

Chapter 1:

Introduction

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This is my sixth, and final, Social Justice Report as the Aboriginal and Torres Strait Islander Social Justice Commissioner. It covers the period from 1 July 2008 to 30 June 2009.

This year's report will focus on: justice reinvestment to reduce Indigenous over-representation in the criminal justice system; protection of Indigenous languages; and sustaining Aboriginal homeland communities.

1.1 Looking back

It is with great pride, gratitude and a touch of sadness that I put the final touches on my last Social Justice Report. My time as the Aboriginal and Torres Strait Islander Social Justice Commissioner has been one of the most rewarding and challenging experiences of my life. I feel great privilege to have served my people in this way.

It has also without a doubt been one of the most tumultuous periods in Indigenous affairs in recent years.

Just before I took up my position as Social Justice Commissioner, the Howard government announced the abolition of ATSIC. This led to a raft of 'new arrangements' and a significant void in terms of national representation and leadership for Indigenous Australians.

Much of my early work was focused on monitoring the impact of the new arrangements and arguing for government accountability and a voice for Indigenous peoples in this new policy landscape.

Then on 21 June 2007 the Australian Government launched the Northern Territory Emergency Response, reportedly in response to the *Little Children are Sacred* report into child sexual assault in the Northern Territory.

I welcomed the announcement to protect the rights of Indigenous women and children in the Northern Territory. However, like many other people in the Indigenous community, I had concerns about the focus of the Commonwealth Government's Emergency Response strategy and accompanying legislation.

Unfortunately, the initial discourse around the Northern Territory Intervention was framed in such away that you were either 'with us or against us'. There was no room for discussion and there was no opportunity for partnership with Indigenous people in resolving child sexual abuse in the Northern Territory.

Again, the policy landscape changed dramatically for Indigenous Australians in the Northern Territory. Amongst some of the changes were compulsory welfare quarantining; compulsory alcohol restrictions; compulsory acquisition of land; the removal of the permit system; removal of customary law and cultural practice as a mitigating factor in bail or sentencing; licensing of stores in prescribed areas; and the banning of pornography in prescribed areas. Initially there was to be compulsory

whole-of-body health checks of all children under the age of 16 years old, but this was abandoned in response to strong protests from the medical fraternity. The sheer scale of Intervention touched the day to day lives of most Indigenous Northern Territorians.

Many of these initiatives were enabled by the suspension of the *Racial Discrimination Act 1975* (Cth), directly contravening Australia's human rights obligations. This was of great concern to me as I have always maintained that human rights are universal and indivisible. This means that human rights apply to everyone, everywhere, everyday and that different types of rights have equal importance. Good policy always upholds human rights.

Around the same time, I undertook a major review of successful Indigenous family violence and child abuse initiatives. In my work as Social Justice Commissioner I have been lucky to meet extraordinary, inspiring people who achieve great things for their communities. The case studies I collected reinforced that the only way the Northern Territory Emergency Response, and in fact the entire spectrum of Indigenous service delivery and policy, would succeed was if we worked in partnership with communities.

In 2007 the policy landscape was changed again with the election of the Rudd government.

A seemingly seismic shift occurred on 13 February 2008 when Prime Minister Rudd on behalf of the Australian Parliament, made a historic and long overdue National Apology to the Stolen Generations. With eloquence and emotion, Prime Minister Rudd said what so many Australians have wanted to say, and what so many Indigenous peoples have needed to hear.

I was honoured to formally respond at Parliament House to the Parliament's Apology on behalf of the National Sorry Day Committee and Stolen Generations Alliance. I am confident that the National Apology will go down as one of those 'where were you' moments in Australia's history.

More than this, I'd like to think that the National Apology has been a transformational event in Australia's history. This transformational vision was shared by the Prime Minister. In the Apology speech he said:

Let (the Apology) not become a moment of mere sentimental reflection. Let us take it with both hands and allow this day, this day of national reconciliation, to become one of those rare moments in which we might just be able to transform the way in which the nation thinks about itself...¹

I've described the National Apology as a 'line in the sand that marks the beginning of a new relationship and era of respect'.²

And we are now starting to see the fruits of this new relationship.

The COAG Closing the Gap commitments made in December 2007 and 2008 have shaped the spirit in which Indigenous policy is being conducted in Australia at the moment. We now have solid government targets to address Indigenous disadvantage in health, education and employment.

1 Commonwealth, Parliamentary Debates, House of Representatives, 13 February 2008, p 167 (The Hon Kevin Rudd MP, Prime Minister).

2 T Calma, Essentials for Social Justice: The Future (Speech delivered at the Hawke Centre, University of South Australia, Adelaide, 12 November 2008). At http://humanrights.gov.au/about/media/speeches/social_justice/2008/20081112_future.html (viewed 13 November 2008).

