Indigenous Rights

Edited by Justin Healey
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Indigenous Rights is Volume 366 in the ‘Issues in Society’ series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC
There is still much to be done to close the gap between Aboriginal and Torres Strait Islander peoples and the rest of the Australian population in terms of social and economic development, culture, land, education, health, justice and human rights.

This book looks at the progress of key rights issues confronting Australia’s indigenous peoples, including historical civil rights milestones; land rights and native title; Reconciliation and the apology to the Stolen Generations; indigenous governance and self-determination; and constitutional recognition.

Indigenous Rights also examines the government policy aimed at closing the gap in health and life expectancy, and human rights concerns over the ongoing federal intervention in Northern Territory indigenous communities. How should this nation right the wrongs visited upon the first Australians?

SOURCES OF INFORMATION
Titles in the ‘Issues in Society’ series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the ‘Issues in Society’ series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:

- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

CRITICAL EVALUATION
As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES
The ‘Exploring issues’ section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH
This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The ‘Web links’ section at the back of this book contains a list of useful websites which you can access for more reading on the topic.
CHAPTER 1
Recognising indigenous rights

Issues for indigenous peoples

Thematic issues for the world’s indigenous peoples, explained by the United Nations

ECONOMIC AND SOCIAL DEVELOPMENT

A continuing injustice. Indigenous peoples suffer from the consequences of historic injustice, including colonisation, dispossession of their lands, territories and resources, oppression and discrimination, as well as lack of control over their own ways of life. Their right to development has been largely denied by colonial and modern states in the pursuit of economic growth. As a consequence, indigenous peoples often lose out to more powerful actors, becoming among the most impoverished groups in their countries.

One-third of the world’s poor. Indigenous peoples continue to be over-represented among the poor, the illiterate, and the unemployed. Indigenous peoples number about 370 million. While they constitute approximately 5 per cent of the world’s population, indigenous peoples make up 15 per cent of the world’s poor. They also make up about one-third of the world’s 900 million extremely poor rural people.

Suicide, violence and incarceration. Smoking and substance abuse are more common amongst indigenous peoples; suicide rates and incarceration rates are also higher. These problems are more pronounced in urban areas, where indigenous peoples are detached from their communities and cultures, yet seldom fully embraced as equal members of the dominant society. Indigenous peoples are also more likely to suffer from violent crime.

A problem in developed countries too. The wellbeing of indigenous peoples is an issue not only in developing countries. Even in developed countries, indigenous peoples consistently lag behind the non-indigenous population in terms of most indicators of wellbeing. They live shorter lives, have poorer health care and education and endure higher unemployment rates. A native Aboriginal child born in Australia today can expect to die almost 20 years earlier than his non-native compatriot. Obesity, type 2 diabetes and tuberculosis are now major health concerns amongst indigenous peoples in developed countries.

High levels of poverty. Studies of socio-economic conditions of indigenous peoples in Latin America show that being indigenous is associated with being poor and that over time, that condition has stayed constant. Even when they are able to accumulate human capital [i.e. education or training opportunities], they are unable to convert that to significantly greater earnings or to reduce the poverty gap with the non-indigenous population. This finding holds for countries where indigenous peoples are a small fraction of the overall population, such as Mexico and Chile, as well as in countries where a large portion of the population is indigenous, such as in Bolivia.

CULTURE

Indigenous cultures threatened with extinction. The importance of land and territories to indigenous cultural identity cannot be stressed enough. However, indigenous peoples have continued to experience loss of access to lands, territories and natural resources. The result has been that indigenous cultures today are threatened with extinction in many parts of the world. Due to the fact that they have been excluded from the decision-making and policy frameworks of the nation-states in which they live and have been subjected to processes of domination and discrimination, their cultures have been viewed as being inferior, primitive, irrelevant, something to be eradicated or transformed.

90 per cent of all languages will disappear within 100 years. It is usually estimated that there are between 6,000 and 7,000 oral languages in the world today.
Most of these languages are spoken by very few people, while a handful of them are spoken by an overwhelming majority of the world. About 97 per cent of the world’s population speaks 4 per cent of its languages, while only 3 per cent speaks 96 per cent of them. A great majority of these languages are spoken by indigenous peoples, and many (if not most) of them are in danger of becoming extinct. Roughly 90 per cent of all existing languages may become extinct within the next 100 years.

