an overview of the work of the Social Justice Commissioner and the major issues that have impacted on Indigenous peoples over the preceding 12 months. One focus of the report is on progress over the last year in the government's implementation of its new arrangements for the administration of Indigenous affairs. To assist in the implementation of the new arrangements, the report outlines what constitutes a human rights based approach to engagement with Indigenous communities. This is designed to ensure the effective participation of Indigenous peoples in all levels of decision making and service delivery that affect their lives.

Another focus of the report is Indigenous health. One of the report's chapters provides a human rights based approach to addressing Aboriginal and Torres Strait Islander health equality. The report also proposes a campaign for achieving health equity between Indigenous and non-Indigenous Australians within a generation.

In accordance with the functions set out in section 46C(1) (a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), the report includes 5 recommendations: – 3 in relation to achieving health equality for Aboriginal and Torres Strait Islander peoples, and 2 in relation to the new arrangements in Indigenous affairs. The report also contains 5 follow up actions that the Social Justice Commissioner will undertake over the next twelve months in relation to the new arrangements. These and the recommendations are reproduced here:

> Achieving Aboriginal and Torres Strait Islander health equality within a generation – A human rights based approach
>
> **Recommendation 1**
>
> That the governments of Australia commit to achieving equality of health status and life expectation between Aboriginal and Torres Strait Islander and non-Indigenous people within 25 years.
>
> **Recommendation 2**
>
> *a)* That the governments of Australia commit to achieving equality of access to primary health care and health infrastructure within 10 years for Aboriginal and Torres Strait Islander peoples.
>
> *b)* That benchmarks and targets for achieving equality of health status and life expectation be negotiated, with the full participation of Aboriginal and Torres Strait Islander peoples, and committed to by all Australian governments. Such benchmarks and targets should be based on the indicators set out in the *Overcoming Indigenous Disadvantage Framework* and the *Aboriginal and Torres Strait Islander Health Performance Framework*. They should be made at the national, state/ territory and regional levels and account for regional variations in health

128 Attorney-General's Department, Media Release 013/2006, *Tabling of the Social Justice and Native Title Reports*, 15 February 2006.

status. Data collection processes should also be improved to enable adequate reporting on a disaggregated basis, in accordance with the *Aboriginal and Torres Strait Islander Health Performance Framework*.

c) That resources available for Aboriginal and Torres Strait Islander health, through mainstream and Indigenous specific services, be increased to levels that match need in communities and to the level necessary to achieve the benchmarks, targets and goals set out above. Arrangements to pool funding should be made, with states and territories matching additional funding contributions from the federal government.

d) The goal and aims of the *National Strategic Framework for Aboriginal and Torres Strait Islander Health* be incorporated into the operation of Indigenous Coordination Centres and the new arrangements for Indigenous affairs. This includes through reliance on the outcomes of regional planning processes under the Aboriginal Health Forums.

Recommendation 3

That the Australian Health Minister's Conference agree to a National Commitment to Achieve Aboriginal and Torres Strait Islander Health Equality and that bi-partisan support for this commitment be sought in federal Parliament and in all State and Territory parliaments.

This commitment should:

- acknowledge the existing inequality of health status enjoyed by Aboriginal and Torres Strait Islander peoples;
- acknowledge that this constitutes a threat to the survival of Aboriginal and Torres Strait Islander peoples, their languages and cultures, and does not provide Aboriginal and Torres Strait Islander peoples with the ability to live safe, healthy lives in full human dignity;
- confirm the commitment of all governments to the *National Strategic Framework* and the *National Aboriginal Health Strategy* as providing over-arching guidance for addressing Aboriginal and Torres Strait Islander health inequality;
- commit all governments to a program of action to redress this inequality, which aims to ensure equality of opportunity in the provision of primary health care services and health infrastructure within ten years;
- note that such a commitment requires partnerships and shared responsibility between all levels of government, Aboriginal and Torres Strait Islander peoples and communities, non-government organisations and the private sector;
- acknowledge that additional, special measures will be necessary into the medium term to achieve this commitment;
- acknowledge that significant advances have been made, particularly in levels of resourcing, since 1995 to address this situation;
- commit to celebrate and support the success of Aboriginal and Torres Strait Islander peoples in addressing health inequality;
- accept the holistic definition of Aboriginal and Torres Strait Islander health and the importance of Aboriginal community controlled health services in achieving lasting improvements in Aboriginal and Torres Strait Islander health status;

- commit to continue to work to achieve improved access to mainstream services, alongside continued support for Aboriginal community controlled health services in urban as well as rural and remote areas; and
- acknowledge that achieving such equality will contribute to the reconciliation process.

Progress in implementing the new arrangements for the administration of Indigenous affairs – Ensuring the effective participation of Aboriginal and Torres Strait Islander peoples in decision-making processes

Recommendation 4

That the federal government, in partnership with state and territory governments, prioritise the negotiation with Indigenous peoples of regional representative arrangements. Representative bodies should be finalised and operational by 30 June 2006 in all Indigenous Coordination Centre regions.

Recommendation 5

That the Office of Indigenous Policy Coordination, in consultation with the Aboriginal and Torres Strait Islander Social Justice Commissioner, agree to Guidelines to ensure that Shared Responsibility Agreements comply with human rights standards relating to the process of negotiating SRAs and the content of such agreements.[129]

8 March 2006 *Boost in Indigenous school retention rates.*	The Australian Bureau of Statistics releases the *Schools Report 2005* which shows that school retention rates among Indigenous students have climbed significantly over the past five years.[130]

In 2005 there were 135,097 Indigenous full time students, representing a 3.5% increase since 2004. Almost 58% of these students attended schools in New South Wales or Queensland in 2005. There were 3,427 Indigenous full time students in Year 12 across all States and Territories in 2005, compared to 2,620 five years earlier.

Apparent retention rates for Indigenous full-time school students from Year 7/8 to both Year 10 and Year 12 have continued to rise over the last five years. The rate to Year 10 increased from 83% in 2000 to 88.3% in 2005, and the rate to Year 12 increased from 36.4% to 39.5% in the same period. These Indigenous retention rates are lower than the comparable rates for non-Indigenous students. In 2005, the rate to Year 10 for non-Indigenous students was 98.6%, while the rate to Year 12 was 76.6%.[131]

129 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Report No. 3/2005 Human Rights and Equal Opportunity Commission, Sydney, 2006.

130 Minister for Families, Community Service and Indigenous Affairs, *Boost in Indigenous school retention rates,* Media Release ID 09/06, 8 March 2006.

131 Australian Bureau of Statistics, *Schools 2005 4221.0*, available online at http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/2D8FFEDFC0C6F32ACA25711D000DFEB8/$File/42210_2005.pdf, accessed 16 January 2006.

28 March 2006 *Public Service boosts its intake of Indigenous graduates.*	The Australian Public Service has markedly increased its intake of Indigenous graduates following the success of the first year of the Australian Public Service Commission's Indigenous graduate recruitment initiative.[132]

Twenty-nine Indigenous graduates have recently commenced on mainstream public service graduate programmes as a direct result of the Australian Public Service Commission's inaugural Indigenous graduate recruitment initiative, where graduates will complete a year of work placements and training. The program will run again in 2007.

The Government's strategy was announced by the Prime Minister on 12 August 2005 and included additional funding of $6.45m over three years to support the Australian Public Service Commission's Employment and Capability Strategy for Aboriginal and Torres Strait Islander Employees. The funding is to be used for Indigenous employment initiatives that will:

- support a whole-of-government approach by building public sector capability to do Indigenous business;
- provide pathways to employment by removing barriers to the effective employment of Indigenous Australians;
- support employees by maximising their contribution to the workplace;
- support employers by helping them to align their Indigenous Employment Strategies with their workforce planning and capacity building; and
- develop and strengthen cross-agency partnerships to support working together to promote Indigenous employment.[133]

12 April 2006 *National Aboriginal and Torres Strait Islander Health Survey indicates that Indigenous unemployment has fallen.*	The 2004-05 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS), indicates that national unemployment for Indigenous persons aged 15 years and over has fallen to 15.4 per cent for 2004-2005. This result represents a fall of 7.5 percentage points, compared to the 2002 survey when Indigenous unemployment was measured at 22.9 per cent.[134]

132 Minister for Employment and Workplace Relations, Minister Assisting the Prime Minister for the Public Service, *Public Service Boosts Its Intake of Indigenous Graduates*, Media Release 409/06, 28 March 2006.

133 Minister for Employment and Workplace Relations, Minister Assisting the Prime Minister for the Public Service, *Public Service Boosts Its Intake of Indigenous Graduates*, Media Release 409/06, 28 March 2006.

134 Minister for Employment and Workplace Relations, Minister Assisting the Prime Minister for the Public Service, *Indigenous Unemployment Falling*, Media Release 086/06, 12 April 2006.

12 April 2006 (continued) *National Aboriginal and Torres Strait Islander Health Survey indicates that Indigenous unemployment has fallen.*	The survey was conducted in remote and non-remote areas of Australia, and was designed to collect a range of information from Indigenous Australians about health related issues, including health status, risk factors and socio-economic circumstances.[135]

The 2004-2005 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) recorded a fall of 7.5 percentage points in the national unemployment rate for Indigenous persons aged 15 years and over from high of 22.9 per cent in 2002. Over the same period, employment for Indigenous Australians grew by 10.3 per cent.

The national employment to population ratio for Indigenous persons aged 15 and over improved from 46.2 per cent in 2002 to 49.0 per cent in 2004-05. The comparable 2004-05 employment to population rate for all Australians was 60.8 per cent.

The key findings contained in the report indicate that:

- the Aboriginal and Torres Strait Islander population at 30 June 2001 was estimated to be 458,500, or 2.4% of the total Australian population;
- around one in four Indigenous people (26%) were living in remote areas compared with only one in fifty non-Indigenous people (2%);
- the Indigenous population is quite young, with a median age of 21 years compared with 36 years for the non-Indigenous population;
- Indigenous people overall were twice as likely as non-Indigenous people to report their health as fair or poor;
- a higher proportion of the Indigenous population reported feeling restless (12%) and/or that everything was an effort all or most of the time (17%) (Questions were asked for the first time in this survey about the social and emotional well being of the Indigenous population and further analytical work is being undertaken by the ABS to assess their suitability for understanding the well being of Indigenous people).
- a higher proportion of Indigenous Australians than non-Indigenous Australians reported more than one long term health condition in the age groups between 25-54 years. However, after adjusting for the age difference between the two populations, Indigenous and non-Indigenous Australians were equally likely to report a long term health condition;

135 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004-05*, 11 April 2005, available online at http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B1BCF4E6DD320A0BCA25714C001822BC/$File/47150_2004-05.pdf accessed 20 December 2006.

- consistent with results from 2001, asthma was reported by around one in seven Indigenous Australians (15%) in 2004-05, this is a finding of 1.6 times more prevalence in the Indigenous population than in the non-Indigenous population;
- the Indigenous population were 1.3 times more likely than non-Indigenous people to report heart disease and/or circulatory problems;
- rates of hearing loss were higher amongst Indigenous people than non-Indigenous people in all ages groups up to 55 years of age;
- Indigenous people were more than three times as likely as non-Indigenous people to report some form of diabetes;
- rates of kidney disease were much higher in the Indigenous population;
- Indigenous people were 1.3 times more likely than non-Indigenous people to have been hospitalised in the 12 months prior to interview;
- Indigenous people were equally as likely as non-Indigenous people to have visited a doctor, one and a half times more likely to have consulted an 'other' health professional, and more than twice as likely to have visited the casualty or out patients department of a hospital in the two weeks before the survey;
- in the 2004-05 NATSIHS, the ABS collected information for the first time about the oral health of Indigenous people. Of Indigenous people aged 15 and over, 11% had never visited a dentist or other health professional about their teeth;
- for both men and women, smoking was more prevalent among Indigenous than non-Indigenous adults in every age group;
- after adjusting for age differences, the proportion of Indigenous adults who reported drinking at risky/high levels (15%) was similar to that of non-Indigenous adults (14%);
- the patterns of risky/high alcohol consumption were different for men and women;
- many of the principal causes of ill-health among Aboriginal and Torres Strait Islander people are nutrition related diseases, such as heart disease, Type II diabetes and renal disease. In 2004-05 the majority of Indigenous people aged 12 years and over reported eating vegetables (95%) and/or fruit (86%) daily;
- in non remote areas, the intake of vegetables was broadly similar between Indigenous and non-Indigenous people;
- the proportion of Indigenous people in non-remote areas who were sedentary or engaged in low level exercise in the two weeks prior to interview was higher in 2004-05 (75%) than in 2001 (68%);
- the proportion of Indigenous people in non-remote areas who were overweight or obese in 1995 was 48% increasing to 56% in 2004-05. Indigenous Australians were 1.2 times more likely to be overweight obese than non-Indigenous Australians. In each group the disparity between Indigenous and non-Indigenous people was greater for females than for males;

- in 2004-05, the majority of Indigenous women aged 18-64 who had had children, reported having breastfed them (84%);
- in 2004-05, around nine in ten Indigenous children under seven years of age in non-remote areas were reported as being fully immunised against diphtheria, tetanus, whooping cough, polio, hepatitis B, measles, mumps, rubella and haemophilus influenza type B (HIB);
- older Indigenous people in remote areas were more likely (80%) than those in non-remote areas (52%) to have been recently vaccinated for influenza, and were more than twice as likely to have received a vaccination against pneumonia (56% compared with 26%); and
- just over half of Indigenous women aged 18 years and over reported having regular pap smear tests and the reported use of common contraceptives by Indigenous women ages 18-49 years has changed very little since 2001.[136]

17 April 2006 *Bilateral Agreement on Service Delivery to Indigenous communities in South Australia signed.*	The Prime Minister and the Premier of South Australia sign a five-year bilateral agreement committing both governments to improving service delivery to Indigenous communities in South Australia. This is a formal agreement which commits the Commonwealth and South Australian Governments to work together with Indigenous communities on service planning, delivery, investment and performance evaluation, and to reduce the bureaucratic load on communities. Under the agreement, the governments will work towards shared priorities, including those identified in the Overcoming Indigenous Disadvantage Report, as well as other identified priority areas including: • safer communities; • housing and infrastructure; • health and education; • homelessness; • economic development; • land, environment and culture; and • service delivery.[137]

The Overarching Agreement on Indigenous Affairs between the Australian and the South Australian Governments, also known as the *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in South Australia*, is a five year agreement which aims to enhance the health and welfare of Indigenous South Australians. The agreement will be in place from 17 April 2006 until 2011.

136 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey 2004-05*, 11 April 2005, available online at http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/B1BCF4E6DD320A0BCA25714C001822BC/$File/47150_2004-05.pdf accessed 20 December 2006.

137 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in South Australia,* Media Release, 17 April 2006.

This is the third agreement to result from the Council of Australian Governments' (COAG) *National Framework of Principles for Delivering Services to Indigenous Australians* which was endorsed in June 2004. The agreement is a response to issues identified in the *Overcoming Indigenous Disadvantage Report*.

