



# Social Justice and Native Title Reports

2004

## A COMMUNITY GUIDE

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### A NOTE FROM THE COMMISSIONER . . .

EACH YEAR, THE SOCIAL JUSTICE COMMISSIONER produces two reports on Indigenous human rights issues – the *Social Justice Report* and the *Native Title Report*.

This community guide provides a snapshot of the main issues raised in the latest reports for 2004.

I hope that this guide can be used by individuals and communities to develop an understanding of their rights and the major changes that are occurring within Indigenous affairs.

During my term as Social Justice Commissioner I will:

- Celebrate Indigenous human rights achievements
- Identify potential breaches of Indigenous peoples' human rights
- Convene regional forums and national roundtables on human rights issues
- Build partnerships and consult with community and government
- Release information on human rights issues



**TOM CALMA** is the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Tom, an Aboriginal elder from the Kungarakan tribal group and a member of the Iwadja tribal group of the Northern Territory, commenced his five-year term in July 2004.

In this position, the Commissioner advocates for the recognition of the rights of Indigenous Australians and seeks to promote respect and understanding of these rights among the broader Australian community.

Tom has been involved in Indigenous affairs at a local, community, state, national and international level and has worked in the public sector for over 30 years.

*Look inside to find out how the new arrangements for Indigenous affairs will affect you*



Aboriginal and Torres Strait Islander Social Justice Commissioner

Human Rights and Equal Opportunity Commission



# New arrangements for Indigenous affairs

“ It is difficult to see how the new arrangements can succeed without a broadly based campaign to inform Indigenous peoples of the changes as well as of their role in the new processes... ”

*Social Justice Report 2004*

IN EARLY 2004, THE FEDERAL GOVERNMENT ANNOUNCED that it would change the way it delivers services to Indigenous communities and how it works with Indigenous peoples. The changes (described below) have become known as ‘the new arrangements for the administration of Indigenous affairs’.

As I discuss in detail in the report, the abolition of ATSIC and the movement to new arrangements for designing policy and delivering programs and services to Indigenous peoples raise many challenges for governments at all levels.

The changes have the potential to impact significantly on Indigenous people and their communities – by either leading to improved performance and outcomes by government, or by undermining the enjoyment of human rights by Indigenous peoples.

These changes will leave the Human Rights and Equal Opportunity Commission, and specifically my position, as the only independent watchdog remaining to monitor and report to Parliament on the activities of governments from a national perspective.

## RECOMMENDATIONS

In the *Social Justice Report 2004*, I have made the following recommendations:

1. Government provides Indigenous communities with better information about the new arrangements,
2. Staff working on the new arrangements must show that they understand Indigenous cultures and can communicate with Indigenous people,
3. The Commonwealth Grants Commission be asked to inquire into the arrangements for Indigenous funding.

**For more information see Chapter Three of the *Social Justice Report 2004***

## What are the new arrangements?

### before the changes ...

#### ▶ ATSIC/ATSIS

▶▶ *National Board (a representative body)*

▶▶ *Administration of Indigenous-specific programs (e.g. CDEP, Community Housing and Infrastructure Program, Family Violence Program)*

#### ▶ ATSIC Regional Councils (*representative bodies*)

#### ▶ Regional Plans

## New arrangements event timeline

DATE	EVENT
12 November 2002	Aboriginal and Torres Strait Islander Commission (ATSIC) Review announced
17 April 2003	Aboriginal and Torres Strait Islander Services (ATSIS) created
13 June 2003	ATSIC Review discussion paper released
1 July 2003	ATSIS commences operations
28 November 2003	ATSIC Review final report released
15 January 2004	Government announces that it intends to reform the <i>Aboriginal Councils and Associations Act</i>
15 April 2004	Government announces abolition of ATSIC and new arrangements introduced from 1 July 2004
27 May 2004	Ministerial Taskforce on Indigenous Affairs created
11-14 June 2004	National Indigenous Leaders Conference held
16 June 2004	Ministerial Taskforce adopts Government Charter setting out vision for Indigenous affairs
25 June 2004	Council of Australian Governments' principles endorsed
1 July 2004	New arrangements commence
6 November 2004	National Indigenous Council appointed
8-9 December 2004	National Indigenous Council conducts inaugural meeting

“This is a time of great uncertainty for Indigenous peoples, with significant changes underway in the government’s approach to Indigenous affairs and how it engages with Indigenous people.”

