

Chapter 1:

Towards a reconciled Australia: An agenda of hope

.....

1.1 Introduction

My son, your eyes search mine
Hurt and puzzled by colour line
Your black skin as soft as velvet shine
What can I tell you son of mine
I could tell you of heartbreak, hatred blind
I could tell of crimes that shame mankind
Of brutal wrongs and deeds malign
Of rape and murder son of mine
But instead I will tell of brave and fine
When lives of black and white entwine
When men, in brotherhood combine
This I would tell you son of mine.¹

These words of Oodgeroo Noonuccal, or Kath Walker, a hero of the struggle of Aboriginal and Torres Strait Islander peoples rights, captures the essence of the challenges confronting us here in Australia in pursuit of a reconciled nation. The acknowledgement of the ‘brutal wrongs’, but with the hope of the ‘lives of black and white entwined’, are needed and still ring true as we enter the second decade of the 21st century.

In present day Australia, there is still too much heartbreak and misunderstanding. After more than 200 years together, we still long for a time ‘when men in brotherhood combine’ in a truly reconciled Australia.

It is a fact that Aboriginal and Torres Strait Islander peoples continue to be overrepresented in every negative socio-economic indicator.² Each and every one of these indicators marks a systematic incidence of Aboriginal and Torres Strait Islander peoples not being able to exercise and enjoy their fundamental human rights the same rights that the vast majority of Australians take for granted.

When I first assumed the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner (Social Justice Commissioner), I looked at these and an array of other human rights issues in trying to determine my priorities for my five-year term. I concluded that the focus for my term must be underpinned by two unshakeable and personal commitments:

- to address disadvantage still faced by Aboriginal and Torres Strait Islander peoples
- to work to achieve a truly reconciled Australia.

1 K Walker, *My People: A Kath Walker Collection* (1970), p 55.

2 See SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

I believe we need to ask the question: can the nation ever be truly reconciled while Aboriginal and Torres Strait Islanders continue to live in such relative disadvantage? The systemic disadvantage faced by Aboriginal and Torres Strait Islander communities has been extensively documented in the *Overcoming Indigenous Disadvantage Report*.³ Overcoming this disadvantage is reconciliation in action and it will require a nation-building effort.

With the idea of addressing disadvantage as a nation-building exercise in mind, I have visited Aboriginal and Torres Strait Islander communities and organisations in remote parts of Australia, in our regions and in urban centres. During these visits I listened and learnt, in an effort to understand the issues that these diverse communities face, and what solutions they are developing. I heard time and again about a sense of hurt in our communities and a feeling of disenfranchisement and disempowerment from the instruments of power.

I have also attended sessions of international human rights mechanisms to better understand how international engagement can assist our efforts to ensure Australia honours its commitments to respect, protect and fulfil our rights.

These activities have helped sharpen my focus.

In this Chapter, I outline my agenda as Social Justice Commissioner. This is an agenda of hope. It is an agenda which aims to unleash the potential of our people, and maximise the capabilities of each and every Aboriginal and Torres Strait Islander person, an agenda that tackles the root causes of Indigenous inequality.

It is clear that addressing the disadvantage in Aboriginal and Torres Strait Islander communities will require the intergenerational commitment of the whole nation. We will need to work together to reframe our approach – to create better pathways of understanding built on relationships of mutual trust and respect. This agenda places fundamental importance on building positive and healthy relationships.

In this Chapter I first outline how my focus on relationships will be guided by human rights standards, in particular the *United Nations Declaration on the Rights of Indigenous Peoples*⁴ (the Declaration). One of my overarching priorities is advocating that the Australian Government work with Aboriginal and Torres Strait Islander peoples to progress the full implementation, of both the spirit and intent, of the Declaration.

I then explain the three areas in which I believe rebuilding relationships can strengthen the foundation necessary for addressing Aboriginal and Torres Strait Islander disadvantage. Relationships must be either reset or established:

- between Aboriginal and Torres Strait Islander peoples and the broader Australian community
- between Aboriginal and Torres Strait Islander peoples and governments
- within Aboriginal and Torres Strait Islander communities.

I argue that resetting and strengthening these relationships can move Australia towards a reconciled nation by making advances to address Aboriginal and Torres Strait Islander disadvantage.

3 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009). At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

4 GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007). At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

As Social Justice Commissioner, I will:

- **be guided by human rights standards, particularly those contained in the *United Nations Declaration on the Rights of Indigenous Peoples***
- **focus on developing stronger and deeper relationships:**
 - **between Aboriginal and Torres Strait Islander peoples and the broader Australian community**
 - **between Aboriginal and Torres Strait Islander peoples and governments**
 - **within Aboriginal and Torres Strait Islander communities.**

1.2 Human rights: The overarching framework

All human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, without distinction of any kind, such as race, creed, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and security of person.⁵

Relationships cannot be reset without a clear focus on the human rights of Aboriginal and Torres Strait Islander peoples. But before dealing with relationships, I want to outline the human rights framework that will guide my agenda.

My role is to promote the enjoyment and exercise of human rights of Aboriginal and Torres Strait Islander peoples.⁶ As a consequence I examine the challenges faced by Aboriginal and Torres Strait Islander peoples across this nation through a human rights lens.

Human rights provide governments with a set of minimum legal standards, which if applied equally to all people, establish a framework for a society to foster dignity and equality. In other words, human rights assist in measuring how the people of a nation look after each other.

(a) The value of human rights

Human rights are taken for granted by many Australians. A recent assessment of political rights and civil liberties gave Australia the highest possible score for the attainment of political rights and civil liberties.⁷

In general, Australians are not subjected to cruel and inhumane treatment; Australia has an independent judicial system, freedom of speech and a free press. All of these things are human rights. All of these rights help promote a functioning and stable democratic society. Indeed, in nations where these rights are not readily realised, it is their absence that inhibits a functioning and stable democratic society.

5 UN Population Division, Department of Economic and Social Affairs, *Report Of The International Conference on Population and Development*, UN Doc A/CONF.171/13 (1994), ch 2, Principle 1. At <http://www.un.org/popin/icpd/conference/offeng/poa.html> (viewed 13 December 2010).

6 *Australian Human Rights Commission Act 1986* (Cth), s 46C.

7 Freedom House, *Country Report 2009 Australia*, <http://www.freedomhouse.org/template.cfm?page=22&year=2009&country=7559> (viewed 27 April 2010).

Human rights are not just abstract concepts that exist in documents such as treaties, conventions and declarations alone. They become meaningful only when they are able to be exercised.

For many Australians, the realisation of economic, social and cultural rights is also a given. Australia has functioning health and social security systems. There is access to education and housing services and protections against discrimination in employment. Again it is the realisation of these rights that makes Australia a successful and prospering nation.

On the other hand, Aboriginal and Torres Strait Islander communities cannot take these rights for granted. One of the major differences between the wider Australian population and Aboriginal and Torres Strait Islander communities has been the long inability to realise our human rights. For instance:

- we were not counted as citizens of Australia until 1967
- our children were removed in the Stolen Generations as a result of legislation and policies of forced removal and assimilation
- as a result of the Northern Territory Emergency Response and the suspension of the *Racial Discrimination Act 1975* (Cth) in 73 Aboriginal communities in the Northern Territory people had only limited protection against racial discrimination for the sole reason that they are Indigenous.⁸

In addition to these policies and laws that overtly diminished our rights, institutional systems that have impeded the realisation of our rights have contributed to:

- Aboriginal and Torres Strait Islander men and women have a life expectancy approximately 11.5 years and 9.7 years younger compared to the broader Australian population.⁹
- Mortality rates of our children under four are between two and four times that of the broader Australian population.¹⁰
- Only 63.4% of year five Aboriginal and Torres Strait Islander students achieving the national minimum standard for reading compared with 92.6% of non-Indigenous students – this is a gap of 29.2% points.¹¹

These are all human rights issues. In fact all of the issues our communities deal with on a day-to-day basis – including effective engagement, poverty, education, health, protection of culture and languages, incarceration rates, and the protection of women and children – are human rights issues. Professor Mick Dodson argues that:

The existence of human rights standards is not the source of Indigenous disadvantage. Human rights do not dispossess Indigenous peoples, they do not marginalise them, they do not cause their poverty, and they do not cause gaps in life expectancy and life

8 The Australian Government has gone some way to lifting the suspension of the RDA with the passage of the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth). Race Discrimination Commissioner Innes and I welcomed this as a 'first step': See Australian Human Rights Commission, 'Passage of NTER Amendments a step in the right direction' (Media Release, 22 June 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/61_10.html (viewed 10 November 2010).