The aim of the agreement is to enhance cooperation between the two governments in regard to service delivery through the streamlining of bureaucratic processes and the reduction of red tape. Another aim of the agreement is to reduce the duplication of service delivery in Indigenous communities.[138]

17 April 2006 *Bilateral Agreement on Service Delivery to Indigenous peoples in New South Wales signed.*	The Australian and New South Wales Governments sign a five-year bilateral agreement committing both governments to improving service delivery to Indigenous communities in NSW. This is a formal agreement commits the Australian and NSW Governments to work together with Indigenous communities on service planning and delivery, investment and performance evaluation, and to reduce the bureaucratic load on communities. Under the agreement, the governments will work towards shared priorities, including those identified in the Overcoming Indigenous Disadvantage Report, as well as other identified priority areas including: • building Indigenous wealth and employment; • promoting an entrepreneurial culture in Indigenous communities; • improving living conditions, health and social outcomes across a range of areas including early childhood health and intervention, improving literacy and numeracy, increasing school retention rates, reducing incarceration and the level of family violence; and creating safer communities. This is the fourth bilateral agreement to be signed under the Council of Australian Governments (COAG) Indigenous Service Delivery Framework.[139]

The Overarching Agreement on Aboriginal Affairs between the Australian and New South Wales Governments, also referred to as the *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in New South Wales*, is a five year agreement which aims to enhance the health and welfare of Indigenous people in New South Wales. The agreement is one element of the implementation of *Two Ways Together: the NSW Aboriginal Affairs Plan 2003-2012*.

138 The full text of the *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in South Australia* can be found at http://www.oipc.gov.au/publications/PDF/NSW_IndigAgreement.pdf accessed 11 January 2007.

139 Prime Minister of Australia, *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in New South Wales,* Media Release, 17 April 2006.

This is the fourth bilateral agreement to result from the Council of Australian Governments' (COAG) *National Framework of Principles for Delivering Services to Indigenous Australians* which was endorsed in June 2004. The agreement is a response to issues identified in the *Overcoming Indigenous Disadvantage Report*. The agreement is effective from 2005-2010.

A stated aim of the agreement is to better integrate government services to Indigenous communities and the implementation of the agreement will be supervised by the Intergovernmental Aboriginal Affairs Group, which has been established specifically for this purpose. The agreement includes planned action in the areas of 'safer communities; housing and infrastructure; health and education; homelessness; economic development; land, environment and culture; and service delivery'.

The major aim of the agreement is to enhance cooperation between the two governments in regard to service delivery through the streamlining of bureaucratic processes and the reduction of red tape. A second related aim of the agreement is to reduce bureaucratic overlap and the duplication of service delivery in Indigenous communities.[140]

28 April 2006 *New provider for NSW Indigenous legal aid services.*	The Attorney-General announces the Aboriginal Legal Service (NSW/ACT) Ltd. as the successful tenderer to provide Indigenous legal aid services in NSW and the Australian Capital Territory. The new Aboriginal Legal Service (NSW/ACT) Ltd merges the six existing Aboriginal and Torres Strait Islander Legal Services in New South Wales.[141]

The newly formed Aboriginal Legal Service (NSW/ACT) Ltd. merges the six pre-existing Aboriginal and Torres Strait Islander Legal Services in New South Wales. Those services are the Sydney Regional Aboriginal Corporation Legal Service; Many Rivers Aboriginal Legal Service; Kamilaroi Aboriginal Legal Service Incorporated; Central Southern Aboriginal Corp for Wiradjuri Aboriginal Legal Service; Wagga Wagga South Eastern Aboriginal Legal Service Incorporated; and Western Aboriginal Legal Service Ltd.

The merger of the six organisations brings together over 100 years of experience in delivering culturally appropriate legal services to Indigenous Australians in the New South Wales region. The original tender to supply legal services to Indigenous Australians in NSW and ACT was submitted by the Coalition of Aboriginal Legal Services NSW, who formed the new organisation Aboriginal Legal Service (NSW/ACT) Ltd when the tender was granted to them.[142]

140 The full text of the *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in New South Wales* can be found at http://www.oipc.gov.au/publications/PDF/NSW_IndigAgreement.pdf accessed 11 January 2007.

141 Attorney-General's Department, *New provider for NSW Indigenous legal services,* News Release 069/2006, 28 April 2006.

142 The web site is www.alsnswact.org.au accessed 11 January 2007.

Indigenous legal aid services are provided in accordance with priorities laid down in the Policy Directions for the Delivery of Legal Aid Services to Indigenous Australians (Policy Directions).[143]

The new process for access to legal aid services for Indigenous Australians includes a means test which aims to ensure that limited funds available are allocated to those who need them most. The Indigenous Justice and Legal Assistance Division of the Attorney General's Department may also provide funding for a range of test cases. Applicants must address the Indigenous Test Case Guidelines which set out the criteria for obtaining funding, the application procedure, and the conditions upon which funding is granted.[144]

9 May 2006 *Federal Budget 2006-07.*	Funding to Indigenous affairs, in the 2006-07 Federal Budget, will total $3.3 billion. This is the result of allocating close to $500 million over five years in this Budget, with twenty four new initiatives across six portfolios.[145] The key budget measures within the Indigenous portfolio address four themes: 1. Measures Investing in People: these programs will include using sport to improve Indigenous young people's education and life prospects; the reform of the delivery capacity of Indigenous corporations; Indigenous community leadership; a family and community networks initiative; an Indigenous tutorial assistance scheme; an Indigenous boarding college and the establishment of a National Indigenous Scouting Programme. 2. Measures Addressing Economic Independence: measures will include improving the sustainability of community stores; the Home Ownership Program; enhanced opportunities for employment and participation in remote communities; extending the Family Income Management Programme; improving Indigenous health worker employment; continuing and expanding funding to the Remote Area Servicing, through ten established centres and two new centres; Cape York Institute welfare reform project; and Cape York Digital Network.

143 This document is available online at http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(03995EABC73F94816C2AF4AA2645824B)~Policy+Directions-+May+2006[1].pdf/$file/Policy+Directions-+May+2006[1].pdf accessed 11 January 2007.

144 The *Indigenous Test Case Guidelines* can be found online at http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(1E76C1D5D1A37992F0B0C1C4DB87942E)~Indigenous+Test+Case+Guidelines+November+2006.DOC.pdf/$file/Indigenous+Test+Case+Guidelines+November+2006.DOC.pdf accessed 11 January 2007.

145 Minister for Families, Community Services and Indigenous Affairs, *Budget delivers new opportunities for Indigenous Australians,* Media Release ID: 33/6, 9 May 2006.

9 May 2006 *Federal Budget 2006-07.*	3. Measures Tackling Pressing Problems: funding will be allocated to reducing substance abuse; Indigenous Family Violence Prevention Legal Services; improving Indigenous access to health care services; additional Indigenous aged care places; Northern Territory Indigenous Interpreter Services; and improving the capacity of health workers in Indigenous communities; and 4. Other Measures: funding will be allocated to Reconciliation Australia; developing the 1967 referendum anniversary activities; and flexible funds for shared responsibility and agreement making.[146]

The key Budget measures and resources within the Indigenous affairs portfolio are:

Measures Investing in People

- $19.6 million to extend the successful school-based Clontarf Football Academy model to 20 other locations across Australia.
- $28.1 million to assist Indigenous corporations improve their governance capacity and their ability to deliver more effective services on the ground.
- $23.0 million to support communities through the development of emerging leaders and the provision of outside assistance to build their capacity to negotiate with governments.
- $10.7 million to maintain the Family Community Networks Initiative.
- $21.8 million to support Indigenous vocational education and training students by providing an estimated 20,000 places for tutorial assistance for up to 2 hours per week.
- $15.6 million to provide up to four hours of tuition per week for up to 32 weeks a year for Indigenous Year 9 students.
- $10.0 million under a Shared Responsibility Agreement to fund the construction of a community-managed secondary college in the Tiwi Islands.
- $2.0 million for Scouts Australia to develop a culturally specific leadership and community development programme for young Indigenous people.

Measures Addressing Economic Independence

- $48.0 million to Indigenous Business Australia to establish a subsidiary company, 'Outback Stores', which will provide a framework for group discount purchasing and better managerial, supply chain, food handling, nutrition and financial arrangements.
- $21.6 million to expand the Home Ownership Programme, providing access to finance for up to 140 Indigenous people who may otherwise not be able to obtain finance from private-sector financial institutions.

146 Minister for Families, Community Services and Indigenous Affairs, *Summary of Indigenous Measures,* Media Release ID: 33/6 Attachment, 9 May 2006.

- $107.5 million to support and develop Indigenous home ownership on Indigenous land. Up to 460 Indigenous families living in remote Indigenous community towns will be able to access affordable home loans. 45 new houses earmarked for home ownership will be constructed and measures introduced to encourage saving for a home loan deposit.
- $17.9 million to reduce passive welfare through employment-focused programmes which will allow remote area exemptions from the activity test to be lifted for people receiving income-support payments.
- $16.6 million to extend the existing Family Income Management programme, which provides education and assistance to Indigenous families in remote communities to better manage their incomes.
- $20.5 million to convert 130 full-time equivalent community-based Indigenous health care and substance abuse worker positions currently supported through the Community Development Employment Projects Scheme into real jobs.
- $6.9 million to improve Indigenous access to Centrelink services through continued funding for 10 established Remote Area Service Centres and for two new centres.
- $3.0 million will be made available to the Cape York Institute to undertake research into the ways that Indigenous communities interact with the welfare system and to design incentives to encourage employment and education.
- $0.75 million to ensure the continued operation of the Cape York Digital Network, which provides telecommunications services for many remote Indigenous communities in Cape York.

Measures Tackling Pressing Problems

- $55.2 million to tackle substance abuse and petrol sniffing. This measure builds on the Government's regional approach in central Australia, increases availability of Opal (non-sniffable petrol) and education and alternative activities for youth.
- $23.6 million to create five new Family Violence Prevention Legal Services and to extend the services available in the 26 existing services to include preventative work.
- $39.5 million to improve access to mainstream health services in urban and regional areas and to provide funding for 40 more medical professionals to work in remote area health services.
- $0.8 million for the creation of 150 new aged care places for older Indigenous Australians in rural and remote areas.
- $5.1 million to maintain interpreter services in the Northern Territory to improve access to government services.
- $20.8 million over 5 years to train Indigenous health workers to identify and address mental illness in Indigenous communities, as part of the Australian Government contribution to the separate Council of Australian Government's Mental Health Package.

Other Measures

- $0.5 million to mark the 40th anniversary of the 1967 referendum by providing funding to Reconciliation Australia to promote a greater understanding of reconciliation.

- The Government is furthering its commitment to the development of Shared Responsibility Agreements. Key portfolios will be required to contribute at least $75.0 million over four years to the development of Shared Responsibility Agreements, with Ministers to report on achievements each year.[147]

18 May 2006 *National plan for action against Indigenous violence and child abuse.*	The Australian Government will invite State and Territory Governments to a summit to develop a national action plan to address community safety in Indigenous communities.[148]

The Australian Government will invite all State and Territory Governments to a summit to develop a national action plan to address community safety in Indigenous communities following the recent media reports on violence within Aboriginal communities.[149]

23 May 2006 *OIPC releases a coordination evaluation plan for 2006-2009.*	The Office of Indigenous Policy Coordination (OIPC) releases a coordination evaluation plan for the whole of government activities in Indigenous affairs for 2006-2009. The paper provides an overview of the planned evaluation activities to be conducted during 2006-2009 by OIPC.[150]

The foundations of the evaluation plan evolved from the launch of the Government's new arrangements in Indigenous affairs. Accountability is one of the primary foundation principles. Evaluation is an integral part of accountability and this plan sets out a framework under which evaluation of the whole of government approach will occur.

The evaluation plan is organised over three broad themes, which tend to overlap:

- policy outcomes – covering whole of government outcomes, coordination and gaps;
- place – dealing with local arrangements and partnerships; and
- process – the actual implementation of the new arrangements.

147 Minister for Families, Community Services and Indigenous Affairs, *Summary of Indigenous Measures,* Media Release ID: 33/6 Attachment, 9 May 2006.

148 Minister for Families, Community Services and Indigenous Affairs, *National plan for action against Indigenous violence and child abuse says Brough,* Media Release ID: 33/6, 9 May 2006.

149 Minister for Families, Community Services and Indigenous Affairs, *National plan for action against Indigenous violence and child abuse says Brough,* Media Release ID: 33/6, 9 May 2006.

150 Office of Indigenous Policy Coordination, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs*, 23 May 2006, available on line at: http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 21 December 2006.

Activities which will take place in 2005-06 will include:

- red tape evaluation;
- a formative evaluation of the eight COAG trial sites; and
- a review of individual Shared Responsibility Agreements.[151]

31 May 2006 *Reforms to Aboriginal Land Rights (Northern Territory) Act 1976 introduced into Parliament.*	The Minister for Immigration and Multicultural and Indigenous Affairs introduces amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976* into Parliament. The amendments were announced in October 2005. The changes to the *Aboriginal Land Rights (Northern Territory) Act 1976* will allow long term leases to be held over entire township areas; change the current processes for land development; and impact on the performance and accountability of Land Councils and royalty bodies.[152] The 2006-07 Budget allocated $107.5 million to the expansion of the Indigenous Home Ownership on Indigenous Land Program and a Home Purchase Incentive Scheme on Community Title Land.[153] The new tenure arrangements contained in the Bill will enable Aboriginal people in the Northern Territory to access these new programs.[154]

The new model proposed under these changes is similar to a proposal put forward by the NT Government and supported by the National Indigenous Council:

- The NT Government will establish an entity to talk with the Traditional owners and the Land Council of a particular town area to obtain 99 year head leases over township areas.
- The entity can issue long term sub leases to town users without the need to negotiate case by case with Traditional Owners and Land Councils.
- The terms of the head lease will be negotiated with the Traditional Owners and Land Councils, except for a statutory ceiling (five per cent of the land's value) on the annual rent payable to the Traditional Owners.[155]

The Home Ownership on Indigenous Land Programme will allow eligible Indigenous people to borrow money at affordable rates to help them to get their own

151 Office of Indigenous Policy Coordination, *Evaluation Plan for Whole-of-Government Activities in Indigenous Affairs*, 23 May 2006, available on line at: http://www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf accessed 21 December 2006.

152 Minister for Immigration and Multicultural and Indigenous Affairs, *Long term leases the way forward for NT Aboriginal townships,* Media Release ID: vIPS 35/05, 5 October 2005.

153 Office of Indigenous Policy Coordination, *ALR Reforms, Questions and Answers on complementary measures to assist Indigenous home ownership,* available online at http://www.oipc.gov.au/ALRA_Reforms/QA_ComplimentaryMeasures.asp accessed 20 December 2006.

154 Minister for Families, Community Services and Indigenous Affairs, *Historic reforms to NT land rights,* Media Release, 31 May 2006.

155 Minister for Immigration and Multicultural and Indigenous Affairs, *Long term leases the way forward for NT Aboriginal townships,* Media Release ID: vIPS 35/05, 5 October 2005.

home on Indigenous land. Indigenous Business Australia (IBA) will be responsible for the Home Ownership on Indigenous Land Programme.

The Home Purchase Incentive Scheme on Community Title Land will provide a discount on the purchase price of community owned housing for Indigenous peoples have a good rental history. The Australian Government Department of Family and Community Services (FaCS) will be responsible for this Scheme.[156]

19 June 2006 *Forum on ending violence in Indigenous communities.*	Australians for Native Title and Reconciliation (ANTaR) and the Human Rights and Equal Opportunity Commission (HREOC) host a forum on ending violence in Indigenous communities at Parliament House in Canberra. The event is supported by the Australian Indigenous Doctors Association (AIDA), Australian Medical Association (AMA), Oxfam Australia and the Australian Principals' Associations Professional Development Council (APAPDC).[157]

The forum on ending violence in Indigenous Communities was not open to the public or media, however a press conference was held following the event.