Dying languages, damaging communities. While some indigenous peoples are successfully revitalising languages, many others are fighting a losing battle, where languages are simply no longer passed from one generation to the next. Most governments are aware of this language crisis but funding is often provided only for the recording of languages, while limited funds are diverted to language revitalisation programmes. Language, furthermore, is not only a communication tool, it is often linked to the land or region traditionally occupied by indigenous peoples; it is an essential component of one’s collective and individual identity and therefore provides a sense of belonging and community. When the language dies, that sense of community is damaged.

Traditional food lengthens life. It is now emerging that indigenous people’s overall health, wellbeing and cultural continuity are directly related to their ability to consume their traditional foods and continue their traditional food practices. This realisation has led to calls to governments to incorporate culture into the development of sustainable agriculture, food systems and related practices, policies and programmes that respect and support the wellbeing of indigenous peoples.

Value of traditional knowledge. Traditional knowledge and traditional resources have been managed by indigenous and local communities since time immemorial, using customary law embedded in spiritual cosmology. A great deal of traditional knowledge, including customary laws and folklore, has been undermined and destroyed by colonisers and post-colonial states who imposed their own systems of law, knowledge and world views on indigenous people. Today, however, there is an increasing appreciation of the value and potential of traditional knowledge.

ENVIRONMENT

Indigenous peoples account for most of the world’s cultural diversity. Throughout the world, there are approximately 370 million indigenous peoples occupying 20 per cent of the earth’s territory. It is also estimated that they represent as many as 5,000 different indigenous cultures. The indigenous peoples of the world therefore account for most of the world’s cultural diversity, even though they constitute a numerical minority.

Land rights in law, but not in reality. Only a few countries recognise indigenous peoples’ land rights, but even in those countries, land titling and demarcation procedures have often not been completed, suffer delays or are shelved because of changes in political leadership and policies. Even where indigenous peoples have legal title deeds to their lands, these lands are often leased out by the state as mining or logging concessions without consultation of indigenous peoples, let alone their free and prior informed consent. The lack of legal security of tenure remains a crucial issue for indigenous peoples almost everywhere.

New technologies force resettlement. The promotion of new technologies such as improved seeds, chemical fertilisers and pesticides, the introduction of cash-crop cultivation and large plantation schemes have caused environmental degradation and destroyed self-sustaining ecosystems, affecting many indigenous communities to the point of forcing them to resettle elsewhere.

The cost of unsustainable development. Large dams and mining activities have caused forced displacement of thousands of indigenous persons and families without adequate compensations in many countries. Several communities have been moved out of national parks against their will, while tourist development in some countries has resulted in the displacement of indigenous people and their increasing poverty. When indigenous peoples have reacted and tried to assert their rights, in most instances they have suffered physical abuse, imprisonment, torture and even death.

The implementation gap: much talk, little action. While indigenous peoples have, since 2002, experienced increased recognition of their environmental rights at the international level, translating this political
recognition into concrete advances at the national and local levels remains a major challenge. Many decisions made at the international level are not always respected or implemented at the national level, and indigenous peoples’ voices are all too often marginalised, if heard at all.

**Climate change threatens very existence of indigenous peoples.** For many indigenous peoples, climate change is already a reality, and they are increasingly realising that climate change is clearly not just an environmental issue, but one with severe socioeconomic implications. The World Bank also sees climate change as having the potential to hamper achievement of the Millennium Development Goals, including those on poverty eradication, child mortality, combating malaria and other diseases, as well as environmental sustainability. For many indigenous peoples, climate change is a potential threat to their very existence and a major issue of human rights and equity.

**Severe impact on women.** Forced evictions and the dispossession of lands have particularly severe impacts on indigenous women, who, as a result, often have an increased workload as they must walk long distances to find alternative sources of water or fuel wood, or are driven out of income-earning productive activities and into a situation of economic dependence on men.

**EDUCATION**

**Lack of respect and resources cause critical education gap.** Too often, education systems do not respect indigenous peoples’ diverse cultures. There are too few teachers who speak their languages and their schools often lack basic materials. Educational materials that provide accurate and fair information on indigenous peoples and their ways of life are particularly rare. Despite the numerous international instruments that proclaim universal rights to education, indigenous peoples do not fully enjoy these rights, and an education gap between indigenous peoples and the rest of the population remains critical, worldwide.

**Numerous obstacles to education.** Indigenous children are more likely to arrive at school hungry, ill and tired; they are often bullied, and the use of corporal punishment is still widespread. Ethnic and cultural discrimination at schools are major obstacles to equal access to education, causing poor performance and higher dropout rates. Indigenous girls, in particular, experience difficult problems related to unfriendly school environments, gender discrimination, school-based violence and sometimes sexual abuse, all of which contribute to high dropout rates.