9 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009), p 4.4. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

10 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009), p 4.13. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

11 SCRGSP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2009*, Productivity Commission (2009), p 4.41. At <http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2009> (viewed 19 October 2010).

outcomes. It is the denial of rights that is a large contributor to these things. The value of human rights is not in their existence; it is in their implementation.¹²

By articulating the issues and aspirations of Aboriginal and Torres Strait Islander communities through the language of human rights we will improve the opportunity for them to be realised. Logically following on from this, I believe that human rights standards represent best-practice guidelines for dealing with disadvantaged communities.

(b) Aboriginal and Torres Strait Islander peoples' engagement with the international human rights framework

Aboriginal and Torres Strait Islander people have been actively engaged in the international human rights system for more than 30 years, recognising the power of the international human rights stage to achieve both international and domestic change. Aboriginal and Torres Strait Islander people actively participated in the development, drafting and lobbying for the Declaration.

Delegations of Aboriginal and Torres Strait Islander peoples have also been attending international meetings of Indigenous peoples from around the world for many years including the Working Group on Indigenous Populations; the United Nations Permanent Forum on Indigenous Issues (UNPFII); and, more recently the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

The United Nations Secretary-General, Ban Ki-moon, opened the UNPFII this year with a statement that recognised Indigenous peoples as 'full and equal members of the United Nations'. He called on 'all Governments, indigenous peoples, the UN system and all other partners to ensure that the vision behind the Declaration becomes a reality for all'.¹³

For a long time, the Australian Government effectively ignored recommendations from United Nations committees and experts about improving the circumstances of Aboriginal and Torres Strait Islander peoples. However, more recently the Australian Government has taken a number of steps to improve Australia's engagement with international standards, including:

- formally endorsing the Declaration¹⁴
- extending an open invitation to all of the United Nations special procedures – the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people conducted an official country visit to Australia in August 2009¹⁵

12 M Dodson, 'Foreword', in Amnesty International Australia, *United Nations Declaration on the Rights of Indigenous Peoples* (2001) 3, p 3.

13 Secretary-General Ban Ki-moon, *Remarks at opening of the UN Permanent Forum on Indigenous Issues*, 9th session (19 April 2010). At http://www.un.org/apps/news/infocus/speeches/search_full.asp?statID=790 (viewed 8 June 2010).

14 See The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx (viewed 19 October 2010).

15 In March 2010 the Special Rapporteur released his report J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010). At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010). It was discussed at the 15th session of the Human Rights Council from 13 September – 1 October 2010. This report provides a real opportunity for the Australian Government and Indigenous peoples in Australia to reflect on how the rights of Indigenous peoples in Australia could be better implemented, protected and realised in Australia.

- committing \$300 000 (allocated by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)) over three years to enable Aboriginal and Torres Strait Islander people to participate in international forums focused specifically on the rights of Indigenous peoples.

As part of the international human rights framework the Australian Government has obligations to report to United Nations treaty bodies responsible for monitoring the treaties to which Australia is a party, and to the Human Rights Council through the Universal Period Review process.

Aboriginal and Torres Strait Islander peoples also have opportunities to participate in that framework. For example, we can contribute to these processes by submitting shadow reports about our concerns.

There are currently two coordinated opportunities for Aboriginal and Torres Strait Islander people to engage with the international human rights framework: the Indigenous Peoples' Organisations Network (IPO Network); and the Indigenous Human Rights Network Australia (IHRNA).

Text Box 1.1: Coordinated opportunities for international engagement

The IPO Network

The IPO Network is an informal affiliation of Indigenous organisations and individuals who meet two-three times per year to:

- discuss human rights concerns
- provide updates on activities undertaken
- develop strategies for participation at international forums
- discuss the preparation of shadow reports to the various international reporting processes.

The IPO is currently hosted by the Australian Human Rights Commission, who are responsible for administering the FaHCSIA international engagement support funding.

IHRNA

IHRNA is a joint project established by Oxfam Australia, the Australian Human Rights Commission and the Diplomacy Training Program. IHRNA is an online network of human rights advocates focused on the rights of Indigenous peoples.

IHRNA has two specific focus areas:

- providing information about the international human rights framework and how it might be used at the domestic level
- a social networking portal to enable advocates to network and exchange ideas, and develop collective solutions to issues.¹⁶

(c) The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations General Assembly adopted the Declaration on 13 September 2007. The adoption of the Declaration has generated substantial attention to the rights of Indigenous peoples at the international level. This is evidenced by the

¹⁶ For more information see Indigenous Human Rights Network Australia, *IHRNA*, www.ihrna.info (viewed 10 December 2010).

specific focus given to the implementation of the Declaration in international forums such as the UNPFII, EMRIP and the Human Rights Council.

The United Nations High Commissioner for Human Rights identified the Declaration as ‘the United Nations’ key tool in advancing the rights of indigenous peoples’.¹⁷

(i) *Minimum standards*

The Declaration contains the ‘minimum standards for the survival, dignity and well-being of the indigenous peoples of the world’.¹⁸ In doing so, it elaborates the rights already set out in human rights instruments, including the treaties to which Australia is a party. In many ways, the Declaration reflects customary international law.¹⁹

Therefore, the Declaration can and should be used to inform our understanding of how existing, universal human rights apply to the situations faced by Indigenous peoples worldwide.²⁰ It is not simply an ‘aspirational’ document.

The Declaration is a remedial instrument, designed to rectify a history of failings when it comes to protecting Indigenous peoples’ human rights. Any reading of the text of the Declaration makes it clear that it offers a programmatic and principled approach to dealing with Indigenous disadvantage holistically.

(ii) *What does the Declaration say about the rights of Aboriginal and Torres Strait Islander peoples?*

As already noted, the Declaration catalogues in one place existing human rights standards and interprets them as they apply to Indigenous peoples. The Declaration can be divided up into broad sections that deal with a range of different themes.

17 United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/34 (2010), para 92. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

18 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 43. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 19 October 2010).

19 For a discussion of the legal status of the Declaration, see P Joffe, ‘Canada’s Opposition to the UN Declaration: Legitimate Concerns or Ideological Bias?’ in J Hartley, P Joffe and J Preston (eds), *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action* (2010) 70, pp 85–93; Permanent Forum on Indigenous Issues, *Report on the eighth session*, UN Doc E/C.19/2009/14 (2009), Annex, General Comment 1, paras 6–13. At http://www.un.org/esa/socdev/unpfii/documents/E_C_19_2009_14_en.pdf (viewed 16 June 2010).

20 For example, the Committee on the Elimination of Racial Discrimination has recommended that the Declaration be used as a guide to interpret the obligations of the United States of America under the *International Convention on the Elimination of All Forms of Racial Discrimination* relating to indigenous peoples: Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, UN Doc CERD/C/USA/CO/6 (2008), para 29. At <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm> (viewed at 19 October 2010).

Text Box 1.2: Key themes in the Declaration²¹

The preamble

The preamble sets the scene for the Declaration. It makes it clear that the Declaration is a positive document that sets out standards to improve the circumstances of Indigenous peoples and to address disadvantage and discrimination.

Foundational rights (articles 1–6)

Confirms that Indigenous peoples have the right to be treated equally without discrimination, including to enjoy rights as a group or collective, and the right to self-determination.

Life and security (articles 7–10)

These rights protect Indigenous peoples' basic needs including the right to life, and freedom from genocide and forcible removals.

Language, cultural and spiritual identity (articles 11–13)

These rights recognise the central role that culture has in Indigenous identities.

Education, information and employment rights (articles 14–17)

These rights provide for equal access to education, employment and information. These rights are to be exercised in a manner that reflects Indigenous peoples' cultural diversity.

Participation, development and economic and social rights (articles 18–24)

Ensures that Indigenous peoples can play an active role in their development and in decision-making that impacts upon them.

Rights to country, resources and knowledge (articles 25–32)

These articles recognise the rights that Indigenous peoples have to their lands, territories and resources including knowledge. These rights feature prominently in the Declaration, reflecting their fundamental importance to Indigenous peoples and their identities.²²

Self-governance (articles 33–37)

These articles provide greater detail as to how the rights to self-determination and self-government can operate.