*Social Justice Report 2004*

For further details see Appendix 1 of the *Social Justice Report 2004*

## after the changes ...

- ▶ Secretaries Group and Ministerial Taskforce to drive government agenda
- ▶ Office of Indigenous Policy Coordination created to administer government agenda
- ▶ National Indigenous Council to advise government on policy (*not a representative body*)
- ▶ Transfer of Indigenous-specific programs to mainstream government departments (*e.g. CDEP transferred to Department of Employment and Workplace Relations*).
  
- ▶ Government to coordinate all programs and service delivery through Indigenous Coordination Centres
- ▶ ATSIC’s Regional Councils continue until 30 June 2005
- ▶ Torres Strait Regional Authority continues
  
- ▶ Government to negotiate agreements with Indigenous people and communities through:
  - ▶▶ *Shared Responsibility Agreements*
  - ▶▶ *Regional Participation Agreements*

# Walking with the women

**“Regarding Indigenous women with humanity, dignity and respect is crucial to well-being. One step towards this can be made by ensuring Indigenous women have the freedom of choice...”**

*Social Justice Report  
2004*

DURING 2003 AND 2004, RESEARCH AND CONSULTATIONS were conducted with individuals, organisations and governments about the needs of Indigenous women when they come out of prison.

We were told that women need more support before they leave prison, particularly help with finding somewhere to live and dealing with life on the outside. We were also told that these supports must be specifically for Indigenous women.

We talked to communities and governments about the different supports and programs that already exist. We also looked at what supports are available in countries like Canada and New Zealand.

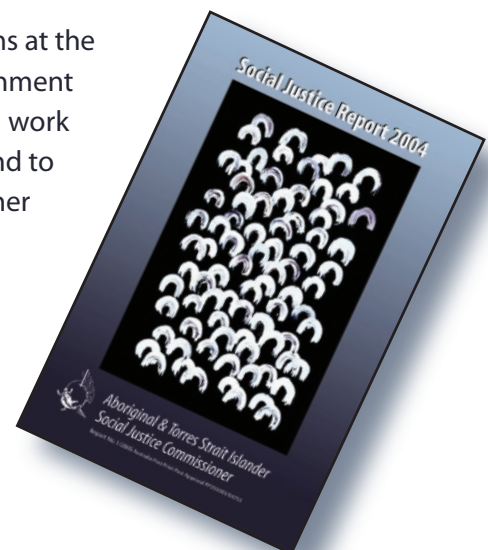
Overall, we found that while some programs do exist to help Indigenous women through their healing, to find a place to live and to reconnect with their communities after being inside prison, there is still more that can be done.

Some examples of support and accommodation programs available for Indigenous women include: Karinga Hostel – Adelaide, SA; Yulawirri Nurai – Morrisett, NSW; Community Re-entry Program – WA; Centrelink’s Pre-Release Support Program for Prisoners – Australia-wide.

## RECOMMENDATIONS

As a result, I have recommended better coordination of programs at the state and territory level and that a national roundtable of government and community be convened to talk about how all agencies can work together to better support Indigenous women leaving prison and to also talk about the successful models that might be useful in other parts of the country.

**For more information see Chapter Two of the *Social Justice Report 2004***



# Race discrimination and shared responsibility agreements

THE NEW ARRANGEMENTS FOR ENGAGING WITH INDIGENOUS PEOPLE AND COMMUNITIES AT the local level are based on direct engagement and negotiation through Shared Responsibility Agreements (SRAs). Central to this negotiation process is the concept of mutual obligation, or the requirement that individuals or communities agree to do certain things in return for services.