The Aboriginal and Torres Strait Islander Social Justice Commissioner and a representative from Flinders University of South Australia provided the contextual background to both the nature of the problem and potential solutions. The Social Justice Commissioner opened the proceedings with a speech that stated:

> *"…* ***first, let me state upfront and unequivocally that family violence in Indigenous communities is abhorrent and has no place in Aboriginal society.***
>
> Family violence is a scourge that is causing untold damage and trauma among Indigenous communities. It is damaging Indigenous cultures and it is causing untold damage to our women and children.
>
> Indigenous men, women and children are entitled to live their lives in safety and full human dignity. This means without fear of family violence or abuse. **This is their cultural and their human right.**
>
> Violence and abuse is also in breach of criminal laws across the country. I am on record several times stating that if an Indigenous person commits these types of offences they should be dealt with by the criminal justice system just as any other person would be. There should also be swift intervention from care and protection systems to ensure that the best interests of the child are the primary consideration. Government officials and community members should be fearless and bold in reporting suspected incidents of violence and abuse. This means addressing the code of silence that exists in many Indigenous communities about these issues. And it means government officers meeting their statutory obligations, meeting their duty of care and taking moral responsibility in the performance of their duties as public officials. Many do already. Regrettably, some do not.

156 Office of Indigenous Policy Coordination, *ALR Reforms. Questions and Answers on complementary measures to assist Indigenous home ownership, available online at* http://www.oipc.gov.au/ALRA_Reforms/QA_ComplimentaryMeasures.asp accessed 15 February 2005.

157 ABC Message Stick, *National: Forum on Ending Violence in Indigenous Communities,* Media Release, 19 June 2006, available online at http://www.abc.net.au/message/news/stories/s1666291.htm accessed 21 December 2006.

> ***Let me also state upfront that Aboriginal customary law does not condone family violence.***
>
> Family violence and abuse of women and children has no place in Aboriginal culture. Customary law cannot be relied upon to excuse such behaviour.
>
> That is not the customary law that I know. Perpetrators of violence and abuse **do not respect customary law and are not behaving in accordance with it**."[158]

A facilitated panel discussion then discussed specific programs that are already in existence and working well with regard to tackling violence in Indigenous communities.[159]

The Aboriginal and Torres Strait Islander Social Justice Commissioner prepared a paper on the key issues entitled "*Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*". The paper provides an overview of research and findings by the Human Rights and Equal Opportunity Commission from 2001-2006 and is released on 21 June 2006.[160]

21 June 2006 *The Australian Institute of Health and Welfare releases 'Australia's Health 2006'.*	The Australian Institute of Health and Welfare releases *Australia's Health 2006*, a comprehensive report on the health status of the Australian population and the factors that influence it, including health services and expenditures. The report states that Australia's Indigenous population continues to have a poorer standard of health than other Australians and there is still too little evidence that the health of Aboriginal and Torres Strait Islander peoples is improving. Death rates of Indigenous infants remain approximately three times those of other Australian infants, and about 70% of Indigenous Australians die before reaching 65, compared with a little over 20% for other Australians.[161]

The report states that Indigenous peoples continue to suffer greater ill health than all other Australians. The average age of death remains younger than other Australians and they are more likely to suffer from a disability and a reduced quality of life due to general ill health.

Collected data indicates that the Indigenous population is disadvantaged across a range of socioeconomic factors and that this impacts on the health of the population. During 2002, Indigenous peoples reported lower incomes, higher rates of unemployment, lower educational attainment and a much lower rate of home

158 Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner, *Addressing family violence in Aboriginal and Torres Strait Islander Communities – Key issues*, Address to Ending Violence in Indigenous Communities Forum, Monday 19 June 2006, Parliament House, Canberra, available online at http://www.hreoc.gov.au/speeches/social_justice/violence20060619.html accessed 21 December 2006.

159 ABC Message Stick, *National: Forum on Ending Violence in Indigenous Communities,* Media release, 19 June 2006, available online at http://www.abc.net.au/message/news/stories/s1666291.htm accessed 21 December 2006.

160 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues*, Human Rights and Equal Opportunity Commission, Sydney, June 2006, available at http://www.humanrights.gov.au/social_justice/family violence/family_violence2006.html accessed 11 January 2007.

161 Australian Government, Australian Institute of Health and Welfare, *Australia improves its health ranking,* Media Release, 21 June 2006.

ownership than other Australians. There are other factors which contribute to their poorer health statistics such as smoking and the misuse of alcohol and other substances, along with poor housing and much greater exposure to violence.

Overall there is a sense of reduced control and autonomy that is experienced by Indigenous peoples over their own lives, and this helps to explain their generally poorer state of health.[162]

The report also examines a number of measures of health status including: self assessed health status; social and emotional well-being; prevalence of conditions; consultations with general practitioners; hospitalisations; disability; mortality and trends in mortality; health risk factors such as smoking and illicit drug use, obesity and poor nutrition; housing and living conditions.

26 June 2006 *Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities.*	An Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities is held involving Ministers from the Australian Government and all States and Territories. The Ministers agree that the levels of violence and child abuse in Indigenous communities warrant a comprehensive national response. The Communiqué released following the Intergovernmental Summit reconfirms the principles agreed by the Council of Australian Governments (COAG) in June 2004, under COAG's *National Framework on Indigenous Family Violence and Child Protection*, particularly that: • everyone has a right to be safe from family violence and abuse; • preventing family violence and child abuse in Indigenous families is best achieved by families, communities, community organisations and different levels of government working together as partners; • successful strategies to prevent family violence and child abuse in Indigenous families enable Indigenous people to take control of their lives, regain responsibility for their families and communities and to enhance individual and family wellbeing; and • the need to address underlying causes and to build strong and resilient families.[163]

The Intergovernmental Summit reconfirmed the principles agreed by the Council of Australian Governments (COAG) in June 2004, under COAG's *National Framework on Indigenous Family Violence and Child Protection*. These principles include that:

162 Australian Institute of Health and Welfare, *Australia's Health 2006: The tenth biennial health report of the Australian Institute of Health*, Canberra, p221, available online at http://www.aihw.gov.au/publications/aus/ah06/ah06.pdf accessed 11 January 2007.

163 Minister for Families, Community Services and Indigenous Affairs; Minister Assisting the Prime Minister for Indigenous Affairs, *Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities Communiqué Safer Kids, Safer Communities,* Media Release, 26 June 2006.

- everyone has a right to be safe from family violence and abuse;
- preventing family violence and child abuse in Indigenous families is best achieved by families, communities, community organisations and different levels of government working together as partners;
- successful strategies to prevent family violence and child abuse in Indigenous families enable Indigenous people to take control of their lives, regain responsibility for their families and communities and to enhance individual and family wellbeing; and
- the need to address underlying causes and to build strong and resilient families.

All jurisdictions agreed to put the action strategy to COAG for consideration and decision on 14 July 2006.[164]

27 June 2006 *Inquiry into Child Sex Abuse in Aboriginal communities in the Northern Territory.*	The Northern Territory Chief Minister orders an inquiry into child sexual abuse in NT Aboriginal communities.[165] The Inquiry will: • examine the size, nature and fundamental causes of the sexual abuse of Aboriginal children; • identify barriers and issues associated with the provision of effective responses; • consider methods, policies, procedures and resources of NT government agencies; and • consider how the NT Government can help support communities effectively to tackle child sexual abuse. The Inquiry will report to the Chief Minister by the end of April 2007.[166]

The Terms of Reference for the NT *Inquiry into the Protection of Aboriginal Children from Sexual Abuse* provide that:

> The purpose of the Inquiry is to find better ways to protect Aboriginal children from sexual abuse. The Inquiry is aiming to report to the Chief Minister by April 2007. An expert reference group will be appointed to assist the Inquiry including providing advice and facilitate communication with community members, stakeholders and others as required.
>
> The Inquiry's task will be to:
>
> - Examine the extent, nature and contributing factors to sexual abuse of Aboriginal children, with a particular focus on unreported incidences of such abuse.

164 Minister for Families, Community Services and Indigenous Affairs; Minister Assisting the Prime Minister for Indigenous Affairs, *Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities Communiqué Safer Kids, Safer Communities,* Media Release, 26 June 2006.

165 Northern Territory Chief Minister, *Chief Minister orders inquiry into child sex abuse,* Media Release 27 June 2006.

166 Northern Territory Chief Minister, *Inquiry into the Protection of Aboriginal Children from Sexual Abuse,* available online at http://www.nt.gov.au/dcm/inquirysaac/ accessed 11 January 2007.

- Identify barriers and issues associated with the provision of effective responses to and protection against sexual abuse for Aboriginal children.
- Consider practices, procedures and resources of NT Government agencies with direct responsibilities in this area (Family & Children's Services and Police).
- Consider how all tiers of government and non-government agencies might contribute to a more effective protection and response network.
- Consider how the NT Government can help support communities to effectively prevent and tackle child sexual abuse.

The Inquiry will make recommendations to Government on these issues. The Inquiry will research and examine information relevant to both successful and unsuccessful strategies and responses relative to the protection of children from sexual abuse. As a part of this process will seek information from:

- Members of the community;
- Territory Government employees;
- Non-government organisations; and
- Independent experts.

While the Inquiry is established under the *Inquiries Act*, 1991 and has the authority and protection afforded by it, the examination of these issues will be conducted in a co-operative and informal manner.

It is anticipated that the majority of discussions will be voluntary as the purpose of the Inquiry is to provide a blue print for future action.

Individuals who wish to speak to the Inquiry confidentially on a one to one basis will be able to do so.

Information provided to the Inquiry relating to specific cases of alleged child abuse will be passed onto the relevant authorities.[167]

28 June 2006 *Indigenous Legal Aid Service Provider for Tasmania announced.*	The Attorney-General announces that the Tasmanian Aboriginal Centre Incorporated has been awarded the contract to provide legal aid services for Indigenous Australians in Tasmania. The Tasmanian Aboriginal Centre Incorporated has provided Indigenous legal aid services in Tasmania for more than 32 years.[168]

This announcement marked the finalisation of the Australian Government's move to *Contracts for Service* for the provision of legal aid services for Indigenous Australians nationally.

The Tasmanian Aboriginal Centre Incorporated joins eight other Indigenous legal aid service providers already appointed in other States and the Northern Territory.

167 Northern Territory Chief Minister, *Inquiry into Protection against sexual abuse of Indigenous children, Terms of Reference*, Media Release, 27 June 2005.

168 Attorney-General's Department, *Indigenous Legal Aid service provider announced for Tasmania*, Media Release 122/2006, 28 June 2006.

The Tasmanian Aboriginal Centre Incorporated will commence services on 1 July 2006.[169]

Eligibility service provision for Indigenous peoples is governed by clear criteria, and will be fairly applied to all applicants. Guidelines have been drawn up to ensure that all Indigenous Australians in Tasmania are able to access these services. These guidelines rely on self-identification and acknowledgement of that person within the Indigenous communities of Tasmania.

29 June 2006 *United Nations Human Rights Council adopts the Declaration on the Rights of Indigenous Peoples.*	The United Nations (UN) Human Rights Council adopts the Declaration on the Rights of Indigenous Peoples after more than twenty years of work by Indigenous peoples and the UN system.[170] On 28 November 2006, the Third Committee of the UN General Assembly adopted a resolution that defers the Assembly's consideration of the Declaration until the end of its current session, which will conclude in September 2007.[171]

The UN Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples on 29 June 2006. The preamble to the Declaration, which sets out the rationale for its elaboration, is provided below.[172]

> *Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,
>
> *Affirming* also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,
>
> *Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,
>
> *Reaffirming* also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,
>
> *Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

169 Attorney-General's Department, *Indigenous Legal Aid service provider announced for Tasmania*, Media Release 122/2006, 28 June 2006.

170 Human Rights and Equal Opportunity Commission, *Social Justice Commissioner praises United Nations Human Rights Council for adopting the Declaration on the Rights of Indigenous Peoples,* Media Release, 30 June 2006. See also the website of the United Nations Permanent Forum on Indigenous Issues available online at http://www.un.org/esa/socdev/unpfii/en/declaration.html

171 Human Rights and Equal Opportunity Commission, *Social Justice Commissioner praises United Nations Human Rights Council for adopting the Declaration on the Rights of Indigenous Peoples,* Media Release, 30 June 2006. See also the website of the United Nations Permanent Forum on Indigenous Issues available online at http://www.un.org/esa/socdev/unpfii/en/declaration.html

172 Human Rights Council, *Report to the General Assembly on the First Session of the Human Rights Council,* United Nations, Geneva, 30 June 2006, A/HRC/1/L.10, p56-73.

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Further recognizing the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing also that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Recognizing also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that the rights affirmed in treaties, agreements and constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Also considering that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect.

During the sixty first session of the UN General Assembly (GA), the GA's Third Committee adopted a resolution on 28 November 2006 that defers consideration of the Declaration on the Rights of Indigenous Peoples until the end of the GA's current session, which will conclude in September 2007. The deferment provides additional time for consultations about the text of the Declaration. The resolution reads:

The General Assembly

2. *Decides* to defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon;
3. *Also decides* to conclude its consideration of the Declaration before the end of its sixty-first session.[173]

173 Sixty-First Session General Assembly, Third Committee Resolution A/C.3/61/l.57/Rev.1, 21 November 2006, available online at http://daccessdds.un.org/doc/UNDOC/LTD/N06/625/20/PDF/N0662520.pdf?OpenElement, accessed 12 January 2007.

Appendix 2

Summary of the Social Justice Commissioner's main findings and messages on ending family violence and abuse in Indigenous communities

This appendix summarises the main findings from research and consultations conducted by the Human Rights and Equal Opportunity Commission between 2001 and 2006 that relate to family violence and abuse in Indigenous communities. The summary has also been published in a more detailed research paper prepared by the Social Justice Commissioner in 2006 entitled *Ending family violence and abuse in Aboriginal and Torres Strait islander communities: Key issues.*[1]

The prevalence of family violence and abuse in Indigenous communities is becoming well known as a result of media attention and more open community discussion in recent years. As a result there is greater awareness of the social and cultural harm that this violence is inflicting, predominantly on Indigenous women and children, and often across generations.

The Social Justice Commissioner is committed to working with Indigenous communities and governments to end family violence in Indigenous communities.

Over the past five years, the Social Justice Commissioner has actively engaged in public discussions, undertaken research, and consulted with Indigenous communities about how best to address family violence. Through this work, he has drawn attention to the fact that Indigenous Australians are entitled to live their lives in safety and full human dignity, and sought to ensure that program responses to family violence in Indigenous communities are built on solid evidence and facts. Above all, the Social Justice Commissioner has sought to emphasise that violence against women and children has no place in Indigenous customary laws and no place in contemporary Indigenous communities.