**Loss of identity, caught in no man’s land.** When indigenous school children are introduced only to the national discourse at the expense of their native discourse, they are in danger of losing part of their identity, their connection with their parents and predecessors and, ultimately, of being caught in a no man’s land whereby they lose an important aspect of their identity while not fully becoming a part of the dominant national society.

**Invisible and at risk.** When a child’s birth goes unregistered, that child is less likely to enjoy his or her rights and to benefit from the protection accorded by the state in which he or she was born. Furthermore, the unregistered child may go unnoticed when his or her rights are violated. Later in life, he or she will be unable to vote or stand for election. These children are also at risk of falling victim to child trafficking and are often easy prey for those who exploit their vulnerability, recruiting them as street beggars, domestic servants in slave-like arrangements, or as child soldiers.

**Education often irrelevant.** Indigenous students frequently find that the education they are offered by the state promotes individualism and a competitive atmosphere, rather than communal ways of life and cooperation. They are not taught relevant survival and work skills suitable for indigenous economies, and they often return to their communities with a formal education that is irrelevant or unsuitable for their needs. They are forced to seek employment in the national economy, leading to a vicious cycle of social fragmentation, brain drain and a lack of development, especially because the jobs and salaries available to them often will not match their educational achievements.

Despite efforts, no solution in foreseeable future. Even in countries where the general level of schooling among indigenous peoples has increased, for instance in several Latin American countries and Canada, the quality gap in schooling persists, resulting in poor education outcomes for indigenous peoples. The conditions of extreme poverty, exclusion and isolation do not bode well for sustainable and multicultural indigenous education programmes.

**HEALTH**

**Alarming levels of diabetes.** Worldwide, over 50 per cent of indigenous adults over age 35 have type 2 diabetes and these numbers are predicted to rise. In some indigenous communities, diabetes has reached epidemic proportions and places the very existence of indigenous communities at risk.

**Life expectancy up to 20 years lower.** Indigenous peoples suffer from poorer health, are more likely to experience disability and reduced quality of life and ultimately die younger than their non-indigenous counterparts. The gap in life expectancy between indigenous and non-indigenous people in years is: Guatemala 13; Panama 10; Mexico 6; Nepal 20; Australia 20; Canada 17; New Zealand 11.

**Poverty, tuberculosis and lack of treatment.** Tuberculosis, a disease that primarily affects people living in poverty, affects at least 2 billion people in the world. As a result of poverty, tuberculosis continues to disproportionately affect indigenous peoples around the globe. While programmes have been designed to combat tuberculosis, they often do not reach indigenous peoples.

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because of issues related to poverty, poor housing, a lack of access to medical care and drugs, cultural barriers, language differences and geographic remoteness.

Poor levels of health, acutely felt by indigenous women. Indigenous peoples experience disproportionately high levels of maternal and infant mortality, malnutrition, cardiovascular illnesses, HIV/AIDS and other infectious diseases such as malaria and tuberculosis. Indigenous women experience these health problems with particular severity, as they are disproportionately affected by natural disasters and armed conflicts, and are often denied access to education, land, property and other economic resources. And yet they play a primary role in overseeing the health and wellbeing of their families and communities. In addition, as the incidence of other public health issues such as drug abuse, alcoholism, depression and suicide increases, urgent and concerted efforts are needed to improve the health situation of indigenous peoples.

Poverty and malnutrition. Poor nutrition is one of the health issues that most affects indigenous peoples around the world. In addition to circumstances of extreme poverty, indigenous peoples suffer from malnutrition because of environmental degradation and contamination of the ecosystems in which indigenous communities have traditionally lived, loss of land and territory and a decline in abundance or accessibility of traditional food sources.

Self-determination, collective rights, crucial to indigenous health. To address the root causes of indigenous peoples’ health problems, there must be full recognition and exercise of indigenous peoples’ collective rights to communal assets and self-determination. Many mental health issues such as depression, substance abuse and suicide have been identified as connected to the historical colonisation and dispossession of indigenous peoples, which has resulted in the fragmentation of indigenous social, cultural, economic and political institutions.

Health systems appropriate for the indigenous context. Models of health care must take into account the indigenous concept of health and preserve and strengthen indigenous health systems as a strategy to increase access and coverage of health care. This will demand the establishment of clear mechanisms of cooperation among relevant health care personnel, communities, traditional healers, policy makers and government officials in order to ensure that the human rights of indigenous peoples are fully recognised and respected.