Implementing the Declaration (articles 38–42)

These articles affirm that action should be taken at the international and domestic level to ensure that Indigenous peoples can realise the rights in the Declaration.

Interpreting the Declaration (articles 43–46)

These articles provide significant guidance as to how to interpret the substantive rights in the Declaration.

21 For more information on the Declaration see: M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, Australian Human Rights Commission (2010). At http://www.humanrights.gov.au/declaration_indigenous/index.html (viewed 15 December 2010).

22 For further discussion on Indigenous peoples rights to lands, territories, resources and knowledge's, see M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2010), ch 1.

Our right of self-determination and to participate in decisions that affect us

Self-determination is a central right of the Declaration. It is a right of all peoples. All other rights in the Declaration help to achieve self-determination for Indigenous peoples.

The recognition of the right of self-determination is a mechanism for re-empowering Indigenous peoples:

[T]he right of self-determination of Indigenous peoples should ordinarily be interpreted as their right to negotiate freely their status and representation in the State in which they live. This might best be described as a kind of 'belated State-building', through which Indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed and just terms, after many years of isolation and exclusion. This does not mean the assimilation of Indigenous individuals as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the [nation], on agreed terms.²³

Text Box 1.3: The right of self-determination

Self-determination means that as collectives, Aboriginal and Torres Strait Islander peoples should:

- have a **choice** in determining how our lives are governed
- be able to **participate** in decisions that affect us
- have **control** over our lives and development.

Exercising the right of self-determination means we have the **freedom to live well and to live according to our values and beliefs**.²⁴

Self-determination is also about establishing equitable relationships. As such, it is a process and not a single event.

Aboriginal and Torres Strait Islander peoples' right of self-determination is not something to be feared by the broader Australian community. The realisation of self-determination has the potential to result in inclusive government, in which Aboriginal and Torres Strait Islander peoples rightfully have a role in determining their priorities and destiny.

Erica Daes, an important advocate for Indigenous peoples' rights in the international arena, argues that the right of self-determination is the 'right to demand full democratic partnership' in society, and consequently:

[T]his means that the existing State has the duty to accommodate the aspirations of indigenous peoples through constitutional reforms designed to share power democratically. It also means that indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and to exercise their right to self-determination by this means and other peaceful ways, to the extent possible.²⁵

23 E Daes, *Discrimination against Indigenous people – Explanatory note concerning the draft declaration on the rights of Indigenous peoples*, UN Doc E/CN.4/Sub.2/1993/26/Add.1 (1993), para 26.

24 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, Australian Human Rights Commission (2010), p 24. At http://www.humanrights.gov.au/declaration_indigenous/index.html (viewed 15 December 2010).

25 E Daes, *Discrimination against Indigenous people – Explanatory note concerning the draft declaration on the rights of Indigenous peoples*, UN Doc E/CN.4/Sub.2/1993/26/Add.1 (1993), para 25.

A necessary component of the right of self-determination is effective participation in decision-making by Indigenous peoples. Creating mechanisms to ensure effective participation in decision-making is fundamental to resetting the relationship between Aboriginal and Torres Strait Islander peoples and the Australian Government.

The Declaration affirms Indigenous peoples' collective rights to decision-making through the principle of free, prior and informed consent (see Appendix 4 for a detailed explanation of this principle).

(iii) *Australia and the Declaration*

The Declaration should be used as the overarching framework to guide the realisation of the rights of Aboriginal and Torres Strait Islander peoples. It should also be the benchmark against which the actions of the Australian Government are assessed.

As a party to seven of the major human rights treaties,²⁶ Australia has already made a commitment to the international community to respect, protect and fulfil our human rights in Australian law and practice.²⁷

At the time of adoption, Australia was one of only four States to vote against the Declaration in the General Assembly.²⁸ On 3 April 2009, the Australian Government reversed Australia's position and formally supported the Declaration.

By supporting the Declaration, Australia joined 'the international community to affirm the aspirations of all Indigenous peoples'.²⁹ As stated by the Minister for Families, Housing, Community Services and Indigenous Affairs (the Minister for Indigenous Affairs), in her Statement of Support for the Declaration:

Today, Australia takes another important step in re-setting the relationship between Indigenous and non-Indigenous Australians and moving forward towards a new future.

The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians.³⁰

As the Minister for Indigenous Affairs notes, the Declaration promotes the central importance of the relationship between Indigenous peoples and governments to realise rights. The Declaration can also be used to create the institutional structures, arrangements and processes needed for Indigenous peoples to be able to effectively engage in a relationship with governments based on mutual respect. This is clear from the preamble which states the General Assembly is:

26 See Attorney-General's Department, *Human Rights*, http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrights (viewed 10 December 2010).

27 For a discussion of the international obligations assumed by Australia in entering into human rights treaties, see Australian Human Rights Commission, *Submission to the National Human Rights Consultation* (2009), pp 13–15. At http://www.humanrights.gov.au/legal/submissions/2009/200906_NHRC.html (viewed 19 October 2010).

28 General Assembly, *Official Records*, 107th plenary meeting, 61st session, UN Doc A/61/PV.107 (13 September 2007), p 19. At <http://www.un.org/depts/dhl/resguide/r61.htm> (viewed 19 October 2010).

29 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx (viewed 19 October 2010).

30 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx (viewed 19 October 2010).

convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples.³¹

A reform agenda that is borne out of and imbedded in the normative standards of human rights should guide this new relationship. Agreement-making guided by the Declaration can lead to true and lasting reconciliation in Australia.

(iv) Now is the time for action

Well over a year has now passed since the Minister for Indigenous Affairs delivered Australia's statement of support for the Declaration. It is now time for the Australian Government to take concrete steps towards implementing the Declaration in all laws and policies which can then provide a base upon which we can rebuild our relationships with the Government.

Australia has an opportunity to demonstrate international leadership by committing to a comprehensive plan for implementing the Declaration. Other countries have already started on this path.³²

Article 38 of the Declaration is explicit in calling on States to implement a reform agenda guided by the Declaration, 'States in consultation and cooperation with Indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of the Declaration'.

Following his recent mission to Australia, the Special Rapporteur recommended that:

The Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration.

The Government should pursue constitutional or other effective legal recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples in a manner that would provide long-term security for these rights.³³

The Special Rapporteur's report on his mission to Australia itself makes recommendations that provide the Australian Government significant guidance on how to implement a reform agenda guided by the Declaration and other relevant international human rights standards.³⁴

31 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 18. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 19 October 2010).

32 For example, Bolivia has adopted a law to give full legal effect to the provisions of the Declaration in domestic law. Bolivia, Ecuador and Nepal have all used the Declaration as a normative reference in constitutional revision processes. In Belize, the Supreme Court used the Declaration to guide its interpretation of the Constitution to uphold the rights of Maya villages over their traditional land. See J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 9th session, UN Doc A/HRC/9/9 (2008), paras 52-54. At <http://unsr.jamesanaya.org/PDFs/Annual2008.pdf> (viewed 29 September 2010).

33 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms, Addendum: The situation of indigenous peoples in Australia*, James Anaya, UN Doc A/HRC/15/37Add.4 (2010), paras 74-75. At <http://unsr.jamesanaya.org/PDFs/Australia3.pdf> (viewed 23 July 2010). See also: J Anaya, The UN Declaration on the Rights of Indigenous Peoples, *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya to the Expert Mechanism on the Rights of Indigenous Peoples, 3rd session, agenda item 4 (15 July 2010). At http://www.humanrights.gov.au/social_justice/international_docs/2010/EMRIP_rapporteur2010.doc (viewed 23 July 2010).

34 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms, Addendum: The situation of indigenous peoples in Australia*, James Anaya, UN Doc A/HRC/15/37Add.4 (2010). At <http://unsr.jamesanaya.org/PDFs/Australia3.pdf> (viewed 23 July 2010).

In addition to addressing the specific recommendations of the Special Rapporteur, the Australian Government, working with the states and territories, in conjunction with Aboriginal and Torres Strait Islander peoples and organisations, should develop a national implementation plan for the Declaration. A plan should include key objectives, targets and an evaluation framework to measure progress and success.

I believe that the implementation of the Declaration within Australia is the principal means of resetting the relationship between the Australian Government and Aboriginal and Torres Strait Islander peoples.

(d) How will the Declaration inform my agenda?

