

Social Justice Report 2006



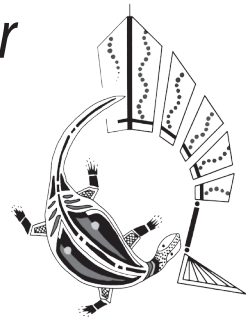
**Human Rights and Equal
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Social Justice Report

2006

*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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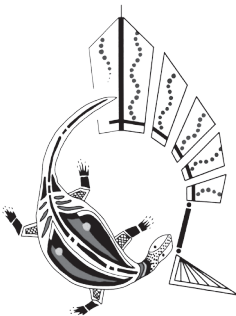
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Artist Acknowledgement

The cover photographs are from the 40 years Freedom Day Festival held on 18 and 19 August 2006 at Kalkaringi and Daguragu. Information about the festival is included on the back cover of this report and further information can be obtained from www.freedomday.info/festival.html. Our thanks to the Daguragu Community Government Council and the communities of Kalkaringi and Daguragu for the permission to reproduce these images. Our thanks also to Trevor van Weeren for facilitating the copyright permissions and supply of images and text.



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.

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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.

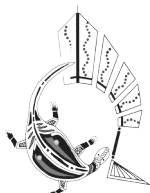
The report analyses the accessibility of mainstream services under the new arrangements for Indigenous affairs (Chapter 2), the adequacy of government engagement and participation of communities under the new arrangements for Indigenous affairs (Chapter 3, Appendix 3) and reports on international developments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



Office of the 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.unhcr.ch/html/menu6/2/fs9.htm



Contents

Chapter 1: Introduction	1
What makes good Indigenous policy?	2
• A commitment to human rights	3
• Engagement and participation of Indigenous peoples in policy making	6
• A capacity building and community development approach	8
• Supporting sound Indigenous governance	9
• Fostering and recognising leadership	10
• A learning framework / planning for implementation	11
• Needs based funding and planning processes	12
• Monitoring and evaluation	13
• A culture of implementation and government accountability	13
Reflections on the current policy framework for Indigenous affairs	15
Contents of the Social Justice Report 2006	18

Chapter 2: The new arrangements for Indigenous affairs – facilitating Indigenous access to government services	21
Part 1: The challenge of ensuring equal access to mainstream services for Indigenous peoples	22
Background – the new arrangements for the administration of Indigenous affairs	22
Indigenous disadvantage and human rights	24
The challenge of improving Indigenous access to mainstream services	28
The situation of urban Indigenous peoples – a particular concern	33
A case study: withdrawal of CDEP from urban and certain regional centres and abolition of Indigenous Employment Centres	38
The Council of Australian Governments (COAG) Trials	48
Post COAG trials – another ‘new’ approach	57
Summary: The challenges of achieving equitable access to mainstream services for Indigenous peoples	68

Part 2: 'Harnessing the mainstream' through the new arrangements for Indigenous affairs	69
• Indigenous Coordination Centres and solution brokers	69
• Reducing 'red tape' through funding processes	74
• Shared Responsibility Agreements	77
• Comprehensive SRAs, Regional Partnership Agreements and 'intensive interventions'	81
Issues concerning engagement with Indigenous communities	84
• The absence of regional representative structures – a flaw in the new arrangements	84
• The importance of direct engagement with Indigenous communities	87
• Defining Indigenous 'communities'	89
• Capacity building	90
The changing role of the Office of Indigenous Policy Coordination (OIPC)	91
Monitoring and evaluation mechanisms – ensuring accountability for the new arrangements	96
Part 3: Conclusions and recommendations	102

Chapter 3: Addressing the fundamental flaw of the new arrangements for Indigenous affairs– the absence of principled engagement with Indigenous peoples	107
Developments in ensuring the 'maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them'	108
The importance of regional Indigenous participatory mechanisms in the new arrangements	108
Progress in supporting Indigenous engagement at the regional level	111
Indigenous participation in decision making at the national level	119
Indigenous participation in determining priorities for inter-governmental cooperation	126
Engagement with Indigenous peoples at the local level – Indigenous perspectives on Shared Responsibility Agreements	129
Why focus on SRAs?	129
Findings of the national survey of Indigenous communities that have entered into Shared Responsibility Agreements	132
• Introduction and Survey methodology	132
• Key Features of SRAs – Survey responses	133
• Obligations contained in SRAs	136
• Monitoring process for the SRA	140
• The negotiation process for the SRA	140
• Delivery of commitments and community satisfaction with the SRA process	147
• Lessons learnt from entering a SRA	151
• Survey conclusions	152

Case studies of specific SRAs	154
• Case Study 1: Girringun Aboriginal Corporation, Cardwell, Queensland	154
• Case Study 2: Cape Barren Island Aboriginal Association, Tasmania	161
• Case Study 3: Baddagun Aboriginal Organisation, Innisfail, Far North Queensland	165
• Shared Responsibility Agreements – some common elements	170
Addressing the fundamental flaw of the new arrangements – Ways forward	171

Chapter 4: International developments on the rights of indigenous peoples – Closing the ‘protection gap’	179
International developments on the rights of indigenous peoples	180
1) United Nations Reform and human rights	181
• The ‘In larger freedom’ report and World Summit	181
• The creation of the Human Rights Council	185
• Indigenous participation in the processes of the Human Rights Council	189
• Integrating human rights across the activities of the United Nations	197
2) The making of global commitments to action – The Millennium Development Goals and the Second International Decade of the World’s Indigenous People	207
• The Millennium Development Goals and Indigenous peoples	209
• The Second International Decade of the World’s Indigenous People	220
3) Developments in recognition of the rights of Indigenous Peoples	224
4) Summary of international developments – the current situation	242
• UN Reform processes	242
• The mainstreaming of human rights across the UN and participatory development practices	243
• Global commitments to action: The MDG’s and Indigenous peoples	245
• Global commitments to action: The Second International Decade of the World’s Indigenous People	246
• Recognition of Indigenous specific rights	247
Closing the ‘protection gap’ – Implementing a human rights based approach to Indigenous policy and service delivery in Australia	249
• The ‘protection gap’ in Australia	250
• Bridging the ‘protection gap’ – the role of NGOs and the Indigenous community sector	253
Conclusion and recommendations	256

Appendix 1: Chronology of events relating to the administration of Indigenous affairs: 1 July 2005 – 30 June 2006	259
Appendix 2: Summary of the Social Justice Commissioner’s main findings and messages on ending family violence and abuse in Indigenous communities	325
Appendix 3: Shared Responsibility Agreements Survey form	345
Appendix 4: Second International Decade of the World’s Indigenous People	363

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.