HUMAN RIGHTS

Violence, forced assimilation, abuse. Despite all the positive developments in international human rights standard-setting, indigenous peoples continue to face serious human rights abuses on a day-to-day basis. Issues of violence and brutality, continuing assimilation policies, marginalisation, dispossession of land, forced removal or relocation, denial of land rights, impacts of large-scale development, abuses by military forces and armed conflict, and a host of other abuses, are a reality for indigenous communities around the world. Examples of violence and brutality have been heard from every corner of the world, most often perpetrated against indigenous persons who are defending their rights and their lands, territories and communities.

Violence against women. An indigenous woman is more likely to be raped, with some estimates showing that more than one in three indigenous women are raped during their lifetime.

Systemic racism. Indigenous peoples frequently raise concerns about systemic discrimination and outright racism from the State and its authorities. This discrimination manifests itself in a number of ways such as frequent and unnecessary questioning by the police, condescending attitudes of teachers to students or rudeness from a receptionist in a government office. At their most extreme, these forms of discrimination lead to gross violations of human rights, such as murder, rape and other forms of violence or intimidation. These forms of discrimination are often either difficult to quantify and verify or are simply not documented by the authorities, or not disaggregated based on ethnicity.

Criminalisation of protest. Indigenous peoples have frequently faced detention due to the criminalisation of social protest activities. One of the most serious shortcomings in human rights protection in recent years is the trend towards the use of legislation and the justice system to penalise and criminalise social protest activities and legitimate demands made by indigenous organisations and movements in defence of their rights.

Despite some progress, little change. Despite efforts over the last 40 years to improve conditions and to increase recognition of indigenous rights through law and policy, litigation, national dialogue and enhanced leadership opportunities, full accommodation of indigenous rights remains elusive.
DEVELOPMENT ON THE RIGHTS OF INDIGENOUS PEOPLES

FREQUENTLY ASKED QUESTIONS ANSWERED BY THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

What is the Declaration on the Rights of Indigenous Peoples?

The Declaration is a comprehensive statement addressing the human rights of indigenous peoples. It was drafted and formally debated for over twenty years prior to being adopted by the General Assembly on 13 September 2007.

The document emphasises the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations.

Other UN bodies address indigenous rights through Conventions such as the International Labour Organisation’s Convention No. 169 and the Convention on Biological Diversity (Article 8j).

What rights are ensured by the Declaration?

The Declaration addresses both individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and others. The text says indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and the rest of international human rights law.

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Indigenous peoples have the right to self-determination. By that right they can freely determine their political status and pursue their economic, social and cultural development.

They have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state.

Indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms.

How was the Declaration adopted?

The Declaration was adopted by a majority of the General Assembly in New York on 13 September 2007, with 144 countries voting in support, 4 voting against and 11 abstaining.

Why did the Declaration take over two decades to move forward?

The process moved slowly while States and indigenous peoples engaged in a fruitful UN-facilitated dialogue over the years. Issues such as group rights and individual rights, lands and resources were subject to intense debate.

- In 1982, the United Nations Economic and Social Council established the Working Group on Indigenous Populations, to develop, among other things, human rights standards that would protect indigenous peoples.
- In 1985, the Working Group began preparing the draft Declaration on the Rights of Indigenous Peoples.
- In 1993, the Working Group agreed on a final text for the draft Declaration and submitted it to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which approved it in 1994. The draft was subsequently sent to the then UN Commission on Human Rights, which
established the Working Group on the draft Declaration on the Rights of Indigenous Peoples.

- The 2005 World Summit and the 2006 Fifth Session of the UN Permanent Forum on Indigenous Issues (UNPFII) called for the adoption of the Declaration as soon as possible.
- Finally, the Human Rights Council adopted the Declaration in June 2006, followed by the General Assembly in September 2007.

Some highlights of the Declaration
- Seventeen of the forty-five articles of the Declaration deal with indigenous culture and how to protect and promote it, by respecting the direct input of indigenous peoples in decision-making, and allowing for resources, such as those for education in indigenous languages and other areas.
- Fifteen of the forty-six articles of the Declaration are about indigenous peoples’ participation in all decisions that will affect their lives, including meaningful participation in a democratic polity.
- The Declaration confirms the right of indigenous peoples to self-determination and recognises subsistence rights and rights to lands, territories and resources.
- The Declaration recognises that indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.
- Essentially, the Declaration outlaws discrimination against indigenous peoples, promotes their full and effective participation in all matters that concern them, as well as their right to remain distinct and to pursue their own visions of economic and social development.