Much of the work presented in the summary is the result of consultation with Indigenous peoples, in recognition of the fact that addressing family violence will require partnerships with Indigenous peoples and communities. We need to ensure that the day-to-day realities that exist in Indigenous communities are recognised

1 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues – An overview paper of research and findings by the Human Rights and Equal Opportunity Commission 2001-2006,* Human Rights and Equal Opportunity Commission, Sydney, 2006, available at http://www.humanrights.gov.au/social_justice/familyviolence/family_violence2006.html accessed 24 January 2007.

and reflected in any policy responses to family violence. We also need to ensure that policy responses are holistic and able to address the range of causal factors that contribute to family violence. Only in this way will Indigenous Australians be able to enjoy their right to live in safety, free from family violence and abuse.

Family violence – key messages

- Family violence is abhorrent and has no place in Aboriginal or Torres Strait Islander societies. It is a scourge that is causing untold damage and trauma among Indigenous communities, to our women and children, and to the fabric of Indigenous cultures.
- Indigenous, women, children and men are entitled to live their lives in safety and full human dignity. This means without fear of family violence or abuse. This is their cultural and their human right.
- Violence and abuse is a criminal matter. If an Indigenous person commits an offence they should be dealt with by the criminal justice system just as any other person would be. There should also be swift intervention from care and protection systems to ensure that the 'best interests of the child' is the primary consideration.
- Government officials and community members should be fearless and bold in reporting suspected incidents of violence and abuse. This means addressing the code of silence that exists in many Indigenous communities about these issues. And it means government officers meeting their statutory obligations, meeting their duty of care and taking moral responsibility in the performance of their duties as public officials.
- Violence relates to almost every aspect of policy making and service delivery to Indigenous communities. The solutions to family violence and abuse in Indigenous communities are complex, multi-faceted and require long term focus and commitment to address. They require bi-partisan political will and leadership at the highest levels of government.
- Governments must work in partnership with Indigenous peoples and communities to identify and implement solutions to address family violence and abuse.
- We need to adopt a holistic approach to address the causes and the consequences of family violence in Indigenous communities.
- We can no longer accept the making of commitments to address Aboriginal and Torres Strait Islander inequality *without* putting in place processes and programs to match the stated commitments. Programs and service delivery must be adequately resourced and supported so that they are capable of achieving the stated goals.
- We can also not accept the failure of governments to commit to an urgent plan of action. It is not acceptable to continually state that the situation is tragic and ought to be treated with urgency, and then fail to put into place bold targets to focus policy making over the short, medium and longer term or to fund programs so they are capable of meeting these targets.

Ten key challenges in addressing family violence and abuse[2]

1. ***Turn government commitments into action:*** Governments have been making commitments to address family violence for some time already. What we need is concerted, long term action which meets these commitments.
2. ***Indigenous participation:*** This action must be based on genuine partnership with Indigenous peoples and with our full participation.
3. ***Support Indigenous community initiatives and networks*:** There are significant processes and networks already in place in Indigenous communities to progress these issues. We need to support them to lead efforts to stamp out violence, including by developing the educational tools to assist them to identify and respond to family violence.
4. ***Human rights education in Indigenous communities:*** There is a need for broad based education and awareness-raising among Indigenous communities. Working with communities to send strong messages that violence won't be tolerated, that there are legal obligations and protections, and that individuals have rights, are critical if we are to stamp out family violence.
5. ***Don't forget our men and don't stereotype them as abusers***. Family violence is fundamentally an issue of gender equality. We need strong leadership from women, but we also need the support of Indigenous men if we are to make progress in stamping out violence. Indigenous men need to model appropriate behaviour, challenge violence and stand up against it, and support our women and nurture our children.
6. ***Look for the positives and celebrate the victories*.** There are good things happening in Indigenous communities, even if the national media is not interested in reporting them. We need to confront family violence, but also do so by reinforcing the inherent worth and dignity of Indigenous peoples, not by vilifying and demonising all Indigenous peoples.
7. ***Re-assert our cultural norms and regain respect in our communities.*** Family violence and abuse is about lack of respect for Indigenous culture. We need to fight it as Indigenous peoples, and rebuild our proud traditions and community structures so that there is no place for fear and intimidation.
8. ***Ensure robust accountability and monitoring mechanisms:*** There must be accountability measurements put into place to hold governments to their commitments. This requires the development of robust monitoring and evaluation mechanisms. These will also allow us to identify and celebrate successes.
9. ***Changing the mindset*:** We require a change in mindset of government from an approach which manages dysfunction to one that supports

2 These ten issues are discussed in more detail in a speech delivered by the Social Justice Commissioner at a national forum on *Ending violence in Indigenous communities* that was convened in Parliament House in Canberra on 19 June 2006. The full speech is available at: http://www.humanrights.gov.au/speeches/social_justice/violence20060619.html accessed 25 January 2007.

functional communities. Current approaches pay for the consequences of disadvantage and discrimination. It is a passive reactive system of feeding dysfunction, rather than taking positive steps to overcome it. We need a pro-active system of service delivery to Indigenous communities focused on building functional, healthy communities.

10 ***Targeting of need:*** Let us be bold in ensuring that program interventions are targeted to address need and overcome disadvantage. As it stands, government programs and services are not targeted to a level that will overcome Indigenous disadvantage. Hence, they are not targeted in a way that will meet the solemn commitments that have been made. They are targeted to maintain the status quo.

Defining family violence in Indigenous communities[3]

- Indigenous concepts of violence are much broader than usual mainstream definitions of domestic violence. 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. Family violence is not limited to physical forms of abuse, and also includes cultural and spiritual abuse. There are interconnecting and trans-generational experiences of violence within Indigenous families and communities.
- There are significant deficiencies in the availability of statistics and research on the extent and nature of family violence in communities. What data exists suggests that Indigenous people suffer violence, including family violence, at significantly higher rates than other Australians do. This situation has existed for at least the past two decades with no identifiable improvement.
- Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender. The identity of many Indigenous women is bound to their experience as Indigenous people. Rather than sharing a common experience of sexism binding them with non-Indigenous women, this may bind them more to their community, including the men of the community.
- 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' as a solution to the violence.

3 For a more detailed consideration of Indigenous perspectives on family violence, see Social Justice Commissioner, *Social Justice Report 2003,* Human Rights and Equal Opportunity Commission, Sydney, 2004, chapter 5 – Addressing family violence in Indigenous communities, p157-161, available at http://www.humanrights.gov.au/social_justice/sjreport03/data/chap5.html accessed 25 January 2007.

Designing programs to address family violence[4]

- There are currently a patchwork of programs and approaches to addressing family violence in Indigenous communities among federal, state and territory governments. However, 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.
- There are three recurring strategic aspects that need to be present to address family violence in Indigenous communities, namely that:
  - programs be community-driven (with leadership from men as well as women);
  - community agencies establish partnerships with each other and with relevant government agencies; and
  - composite violence programs are able to provide a more holistic approach to community violence.
- An emphasis solely 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.
- Existing programs addressing Indigenous family violence programs can be categorised into the following broad areas of intervention:
  - *Support programs:* 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.
  - *Identity programs:* Identity programs aim to develop within the individual, family or community, a secure sense of self-value or self-esteem. This can be achieved through diversionary programs and also through therapy based programs that focus on culturally specific psychological or spiritual healing. All these programs may be accessed prior to, and after involvement with violence, and offer a

4 For a more detailed consideration of programs to address Indigenous family violence, see Social Justice Commissioner, *Social Justice Report 2003,* Human Rights and Equal Opportunity Commission, Sydney, 2004, chapter 5 – Addressing family violence in Indigenous communities, p168-191, available at http://www.humanrights.gov.au/social_justice/sjreport03/data/chap5.html accessed 25 January 2007.

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. Complementary groups and support services for Indigenous women should be run parallel to men's programs, and complementary preventative/intervention programs for youth be an integral part of the whole strategy.
- *Night patrols:* Have the potential to build cooperation and mutual respect and support with local police. Night patrols, particularly in remote areas, use and strengthen Indigenous 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 Indigenous community.
- *Refuges and Shelters:* While an important part of any family violence intervention strategy, they are not a sufficient response to the difficulties produced by high levels of violence in Indigenous communities. 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.
- *Justice programs:* These programs are characteristically aimed at the perpetrators of violence. They aim to mediate between people in conflict, designate appropriate cultural punishments for offenders, and reduce the likelihood of re-offending.
- *Dispute resolution:* Anecdotal evidence suggests that success has been achieved where impartial members of the Indigenous community are used as facilitators and traditional dispute-resolution techniques are incorporated into mediation processes.
- *Education and awareness raising:* Education and training programs are vital to raise awareness about family violence prevention; as well as develop skills within communities to resolve conflicts and identify the need for interventions with perpetrators. There are (currently) 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.
- *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.

- 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.
- An issue for 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. The *Violence in Indigenous Communities report*[5] (by Memmott, Stacy, Chambers and Keys, herein the Memmott report) 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'.

A human rights based approach to overcoming Indigenous disadvantage[6]

- Australia has legal obligations in international human rights treaties to address the disadvantage experienced by Indigenous Australians, including in relation to family violence issues and the social and economic conditions which contribute to violence. Article 2 of the *International Covenant on Economic, Social and Cultural Rights* requires that the government 'take steps to the *maximum of its available resources*, with a view to *achieving progressively* the full realization of' rights 'by *all appropriate* means' [emphasis added].
- This obligation means that governments must progressively achieve the full realisation of relevant rights and to do so without delay. Steps must be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.
- This also requires that governments establish timeframes for the achievement of outcomes and identify appropriate indicators, in relation to which they should set ambitious but achievable benchmarks, so that the rate of progress can be monitored and, if progress is slow, corrective action taken. Setting benchmarks enables government and other parties to reach agreement about what rate of progress would be adequate.

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5 Memmott, P., Stacy, R., Chambers, C. and Keys, C., *Violence in Indigenous Communities – Full Report,* Commonwealth Attorney-General's Department, Canberra, 2001.

6 For a more detailed examination of a human rights based approach to overcoming Indigenous disadvantage, see: Social Justice Commissioner, *Social Justice Report 2005,* Human Rights and Equal Opportunity Commission, Sydney, 2006, chapter 2 – Achieving Aboriginal and Torres Strait Islander health equality within a generation, p9-98, available at http://www.humanrights.gov.au/social_justice/sjreport05/chap2.html accessed 25 January 2007. See also: Human Rights and Equal Opportunity Commission and Secretariat of the United Nations Permanent Forum on Indigenous Issues, *Engaging the marginalised: partnerships between indigenous peoples, governments and civil society,* Workshop Report, available at http://www.humanrights.gov.au/social_justice/conference/engaging_communities/index.html#link2 accessed 25 January 2007. See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Benchmarking reconciliation and human rights,* Seminar, 28-29 November 2002, materials available at www.humanrights.gov.au/social_justice/benchmarking/report.html accessed 25 January 2007.

- This is fundamentally an issue of government accountability for service delivery and outcomes. It requires governments' actions to match the commitments that they make, and for governments to demonstrate that they have a plan for when outcomes will be achieved – ie, that programs are benchmarked with targets and goals.
- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives. Such participation should be based on the principle of free, prior and informed consent, which includes governments providing information which is accurate, accessible, and in a language the indigenous peoples can understand.
- Governments should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities. This should allow for the full and effective participation of indigenous men, women and young people in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes.

Recognising Aboriginal customary law consistently with human rights[7]

- Aboriginal customary law does not condone family violence and abuse, and cannot be relied upon to excuse such behaviour. Perpetrators of violence and abuse do not respect customary law and are not behaving in accordance with it.
- Aboriginal customary law must be applied consistently with human rights standards. At no stage does customary law override the rights of women and children to be safe and to live free from violence.
- Any attempts to recognise Aboriginal customary law in a manner *inconsistent* with human rights standards would place Australia in breach of its obligations under international law and activate a duty on the part of the federal government to nullify or override such breaches.
- There will be many instances where there will be no conflict between individual and collective rights (as expressed through customary law), and where they will be able operate in an interdependent manner. The recognition of Aboriginal customary law and collective rights has the capacity to strengthen social structures within Aboriginal communities as well as the observance of law and order.

Balancing customary law with human rights standards

- There will, however, be other circumstances where individual and collective rights are in opposition and a balance must be struck. This does not mean that collective and individual rights are irreconcilable. Decisions made under the Optional Protocol to the ICCPR and General

7 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues,* op cit, section 4B - Recognising Aboriginal customary law consistently with human rights, p40-60.

Comments interpreting the scope of the ICCPR by the United Nations Human Rights Committee in relation to Article 27 of the Covenant, for example, provide guidance on how this contest between collective and individual rights should be resolved.

- The Human Rights Committee has noted that Article 27 applies to indigenous peoples, and that it creates a positive obligation on governments to protect such cultures.
- The Committee has, however, placed limits on those measures that can be recognised. So while it acknowledges that positive measures by governments may be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, it also notes that such positive measures must respect the provisions of Articles 2.1 and 26 of the Covenant. These Articles relate to the principle of non-discrimination and how it applies in relation to the treatment between different minorities, as well as the treatment between the persons belonging to a minority group and the remainder of the population.
- Similarly, the Committee notes that 'none of the rights protected under Article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with other provisions of the Covenant'. This includes, for example, Article 6 (the inherent right to life); Article 7 (torture or cruel, inhuman or degrading treatment); and Article 23 (requirement of free and informed consent for marriage).
- The rights which persons belonging to minorities enjoy under Article 27 of the Covenant in respect of their language, culture and religion, do not authorise any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights, including the right to equal protection of the law.
- The Committee has also stated that female genital mutilation is a practice that breaches Articles 6 and 7 of the Covenant, despite the cultural significance of the practice in some societies; and has expressed concern about domestic violence, including forced sexual intercourse, within the context of marriage.
- The provisions of the ICCPR are also to be read consistently with the interpretation of similar relevant rights under other conventions such as the *International Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW') and the *Convention on the Rights of the Child* ('CRC').
- The right to freedom from violence is accepted as implicit in the right to freedom from discrimination under CEDAW. The Convention also requires that all appropriate measures should be taken to 'modify the social and cultural patterns of conduct of men and women' so as to eliminate 'prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.

- The Committee on the Elimination of Discrimination Against Women has noted that traditional practices by which women are regarded as subordinate to men or as having stereotyped roles, perpetuate widespread practices involving violence or coercion. These can include: family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.
- The particular vulnerability of children is recognised by the CRC. Similar to the ICCPR, the CRC specifically recognises the right of indigenous children to enjoy their own culture in community with other members of his or her own group. However, governments have obligations to protect children from all forms of sexual abuse and all other forms of exploitation prejudicial to any aspects of the child's welfare.

Resolving conflicts between human rights and Aboriginal customary law

- Mainstream law should consider apparent conflicts between Aboriginal customary law and women's individual rights on a case by case basis. It is also important to recognise that custom and law can adapt to general societal change, thus allowing resolution of apparent conflict. The potential for conflict should not be used by government as an excuse to avoid the recognition of Aboriginal customary law or by Aboriginal communities to condone breaches of human rights.
- In situations where women's human rights are at risk, Indigenous communities should be encouraged to develop their own solutions to these problems and to adapt traditional practices to ensure women's human rights. While all attempts should be made to reconcile women's individual human rights with the rights of Indigenous peoples to retain and enjoy their culture, HREOC considers that women's individual human rights must ultimately prevail. HREOC considers that the recognition of Aboriginal customary law must also take active steps to ensure women's right to individual safety and freedom from violence.
- HREOC considers that it is preferable for judicial decision makers to be required to balance Aboriginal customary law issues with human rights standards, rather than imposing a legislative uniform ban or refusing to recognise certain practices.
- It is also the view of HREOC that international human rights principles are relevant to the balance that must be achieved in sentencing decisions involving Aboriginal customary law. Further, a sentence which leads to impermissible discrimination against a woman or a child under international human rights principles is an error of law both in the balancing exercise under the provisions of Sentencing Acts and under the common law.