Establishing proper frameworks for engagement at both the national and international level guided by the implementation of the Declaration will be a key priority during my term as Social Justice Commissioner.

As a Commissioner of Australia's national human rights institution (NHRI), my functions provide a unique opportunity to be a conduit between the international and national arenas. For instance, EMRIP has recognised the positive role of NHRIs in noting the

important role of national human rights institutions and regional human rights mechanisms in protecting and promoting the rights of indigenous peoples and in implementing the United Nations Declaration on the Rights of Indigenous Peoples.³⁵

The Special Rapporteur has specifically acknowledged the positive contributions of my office:

The Special Rapporteur considers the position of the Aboriginal and Torres Strait Islander Social Justice Commissioner within the Australian Human Rights Commission to be an exceptional model for advancing the recognition and protection of rights of indigenous peoples.³⁶

Bearing this in mind, I will use the Declaration to guide my work. I will also use it as the primary benchmark against which to measure the effectiveness of governments' actions frankly and fearlessly in my annual *Social Justice Report* and *Native Title Report*, and in other reporting and research I conduct.

To give more effect and accountability to my Reports, I consider it appropriate that the Australian Government should be required to provide a formal response to my reports.

In its 2003 inquiry into progress towards reconciliation, the Senate Legal and Constitutional References Committee recommended 'that the Government should be required by statute to respond to the reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner'.³⁷

35 Expert Mechanism on the Rights of Indigenous Peoples, *Report of the 2nd Session*, UN Doc A/HRC/12/32 (2009), p 5. At <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/documentation.htm> (viewed 10 December 2010).

36 J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: The situation of indigenous peoples in Australia*, UN Doc A/HRC/15/37Add.4 (2010), para 78. At <http://unsr.jamesanaya.org/PDFs/Australia3.pdf> (viewed 23 July 2010).

37 Senate Legal and Constitutional References Committee, Parliament of Australia, *Reconciliation: Off track* (2003), p xii (recommendation 9). At http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/reconciliation/report/report.pdf (viewed 19 October 2010).

The Special Rapporteur also recommended that the *Social Justice Report* and *Native Title Report* be 'given greater attention in government administration to promote a higher level of accountability and sensitivity to human rights commitments.'³⁸

To promote transparency and accountability, I believe that the Attorney-General should be required by legislation to table a response to the *Social Justice Report* and the *Native Title Report* in Parliament within a set timeframe. This response should indicate how the Government intends to address the recommendations made in these reports.

As the Social Justice Commissioner, I will continue to use my Reports to inform dialogue at the international and national levels on developing methods for implementing the Declaration. I am also committed to working with all Australian governments and with Aboriginal and Torres Strait Islander peoples to progress a national implementation plan for the Declaration. I look forward to advancing such a plan in the spirit of constructive relationships.

As Social Justice Commissioner, I will:

- **be guided by the Declaration in the performance of my statutory functions, including in the preparation of my annual *Social Justice Report* and *Native Title Report***
- **recommend that the Australian Government introduce legislation into Parliament to require the Attorney-General to provide a formal response to the annual *Social Justice Report* and *Native Title Report***
- **monitor and report on the Australian Government's progress in implementing the recommendations contained in the annual *Social Justice Report* and *Native Title Report***
- **work with the Australian Government to formally implement the recommendations of the Special Rapporteur**
- **work with the Australian Government, state/territory governments and Aboriginal and Torres Strait Islander peoples and organisations to develop a national implementation plan for the Declaration**
- **monitor and report on the Australian Government's performance, using the Declaration as an objective guide.**

1.3 Addressing Aboriginal and Torres Strait Islander disadvantage by rebuilding relationships

At the centre of my priorities is the belief that in order to address Aboriginal and Torres Strait Islander disadvantage, stronger and deeper relationships must be established:

- between Aboriginal and Torres Strait Islander peoples and the broader Australian community

38 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 78. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

- between Aboriginal and Torres Strait Islander peoples and governments
- within Aboriginal and Torres Strait Islander communities.

Relationships cannot be established where there is mistrust, misunderstanding, intolerance and a lack of acceptance, dialogue and respect. Therefore relationships must be rebuilt on a strong foundation of understanding, tolerance, acceptance, dialogue, respect, trust and reciprocated affection.

Building stronger, deeper relationships with these foundations offers the Australian nation an opportunity for healing. By respecting and celebrating differences and truly reconciling with the past Australians can advance together, as one unified nation.

(a) Promoting better relationships between Aboriginal and Torres Strait Islander peoples and the broader Australian community

And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

Our hope is for a united Australia that respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.³⁹

When the National Apology to Australia's Indigenous Peoples (National Apology) was made in February 2008, I believed Australia was ready for a new, stronger, deeper relationship with its first peoples.⁴⁰ On that day there was a palpable sense of us coming together as a nation. Indigenous and non-Indigenous Australians sat together, held each other and cried together. The nation took a great stride forward towards true reconciliation – but somehow we have since lost momentum.

Despite much goodwill, there are several tough issues we all have to confront, as a nation, if we are going to reset this relationship. I will focus on two elements that I believe are central to reconstructing this relationship:

- addressing racism faced by Aboriginal and Torres Strait Islander peoples, at the individual and the systemic level
- advancing reconciliation between Aboriginal and Torres Strait Islander peoples and the broader Australian population.

It is my view that if we are to improve this relationship, we need to start by disregarding preconceptions of each other and build understanding.

Text Box 1.4: Sometimes our closest friend is the one who has travelled the greatest distance to be our friend.

Towards a reconciled Australia – Address to the National Press Club

A non-Indigenous mate of mine hadn't ever had very much to do with Aboriginal or Torres Strait Islander people. In 2008 he found himself working for the Anangu board of an organisation based in Alice Springs for 8 months. Both he and the Anangu approached 8 or 9 months of what was going to be a working relationship with open minds and open hearts but there was, understandably, some stand-offishness on both sides.

39 Council for Aboriginal Reconciliation, *Australian Declaration: Toward Reconciliation* (2000). At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/12/pg3.htm> (viewed 2 June 2010).

40 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, pp 167-173 (The Hon Kevin Rudd MP, Prime Minister). At <http://www.aph.gov.au/hansard/rep/dailys/dr130208.pdf> (viewed 10 November 2010).

The Anangu mob offered their traditionally soft handshakes with averted eyes. My mate offered his firm handshake, puzzled at the averted eyes. Gradually though, after some weeks of working together and learning a bit about each other's cultures and ways of going about things, eyes met, smiles crept onto faces, names were remembered, jokes were shared – tentatively at first – then they got more robust! Tucker was shared, families were introduced, and invitations were extended.

It's now almost three years since they worked together but the friendships remain. The Anangu mob would ring him when they came to Adelaide. Eyes light up when they meet – there's laughter and smiles and shared stories and tucker and beer.

My mate travelled up to one of the remote communities to attend the funeral of one of the Board members' wives. He was invited to speak. He was welcomed into the mob in a way he could never have imagined. He reckons his time with the Anangu mob was one of the joys of his life and the friendships survive to this day.

I read somewhere the following observation which has stayed with me for a lot longer than the name of the person who made it. It's this.

Sometimes our closest friend is the one who has travelled the greatest distance to be our friend.

So it was with my mate from Adelaide.

So it will be with regard to the relationship between Aboriginal and Torres Strait Islanders and the rest of the Australian people.⁴¹

During our history together in this country, there have been many stories of apprehension between black and white. On most occasions, as was the experience with my friend, these apprehensions dissipate when we make a choice to understand each other's worlds. However, if we do not make that choice, the lack of understanding has the potential to lead to intolerance and even conflict. Often in Australia, that lack of understanding is portrayed in racism.

(i) *Racism*

Despite a sense of pride that we are the land of the fair go, unfortunately racism is still common across Australia.

Recent surveys conducted among 12 000 people, found that approximately 90% of respondents consider that racial prejudice is still a problem in Australia.⁴² The *Australian Reconciliation Barometer* shows that most Australians felt there was a 'high' level of prejudice between Indigenous and non-Indigenous Australians.⁴³ Other national research reveals that about 20% of Aboriginal and Torres Strait Islander adults report regular experiences of racism.⁴⁴

41 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Towards a reconciled Australia* (Speech delivered at the National Press Club, Canberra, 3 November 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20101103_npc.html (viewed 10 December 2010).