I am very proud that I have been able to contribute to this positive shift in some way. It was my *Social Justice Report* in 2005 that called for the gap in Indigenous health equality to be closed, challenging governments to commit to closing the life expectancy gap in one generation. A coalition of Indigenous health bodies and non government organisations responded to this call giving rise to a campaign which mobilized a groundswell of community support. The fight for Indigenous health equality is far from over but this campaign shows just what can happen when we come together for human rights.

Building on this solid ground, we also saw the Australian Government formally give its support for the *UN Declaration on the Rights of Indigenous Peoples* in April 2009. I've described this as a watershed moment in Australian history and I am hopeful that it will guide better rights-based engagement with Indigenous Australians.

Having come into this position just after the abolition of ATSIC perhaps it is fitting that one of my final tasks has been recommending a model for a new national Indigenous representative body in August this year.

Again, I think this is another shift in the Indigenous policy landscape. But this time it will take us to higher, more secure ground as self-determining peoples whose voices will be heard.

After a comprehensive consultation process and with input from some of the best brains in Indigenous affairs, we came up with a robust model that has allowed us to learn from the mistakes of ATSIC and adapt to the challenges of the future. I look forward to seeing the model implemented over the next year.

1.2 Looking forward...

I'm often asked to comment on the progress, or lack of progress, that we are making in the realisation of Indigenous human rights. It is easy to become despondent in the relentless grind of Indigenous affairs where one alarming set of statistics follows another. However, as anyone who knows me will attest, I am an eternal optimist.

I can see positive signs for the future. The national Indigenous representative body will provide a more representative voice and therefore better policy in Indigenous affairs. For the first time we have all Australian governments working towards targets to close the gap of Indigenous disadvantage. The *UN Declaration on the Rights of Indigenous Peoples* should guide proper community engagement.

These positive developments align with the steps I set out in my *Social Justice Report 2008* as being necessary for government to re-set the agenda for Indigenous affairs. Some of the other steps that government could take included:

- enacting a national Human Rights Act that includes protection of Indigenous rights
- amending the *Constitution* to recognise Indigenous peoples in the preamble; removing discriminatory provisions and providing a guarantee of equal treatment and non-discrimination
- establishing a framework for negotiations/ agreements with Indigenous peoples to address the unfinished business of reconciliation
- providing human rights education
- reinstating the application of the *Racial Discrimination Act 1975* (Cth) and state/ territory anti discrimination legislation for the Northern Territory Emergency Response legislation.

I am also encouraged by the Australian Government's social inclusion framework. In fact, when you look at all of the positive developments that I have outlined above, they all sit within the social inclusion framework.

Being socially included means:

people have the resources (skills and assets, including good health), opportunities and capabilities they need to:

- Learn and participate in education and training;
- Work and participate in employment, unpaid or voluntary work including family and carer responsibilities;
- Engage and connect with people, use local services and participate in local, cultural, civic and recreational activities; and
- Have a voice influence decisions that affect them.³

These are all the things that we want for Indigenous Australians, and they are all necessary for the realisation of Indigenous peoples' human rights. In recognition of this and the current level of disadvantage faced by Indigenous Australian, the Australian Government has nominated Indigenous Australians as a priority group in the social inclusion framework.

Also encouraging are the new structures that reflect the status of social inclusion as a guiding policy principle in the Australian government including:

- the establishment of the Australian Social Inclusion Board to provide independent advice to the government
- the Deputy Prime Minister, Julia Gillard, has portfolio responsibility for Social Inclusion, assisted by Senator Ursula Stephens
- the Social Inclusion Unit sits in the Department of Prime Minister and Cabinet, with the Prime Minister making a number of public undertakings towards social inclusion.

This level of commitment signals that the Australian Government is serious about its social inclusion framework.

If this level of commitment sustains, the social inclusion framework will become a powerful policy tool for achieving Indigenous rights. In some ways it is just a new language for things we have been talking about for years: access, equity and involvement in decision making. But in other ways, social inclusion offers us practical tools to achieve change.

We can see this in the Australian Government's social inclusion 'principles of approach' including:

- Building partnerships with key stakeholders
- Developing tailored services
- Giving a high priority to early intervention and prevention
- Building joined up services and whole of government solutions
- Using evidence and integrated data to inform policy
- Using locational approaches
- Planning for sustainability
- Building on individual and community strengths.⁴

3 Australian Government, *Australian Public Service Social Inclusion Policy Design and Delivery Toolkit*. At <http://www.socialinclusion.gov.au/Documents/SIToolKit.pdf> (viewed 28 September 2009)

4 Australian Government, *Australian Public Service Social Inclusion Policy Design and Delivery Toolkit*. At <http://www.socialinclusion.gov.au/Documents/SIToolKit.pdf> (viewed 28 September 2009).