- The Court of Criminal Appeal of the Northern Territory in a recent decision (*The Queen v GJ*) has confirmed that where Aboriginal customary law conflicts with Territory law, the latter must prevail. The Court also stated that it has never been the case that the courts of the Northern Territory have given precedence to Aboriginal customary law when it conflicts with the written law of the Northern Territory.[8]
- The Court of Criminal Appeal of the Northern Territory also noted that to date 'consultation with Aboriginal communities about (these) principles has too often been perfunctory' and suggested that it may be an appropriate matter for HREOC 'to give consideration to the implementation of educational programs about (conflicts between customary law and criminal codes) in Aboriginal communities'.

Indigenous women, imprisonment and post-release support needs[9]

- Indigenous women are increasingly over-represented in criminal justice processes. This is occurring in the context of intolerably high levels of family violence, over policing for selected offences, ill health, unemployment and poverty.
- There is a consistent pattern indicating that incarcerated Indigenous women have been victims of assault and sexual assault at some time in their lives. Indigenous women are also significantly over represented as victims of violent crime.
- A matter of great concern in relation to current debates about addressing family violence in Indigenous communities are issues of access to justice for Indigenous women. A matter of particular concern is the limited ability of funding of Aboriginal and Torres Strait Islander Legal Services (ATSILS) to provide access to justice for Indigenous women through legal representation and family violence services.
- There is an urgent need to ensure appropriate funding levels for ATSILS, Family Violence Prevention Legal Services and Indigenous women's legal services, 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.
- Links must be drawn and holistic models developed and supported which address the connections between culture, drug use, alcohol use, separation from family, violence, poverty, spiritual needs, housing, health, boredom, race discrimination and gender discrimination.

8 *The Queen v GJ* [2005] NTCCA 20. See also Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues,* op cit, section 4B – Recognising Aboriginal customary law consistently with human rights, which summarises the decision of the NT Court of Criminal Appeal in *The Queen v GJ,* p54-57.

9 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues,* op cit, section 4E – Indigenous women and imprisonment and post-release programs, p79-85. See also Social Justice Commissioner, *Social Justice Report 2002,* Human Rights and Equal Opportunity Commission, Sydney, 2003, chapter 5 – Indigenous women and corrections: a landscape of risk, p135-178.

- Effective pre-and post-release programs should include community based, Indigenous specific programs to help women deal with the effects of violence and to help women develop alternative strategies for coping with violence in the future. People require protection from violent behaviour and alternative structures for prevention and punishment of violent behaviour which provide more than imprisonment with all its risks and consequences.
- Effective pre-and post-release programs need to recognise and treat the complexity of experience of the experience of Indigenous individuals who are both victims and perpetrators of violence. Programs will also need to provide support for Indigenous women to reintegrate back into the community. The types of support required by each woman will be determined by her location and other issues. For instance, for some women there may be issues of payback, and she may not be able to return to her community until those issues are resolved. Other women may need to return to small communities, where contact with the perpetrator of violence cannot be avoided.
- The issues of healing and wellness are critical issues for Indigenous women exiting prison. Processes for healing are seen as having the potential to increase the health and wellbeing of Indigenous women, with a possible outcome of this being reductions in rates of involvement of Indigenous women in criminal justice processes.
- Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnections between and effects of violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous peoples, families and communities.
- Healing can be context specific. For example, it may be necessary to address issues of grief and loss- or there may be a more general need to assist individuals to deal with any trauma they may have experienced. The varying nature of healing demonstrates that it cannot be easily defined, with healing manifesting itself differently in different communities.
- Healing is not a program, rather it is a process. Healing is not something that should only be available at the post-release stage. It should be available at any point when a woman is ready. This may be before a woman comes into contact with the criminal justice system, or after she has been in and out of prison over a number of years. Further, healing in the context of criminal justice, attempts to help the individual deal with the reasons why they have offended in the first place. This element of healing is strongly linked to the notion of restorative justice. For this reason, healing has the potential to fit within a restorative justice framework.
- There are, however, relatively few programs and services for Indigenous women exiting prison that presently focus on healing processes in Australia. The conversion of concepts of healing into actual programs and services is very much in its infancy here. As the case study of the

Yula Panaal Cultural and Spiritual Healing Program in New South Wales demonstrates, they also face difficulty in attracting operational funding.[10]

- The traditional approach to distributing available funding for programs and services is dictated by an economy of scale. This impacts negatively on Indigenous women as it delivers minimum resources to a population within the community that has a high level of need. Given that Indigenous women are manifestly the smallest population in the Australian prison system, it is somewhat understandable that they are the group with the least amount of resources directed towards them. However it is precisely this lack of direct resources that goes someway to maintaining Indigenous women's distinct disadvantage in society.

Indigenous youth and criminal justice systems[11]

- The Aboriginal and Torres Strait Islander population is growing faster than the non-Indigenous population. The annual rate of growth for Indigenous peoples has been estimated at 2.3% compared with approximately 1.2% for non-Indigenous Australians. As a result, the challenges for service delivery to Indigenous youth will be exacerbated over the coming decades.
- Indigenous males comprise 46 percent of the total national male juvenile detention population and Indigenous females comprise 57 percent of the total national female juvenile detention population. Although overall there has been a decline in rates of detention for both Indigenous and non-Indigenous juveniles, the ratio of over-representation continues in a stable trend with Indigenous young people 20 times more likely to be incarcerated than non-Indigenous young people.
- While there are limited statistics available, it is believed that a significant percentage of Indigenous juvenile detainees have a disability. Indigenous young people living in poor physical and social environments experience higher rates of cognitive / intellectual disabilities and poorer mental health.
- There are a range of developmental issues that impact on the cognitive functioning and mental health of Indigenous young people and their communities such as Foetal Alcohol Syndrome, petrol sniffing, physical and emotional violence and poor nutrition.
- The *Western Australian Aboriginal Child Health Survey (WAACHS)* revealed that Aboriginal children experience a high risk of clinically significant

10 See further: Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission, Sydney, 2005, chapter 2 – Walking with the women: addressing the needs of Indigenous women exiting prison, p11-66.

11 See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues,* op cit, section 4F – Indigenous youth and the criminal justice system, p86-96. See also Aboriginal and Torres Strait Islander Social Justice Commissioner, *Indigenous young persons with cognitive disabilities and Australian juvenile justice systems,* Report to Attorney-General's Department 2005, available at www.humanrights.gov.au/social_justice/cognitive_disabilities.doc accessed 25 January 2007.

emotional or behavioural difficulties. It found that there are clear associations between family and household factors and risk of clinically significant emotional and behavioural difficulties experienced by Aboriginal children and young people. The factor most strongly associated with high risk of clinically significant emotional or behavioural difficulties in children was the number of major life stress events (e.g. illness, family break up, arrests or financial difficulties) experienced by the family in the 12 months prior to the survey.

- Similarly *Pathways to Prevention,* a report developed for the National Crime Prevention Strategy urges government to focus on early developmental phases of a child as a means to thwarting future contact with the criminal justice system.
- Failures to address issues relating to mental health, child protection, disability and community service systems contribute to the increased risk of children entering the juvenile justice system. These failures include lack of support services, appropriate treatment and behaviour intervention programs, family based care services and accommodation options; the use of inappropriate and harmful service practices, such as physical restraint and medication; the risk or actual occurrence of physical and sexual assault; and the reliance on the police to resolve challenging behaviour. There is also evidence to suggest that the lack of support services for children and appropriate policies and practices to deal with challenging behaviour often leads services to rely on or view juvenile justice facilities to provide a stable and secure care environment and as a solution to a complex problem.

Restorative justice models[12]

- 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.
- Restorative justice is 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.

12 For further information see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* op cit, chapter 5 – Addressing family violence in Indigenous communities, p174-191.

- 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 peoples 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 a holistic response to family violence into strategies for addressing offending in communities.
- The last two years have 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. 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 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.
- A NSW report on circle sentencing in Nowra has been conducted to review the first twelve months of operation. The review found 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, promotes healing and reconciliation, increases the confidence and generally promotes the empowerment of Aboriginal people in the community.
- While these processes have been considered successful in their initial years, 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.
- The NSW Aboriginal Justice Advisory Committee has proposed the extension of community controlled justice mechanisms to deal with family violence. This involves establishing localised justice mechanisms and healing centres combined with alternative sentencing processes for offenders which seek to establish formal links with local Aboriginal communities. In this approach, community justice and healing centres would be established as a single point of contact for victims of family violence.

- 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 the Family Violence Prevention Legal Service Program. It also provides what the Memmott report, as discussed earlier, identified as a holistic composite set of programs for addressing family violence.
- It also has similarities to Canadian models for addressing sex offending by Indigenous peoples. 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.[13] 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.

Victims of crime[14]

- 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, if served at all, by the current system.
- Accordingly, the current system disadvantages Indigenous peoples from both ends. It has a deleterious effect on Indigenous communities through over-representation of Indigenous peoples 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.
- There are limited services which target Indigenous victims of crime. A number of existing victim support services and victims compensations services, in particular, also do not record Indigenous status of their clients.

13 Hylton, J.H., *Aboriginal Sexual Offending in Canada,* The Aboriginal Healing Foundation, 2992, p157.

14 See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Addressing the needs of Aboriginal and Torres Strait Islander peoples as victims of crime,* Speech, launch of White Ribbon Day, 18 November 2005, available at http://www.humanrights.gov.au/speeches/social_justice/victims_of_crime_speech.html accessed 25 January 2007.

This makes it difficult to assess whether services are being accessed and are meeting the needs of Aboriginal peoples and Torres Strait Islanders.

Mental health[15]

- Poor mental health contributes to the crisis of family violence, anti-social behaviour, substance misuse, confrontation with the legal system, low participation in schooling and employment that are seen in a significant number of Aboriginal and Torres Strait Islander communities.
- There is currently no national data collection process that is able to provide accurate information on the incidence of mental health disorders or treatment occurring among Indigenous peoples in Australia. All we know is that suicide, substance abuse and family and community violence are problems and there are services in place in some communities to address these. Most of the data we have about mental ill-health in Indigenous adults is that gleaned after crisis situations, when the mental health issue results in hospitalisation.
- The Western Australian Aboriginal Child Health Survey, published in April 2005, surveyed a sample of approximately 5,000 children. It reported that *one in four* **(1:4) Aboriginal children are at high risk of developing clinically significant emotional or behavioural difficulties.** This compares to about one in six or seven (1:6/7) of non-Indigenous children.
- Research has also indicated that children with poor mental health have a greater tendency to develop into adults with poor mental health.
  - *Suicide and other forms of self-harm*: In 1998, Indigenous males committed suicide at 2.6 times the rate in the non-Indigenous population; for Indigenous females the rate is double that of females in the non-Indigenous population. In 2000-01, Indigenous males were hospitalised at 2.2 times the rate of males in the general population and Indigenous females at 2.0 times the rate of females in the general population for intentional self-injury. The National Health Survey in 2001 reported 10% of Indigenous peoples were likely to consume alcohol at risk or high-risk levels, compared with 11% of non-Indigenous people. However, this finding contrasts with other sources that report Indigenous peoples consume alcohol at risk levels twice that of the non-Indigenous community. Apart from alcohol, substance abuse is reported to be higher in Indigenous communities.
  - *Indicators for other forms of harm behaviours:* Violence is symptomatic of poor mental health in perpetrators and is associated with substance abuse. It is also a stressor to the mental health of victims. Violence

15 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues,* op cit, section 4D - Mental health issues, p68-78. See also Human Rights and Equal Opportunity Commission, *Submission to the Senate Select Committee on Mental Health 2005,* available at http://www.humanrights.gov.au/disability_rights/inquiries/mental/senate05.htm accessed 25 January 2007.

kills Indigenous peoples at four times the rate of the non-Indigenous population. Reported physical, or threatened physical, violence, appears to have doubled over 1994 - 2002: 12.9% of respondents in 1994 identifying as victims, compared to 24.3% of respondents in 2002 in Indigenous social surveys. In 2001, Indigenous females were 28.3 times more likely to be hospitalised for assault than non-Indigenous females; males at 8.4 times the non-Indigenous rate.

- Mental ill-health among Indigenous peoples must be understood in a holistic context. As the *National Aboriginal Health Strategy* put it '[h]ealth to Aboriginal peoples is a matter of determining all aspects of their life, including control over their physical environment, of dignity, of community self-esteem, and of justice. It is not merely a matter of the provision of doctors, hospitals, medicines or the absence of disease and incapacity'.[16]
- The combination of problems suffered within Indigenous communities is *the* prime example of negative social determinants of health in Australia. Violence and addiction in communities undermines the resilience of members and erodes the capacity of communities to support the mental health of members. The impact of addiction on communities has been most closely observed in relation to alcoholism, although petrol sniffing and other substance abuse must be considered in relation to some communities.
- Social support and social cohesion are associated with good mental health. Studies show that people in long-term, familial relationships and close-knit communities are better able to deal with stress and will live longer than those who do not.
- Strengthening communities and culture clearly has potentially positive implications for the mental health of community members. Likewise, policies and programs that erode the strength and culture of communities can be considered as having negative impacts on community members.

Substance abuse issues[17]

- There are significant links between substance abuse and violence. The links between substance and abuse and violence mean that strategies to prevent and mitigate substance abuse also need to address the impacts of substance abuse on communities.
- Potential responses to address the impacts of substance abuse need to address the those directly affected by substances, those potentially at risk of taking up substances at dangerous levels, and the impacts on those who come into contact with people affected by substances.

16 National Aboriginal Health Strategy Working Group, *National Aboriginal Health Strategy,* AGPS, Canberra, 1989.

17 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues,* op cit, section 4H – Substance Abuse, p102-114.

- Typically, responses to address substance abuse are based on three phase health frameworks that include prevention measures, intervention strategies, and measures to overcome the impacts of those disabled through substance abuse. They include:
  - Primary interventions: to reduce recruitment into substance abuse;
  - Secondary interventions: seeking to achieve abstinence and rehabilitation;
  - Tertiary intervention: providing services to the permanently disabled.
- The social impacts of sniffing are 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…[18]

- In introducing liquor licence conditions and restrictions in Indigenous communities on alcohol the *Racial Discrimination Act 1975* (Cth) must be considered.[19]
- HREOC's *Alcohol Report*, published in 1995,[20] considers the fact that while you might be detracting from the rights of the individual to alcohol by virtue of introducing restrictions, you may be in fact conferring rights on the group as a result (known as 'collective rights'). In the *Alcohol Report,* the Commission reasoned that alcohol restrictions *could* be conceived as conferring some benefits in terms of the 'collective rights' it might promote in Indigenous communities. Such benefits might be a reduction in the incidence of violent crime, a reduction in the rate of Indigenous incarceration, and an increase in money available for food.
- In order to not breach the RDA, alcohol restrictions would need be classified as a class of 'benefit conferral'. They must *also* meet all of the criteria for special measures, namely that:
  - It confers a benefit on some or all members of a class, and membership of this class is based on race, colour, descent or national or ethnic origin;

18 For further information see Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003,* op cit, chapter 4 – Responding to petrol sniffing on the Anangu Pitjantjatjara Lands: a case study, p107-154, available at http://www.humanrights.gov.au/social_justice/sjreport03/data/chap4.html accessed 25 January 2007.