42 K Dunn, A Kamp, W Shaw, J Forrest and Y Paradies 'Indigenous Australians' attitudes towards multiculturalism, cultural diversity, 'race' and racism', *Journal of Australian Indigenous Issues*, forthcoming. See also Australian Human Rights Commission, *Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (2010), paras 76-78. At http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html (viewed 10 December 2010).

43 Reconciliation Australia, *Australian Reconciliation Barometer: Comparing the attitudes of indigenous people and Australians overall* (2009), pp 38-39. At http://www.reconciliation.org.au/extras/file.php?id=81&file=FINAL_Australian_Reconciliation_Barometer_Comparative_Report.pdf (viewed 10 December 2010).

44 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey 2002* (2004). At <http://abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/2575DCC732E7EE9CCA25765E001589D4?opendocument> (viewed 10 December 2010).

Racism has serious health, social and economic consequences for individuals, communities and societies. It has been associated with depression, anxiety, high blood pressure, heart disease, smoking, alcohol and substance abuse as well as poor employment and educational outcomes.⁴⁵

Racism has the potential to do considerable damage to an entire society, regardless of who the victims and the perpetrators are. As highlighted by ANTaR:

Myths and stereotypes are a key component of racism:

- they reduce a range of differences in people to simplistic categorisations
- transform assumptions about particular groups of people into ‘realities’
- are used to justify status quo or persisting injustices
- reinforce social prejudice and inequality

Labeling of Indigenous Australians including stereotypes such as dark skin, despair, levels of alcohol consumption, laziness, levels of intelligence, ability to work and care for children, and levels of criminality are all part of the myths and stereotypes that perpetuate racism in Australia.⁴⁶

Text Box 1.5: Racial Discrimination

The *Racial Discrimination Act 1975* (Cth) (RDA) was the first federal unlawful discrimination statute to be enacted in Australia. The Act implements, at the domestic level, the *International Convention on the Elimination of all Forms of Racial Discrimination* (ICERD).

There are two main forms of racism prohibited by the RDA – direct and indirect racism.⁴⁷

Direct racism

Section 9(1) prohibits what is generally known as ‘direct’ race discrimination. An example of direct racism might look like this:

An Aboriginal employee is told by a senior supervisor that he should not apply for a promotion as he is an ‘Abbo’ and is therefore incapable of fulfilling the role.⁴⁸

Indirect racism

Section 9(1A), which was inserted into the RDA in 1990, prohibits ‘indirect’ race discrimination. An example of indirect racism might look like this:

An Indigenous complainant employed as a trainee alleged that because of his race, he was not provided with adequate training, support or feedback and his employment was terminated.

The employer claimed the complainant did not engage in self-directed training to build his experience and failed to pass required assessments. The employer said they had to reduce staff to cut costs and the complainant’s employment was terminated because he was not competent.⁴⁹

45 A Larson, M Gilles, P Howard and J Coffin, ‘It’s enough to make you sick: The impact of racism on the health of Aboriginal Australians’ (2007) 31 *Australian and New Zealand Journal of Public Health* 322.

46 ANTaR (Australians for Native Title and Reconciliation), *Racism in Australia facts*, <http://www.antar.org.au/node/221> (viewed 26 November 2010).

47 *Racial Discrimination Act 1975* (Cth), s 9.

48 Australian Human Rights Commission, *Annual Report 2008–2009* (2009), p 49. At http://www.humanrights.gov.au/about/publications/annual_reports/2008_2009/index.html (viewed 11 August 2010).

49 Australian Human Rights Commission, *Racial Discrimination Act 1975, For complaints conciliated and finalised in the period of Jul – Dec 2009*, http://www.humanrights.gov.au/complaints_information/register/rda/rda_jul_dec09.html (viewed 11 August 2010).

Racial discrimination is covered in many areas of public life, including:

- employment – seeking employment, training, promotion, equal pay, employment conditions or dismissal
- education – at school, TAFE, university or a private training provider
- provision of goods, services or facilities – such as buying something, applying for a loan, seeking assistance from a service provider or going to shops or entertainment venues
- land, accommodation and housing – renting or buying a house or flat
- access to places and facilities for use by the public – such as parks, libraries, government offices, hotels, places of worship or entertainment centres.

During the 2008–09 reporting year, the Australian Human Rights Commission reported that a total of 42% of complaints under the RDA were made by people who identified as Aboriginal and/or Torres Strait Islander.⁵⁰ This figure dropped marginally to 39% during the 2009–10 reporting year.⁵¹

Systemic racism

Some forms of racism are less identifiable. For example, institutionalised or systemic racism is an indirect and largely invisible process. It is the application of beliefs, values, presumptions, structures and processes by the institutions of society (be they economic, political, social or cultural) that indirectly treats the values of a particular racial group as inferior. This type of racism is not addressed by the RDA.

It can involve a failure to acknowledge historical discrimination against a particular group that has resulted in that group in the present day occupying an inferior or unequal position in society. The operation of the criminal justice system is an example that leads to structural inequality for Aboriginal and Torres Strait Islander peoples.⁵²

In order to rebuild and strengthen our relationships as Australians, we must work together as a nation to eradicate racism.

While it is not my statutory responsibility to monitor the implementation of the RDA (this responsibility resides with the Race Discrimination Commissioner),⁵³ I have a particular interest in addressing racial discrimination as it affects Aboriginal and Torres Strait Islander peoples.

As well as confronting individual racism, I will pay particular attention to the structures of society that negatively impact on Aboriginal and Torres Strait Islander peoples. Structural racism is a real impediment to better relationships between Aboriginal and Torres Strait Islander peoples and the broader Australian population.

I will work with the Australian Government and state and territory governments to assist in identifying current legislative frameworks, policies and programs that are discriminatory. I will also provide practical advice on how to reform discriminatory practices and prevent discrimination in the future.

For example, increasing the knowledge of Australians about our nation's history, both before and after colonisation, would go some way to remedying racist attitudes

50 Australian Human Rights Commission, *Annual Report 2008–2009* (2009), p 68. At http://www.humanrights.gov.au/about/publications/annual_reports/2008_2009/index.html (viewed 11 August 2010).

51 Australian Human Rights Commission, *Annual Report 2009–2010* (2010), p 78. At http://www.humanrights.gov.au/about/publications/annual_reports/2009_2010/index.html (viewed 10 December 2010).

52 See H Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (2008); C Cunneen, *Conflict, politics and crime: Aboriginal communities and the police* (2001).

53 *Racial Discrimination Act 1975* (Cth), s 20.

towards Aboriginal and Torres Strait Islander peoples and improving relationships between us and the broader Australian community.

I look forward to working cooperatively with the Race Discrimination Commissioner to tackle racism, both individual and systemic, in Australia.

(ii) *Working towards a truly reconciled Australia*

Reconciliation involves building mutually respectful relationships between Indigenous and other Australians that allow us to work together to solve problems and generate success that is in everyone's best interests.

Achieving reconciliation involves raising awareness and knowledge of Indigenous history and culture, changing attitudes that are often based on myths and misunderstandings, and encouraging action where everyone plays their part in building a better relationship between us as fellow Australians.⁵⁴

December 2010, marks the tenth anniversary of the Final Report of the Council of Aboriginal Reconciliation, *Reconciliation: Australia's Challenge*.⁵⁵ This report covered the formal national reconciliation process which was set in place by the Commonwealth Parliament when it voted unanimously to enact the *Council for Aboriginal Reconciliation Act 1991* (Cth). It also highlighted the efforts and achievements of many thousands of Australians who have worked to make reconciliation a reality in their communities, workplaces and organisations.

A key goal of the Council for Aboriginal Reconciliation's Strategic Plan (1998–2000) was to:

Achieve recognition and respect for the unique position of Aboriginal and Torres Strait Islander peoples as the indigenous peoples of Australia through a national document of reconciliation and by acknowledgment within the Constitution of this country.⁵⁶

In Chapter 2 of this Report I discuss constitutional reform in detail and will not repeat that here. However, I do want to reaffirm my belief that constitutional reform will form a central part of the reconciliation journey. The prospect of a referendum recognising Aboriginal and Torres Strait Islander people and our rights in the Australian Constitution will provide us all with a great opportunity to reframe and reset our relationship as a nation.

With key actions that acknowledge the nation's history, such as the National Apology and the bipartisan commitment to Close the Gap, the journey to address the unfinished business of reconciliation has already begun.