Indigenous peoples' rights may be undermined if local level engagement is selective or based on coercive measures. I would be concerned if SRAs become less of a community development or capacity building model and more of a punitive funding agreement model that seeks behavioural change or which is discriminatory in impact.

In developing SRAs, the government must comply with the Racial Discrimination Act (RDA). This makes it unlawful to discriminate on the basis of race, colour, descent or national or ethnic origin. SRAs are subject to the RDA through the way they are negotiated, the terms of the agreement and how they are implemented.

Complaints of racial discrimination may be brought to the Human Rights and Equal Opportunity Commission for investigation and conciliation. If conciliation is unable to resolve the complaint, then it is terminated by the Commission and the complainant may make an application to the Federal Magistrates Court or the Federal Court.

In order to make a successful complaint of race discrimination in relation to SRAs you would need to show:

1. An act involving a distinction based on race, AND
2. The act impairs the enjoyment of a right 'on an equal footing', AND
3. A human right or fundamental freedom is impaired.

On the basis of information currently available, it is not yet possible to determine whether SRAs are discriminatory. That will depend upon the terms and circumstances of each SRA. However, this is an issue I will continue to monitor closely over the next 12-18 months.

**For more information see Appendix Two of the *Social Justice Report 2004***

**For information on how to make a complaint refer to the Commission's *Complaint Guide* at [www.humanrights.gov.au/complaints\\_information/lodge/](http://www.humanrights.gov.au/complaints_information/lodge/) or contact the Commission at:**

**Complaints Infoline: 1300 656 419 (cost of a local call)**

**Email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)**

**Or visit our website at [www.humanrights.gov.au/complaints\\_information/](http://www.humanrights.gov.au/complaints_information/)**

# Getting more out of native title

**“Governments and Indigenous peoples must take the opportunity to exploit this window of opportunity to reform the agreement making process to ensure that sustainable and meaningful improvements and advancements for Indigenous Australians are realised within this generation.”**

**Tom Calma**

NATIVE TITLE PROCESSES MAINLY FOCUS ON meeting the legal standards of the *Native Title Act*. Because of this focus, traditional owners rarely have the opportunity to talk about other important issues like jobs, training, businesses, using their land to make money and building organisations to manage their native title rights in the future. But with support from everyone working in the native title process, especially government and companies, native title agreements can address these important issues.

This year’s Native Title Report sets out guidelines for agreement making, that aim to direct agreements towards meeting traditional owner goals as well as the legal requirements of the Native Title Act. The guidelines are based on human rights such as equality, respect for Indigenous culture, self determination and the right to development.

We worked on the guidelines with Native Title Representative Bodies and land councils, industry groups, governments and native title experts around Australia. They gave us ideas about how the guidelines could work on the ground.

## AGREEMENT MAKING GUIDELINES

For traditional owners and their communities to benefit from native title, agreements should:

- respond to traditional owners’ needs and goals,
- assist traditional owners to set and achieve their own goals,
- be built on traditional owners’ skills and knowledge and help traditional owners gain new skills,
- build strong relationships between traditional owners, governments and companies,
- be supported by a ‘whole-of-government’ approach that makes everyone working on native title work more closely together.

Commissioner Calma discussing a range of Indigenous issues at a recent community forum.



The guidelines are similar to the principles of engagement in the Council of Australian Governments' community trials, with emphasis on: partnerships between communities and government; a focus on outcomes; flexibility; community governance and capacity development.

## LINKS TO THE NEW ARRANGEMENTS

In my Social Justice Report, I talk about how the federal Government has stated that it wants to enter into agreements with communities. These agreements are called Shared Responsibility Agreements or SRAs.