19 See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Implications of the Racial Discrimination Act 1975 with reference to state and territory liquor licensing legislation,* Speech, 34th Australasian Liquor Licensing Authorities' Conference 26-29 October 2004, Hobart Tasmania, 28 October 2004, available at http://www.humanrights.gov.au/speeches/race/LiquorLicensingAuthoritiesConference.html accessed 25 January 2007.

20 Race Discrimination Commissioner, *Alcohol Report: Race Discrimination, Human Rights and the Distribution of Alcohol,* Australian Government Publishing Service, Canberra, 1995, available at http://www.humanrights.gov.au/racial_discrimination/reports/alcohol.html accessed 25 January 2007.

  - It is for the sole purpose of securing adequate advancement of the group so that they may enjoy and exercise equally with others, their human rights and fundamental freedoms; and
  - The protection given is necessary so the group may enjoy and exercise equally with others, their human rights and fundamental freedoms.

- While not determinative, in his decision in *Gerhardy v Brown*, High Court Justice Brennan noted HREOC's *Alcohol Report* and stated:

  > The wishes of the beneficiaries of the measure are of great importance (perhaps essential) in determining whether a measure is taken for the purpose of securing their advancement. In the Alcohol Report, Commissioner Antonios concluded: alcohol restrictions imposed upon aboriginal groups as a result of government policies which are incompatible with the policy of the community will not be special measures.[21]

- This highlights the importance of ensuring informed, real community consultation when considering alcohol restrictions in Indigenous communities.
- Evidence also suggests that alcohol restrictions *in isolation* of any mechanism to address *why* people are abusing alcohol actually entrench the problems that the restrictions were designed to stop.

21 (1985) 159 CLR 70.

Appendix 3

Shared Responsibility Agreements Survey form

This appendix contains the survey form that my Office compiled and sent to all Indigenous communities and organisations that had entered into a Shared Responsibility Agreement (SRA) with the federal government by 31 December 2005. By this date 108 SRAs had been finalised, and they involved 124 communities.

The purpose of the survey was to gather and assess first-hand information about individual communities' experiences of negotiating and implementing SRAs. Respondents were asked to describe the content and purpose of their SRA, and to identify both the positive and negative aspects of their experience. The survey was completed on a voluntary basis. At the close of the survey, responses had been received in relation to 71 SRAs.

To increase accessibility for communities and organisations, the survey was posted on the HREOC website. Each community representative was able to complete and submit the entire survey online. I sent a letter to each community before the survey was posted, explaining why I was interested in conducting the survey and encouraging communities to participate. Paper copies were also available on request and my staff also assisted some respondents to complete the survey over the phone.

The results and analysis of the national SRA survey are contained in chapter 3 of this report.

Dear survey respondent:

INSTRUCTIONS:

This survey is for Indigenous communities and organisations that have entered into a Shared Responsibility Agreement (SRA) with the federal government. The Social Justice Commissioner wants to hear about your experiences in making an SRA. We want to hear your views about the process for making the SRA and what your agreement is about as well as what you think are the good and the bad things that you have encountered through the SRA.

Some communities have more than one SRA. If this is your situation, then it is your decision whether you complete a separate survey form for each SRA.

The answers to the questions in the survey will be compiled and analysed in the *Social Justice Report 2006*. No material will be made public which identifies a community or organisation or individual.

Please complete this survey by 1 September 2006 and immediately return to us.

Completing the Survey:

- Please read the survey before you answer the questions to make sure you do not repeat your answers. There are 27 questions in total.
- If you do not think a question relates to your organisation, please tick the box 'Don't Know' rather than leaving it blank. If you need more space than we have given you on the form, please attach separate pages. If you attach separate pages, please put the question number clearly at the top of the page.

Part One – Contact details

In this section of the survey, you need to provide information that will allow us to verify who is filling in the survey. We need your name and the organisation or community that you represent. **This information is for our records only. The Human Rights and Equal Opportunity Commission respects your privacy and all information will be kept confidential.**

1) Who is completing this form? Please provide us with details of the organisation you are representing.

Your name:	
Position:	
Organisation:	
Address:	
Phone:	
Fax number:	
Email:	

2) What is the name of your SRA?

3) Please describe your organisation type:

Note: If more than one of the options below relate to your organisation, please tick all boxes that are relevant.

	Please tick
Aboriginal and Torres Strait Islander Legal Service	❒
Parents and citizens group	❒
Community Development Employment Program (CDEP)	❒
Community Council	❒
Aboriginal/Torres Strait Islander Corporation	❒
Traditional owners group/Elders Council	❒
Other: Describe here	❒

4) The responses in this survey are authorised by the following:

Note: Please tick all the boxes that are relevant. More than one may apply.

	Please tick
Community Elders	❒
Chief Executive Officer of Organisation or Council	❒
Chairperson of Organisation or Council	❒
Board Member/s	❒
An employee of the organisation	❒
Community member	❒
Other: Describe here	❒

Part Two – Content of the SRA

In this section of the survey, please provide information about the actual Shared Responsibility Agreement that you have made with the government.

5) What is your SRA about?

	Please tick
Capacity building e.g. financial mentoring; training; teleconference facilities and general resources	❒
Municipal services e.g. petrol bowser; local store; airstrip lighting	❒
Sport and recreation e.g. basketball court; pool; sporting activities	❒
Health and nutrition e.g. breakfast program; healthy kids program	❒
Community revitalisation e.g. community garden, cleaning up community	❒
Cultural activities e.g. dreaming trails; culture camps, tour guide	❒
Leadership activities e.g. mentoring programs, youth programs, women's leadership groups	❒
Housing e.g. repairs and maintenance; home ownership programs	❒
Economic development e.g. animal husbandry; farming; internet café; tourism; art projects	❒
Family Wellbeing e.g. family violence programs; men's programs; parenting programs	❒
Law and Order e.g. night patrol; blue light disco; prevention and diversion programs	❒
Other: Describe here:	❒

6) What are the obligations of the Commonwealth Government to your community, as set out in the SRA?

	Please tick
To provide money e.g. $50,000 to build a sporting arena; $20,000 for salary for health worker	❒
To provide resources such as infrastructure, equipment, staff or consultants	❒
To increase CDEP places in the community e.g. to start a new CDEP program; to extend a CDEP program	❒
To monitor and evaluate the program e.g. through regular visits to the community; through written reports based collection of information from the community	❒
To provide training for community members e.g. to train community members to be facilitators at group meetings; to train community members to work in a mechanics shop	❒
To participate in steering or other committee	❒
To meet travel and accommodation costs of visiting professionals	❒
Other: Describe here:	❒

7) What are the obligations of the State Government to your community, as set out in the SRA?

Note: Many SRAs **do not involve** the state government. If this is the case, tick 'No involvement of state government'

Obligation	Please tick
To provide money **e.g.** $20,000 to re-open the local store; $20,000 for the wages of a pool attendant/life saver; to meet the ongoing costs of the project	❒
To provide resources **such as** infrastructure, equipment, staff or consultants	❒

To provide training for community members **e.g.** to train community members to facilitate community meetings; to train community members at the local TAFE in Horticulture	❒
To monitor and evaluate the program **e.g.** through regular visits to the community; through written reports provided by the local school	❒
To participate in steering or other committee	❒
To meet travel and accommodation costs of visiting professionals	❒
No involvement of State Government	
Other: Describe here:	❒

8) What are the obligations of your community or organisation, as set out in the SRA?

	Please tick
To provide labour e.g. to provide CDEP workers; to do voluntary work	❒
To provide resources **e.g.** to provide funds to the project; to provide a vehicle to the project; getting quotes for building activities; finding suitable premises	❒
To be active participants in the community **e.g.** attend board meetings; join the P & C; form part of a working group; scout program; mentor Indigenous youth	❒
To provide maintenance and security **e.g.** to maintain equipment or grounds; to ensure the security of the new building or sporting facility	❒
To provide financial or project management **e.g.** to develop community guidelines for access to activities and programs; have input into cultural activities; to manage funds; to develop and maintain records of the program	❒
To organise sporting or recreational activities **e.g.** to run regional sporting activities/competitions	❒

To undertake training e.g. TAFE training; training in violence issues; training in mentoring	❒
Other: Describe here:	❒

9) Is your local CDEP Scheme involved in activities for the SRA?

	Please tick
YES	❒
NO	❒
DON'T KNOW	❒

10) Please describe the processes in place to monitor the SRA?

Part Three – The negotiation process

In this section of the survey, please provide information about how you came to be negotiating an SRA and describe the key features of the negotiation process

11) What are the three main reasons you decided to negotiate with government for a SRA? Please rank the reasons below and provide your answers in order of importance. 1 is the most important.

1.
2.
3.

12) Who suggested negotiating the SRA?

	Please tick
The community saw a need for the project and approached the government	❒
The community observed an SRA working in another community and thought it was a good idea	❒
The government suggested the SRA process e.g. the local Indigenous Coordination Centre	❒
A corporate organisation suggested the SRA	❒
The local school or other community organisation saw a need for an SRA	❒
Other: Describe here:	❒

13) How did the community prepare to make the SRA?

	Please tick
Community consultations were held: E.G: Community workshops were held to prepare the community negotiators for the SRA negotiation; Community members held meetings to talk about the content of the SRA and the obligations that would be placed on the community; Elders initiated community consultations	❒
Community planning was undertaken: E.G: The community conducted an audit of their strengths and the weaknesses, and what areas they might need assistance with to be able to participate in the SRA; The SRA is part of a larger community plan.	❒
A negotiator or advisor was engaged by the community: E.G: The community used a professional negotiation advisor to help negotiate the SRA: this might be a community member with previous experience in negotiating another SRA; The community employed an "agent" or a broker to act on their behalf in the negotiations	❒
Members of staff of your organisation negotiated on behalf of the community	❒
There was an existing project that needed funding, so community meetings were held to discuss the future of the project	❒
Other: Please describe any other process entered into here:	❒

14) What assistance was provided to negotiate the SRA?

	Please tick	Please comment
A Specialist Consultant was provided by your local Indigenous Coordination Centre (ICC)	❒	
A staff member from your local Indigenous Coordination Centre (ICC) assisted in writing a community plan	❒	
Resources were provided to the community to develop the plan	❒	
No assistance was provided to the community	❒	
Other: Describe here:	❒	

15) How long did the negotiations for the SRA take?

	Please tick
Less than one month	❒
1 month – 3 months	❒
3 months – 6 months	❒
6 months – 12 months	❒
Other: Describe here:	❒

16) Was the time line appropriate for negotiating the SRA?

	Please tick
The process went at the right pace	❒
The process was too fast: the government pressured the community to finalise and sign the agreement too quickly	❒
The process was too fast: The government set timeframes that did not allow enough time for the community to consider the implications of the proposed obligations in the agreement	❒
The process was too slow: The community was ready to finalise the agreement but had to wait for the government to approve the agreement	❒
The process was too slow: there were delays during the negotiation process which meant that the agreement took longer than it should have	
Other: Describe here:	❒

17) How much information did the community have about SRAs during the negotiating process?

	Please tick
Not enough information was provided by the government	❒
Too much information was provided	❒
The right amount of information was provided	❒
Other: Describe here:	❒

18) When the SRA was finalised, how was it approved by the community or organisation?

	Please tick	Please comment
Community meeting	❒	
Approved by Board/Council	❒	
Approved by CEO	❒	
Approved by Chairperson	❒	
No approval sought from the community		
Other: Describe here:	❒	

19) What has been done to inform community members of their obligations in the SRA?

	Please tick
A community meeting has been held	❒
A copy of the SRA has been given to members of the community	❒
A copy of the SRA is displayed in the community centre	❒
The progress of the SRA is discussed monthly at community meetings	
Information provided at a board / council meeting	
Other: Describe here:	❒

Part Four – Your community's views on the SRA process

In this section of the survey, please indicate the views of the community about the SRA process. We want to understand whether the community viewed the SRA process as a positive experience and how it might be improved.

20) Are you satisfied with how the government has met it's obligations under the SRA?

	Please tick
Yes – the government has met its obligations and the community is satisfied with how they have done so	❒
No – the government has not met its obligations	❒
No – While the government has met its obligations, the community is not satisfied with how they have done so	❒
Other: Describe here:	❒

Please explain your answer:

21) Please list the 3 main positive impacts on your relationship with the federal government that have resulted from making an SRA, in order of importance. 1 is the most important.

1.
2.

3.

22) Please list the 3 main negative impacts on your relationship with the federal government that have resulted from making an SRA, in order of importance. 1 is the most important

1.
2.
3.

23) Please list the 3 main positive impacts on the community that have resulted from making an SRA, in order of importance. 1 is the most important.

1.
2.
3.

24) Please list the 3 main negative impacts on the community that have resulted from making an SRA, in order of importance. 1 is the most important.

1.
2.
3.

25) Please list the 3 main things that an Indigenous community, or organisation, would need to successfully negotiate an SRA? Please list these below in order of importance. 1 is the most important.

1.
2.
3.

26) Based on your experience of negotiating an SRA with the government, would your community enter into other Shared Responsibility Agreements?

	Please tick
YES	❒
NO	❒
DON'T KNOW	❒

27) Finally, do you have any other comments? If so, please write them here:

1.
2.
3.

Thank you very much for your time. Your information will help to ensure that Indigenous people can gain the maximum benefits from the SRA process.

Please see the front of this survey for mailing options

Tom Calma
Aboriginal and Torres Strait Islander Social Justice Commissioner

Appendix 4

Second International Decade of the World's Indigenous People

This Appendix reproduces materials approved by the United Nations General Assembly when establishing the Second International Decade of the World's Indigenous People. It also extracts and briefly comments on the main provisions of the Program of Action for the Second Decade.

Background

The United Nations General Assembly adopted resolution A/RES/59/174 on 22 December 2004 to establish a Second International Decade for the World's Indigenous People. The Second Decade commenced on 1 January 2005 and will conclude in 2015.

The Second Decade provides a focal point for all UN activity on indigenous peoples over the next ten years. It is also designed to guide and foster action by governments, civil society organisations and others to ensure that 'all indigenous people everywhere enjoy full human rights and real and measurable improvements in their living conditions.'[1]

The Second Decade calls for governments and all members of the international community to work in partnership with indigenous peoples. It follows on from the International Year for the World's Indigenous People in 1994 and the First International Decade of the World's Indigenous People (1995-2004) which had as its theme 'Indigenous people: partnership in action.'

The main objective of the First Decade was to strengthen international cooperation to address the problems faced by indigenous people in such areas as human rights, the environment, development, education and health. These areas are the subject of ongoing attention in the Second Decade, as well as the new are of 'culture'.

The fact that the General Assembly agreed to establish a Second Decade is an acknowledgement by the leadership of the international community that several of the key objectives of the First Decade had not been achieved. Principal among these was the failure to finalise and adopt the Declaration on the Rights of Indigenous Peoples prior to the conclusion of the First Decade. The establishment

1 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para3.

of a Second Decade is also an acknowledgement that renewed international commitment and action on the ground are needed to address indigenous peoples' ongoing marginalisation and disadvantage.