Reconciliation at its core must be about recognising and embracing difference with mutual respect. We must be cautious that it is not based on the premise of further assimilation or integration. As Linda Burney notes, it must also be about:

...recognition, rights and reform. It is recognition of Aboriginal and Torres Strait Islander peoples as the original peoples of this land, and it is recognising the Aboriginal history of this land, both the long Aboriginal history before the invasion, and the shared history since. Reconciliation is recognising the rights that flow from being the First Peoples, as well as our rights as Australian citizens in common with all other citizens. It is about reforming systems to address the disadvantages suffered by Indigenous peoples and,

54 Reconciliation Australia, *What is Reconciliation*, <http://www.reconciliation.org.au/home/reconciliation-resources/what-is-reconciliation-> (viewed 26 November 2010).

55 Council for Aboriginal Reconciliation, *Reconciliation, Australia's Challenge: Final Report of the Council of Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (2000). At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/> (viewed 26 November 2010).

56 Council for Aboriginal Reconciliation, *Reconciliation, Australia's Challenge: Final Report of the Council of Aboriginal Reconciliation to the Prime Minister and the Commonwealth Parliament* (2000), ch 7 and Appendix 1. At <http://www.austlii.edu.au/au/other/IndigLRes/car/2000/16/> (viewed 26 November 2010).

as I have said, it is about changing the frame of reference of all Australians to include Aboriginal Australia.⁵⁷

By formally settling and affirming the place of Aboriginal and Torres Strait Islander peoples in the nation, we all as Australians grow in stature.

During the next three years, I commit myself to working closely with our political leaders and, more importantly, the people of Australia to achieve a successful referendum in 2013. This will be a real step towards achieving a reconciled nation.

As Social Justice Commissioner, I will:

- **work with the Race Discrimination Commissioner to address racism in Australia**
- **advocate for reforms that address systemic racism**
- **work towards a successful referendum that recognises the unique place and the rights of Aboriginal and Torres Strait Islander people in the Australian Constitution**
- **work towards achieving a reconciled nation.**

(b) Promoting better relationships between Aboriginal and Torres Strait Islander peoples and governments

Since beginning my term as Social Justice Commissioner, I have been told time and again that relationships between Aboriginal and Torres Strait Islander communities and governments at all levels are not good.

I believe that this relationship is currently characterised by a lack of trust, from both Aboriginal and Torres Strait Islander peoples and governments.

The NTER, with its suspension of the RDA, has damaged this relationship. The NTER, in particular, triggered our collective memories of past injustices faced by our peoples, communities and families.

There is an alternative, however and this was highlighted by Erica Daes:

The fundamental condition to realizing the right of self-determination in practice is trust between peoples. Trust is impossible without cooperation, dialogue and respect. Governments have nothing to fear from indigenous peoples; they can learn to respect and trust... to be able to live together peacefully, without exploitation or domination [... Indigenous peoples and governments] must continually renegotiate the terms of their relationship.⁵⁸

Again, using the Declaration as the overarching framework has the potential to reset the relationship between Aboriginal and Torres Strait Islander peoples and governments.

The nation has seen some steps towards improving the relationship between Aboriginal and Torres Strait Islander peoples and the Australian Government. For instance, the Minister for Indigenous Affairs, in announcing the Australian Government's formal endorsement of the Declaration on 3 April 2009, stated:

57 L Burney, *Reconciliation and Citizenship; Not Just a Challenge – an Opportunity for all Australians* (Paper for the 50th Anniversary of Australian Citizenship Conference, University of Melbourne, Victoria, 1999). Cited by ANTaR, *Are we there yet? Ten years on from the Decade of Reconciliation: A Reconciliation Progress Report* (2010). At http://www.antar.org.au/are_we_there_yet (viewed 26 November 2010).

58 E Daes, 'Striving for self-determination for indigenous peoples' in Y Kly and D Kly (eds), *In pursuit of the right to self-determination* (2000) 50, p 57.

Today, Australia changes its position. Today, Australia gives our support to the Declaration. We do this in the spirit of re-setting the relationship between Indigenous and non-Indigenous Australians and building trust... The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians. Australia's existing international obligations are mirrored in the Declaration.⁵⁹

However, the actions of the Australian Government will speak louder than words in achieving the standards contained in the Declaration. One of the most significant shifts in this relationship has been the establishment of the National Congress of Australia's First Peoples (National Congress) in April 2010.

Borne out of a process designed and developed by my predecessor, Tom Calma, this is the result of years of work to recreate a national Indigenous representative body.

In making recommendations to establish this new body, the process was informed, at all stages, by Aboriginal and Torres Strait Islander people from across the country, and supported by a Steering Committee constituted by Aboriginal and Torres Strait Islander members.⁶⁰

A key feature of all processes involved in establishing the National Congress was the agreed requirement for gender equity. In this regard the Congress gives effect to article 44 of the Declaration which states that '[a]ll the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals'.

The establishment of the National Congress means governments now have the opportunity to improve outcomes through meaningful engagement with a credible national representative voice for Aboriginal and Torres Strait Islander peoples.

The National Congress will be a crucial part of building and strengthening relationships between governments and Aboriginal and Torres Strait Islander peoples and I look forward to working closely with it as it develops over the next few years.⁶¹

The Australian Government's commitment to addressing Aboriginal and Torres Strait Islander disadvantage — particularly through its Closing the Gap agenda — is an important plank in resetting this relationship. This agenda has been influenced by the independent Close the Gap Campaign also initiated by my predecessor, Tom Calma, with whom I now sit as co-chair of the campaign.⁶²

59 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/un_declaration_03apr09.htm (viewed 26 March 2010).

60 Steering Committee for the creation of a new National Representative Body, *Our future in our hands – Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples*, Australian Human Rights Commission (2009). At http://www.humanrights.gov.au/social_justice/repbody/report2009/index.html (viewed 10 December 2010).

61 See National Congress of Australia's First Peoples, *Welcome National Congress of Australia's First Peoples*, <http://nationalcongress.com.au/welcome/> (viewed 10 December 2010).

62 "Close the Gap" was adopted as the name for the Campaign for Aboriginal and Torres Strait Islander Health Equality in 2006. It signals a human rights-based approach to achieving health equality within a generation.

In its August 2007 election platform the Australian Labor Party signalled its support for the approach of the Close the Gap Campaign. As a result 'closing the gap' entered the policy lexicon. It has been used to brand Aboriginal and Torres Strait Islander policy initiatives from the *National Partnership Agreement to Closing the Gap on Indigenous Health Outcomes* to aspects of the Northern Territory Emergency Response.

Please note, however, that 'closing the gap'-branded Australian Government and COAG initiatives do not necessarily reflect the human rights-based approach of the Close the Gap Campaign, nor does the use of the term 'closing the gap' in relation to these initiatives necessarily reflect an endorsement of them by the Close the Gap Campaign Steering Committee. See Close the Gap Campaign Steering Committee, *Close the Gap – Making It Happen Workshop Report*, Close the Gap Campaign (2010). This report will be available at http://www.humanrights.gov.au/social_justice/health/index.html.

Through COAG processes all Australian governments have come together to support specific and ambitious targets for Closing the Gap.⁶³ I welcome these targets, and commit to working with the Close the Gap Campaign Steering Committee to advance the development of a national plan to implement the Closing the Gap targets.

However, plans and targets aside, Aboriginal and Torres Strait Islander peoples and governments need respectful and trusting relationships as a solid foundation to move forward.

This is something that has been highlighted in numerous reports including *The Little Children are Sacred Report*,⁶⁴ the Review of the NTER⁶⁵ and the Report of the Special Rapporteur.⁶⁶

There are two particular issues that contribute to the current status of the relationship between the Australian Government and Aboriginal and Torres Strait Islander people. They are the need to improve:

- engagement with Aboriginal and Torres Strait Islander communities
- the coordination of services to Aboriginal and Torres Strait Islander communities.

I will address each in turn.

(i) *Engagement with Aboriginal and Torres Strait Islander communities*

A core element of effective engagement is accepting that neither our experiences nor our needs are the same. We, as Aboriginal and Torres Strait Islander peoples, have our own unique needs and aspirations as distinct from the broader Australian population. And each Aboriginal and Torres Strait Islander community, has its own unique needs and aspirations. Consequently a one-size-fits-all approach will not be appropriate.