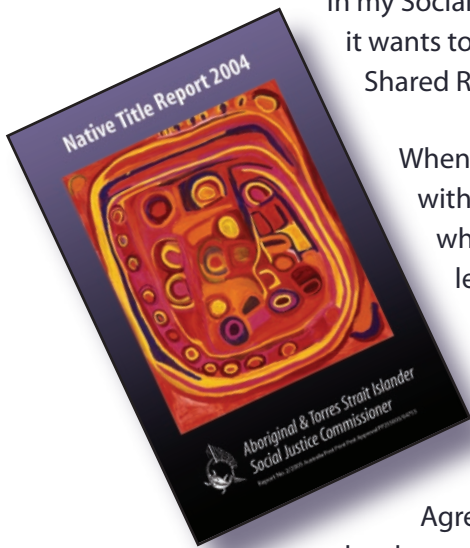
When the government talks about SRAs, they say they will work in partnership with communities to build positive economic and social outcomes. However, when they talk about native title agreements, they focus mainly on the legal issues. Community issues are not covered adequately in native title agreements and Native Title Representative Bodies are not funded to address them.

I believe that the proposed guidelines for native title agreement making could also be applied to SRAs and Regional Partnership Agreements. Traditional owners need to discuss economic and social development issues with Indigenous Coordination Centre staff when they visit their community.

But it's also important to remember when negotiating an agreement – that it is the government's job to provide education and healthcare to all citizens. Traditional owners do not have to *negotiate* for these basic rights in a native title agreement or in an SRA.

**“ And remember – the government is responsible for providing basic services, such as education and healthcare, to all citizens. Traditional owners do not have to negotiate for these things in a native title agreement. ”**

**Tom Calma**



# Where to from here?

AS SOCIAL JUSTICE COMMISSIONER, IN THE COMING 12–18 MONTHS I WILL:

- Monitor whether the Council of Australian Governments' trials are making Indigenous peoples' lives better
- Establish whether Indigenous organisations are experiencing financial difficulties under the new funding arrangements
- Monitor the involvement of Indigenous peoples (including Torres Strait Islanders on the mainland) in decisions which affect their lives
- Talk with governments, regional councils and organisations about their involvement in the development of new regional structures
- Ensure Shared Responsibility Agreements do not discriminate against Indigenous people
- Talk to the Australian Public Service Commission about the recruitment and retention of Indigenous staff and cultural awareness training
- Consult with governments and Indigenous communities about how they can work together better
- Establish whether the new arrangements are making positive changes to the lives of Indigenous peoples
- Talk to governments about the native title agreement making guidelines and encourage them to use ideas from the Council of Australian Governments' trials and the new arrangements, for native title policy
- Listen to hear how native title can be better used to achieve community needs and goals

OTHER ISSUES I WILL FOCUS ON THROUGHOUT MY TERM INCLUDE:

- Indigenous health
- Indigenous mental health
- International processes for the recognition of the rights of Indigenous peoples
- Reconciliation

**For more information see the *Social Justice Report 2004***

## Handy contacts for the Human Rights and Equal Opportunity Commission

Call **1300 369 711** to order hard copies and CD-ROMs of the Social Justice and Native Title Reports and for additional copies of this Community Guide

The *Social Justice Report 2004* is available at [www.humanrights.gov.au/social\\_justice/sjreport04/](http://www.humanrights.gov.au/social_justice/sjreport04/)

The *Native Title Report 2004* is available at [www.humanrights.gov.au/social\\_justice/ntreport04/](http://www.humanrights.gov.au/social_justice/ntreport04/)

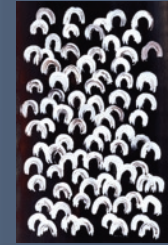
If you have any feedback please email us at [sjreport@humanrights.gov.au](mailto:sjreport@humanrights.gov.au)

## Artists' acknowledgements

ALL THOSE WOMEN DANCE (2004)

© Rosella Namok, Lockhart River.

Photographer: Michael Marzik



*Every woman... they all got ready for the dance... they all get painted up. There are a lot of women...*

*and young ones have joined to... they all get ready for that secret dance.*

NGUPAWARLU (2003)

© Nyuju Stumpy Brown.

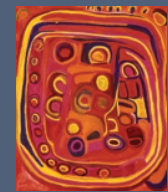


Photo: Gilbert Herrada, courtesy of the Museum and Art Gallery of the Northern Territory.

*Ngupawarlu* depicts *tali* (sandhill) country.

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