Establishment of the Second Decade

The General Assembly prefaced its resolution to establish the Second Decade with an acknowledgement of the unique status of the world's indigenous peoples, and a reiteration of the various commitments the international community has made since 1993 to protect and promote their human rights. Although the General Assembly acknowledged the achievements of the First Decade for Indigenous People, the following extract from the preamble to the resolution indicates that it remains concerned by the persistent economic and social disadvantage of indigenous peoples in many parts of the world:

> The General Assembly,
>
> *Bearing in mind* that, in the Vienna Declaration and Programme of Action, the 1993 World Conference on Human Rights recognized the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirmed the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development,
>
> *Reaffirming* that States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognizing the value and diversity of their distinctive identities, cultures and social organization, …
>
> *Welcoming* all achievements during the Decade, in particular the establishment of the Permanent Forum on Indigenous Issues, and the contributions to the realization of the goals of the Decade made by the Permanent Forum, the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights and the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people, such as the comprehensive work programme that the Permanent Forum is carrying out for the benefit of indigenous peoples in the area of culture, education, environment, health, human rights and social and economic development,
>
> *Taking due note of* Commission on Human Rights resolution 2004/62 if 21 April 2004, in which the Commission expressed its deep concern about *the precarious economic and social situation that indigenous people continue to endure in many parts of the world in comparison to the overall population and the persistence of grave violations of their human rights, and reaffirmed the urgent need to recognize, promote and protect more efficiently their rights and freedoms*, [emphasis added]
>
> *Recalling* that in its resolution 49/214 of 23 December 1994 it expressly put on record its expectations of achieving the adoption of a declaration on indigenous rights within the International Decade and that in its resolution 50/157 of 21 December 1995 it decided that the adoption by the General Assembly of a declaration on the rights of indigenous people constituted a major objective of the Decade, and noting the progress made in the recent rounds of negotiations in the open-ended inter-sessional working group on the Commission on Human Rights charged with

elaborating a draft declaration on the rights of indigenous people established pursuant to Commission resolution 1995/32 of 3 March 1995.[2]

The resolution establishing the Second Decade put in place a range of measures to assist in the coordination and financing of the Decade. These include:

- A Voluntary Fund to which governments, non-government organisations, private institutions and others can contribute money to fund projects during the Second Decade.[3]
- The position of Coordinator of the Second Decade, which is to be held by a senior representative of the UN bureaucracy.[4] The role of the Coordinator will be critical in facilitating cooperation between governments, the Permanent Forum on Indigenous Issues, Indigenous Peoples' Organisations and other relevant bodies within the UN system working with indigenous peoples.[5]
- An appeal to all relevant organisations within the UN system to take special account of the needs of indigenous peoples in their budgeting and programming, and to explore ways to make their existing programs and resources more beneficial for indigenous peoples.[6]

Other important tasks and challenges addressed in the resolution include:

- The finalisation and adoption of the Declaration on the Rights of Indigenous Peoples is set as an urgent priority for governments and other parties.[7]
- Governments are to ensure that their activities and objectives for the Second Decade are planned and implemented with the 'full consultation and collaboration of indigenous people'.[8]

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2 United Nations General Assembly, *Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/500)] 59/174. Second International Decade of the World's Indigenous People,* 22 December 2004, UN Doc A/RES/59/174, preamble, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/486/70/PDF/N0448670.pdf?OpenElement.

3 United Nations General Assembly, *Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/500)] 59/174. Second International Decade of the World's Indigenous People,* 22 December 2004, UN Doc A/RES/59/174, para7-9, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/486/70/PDF/N0448670.pdf?OpenElement.

4 Under-Secretary-General for the UN Department of Economic and Social Affairs, Mr. José Antonio Ocampo, was appointed Coordinator for the Second Decade in accordance with paragraph 3 of the resolution establishing the Second Decade.

5 United Nations General Assembly, *Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/500)] 59/174. Second International Decade of the World's Indigenous People,* 22 December 2004, UN Doc A/RES/59/174, para4, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/486/70/PDF/N0448670.pdf?OpenElement.

6 United Nations General Assembly, *Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/500)] 59/174. Second International Decade of the World's Indigenous People,* 22 December 2004, UN Doc A/RES/59/174, paras6 and 10, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/486/70/PDF/N0448670.pdf?OpenElement.

7 United Nations General Assembly, *Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/500)] 59/174. Second International Decade of the World's Indigenous People,* 22 December 2004, UN Doc A/RES/59/174, para12, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/486/70/PDF/N0448670.pdf?OpenElement.

8 United Nations General Assembly, *Resolution adopted by the General Assembly [on the report of the Third Committee (A/59/500)] 59/174. Second International Decade of the World's Indigenous People,* 22 December 2004, UN Doc A/RES/59/174, para5, available online at: http://daccessdds.un.org/doc/UNDOC/GEN/N04/486/70/PDF/N0448670.pdf?OpenElement.

Key paragraphs of the resolution include:

The General Assembly:

3. *Requests* the Secretary-General to appoint the Under-Secretary-General for Economic and Social Affairs as the Coordinator for the Second Decade;

4. *Requests* the Coordinator to fulfil the mandate in full cooperation and consultation with Governments, the Permanent Forum on Indigenous Issues and other relevant bodies and mechanisms of the United Nations system, the Office of the United Nations High Commissioner for Human Rights, other members of the Inter-Agency Support Group on Indigenous Issues and indigenous and non-governmental organizations;

5. *Invites* Governments to ensure that activities and objectives for the Second Decade are planned and implemented on the basis of full consultation and collaboration with indigenous people;

6. *Appeals* to the specialized agencies, regional commissions, financial and development institutions and other relevant organizations of the United Nations system to increase their efforts to take special account of the needs of indigenous people in their budgeting and in their programming;

7. *Requests* the Secretary-General to establish a voluntary fund for the Second Decade, which to all juridical purposes and effects should be set up and should discharge its functions as a successor to the already existing voluntary fund established for the present Decade pursuant to General Assembly resolutions 48/163, 49/214 and 50/157;

9. *Urges* Governments, intergovernmental and non-governmental organizations to contribute to the voluntary fund for the Second Decade established by the Secretary-General, and invites indigenous organizations and private institutions and individuals to do likewise;

10. *Urges* the competent United Nations organs, programmes and specialized agencies, in planning activities for the Second Decade, to examine how existing programmes and resources might be utilized to benefit indigenous people more effectively, including through the exploration of ways in which indigenous perspectives and activities can be included or enhanced;

12. *Urges* all parties involved in the process of negotiation to do their utmost to carry out successfully the mandate of the open-ended intersessional working group established by the Commission on Human Rights in its resolution 1995/323 and to present for adoption as soon as possible a final draft United Nations declaration on the rights of indigenous peoples;

13. *Requests* the Secretary-General to give all the assistance necessary to ensure the success of the Second Decade;

Program of Action for the Second Decade

On 21 November 2005, the Program of Action for the Second Decade was approved by the UN General Assembly following extensive consultations.[9] The Program of Action contains the mottos, goal, objectives, areas of action, and the mechanisms to promote and monitor the Second Decade of the World's Indigenous People.

The Introduction to the Program of Action sets out the themes or **mottos for the Second Decade**, which are:

- Partnership for further action.
- Human rights in practice.
- Engagement for action.
- Agenda for life.[10]

The Introduction also establishes that the work of the Permanent Forum on Indigenous Peoples, particularly in relation to the implementation of the Millennium Development Goals, should inform the Plan of Action. The relevant paragraph reads:

> 4. The Permanent Forum on Indigenous Issues has been a valuable political meeting point for States, indigenous organizations, the United Nations system and other intergovernmental organizations and has successfully acted as a catalyst for change. The direction and outcomes of the Permanent Forum should therefore be fully taken into account in a plan of action for the Second Decade. In addition, given the fact that the time frame for the implementation of the Millennium Development Goals is the same as that of the Second Decade, the Goals and the Forum's focus and recommendations on them should also inform the plan of action.[11]

The **goal of the Second Decade** is the:

> … further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-orientated programmes and specific projects, increased technical assistance and relevant standard- setting activities.[12]

The **five key objectives of the Second Decade** set out how the General Assembly intends that the goal will be met. This section of the Program of Action also invites governments, the United Nations system, inter-governmental organisations, indigenous peoples' organizations, non-governmental organizations, the private

9 This included an open invitation to all Governments as well as Indigenous organisations to submit proposals for inclusion in the Program in February 2005; discussion on this theme at the Permanent Forum in May 2005 and the Working Group on Indigenous Populations in July 2005; the circulation of a draft program for further comment to all governments as well as Indigenous organisations in May 2005; the revision of this following the Permanent Forum meeting in May 2005 and posting of a revised program on the internet, with further comments sought from all governments as well as Indigenous organisations. See further: United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, paras5-7.

10 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para8.

11 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para4.

12 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para.1.

sector and other parts of civil society to implement the objectives through their work.[13] The objectives are as follows:

> (i) Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects;
>
> (ii) Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent;
>
> (iii) Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples;
>
> (iv) Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth;
>
> (v) Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives. [14]

The **areas for action in the Program of Action** are those identified in the goal of the Second Decade, namely culture, education, health, human rights, the environment, and social and economic development.

This section of the Program of Action identifies clear responsibility for cooperation and action on the part of the United Nations system, other intergovernmental organisations, governments (States), indigenous peoples' organisations and indigenous peoples themselves. An extract of this section is provided below:

> **1. Culture**
>
> 11. The following recommendations are made for States, the United Nations system, other intergovernmental organizations and indigenous peoples.
>
> **(a) International level**
>
> 12. It is recommended that culture should be integrated as a prerequisite and a basis for development project design in order to build "development with identity", respecting people's way of life and building sustainable human development.
>
> 13. All relevant actors are urged to implement the Action Plan of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity during the Second International Decade.
>
> 14. All relevant actors are encouraged to work towards the adoption and ratification by States of the draft convention on the protection of the diversity of cultural contents and artistic expressions to ensure the right of indigenous peoples to create and disseminate in a fair environment their cultural goods and services, and their traditional expressions, so that they might benefit from them in the future.

13 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para10.

14 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para.9.

15. It is recommended that UNESCO should intensify efforts to promote and support the recovery of indigenous heritage and the oral tradition and ancient writings of indigenous peoples with a view to recognizing them as heritage of humanity under the framework of the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of the Intangible Cultural Heritage.

16. UNESCO is urged to establish mechanisms to enable indigenous peoples to participate effectively in its work relating to them, such as the programmes on endangered languages, education, literacy, nomination of indigenous sites in the World Heritage List and other programmes relevant to indigenous peoples.

17. The ongoing discussion of the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should have as its clear objective the continued development of mechanisms, systems and tools that adequately protect the genetic resources, traditional knowledge and expressions of culture of indigenous peoples at the national, regional and international levels.

(b) National level

18. States are urged to develop policies and focused programmes to reverse ethnocentric perceptions of non-indigenous peoples of indigenous cultures, which are often stereotyped, folklorized and biased. The role of mass media is very important in that process.

19. It is recommended that programmes and initiatives relating to indigenous cultures should follow the principle of free, prior and informed consent of indigenous peoples. Particular caution should be exercised when elaborating tourism and national park projects in indigenous territories.

20. Relevant agencies and bodies of the United Nations system should consider developing international guidelines on free, prior and informed consent regarding traditional knowledge of indigenous peoples.

21. National measures are strongly encouraged to facilitate public communication between indigenous peoples and the rest of the population including access to mass media.

22. It is recommended that information and communication technology should be used to support and encourage cultural diversity and to preserve and promote indigenous languages and the distinct identities and traditional knowledge of indigenous peoples in a manner that they determine best advances their goals.

23. Indigenous peoples are invited to strengthen measures to preserve, develop and promote their languages, histories and cultures through their oral histories and in printed and audio-visual forms.

2. Education

24. The following recommendations are made for States, the United Nations system and other intergovernmental organizations.

(a) International level

25. It is recommended that global efforts should be made to raise awareness of the importance of mother tongue and bilingual education especially at the primary and early secondary level for effective learning and long-term successful education.

26. The international community should continue to promote bilingual and cross-cultural education programmes for indigenous and non-indigenous peoples, schools for girls and women's literacy programmes and share good practices in the field.

27. UNESCO is urged to identify universities, primary and secondary schools and teaching and research centres for indigenous peoples that fulfil satisfactorily their programmes and projects and grant them recognition and technical and financial support promoting their work.

(b) National level

28. It is recommended that emphasis on quality education in the mother tongue, bilingual and intercultural education that is sensitive to indigenous holistic world views, languages, traditional knowledge and other aspects of their cultures should be central in all programmes of education for indigenous peoples.

29. In the framework of the Millennium Development Goals and the UNESCO Dakar Framework for Action on Education for All, States should take legislative measures to eliminate national policies and practices that create further difficulties for indigenous children to enjoy their right to education.

30. It is recommended that there should be increased awareness of the importance of integrating indigenous learning systems and knowledge in formal and informal education for indigenous peoples. That includes teaching and learning the history, traditions, culture, rights, spirituality and world views of indigenous peoples and their ways of life. Special emphasis should be placed on the education of teachers at all levels to become more indigenous-sensitive, and indigenous schools should be set up in areas where indigenous peoples are the majority. States should recognize teaching centres in terms of labour and academic conditions in order to facilitate interchanges and cooperation among them.

31. All relevant actors are urged to provide focused programmes with increased state budgetary allocations, including scholarships to support the enrolment of indigenous persons in teacher-training programmes, colleges and relevant higher educational institutions. Special emphasis should be placed on the education of indigenous teachers at all levels.

32. In order for nomadic or semi-nomadic indigenous peoples to fully enjoy their right to education, culturally appropriate practices of education including the use of technologies should be established.

(c) Organizations of indigenous peoples

33. Organizations of indigenous peoples should consider: establishing and supporting indigenous schools and university-level institutions and collaborating with the relevant United Nations agencies; participating in the revision of school texts and the contents of programmes of study in order to eliminate discriminatory content and promote the development of indigenous cultures and, where appropriate, indigenous languages and scripts; and developing indigenous curricula for schools and research institutions.

34. Organizations of indigenous peoples should create documentation centres, archives, in situ museums and schools of living traditions concerning indigenous peoples, their cultures, laws, beliefs and values, with material that could be used to inform and educate non-indigenous people on those matters.

3. Health

35. The following recommendations are made for States, the United Nations system and other intergovernmental organizations.

36. Access to comprehensive, community-based and culturally appropriate healthcare services, health education, adequate nutrition and housing should be ensured without discrimination. Measures to guarantee the health of indigenous peoples must be seen as a collective and holistic issue involving all members of the

communities and including physical, social, mental, environmental and spiritual dimensions.

37. All relevant actors are urged to support and implement collection and disaggregation of data on indigenous peoples with special emphasis on indigenous children, including infants, based on criteria relating to ethnicity, cultural and tribal affiliation and language. In addition, the dissemination of information on such data to the widest possible extent among indigenous peoples, regional and local authorities and other stakeholders should be ensured.

38. It is recommended that regional and local consultations with indigenous peoples should be undertaken to appropriately integrate indigenous healers, indigenous concepts and understandings of health, wellness, healing, illness, disease, sexuality and birthing and traditional health systems into policies, guidelines, programmes and projects carried out during the Decade. Training and employment of qualified indigenous persons, including indigenous women, to design, administer, manage and evaluate their own health-care programmes must be taken into consideration.