The Declaration is clear on this:

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.⁶⁷

This is a right that all peoples have. It imposes obligations on nation-states and their governments to design and implement systems, policies, programs and legislation that not only cope with, but celebrate and nurture difference and diversity.

There is a need to move the current Indigenous policy space from a position of what *they* (governments) do to Aboriginal and Torres Strait Islander peoples to improve

63 See Council of Australian Governments, *National Indigenous Reform Agreement* (2008). At http://www.coag.gov.au/intergov_agreements/federal_financial_relations/docs/IGA_FFR_ScheduleF_National_Indigenous_Reform_Agreement.rtf (viewed 10 December 2010).

64 Northern Territory Board of Inquiry into the Protection of Aboriginal Children From Sexual Abuse, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government (2007). At <http://www.inquirysaac.nt.gov.au/> (viewed 10 December 2010).

65 Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At http://www.nterreview.gov.au/docs/report_nter_review/default.htm (viewed 28 April 2010).

66 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010). At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

67 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 2. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 19 October 2010).

our lives – to what governments (and the broader Australian population) can do *with us, to support us* in achieving our goals and aspirations.

Policies designed and developed for Aboriginal and Torres Strait Islander peoples are predominantly lacking in a substantiated evidence base or input from those likely to be affected. Often input from Aboriginal and Torres Strait Islander peoples (when sought through public consultation processes), is not included in the output – the policy, program or legislation.⁶⁸

Too often consultation occurs in an ad hoc manner, or worse it does not occur at all in the communities most affected by the issues being addressed. Nor is it usual practice for the governments to include Aboriginal and Torres Strait Islander peoples in pre and post-consultation processes where policies or draft legislation is being developed or finalised.

In most instances, Aboriginal and Torres Strait Islander communities have their own ideas about what might be done to solve the issues and opportunities confronting them. Often these ideas are not accommodated by governments and their policy and financial guidelines.

A critical step necessary to achieve substantial improvement in the lives of Aboriginal and Torres Strait Islander peoples is for governments, at all levels, to recognise, include and treat us as substantive players and major stakeholders in the development, design, implementation, monitoring and evaluation of all policy and legislation that impacts us.

Therefore, it is essential that governments develop an effective framework for engagement with Aboriginal and Torres Strait Islander peoples in order to generate positive relationships. A framework for engagement needs to be a mandated process across all government departments developing and implementing policies and programs that affect Aboriginal and Torres Strait Islander peoples. Crucially, the framework must be based on the key principles and objectives of the Declaration. Such a framework will be human rights in action, creating a space for free, prior and informed consent, self determination and respect for culture.

Such a framework of engagement should also reorient models of policy development and service delivery to ensure there is effective engagement at all stages of the process. This begins with designing and planning the engagement and should continue right through to monitoring and evaluation.

We must also address the ongoing failure to invest in building the capacity of Aboriginal and Torres Strait Islander communities to participate in decisions that affect them. The capacity of Aboriginal and Torres Strait Islander communities to engage in consultative processes has often been hindered by:

- inadequate resources to effectively participate in decision-making processes as equals and at all stages of policy processes
- burdensome processes and unreasonable timeframes for responding to discussion papers and draft legislation that directly relate to the rights of Aboriginal peoples and Torres Strait Islanders.

In order to address these deficiencies governments and their agencies need to develop sensible, cooperative, and culturally appropriate engagement mechanisms with Aboriginal and Torres Strait Islander communities. There is no place and no time for the sort of bureaucratic territorialism that, sadly, still marks much inter-

68 See further, M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2011), ch 3.

departmental and community engagement. The result is the consistent failure of policy and a lack of progress in overcoming disadvantage.

Governments have a responsibility to ensure that society's structures, laws and processes facilitate full and open engagement with Aboriginal and Torres Strait Islander citizens. It is simply unacceptable that structures, laws and processes continue to result in Aboriginal and Torres Strait Islander people being treated less equally than other Australians.

During my term I hope to work towards the establishment of a framework for engagement that will enable genuine relationships to exist between governments, non-Indigenous and Aboriginal and Torres Strait Islander peoples. I will advocate for a framework to cover Aboriginal and Torres Strait Islander peoples at the national, regional and local levels for the development, implementation, monitoring and evaluation of policy making and legislation that affects us.

(ii) Coordination of services to Aboriginal and Torres Strait Islander communities

The coordination of services to Aboriginal and Torres Strait Islander communities requires a commitment and cohesion from governments at all levels. As highlighted above, active participation by the people who are directly affected is necessary to ensure that policies are appropriately targeted to meet the needs of the community. The effective coordination of services to Aboriginal and Torres Strait Islander communities will require a strong partnership with the people who live and work in those communities.

When consultation does take place in Aboriginal and Torres Strait Islander communities they are also often poorly coordinated. For many Aboriginal and Torres Strait Islander communities, their days and weeks involve answering the revolving door of government bureaucrats from various federal, state and local governments who come to talk about a whole range of issues. In one remote Aboriginal community of approximately 2187 people⁶⁹ in Queensland there are 13 commercial flights per day.⁷⁰ More needs to be done to coordinate the delivery of services into communities and to promote community capacity and development.

Some communities have already managed to negotiate strategies to coordinate service delivery in their communities. In Chapter 3 of this Report I examine the journey of the Fitzroy Valley from communities in crisis to communities taking control. These communities have been working with governments to develop a regional response – the Fitzroy Futures Forum – to address issues of engagement and coordination. Fitzroy Futures Forum has been designed to address the specific priorities identified by the relevant communities. The responses to those priorities are being coordinated by the communities with the support of the relevant government departments.

As Social Justice Commissioner, I will:

- **develop a cooperative relationship with the National Congress of Australia's First Peoples**

69 As at 30 June 2009: Department of Aboriginal and Torres Strait Islander Policy, *Palm Island, Community Overview, Fact Sheet*, <http://www.atsip.qld.gov.au/government/programs-initiatives/partnerships/quarterly-reports/documents/jan-mar-2010/palmisland-quarterly-report-jan-mar-2010.rtf> (viewed 10 December 2010).

70 West Wing Aviation, *Palm Island Flights*, <http://www.westwing.com.au/palm-island.html> (viewed 10 December 2010).

- **work with the Close the Gap Campaign Steering Committee to lobby governments to develop a national implementation plan to close the gap on Indigenous disadvantage**
- **recommend that the Australian Government work with Aboriginal and Torres Strait Islander peoples to develop a consultation and engagement framework that is consistent with the minimum standards affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples*. Further, that the Australian Government commit to using this framework to guide the development of consultation processes on a case-by-case basis, in partnership with the Aboriginal and Torres Strait Islander peoples that may be affected by a proposed legislative or policy measure**
- **encourage governments and bureaucracies to reform their ways of working with Aboriginal and Torres Strait Islander communities to ensure that the delivery of services are coordinated.**

(c) Promoting better relationships within Aboriginal and Torres Strait Islander communities

Indigenous peoples should endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, ... and should make all efforts to address any issues of social dysfunction within their communities, including with respect to women and children.⁷¹

Aboriginal and Torres Strait Islander peoples continue to fight to regain and secure our rights to our country, our culture and our identities. However, as a consequence of the policies that have systematically denied us these rights, there is much healing that needs to happen within our families, language groups and communities.

My predecessor, Tom Calma said in his final speech as Social Justice Commissioner:

As Aboriginal and Torres Strait Islander peoples, the first peoples of this land, who have been blessed with a legacy of determination, resilience and survival, we have to come together, as those before us did when they fought for our citizenship rights, our land rights, our human rights. And as we all know – not everyone agreed with each other, different groups had different priorities and different ways of doing business, as we do today. But when it mattered they came together and fought together for the common elements of their arguments – our basic human rights.

However, we all continue to fight for our basic human rights, and unless we stand together on these fundamental basics that are exactly the same for each and every one of us – a quality of life and respect for our human rights – we will never overcome the challenges we face no matter what they are.⁷²

71 J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 107. At <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> (viewed 19 October 2010).

72 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Annual Kevin Cook Lecture 2010: – Looking Back, Looking Forward* (Speech delivered at Yabun – Survival Day 2010, Sydney, 26 January 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100126_kevin_cook_yabun.html (viewed 10 December 2010).

A significant consequence of our history is the legacy left by forced removal and assimilation policies that resulted in widespread dispersal, dispossession, and lack of identity for many.

It is a well argued phenomenon around the world that oppressed people will eventually internalise this oppression and turn on each other. This is known as lateral violence.