What is the significance of the Declaration?
Many of the rights in the Declaration require new approaches to global issues, such as development, decentralisation and multicultural democracy. In order to achieve full respect for diversity, countries will need to adopt participatory approaches to indigenous issues, which will require effective consultations and the building of partnerships with indigenous peoples.

Is the Declaration legally binding?
UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles.

The Declaration, however, is widely viewed as not creating new rights. Rather, it provides a detailing or interpretation of the human rights enshrined in other international human rights instruments of universal resonance – as these apply to indigenous peoples and indigenous individuals. It is in that sense that the Declaration has a binding effect for the promotion, respect and fulfillment of the rights of indigenous peoples worldwide.

The Declaration is a significant tool towards eliminating human rights violations against the over 370 million indigenous people worldwide and assisting them and States in combating discrimination and marginalisation.

For more information on the Declaration, please visit: www.un.org/esa/socdev/unpfii/en/declaration.html

United Nations Declaration on the Rights of Indigenous Peoples: an overview

A fact sheet overview from the Australian Human Rights Commission

The Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 14 September 2007 (AEST). The Declaration has 46 substantive articles and 24 preambular paragraphs. It includes 9 changes to the text of the Declaration as adopted by the UN Human Rights Council in June 2006.

The Declaration is divided into the following broad thematic areas:

- **Over-arching principles** (Articles 1-6): The rights of indigenous peoples to the full enjoyment of all human rights, non-discrimination, self-determination and autonomy, maintenance of indigenous institutions, and the right to a nationality.

- **Life, integrity and security** (Articles 7-10): Freedom from genocide, forced assimilation or destruction of culture, forced relocation from land, right to integrity and security of the person, and right to belong to an indigenous community or nation.

- **Cultural, spiritual and linguistic identity** (Articles 11-13): Rights to practice and revitalise culture and the transmission of histories, languages etc; and the protection of traditions, sites, ceremonial objects and repatriation of remains.

- **Education, information and labour rights** (Articles 14-17): Right to education, including to run own educational institutions and teach in language; cultures to be reflected in education and public information; access to media (both mainstream and indigenous specific); and rights to protection of labour law and from economic exploitation.

- **Participatory, development and other economic and social rights** (Articles 18-24): Rights to participation in decision-making, through representative bodies; rights to their own institutions to secure subsistence and development; special measures to be adopted to address indigenous disadvantage and ensure non-discriminatory enjoyment of rights; guarantees against violence and discrimination for women and children; right to development; and access to traditional health practices and medicines.

- **Land, territories and resources rights** (Articles 25-32): Rights to maintain traditional connections to land and territories; for ownership of such lands and protection of lands by State; establishment of systems to recognise indigenous lands; rights to redress and compensation for lands that have been taken; conservation and protection of the environment; measures relating to storage of hazardous waste and military activities on indigenous lands; protection of traditional knowledge, cultural heritage and expressions and intellectual property; and processes for development on indigenous land.

- **Indigenous institutions** (Articles 33-37): Rights to determine membership and to maintain institutions (including judicial systems), to determine responsibilities of individuals to their communities, to maintain relations across international borders, and right to the recognition of treaties, agreements and other constructive arrangements with States.

- **Implementation of the Declaration** (Articles 38-42): States and UN agencies to implement the provisions of the Declaration, including through technical and financial assistance; access to financial and technical assistance for indigenous peoples to implement the Declaration; and conflict resolution processes to be established that are just and fair.

- **General provisions of the Declaration** (Articles 43-46): The provisions of the Declaration are recognised as minimum standards and apply equally to indigenous men and women; the standards recognised in the Declaration may not be used to limit or diminish indigenous rights, and must be exercised in conformity with the UN Charter and universal human rights standards; the provisions in the Declaration to be interpreted in accordance with principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

**FOOTNOTES**

1. The Declaration, as approved by the General Assembly, is available online at www.un.org


The fifth anniversary of the UN Declaration on the Rights of Indigenous Peoples

The rights of indigenous peoples everywhere are progressively being acknowledged. Now it is time for Aboriginal and Torres Strait Islander peoples to be more vigorous in exercising these rights and freedoms, urges Les Malezer

Thursday September 13, 2012 was the fifth anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples. Without doubt this international instrument has already been established universally as a human rights benchmark to confirm the indigenous peoples of the world are equal to all other peoples.