Again, none of these principles is particularly radical or novel but taken together they will provide a new way of doing Indigenous policy.

Of course, we have all seen fine principles like these before. Too often they remain unrealised. However, the Australian Government has developed the *Australian Public Service Social Inclusion Policy Design and Delivery Toolkit* which squarely places responsibility for actualising these principles at the policy and service delivery level. In a 'how to' guide bureaucrats are equipped to take these principles out into the real world.

The challenge for us is to now harness the potential of the social inclusion framework to address Indigenous disadvantage.

One example I deal with in this report is how justice reinvestment can reduce Indigenous over-representation in the criminal justice system. What is interesting is just how closely a number of these principles and priorities align with justice reinvestment. In particular, there is a significant coalescence between the stated principles of 'early intervention and prevention';⁵ 'using evidence and integrated data to inform policy';⁶ and using locational approaches.⁷

In effect, justice reinvestment could become a very powerful tool for ensuring that Indigenous Australians are socially included. It meets the concerns of policy makers 'mindful of the costs and benefits and evidence of returns for investment',⁸ the need for holistic early intervention and evidence based policy.

This confluence of agendas could be a turning point for Indigenous disadvantage in Australia if the Australian Government takes its commitments to social inclusion seriously.

1.3 Contents of the *Social Justice Report 2009*

Every year it is a challenge to decide which issues to focus on in the Social Justice Report. Some years the issues seem to pick us, for instance it has been crucially important to be responsive to the human rights implications of major policy shifts like the new arrangements and Northern Territory intervention. Other times the issues directly respond to a huge need, for instance focusing on Indigenous health equality or remote Indigenous education.

For my last report I have chosen to focus on justice reinvestment to reduce Indigenous over-representation in the criminal justice system; the protection of Indigenous languages; and sustaining Aboriginal homeland communities.

Chapter 2 examines a new idea called justice reinvestment as a solution to the appalling over-representation of Indigenous people in the criminal justice system.

5 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

6 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

7 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

8 Australian Government, *Social Inclusion Principles for Australia*. At <http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf> (viewed 28 July 2009).

Nationally, Indigenous adults are 13 times more likely to be imprisoned than non-Indigenous people⁹ and Indigenous juveniles are 28 times more likely to be placed in juvenile detention than their non-Indigenous counterparts.¹⁰

Some worthy initiatives have been tried to reduce over-representation but the bottom line remains: what we are doing is simply not working. If it were working, we would be seeing a reduction in Indigenous imprisonment, rather than the 48% increase since 1996.¹¹

When something isn't working, we need to be bold and creative in thinking outside our safe policy parameters for alternative solutions. But at all times we must respect human rights principles, including the principle of non-discrimination. That is why in this chapter I look to justice reinvestment from the United States as a new approach that may hold the key to unlocking Indigenous Australians from the cycle of crime and escalating imprisonment rates.

Justice reinvestment is a localised criminal justice policy approach that diverts a portion of the funds spent on imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested in programs and services in communities where these issues are most acute in order to address the underlying causes of crime in those communities.

Justice reinvestment still retains prison as a measure for dangerous and serious offenders but actively shifts the culture away from imprisonment and starts providing community wide services that prevent offending. Justice reinvestment is not just about reforming the criminal justice system but trying to prevent people from getting there in the first place.

Justice reinvestment is a model that has as much in common with economics as social policy. Justice reinvestment asks the question: is imprisonment good value for money? The simple answer is that it is not. We are spending ever increasing amounts on imprisonment while at the same time, prisoners are not being rehabilitated, recidivism rates are high and return to prison rates are creating overcrowded prisons.

This chapter, based on the evidence from the United States and consideration of the Australian context, argues that it is about time we got smart with our money and reinvested in community wide early intervention and support our Indigenous communities, rather than throwing it away on imprisonment.

Chapter 3 looks at the perilous state of Indigenous languages in Australia. Indigenous languages critically endangered and they continue to die out at a rapid rate.

9 Australian Bureau of Statistics, *Prisoners in Australia 2008*. At [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/\\$File/45170_2008.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/F618C51B775B2CF7CA25751B0014A2D5/$File/45170_2008.pdf) (viewed 27 May 2009).

10 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2006-2007*. At <http://www.aihw.gov.au/publications/juv/jjia06-07/jjia06-07.pdf> (viewed 27 May 2009).

11 Australian Bureau of Statistics, *Prisoners in Australia 2006*. At <http://abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02006?OpenDocument> (viewed 24 July 2009).