Text Box 1.6: Lateral violence

Lateral violence is the name given to the behaviour of bullying, harassing and intimidating among ourselves. This includes gossip, shaming and blaming others, backstabbing and attempts to socially isolate others.

It is directed *sideways* ('lateral') meaning the aggressors are your peers, often people in powerless positions. Other terms include 'work place bullying' and 'horizontal violence'.

The notion of 'lateral violence' implies that this behaviour is often the result of disadvantage, discrimination and oppression and that it arises from living within a society that is not designed for our way of doing things.⁷³

Unfortunately, lateral violence is damaging many Aboriginal and Torres Strait Islander communities. For example, recent research conducted by the Office of the Registrar of Indigenous Corporations found that internal disputes constitute the third most prevalent 'class' of Indigenous corporate failure.⁷⁴

In conversations I have had across the country, Aboriginal and Torres Strait Islander people recognise this is a real issue. They also recognise that it is one we, as Aboriginal and Torres Strait Islander peoples, need to address ourselves.

For example, the Family Wellbeing Empowerment Program in Cairns and Yarrabah, is designed specifically to overcome community conflict through building support within families and communities.⁷⁵ This program shows us that when given the right opportunities, people are prepared to confront and defeat behaviours and challenges that stifle and hurt our communities.

The concept of lateral violence is relatively new to Australia and will be an area of developing work during my term. However, as Commissioner I am committed to working with our communities to address lateral violence. Community empowerment is needed to address this form of violence.

I will advocate for government approaches to policy and service delivery that are predicated on the assumption that Aboriginal and Torres Strait Islander people have strengths and resources for our own empowerment.

I will be advocating for a strengths-based approach to policy development and implementation as it affects Aboriginal and Torres Strait Islander people and that recognises and supports our cultures and identities.

73 R Frankland, Aboriginal singer/songwriter, author and film maker, cited by Creative Spirits, *Bullying and Lateral Violence*, <http://www.creativespirits.info/aboriginalculture/people/bullying-and-lateral-violence.html> (viewed 26 November 2010).

74 Office of the Registrar of Indigenous Corporations, *Analysing key characteristics in Indigenous corporate failure: Research Paper* (2010), p 46. At http://www.oric.gov.au/html/publications/other/Analysing-key-characteristics-in-Indigenous-corporate%20failure_v-2-2.pdf (viewed 1 November 2010).

75 See A McEwan and K Tsey, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Discussion Paper No. 7, Cooperative Research Centre for Aboriginal Health (2009). At <http://www.crcah.org.au/research/crcah---role-of-spirituality-in-sewb-fwb-at-yarrabah.html> (viewed 10 December 2010).

A strengths-based approach to working with Aboriginal and Torres Strait Islander people is a human rights approach. This approach is about finding ways in which individuals, family units and communities can build on their capabilities:

The [strengths-based] approach focuses on what is working well, and uses informed strategies to support the growth of organisations and individuals... Strengths based methodologies do not ignore problems; instead they shift the frame of reference to define the issues.⁷⁶

Again, I will again draw on the Declaration to guide my work in this regard. The rights outlined in the Declaration provide useful guidance for all aspects of our lives, including our physical, mental, social, and cultural well-being.

Not only does the Declaration provide guidance to governments about their responsibilities to Indigenous peoples, we can also use the Declaration to set our own standards for engagement and participation with each other and within our own communities. Standards such as those included in the Declaration should be embedded in all levels of our own internal governance – from our own families and community organisations, to our regional bodies, state and national peak bodies as well as the National Congress.

We each have a choice and a responsibility to participate in these structures to ensure an improved quality of life for our immediate future, and a solid foundation for our next generations.

Through our active participation in our communities, and through Aboriginal and Torres Strait Islander peoples asserting standards that are appropriate to achieve true self-determination, I believe we can address the multiple and trans-generational layers of disadvantage and trauma confronting us in our communities. As noted above, Chapter 3 of this Report examines how the communities in the Fitzroy Valley region of Western Australia have gone from communities in crisis to communities in control. This Chapter shows that when Aboriginal and Torres Strait Islander communities are enabled to own their own challenges, appropriately supported by governments, they can address their most confronting and intractable issues.

(i) The role of governments

Governments cannot and should not intervene to fix our internal relationships.

Issues such as family and lateral violence, suicide and high incarceration rates, bullying in communities and community organisations, are all issues that undermine the development of healthy internal relationships between Aboriginal and Torres Strait Islander peoples individually and collectively.

Governments can provide the support structures and funding for programs that are necessary but only Aboriginal and Torres Strait Islander peoples ourselves can address these issues.

The role for governments is to work with us, as enablers and facilitators. To do this governments should act to remove existing structural and systemic impediments to healthy relationships within our communities.

76 TAFE NSW, *Promoting Emerging Practice*, www.icvet.tafensw.edu.au/resources/strengths_based.htm (viewed 20 July 2010) as cited by M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Aboriginal and Torres Strait Islander peoples access to services* (Speech delivered at QCOSS Regional Conference: Building a Better Future – themed around improving service delivery for regional and remote communities, Cairns, 12 August 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100812_access_services.html (viewed 10 December 2010).

As Social Justice Commissioner, I will:

- **work towards a zero tolerance policy with regard to any type of abuse within our communities – bullying, harassment, intimidation and violence**
- **advocate a strengths-based approach to policy development and implementation as it affects Aboriginal and Torres Strait Islander people and that recognises and supports our cultures and identities, and build on the strengths of Aboriginal and Torres Strait Islander people.**

1.4 Conclusion

As the Social Justice Commissioner, I approach with optimistic anticipation the challenge of working with governments, non-Indigenous Australians, and most importantly Aboriginal and Torres Strait Islander peoples and organisations to build stronger and deeper relationships capable of addressing disadvantage.

During my term, I also look forward to working with the Australian Government and the states and territories to implement the Declaration's provisions in meaningful ways and to develop an understanding of the Declaration among government officials, Aboriginal and Torres Strait Islander communities and the broader Australian community.

I believe the full and proper implementation of the Declaration can unleash Australia's potential to engage with its Indigenous peoples and firmly establish Australia's leadership role in the international human rights system:

Imagine the indigenous world as it was, for a moment [before colonisation]. Then think of the conditions that indigenous peoples currently face: encroachment, colonization, subjugation, exploitation, domination, leaving many of us in disarray. Now read the Declaration through from beginning to the end and dream of a world that 'might someday be'.⁷⁷

An agenda of hope can only be sustained when Aboriginal and Torres Strait Islander people are able to achieve our potential – able to realise our personal and collective capabilities. And only then we will be in a position to move towards a truly reconciled Australia.

Glenn Pearson, a Noongah man from Perth who, when asked what type of future that he would like to see for us as a nation, put it like this:

I want for my children – as I do for your children – that they grow really, really old together – having led fantastic lives that have allowed them to make a lifetime contribution to the health and wellbeing of the broader community and their families – that when they were tested by life's challenges they pulled together to face them as a people – that they drew upon the best of what they had to find positive solutions to the things that have tested even our own generation. That they purposively took on those things that they felt did not reflect what they wanted in a fair, honest, respectful and harmonious society – that they learnt to hold and celebrate Aboriginal culture and history as an essential

77 D Sambo Dorough, 'The Significance of the Declaration on the Rights of Indigenous Peoples and its Future Implementation' in C Charters and R Stavenhagen, *Making the Declaration Work* (2009) 264, p 264. At <http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Downloadpublications/Books/Making%20the%20Declaration%20Work.pdf> (viewed 10 December 2010). In this quote Dr. Sambo Dorough cites the work of M Brown, *The Dream Book: First Come First Dream* (1950).

Social Justice Report 2010

part of the Australian story because they saw themselves as part of it – connected to it, proud of it and centred by it. A truly reconciled community.⁷⁸

This is a vision I share and will work towards over the next five years.

Recommendations

- 1.1 That the Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples to develop a national strategy to ensure the full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- 1.2 That the Australian Government introduce legislation into Parliament to require the Attorney-General to provide a formal response to the annual *Native Title Report* and the *Social Justice Report* within a set timeframe.

⁷⁸ G Pearson, *Presentation to the Strong Foundations, Sustainable Futures* (Speech delivered at the Start Stronger, Live Longer National Aboriginal Health Worker Symposium, University of Western Australia, Perth, 8–9 June 2010).