39. All relevant actors are urged to guarantee indigenous peoples' access, especially women's access, to information relating to their medical treatment and to secure their free, prior and informed consent to medical treatment. Health research in or affecting indigenous communities must also respect their free, prior and informed consent which may implicate their intellectual property rights. Researchers, whether academic or private sector, must practise transparency regarding the potential economic benefits of any research or knowledge of indigenous healing practices.

40. It is recommended that national monitoring mechanisms for indigenous communities to report abuses and neglect of the health system to national health authorities should be set up and the legal framework to effectively address those issues should be put in place. The fundamental human rights and critical needs in the area of health of indigenous children, youth and women are of the highest priority and that fact should be recognized and promoted through the formation of focal points or committees within each agency, organization or institution, including the full and effective participation of indigenous women and youth in planning, implementation, monitoring and evaluation of initiatives.

41. All relevant actors are urged to adopt targeted policies, programmes, projects and budgets for indigenous health problems in strong partnership with indigenous peoples in the following areas:

a) HIV/AIDS, malaria and tuberculosis;

b) Cultural practices which have negative impacts on health, including female genital mutilation, child marriages, violence against women, youth and children and alcoholism;

c) Environmental degradation that adversely affects the health of indigenous peoples, including use of indigenous peoples' lands for military testing, toxic by-product storage, nuclear and industrial exploitation and contamination of water and other natural resources;

d) Health problems connected to forced relocation, armed conflicts,

e) migration, trafficking and prostitution.

4. Human rights

42. The following recommendations are made for States, the United Nations system and other intergovernmental organizations.

(a) International level

43. The finalization of negotiations on the draft declaration on the rights of indigenous peoples and its adoption early in the Decade should be a priority for the Second Decade. The draft shall not fall below existing international standards. Consideration may be given to innovative methods for the Commission on Human Rights Working Group on the United Nations draft declaration on the rights of indigenous people.

44. It is recommended that there should be an increased and systematic focus on the implementation of existing international standards and policies of relevance to indigenous and tribal peoples.

45. It is recommended that a global mechanism should be established to monitor the situation of indigenous peoples in voluntary isolation and in danger of extinction.

46. International human rights treaty monitoring bodies and thematic and country-specific United Nations human rights mechanisms including the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people are invited to continue to or start to specifically address indigenous peoples within their mandates throughout the Second Decade and share their reports with the Permanent Forum.

47. It is recommended that programmes of education on the human rights of indigenous peoples should be developed and strengthened, including the current Indigenous Fellowship Programme of the Office of the United Nations High Commissioner for Human Rights, in indigenous languages where possible, including relevant training materials that are culturally appropriate, and should advocate against stereotypes and ethnic stigmatization.

(c) National level

50. Governments are urged to launch a review of national legislations to eliminate possible discriminatory provisions with the full and effective participation of indigenous experts.

51. It is recommended that a special protection framework for indigenous peoples in voluntary isolation should be adopted and that Governments should establish special policies for ensuring the protection and rights of indigenous peoples with small populations and at risk of extinction.

52. It is recommended that Governments should consider integrating traditional systems of justice into national legislations in conformity with international human rights law and international standards of justice.

53. Advocacy for good governance by local and national administrations in areas populated by indigenous peoples is strongly encouraged.

55. It is recommended that Governments should support and broaden the mandate of existing national machineries for the promotion of equal rights and prevention of discrimination, so that they will include promotion of the rights of indigenous peoples. Legal centres could be established by national authorities to inform and assist indigenous people regarding national and international legislation on human rights and fundamental freedoms, to carry out activities for protecting those rights and freedoms and to promote the capacity-building and participation of indigenous peoples.

56. Governments are encouraged to further develop national legislation for the protection and promotion of human rights, including means of monitoring and guaranteeing those rights. Consideration should be given by States that have

not yet done so to ratification of International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, and the strengthening of mechanisms to monitor the implementation of the Convention. Where it is not already the case, it is recommended that national constitutions should recognize the existence of indigenous peoples and make explicit reference to them, where relevant.

5. The environment

57. The following recommendations are made for States, the United Nations system and other intergovernmental organizations.

58. It is recommended that the indigenous-related elements of the programme of work of the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, especially on fair and equitable sharing of the benefits from the use of genetic resources, should be considered as part of the Programme of Action for the Decade, and in particular sustainable development and the protection of traditional knowledge should remain urgent priorities regarding the world's indigenous peoples.

59. Climate change and other stressors, in particular pollutants and the ecologically unsustainable use of natural resources, present a range of challenges for the health, culture and well-being of indigenous peoples, and pose risks to the species and ecosystems that those communities and cultures rely on. It is therefore essential to:

(a) Work closely with indigenous and local communities to help them to adapt to and manage the environmental, economic and social impacts of climate change and other stressors;

(b) Implement, as appropriate, sustainable and adaptive management strategies for ecosystems, making use of local and indigenous knowledge and indigenous peoples' full and effective participation, and review nature conservation and land and resource-use policies and programmes;

(c) Stress the importance of promoting procedures for integrating indigenous and local knowledge into scientific studies, and partnerships among indigenous peoples, local communities and scientists in defining and conducting research and monitoring associated with climate change and other stressors.

60. It is recommended that programmes to strengthen synergies between indigenous knowledge and science should be developed to empower indigenous peoples in processes of biodiversity governance and assessment of impacts on territories, as part of the inter-sectoral project of UNESCO on Local and Indigenous Knowledge Systems.

61. The Akwe: Kon Guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites on lands and waters traditionally occupied and used by indigenous and local communities, must be taken into consideration and implemented in programmes and projects carried out during the Decade.

62. It is recommended that programmes and projects planned on traditional indigenous territories or otherwise affecting the situation of indigenous peoples should foresee and respect the full and meaningful participation of indigenous peoples.

63. It is urged that indigenous persons who promote the protection of the environment should not be persecuted or harassed for their activities.

64. All relevant actors are encouraged to develop and implement programmes and projects for natural disaster management at the national and community levels with indigenous peoples' full and meaningful participation.

6. Social and economic development

65. The following recommendations are made for States, the United Nations system, other intergovernmental organizations and indigenous peoples.

(a) International level

66. It is recommended that agencies, funds and programmes of the United Nations system, including their governing bodies, should adopt programmes of activities premised on the human rights-based approach to development for the Second International Decade in their own fields of competence, in close cooperation with indigenous peoples.

67. All relevant actors are urged to establish, develop and promote strong partnerships among indigenous peoples, governments and intergovernmental bodies, agencies, funds, non-governmental organizations and the private sector during the Second Decade.

68. Indigenous peoples are encouraged to further develop sustainable practices, including subsistence practices and strategies of self reliance. Cooperation among indigenous peoples and other organizations is highly encouraged.

69. Strong grass-roots collaboration should be fostered by United Nations agencies, funds and programmes with local organizations of indigenous peoples in identifying and prioritizing programmes, projects and other activities. The United Nations system is encouraged to provide special support to initiatives of indigenous peoples to improve the sustainability of their practices and assist them when they seek alternatives for long-term perspectives of economic activity and community well-being.

70. It is recommended that governments and international agencies should establish policies that recognize environmentally sustainable pastoralism, hunting, gathering and shifting cultivation as legitimate activities, as in the case of farming and other types of land use.

71. Before the end of the Decade, development plans that directly or indirectly impact indigenous peoples should systematically include a provision on free, prior and informed consent.

72. It is recommended that the Permanent Forum on Indigenous Issues should oversee research on the socio-economic conditions of indigenous peoples, in collaboration with specialized agencies, indigenous organizations and Governments, which should result in a report on the state of the world's indigenous peoples. An additional series of publications should be created to inform policymakers and the world at large on indigenous issues.

73. It is recommended that programmes should be particularly focused on indigenous women and girls and, specifically, on their full and effective participation and the issue of violence against women and trafficking. Governments and the United Nations system and other intergovernmental organizations are urged to integrate a gender perspective in all programmes relevant to indigenous peoples, including indigenous cultural perspectives, and work towards the implementation of the recommendations on indigenous women, children and youth made by the Permanent Forum on Indigenous Issues.

74. States and intergovernmental and non-governmental organizations and foundations are encouraged to contribute to the three United Nations Voluntary

Funds established by the General Assembly to support the travel of indigenous representatives to United Nations meetings, the work of the Permanent Forum on Indigenous Issues and the programme of the Second International Decade of the World's Indigenous People.

75. It is recommended that there should be increased provision of technical and financial resources to build the capacity of indigenous peoples, government institutions and the United Nations system to address indigenous issues. Such provision should include the establishment of funds for international cooperation and funds for indigenous peoples in United Nations country offices. A process should be developed to facilitate the channelling of funds directly to indigenous peoples' organizations at the community level.

76. It is recommended that the Indigenous Fellowship Programme managed by the secretariat of the Permanent Forum on Indigenous Issues to place indigenous fellows at United Nations agencies, funds and programmes should be funded and launched. Governments and international institutions are urged to contribute to the Fellowship Programme through the United Nations Voluntary Fund for the Decade.

77. In capacity-building programmes and projects addressed to indigenous peoples, special attention should be paid to leadership training for indigenous women.

78. The United Nations system is urged to make efforts to hire indigenous individuals as United Nations staff members and experts in various fields.

79. It is recommended that consideration should be given to the establishment of a United Nations Indigenous Peoples' Fund, with adequate resources to support projects and programmes, jointly with indigenous peoples, in the areas of development, environment, education, culture, health and human rights.

80. The implementation of the Millennium Declaration, including the Millennium Development Goals, should be monitored by developing and effectively using environmental, social and human rights impact assessment methods and indicators that are sensitive to the realities of indigenous peoples.

81. It is recommended that quantifiable targets and benchmarks should be set during the Decade by States and the United Nations system to directly improve the lives of indigenous peoples and that such targets and benchmarks should be regularly monitored every two years, or half way through and at the end of the Decade.

82. All relevant actors are urged to further strengthen the Permanent Forum on Indigenous Issues and its secretariat through financial, human and technical resources. Additional human and technical resources will also ensure that the activities of the Second Decade can be effectively facilitated and overseen by the Permanent Forum.

83. Appropriate strategic partnership of the United Nations system and the private sector may be explored, involving the joint development of projects with indigenous peoples and communities. The development of a strategy is encouraged for cooperation between the United Nations system and the private sector as regards indigenous peoples. Indigenous small and medium business should be given high priority for that effort. Pilot programmes in that area are encouraged.

84. It is recommended that the United Nations system and other intergovernmental organizations should facilitate, nurture, strengthen and multiply collaboration at the international, regional and national levels among indigenous and tribal peoples and other rural and urban communities on the other hand.

(b) Regional level

85. It is recommended that the Permanent Forum on Indigenous Issues should hold regional meetings on indigenous issues with existing regional organizations with a view to strengthening cooperation and coordination. The Permanent Forum should support regional initiatives of United Nations agencies, funds and programmes, such as the Indigenous Peoples Programme of the United Nations Development Programme in Asia.

88. In an effort to systematize and build capacity, regional focal points on indigenous issues should be designated in all agencies, funds and programmes with regional offices that are mandated to follow up on the implementation of recommendations of the Permanent Forum and the objectives of the Second Decade. The Regional Programme on Indigenous Peoples in Asia of the United Nations Development Programme should be further strengthened, and its other Regional Bureaux should also develop such programmes.

(c) National level

89. It is recommended that specific policies should be considered at the national level for employment creation for indigenous peoples and for facilitating their access to financing, credit and the creation of small and medium businesses. Capacity-building measures by Governments are strongly encouraged to increase the access of indigenous persons to civil service, including through scholarships.

90. High priority is urged to systematize data collection and disaggregation and dissemination initiatives. Technical resources should be provided to national information systems to produce reliable statistics, so that the specific linguistic and cultural characteristics of indigenous peoples can be demonstrated. The work and studies of the Economic Commission for Latin America and the Caribbean can be drawn upon as an example in developing more coherent systems for data collection with respect to indigenous peoples at the national level.

The final section of the Program of Action sets out the **promotional and monitoring mechanisms** that are to be used to ensure that beneficial outcomes for indigenous peoples are achieved**.** These are presented below in full.

The General Assembly recognises the need for indigenous peoples to take an active role at the local, national, regional and international levels in overseeing and reporting on the effectiveness of measures to implement the Program of Action. This is in addition to the requirement that indigenous peoples are 'full and effective' participants in all implementation activities.[15]

To assist in tracking and measuring progress, all parties implementing activities under the Plan of Action are expected to adopt 'concrete activities with specific benchmarks.' In addition to reporting at the national level, the General Assembly will receive annual reports from the Coordinator, as well as undertaking its own mid-term and full-term assessment of the Second Decade.

91. Governments; United Nations agencies, funds and programmes; other intergovernmental organizations; indigenous and other non-governmental organizations; and civil society actors are invited to adopt plans of concrete activities with specific benchmarks to implement the goal, objectives and programme of action of the Second Decade. Gender should be mainstreamed in such activities.

15 United Nations, General Assembly, *Programme of Action for the Second International Decade of the World's Indigenous Peoples*, UN Doc A/60/270, 18 August 2005, para94.

92. The Coordinator of the Second Decade should collect relevant information and submit annual reports to the General Assembly on progress made in the achievement of the goal, objectives and programme of action of the Second Decade.

93. The General Assembly should hold a mid-term and end-term assessment of the Second Decade to review progress.

94. Key to the implementation of the programme of action is the full and effective participation of indigenous peoples. It is also suggested that indigenous organizations should establish a council of indigenous peoples in each region or subregion at the international level with a mandate of evaluating on an ongoing basis the degree to which the goal, objectives and programme of action of the Second Decade are being realized.

95. It is recommended that indigenous organizations should establish committees at the national and local level to monitor the implementation of the programme of action.

96. It is recommended that there should be a designation of focal points at the country level among United Nations agencies, funds and programmes with country offices, with a mandate to follow up on the implementation of recommendations of the Permanent Forum on Indigenous Issues and the goal, objectives and programme of action of the Second Decade.

97. It is recommended that Governments should establish national focal points on indigenous issues and on the Second Decade and intensify coordination and communication at the national level among relevant ministries, agencies and local authorities.

98. It is recommended that tripartite committees should be established at the country level composed of governments, indigenous peoples and United Nations country offices to promote implementation of the objectives of the Second Decade. The Permanent Forum on Indigenous Issues should consider the initiative to call for meetings at which indigenous peoples, governments and the United Nations country teams can exchange experiences with national institutions at the country level, while taking into account lessons learned from previous experiences in establishing and running such national committees. Civil society organizations may be invited to join that effort with the agreement of all three parties.

99. The United Nations system, including the Department of Public Information and the Inter-Agency Support Group for the Permanent Forum on Indigenous Issues, States, indigenous organizations, other non-governmental organizations, academia and the media are invited to adopt measures to create broad awareness and mobilization regarding the Second Decade and its goal, objectives and programme of action.[16]

16 United Nations General Assembly, *Draft programme of action for the Second International Decade of the World's Indigenous People,* 26 August 2005, UN Doc A/60/270/Add.1, paras 91-99, available online at http://daccessdds.un.org/doc/UNDOC/GEN/N05/464/96/PDF/N0546496.pdf?OpenElement, accessed 14 March 2007.