Prior to colonisation, Australia had 250 distinct languages which expanded out to 600 dialects.¹² Today only 20 Indigenous languages are fully intact and even these are endangered.¹³ Without intervention Indigenous language knowledge will cease to exist in Australia in the next 10 to 30 years.¹⁴

In terms of cultural heritage, the loss of Indigenous languages in Australia is a loss for all Australians. For the Indigenous peoples whose languages are affected, the loss has wide ranging impacts on culture, identity and health.

Cultural knowledge and concepts are carried through languages. Where languages are eroded and lost, so too is the cultural knowledge. This in turn has potential to impact on the health and well-being of Indigenous peoples. There is now significant research which demonstrates that strong culture and identity are protective factors for Indigenous people, assisting us to develop resilience.

In August 2009 the Australian Government released a policy with the aim of preserving and promoting Indigenous languages. Despite good intentions, the recent policy provides no new funds for Indigenous languages and it will not do more to preserve languages than is already being done. Without targeted action and cooperation from the state and territory governments, we will see Indigenous languages continue to die out.

Inconsistent and contradictory policies across the state, territory and Commonwealth governments have created a policy environment where little can be done in a systematic way to preserve languages. We have seen over the past year, for example, efforts of the Northern Territory government to dismantle bilingual education by making it mandatory for schools to teach the first four hours of each school day in English. This is occurring at the same time as the Commonwealth Government releases a policy to preserve languages.

This chapter sets out a series of actions that governments must take to implement the objectives of the new policy. This chapter shows that language preservation is possible when nations make a concerted effort to coordinate efforts and move in a consistent direction in their policy and practice. The chapter documents a number of good practice approaches both nationally and internationally and suggests a way forward to formal recognition of Indigenous languages and the establishment of a national body to promote Indigenous languages.

Chapter 4 profiles the homelands movement of the Northern Territory as an example of successful Aboriginal community development, governance and self-determination.

Homelands provide social, spiritual, cultural, health and economic benefits to residents. They are a unique component of the Indigenous social and cultural landscape, enabling residents to live on their ancestral lands. Homelands are governed through traditional kinship structures which provide leadership and local governance.

12 Australian Institute of Aboriginal and Torres Strait Islander Studies and the Federation of Aboriginal and Torres Strait Islander Languages, *National Indigenous Languages Survey Report 2005*, Executive Summary. At http://www.arts.gov.au/__data/assets/pdf_file/0006/35637/nils-report-2005.pdf (viewed 3 July 2009)

13 J Lo Bianco, *Organizing for Multilingualism: Ecological and Sociological Perspectives*, A TESOL Symposium on Keeping Language Diversity Alive, 2008, p11, Alice Springs, Northern Territory, Australia, July 9, 2008

14 Australian Institute of Aboriginal and Torres Strait Islander Studies and the Federation of Aboriginal and Torres Strait Islander Languages, *National Indigenous Languages Survey Report 2005*, p 67. At http://www.arts.gov.au/__data/assets/pdf_file/0006/35637/nils-report-2005.pdf (viewed 3 July 2009)

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The focus on Northern Territory homelands is in response to the recent significant changes made to government policies which limit the resources and support for homeland communities. These policies collude to move homeland residents into large townships to access housing, education and other services.

History has shown that moving people from homeland communities into fringe communities in rural towns increases the stresses on resources in rural townships. Some of the documented disadvantages include increased social tensions between different community groups, reduced access to healthy food and lifestyles and loss of cultural traditions, practices and livelihoods.

This chapter will demonstrate that if government policies fail to support the ongoing development of homelands it will lead to social and economic problems in rural townships that could further entrench Indigenous disadvantage and poverty. The failure to support homeland communities will also be a significant contributor to the loss of the world's longest surviving continuous culture.

The central argument of this chapter is that homelands should be adequately resourced by Australian governments and that homeland leaders should be able to actively participate in the development of policies that affect homeland communities.

As with previous reports, **Appendix 1** of the report provides a chronology of events relating to the administration of Indigenous affairs, from 1 July 2008 to 30 June 2009. The chronology provides a comprehensive overview of the major government policy initiatives introduced during this period. This snapshot of developments highlights both the sheer scale of changes as well the rapid pace at which they are occurring. This has had a significant impact on communities and individuals who are required to adapt and adjust to them.

On the face of it, the issues in these chapters may look disconnected, but at their essence they all speak to the need for strong communities. This might be through reinvesting money in crime prevention and keeping people out of prison; protecting the language and culture that is the glue to keep communities together; or supporting strong homelands as a model of community development.

Our communities are not just where we come from, but who we are. They represent our family connections, proud history and rich culture. I hope that they remain strong and can in turn sustain future generations. My final Social Justice Report provides some new ideas and recommendations to do this.