This achievement, within the first five years of its life, is verification that the rights of our peoples, encompassing social organisation, cultures, territories and development, are progressively being acknowledged.

Our collective rights as peoples are being expressed, interpreted, integrated and experienced by the many distinct indigenous populations, populations which historically have been ruthlessly dominated and exploited by powerful, gregarious societies.

Indigenous peoples everywhere are citing the Declaration and its components as they vie for equality and non-discrimination in their own territories.

Slowly but surely, member States of the United Nations are revising their relationships with indigenous peoples to respect these human rights.

**Indigenous peoples have much to expect from the United Nations to ensure the equality of peoples is respected at the global level.**

We can see evidence that basic human rights as articulated in the Universal Declaration of Human Rights are being given extra attention where indigenous peoples are involved.

More importantly the collective rights of indigenous peoples, rights which are so vital to the survival and success of civilisations, can no longer be denied or oppressed through legitimisation by the authority of States.

Indigenous peoples have much to expect from the United Nations to ensure the equality of peoples is respected at the global level.

The establishment of mechanisms, including the UN Special Rapporteur on the Rights of Indigenous Peoples, the UN Expert Mechanism on the Rights of Indigenous Peoples and the UN Permanent Forum on Indigenous Issues are concrete steps already taken to guarantee change.

These are very specific and important actions taken by the United Nations to ensure that the rights of Indigenous Peoples are a priority concern towards not only global peace, security and development, but also the wellbeing of the cultural and ecological environments.

States should be taking consequent steps, if they have not already done so, to broaden the momentum for change.

The World Conference on Indigenous Peoples, declared by the United Nations as an event in Year 2014, should be seen as a time for important reflection. This significant occasion will mark the end of the Second Decade of the World’s Indigenous Peoples.

The World Conference will offer an opportunity for States and indigenous peoples alike to examine the endeavours, achievements and shortcomings over two decades to realise the rights of the indigenous peoples of the world.

In Australia over the past five years, there has been a turnaround in the commitment by the State to the UN Declaration on the Rights of Indigenous Peoples.

In 2009 the Government of Australia announced its support for the Declaration, having voted in 2007 in the General Assembly against the adoption of the Declaration.

The Government has given tangible support to the establishment of the National Congress of Australia’s First Peoples, a body created in...
accordance with Article 18 of the Declaration.

The Government has also commissioned a review of the Constitution of Australia to provide recognition that Aboriginal and Torres Strait Islander peoples are the First Peoples of Australia.

As a third initiative, the Government has established the ‘Human Rights Framework’ as a policy of government. This framework includes, *inter alia*, training of government officials in international human rights obligations undertaken by Australia and the establishment of a parliamentary standards committee to review the laws of the national parliament for compliance with human rights standards.

Following examination of human rights in Australia in 2011, under the Universal Periodic Review provisions of the UN Human Rights Council, Australia is considering the ratification of *ILO Convention No. 169*, an international treaty which addresses the rights of indigenous peoples.

These specific initiatives are yet to achieve tangible benefits for Aboriginal and Torres Strait Islander people but have serious potential.

Australia has yet to describe its overall government pertaining to indigenous issues in terms of the Declaration (apart from perfunctorily claiming overall compliance with the standard).

Aboriginal and Torres Strait Islander people are unquestionably very confused about how the State has addressed, or is to address, implementation of the Declaration.

Greater effort is needed to describe government priorities and administrative actions against the specific human rights articles in the Declaration.

There can be no doubt that Aboriginal and Torres Strait Islander people in Australia have a high level of awareness of the existence of the *UN Declaration on the Rights of Indigenous Peoples* and an appreciation that the United Nations will continue to examine the exercise of the rights and freedoms of indigenous peoples of the world.

This has been amply demonstrated during the past five years by many UN reports which address Australia and the rights of the Aboriginal and Torres Strait Islander peoples.

However, a shortcoming is the lack of clear understanding amongst our population of the specific rights expressed in the Declaration, or the correlation of such rights with articles in the ratified international human rights treaties.

Specifically, the definition of ‘peoples’ is not understood, and is often misinterpreted.

The term ‘peoples’ must be understood in the context of international law and global governance.

More clear understanding of how the right of self-determination is manifested and exercised is important, to avoid disunity between sub-groups and over-reach of sectarian interests.

At the national level there are calls for a comprehensive program for raising awareness and understanding of the Declaration by the Aboriginal and Torres Strait Islander peoples.

**Looking back we must remember how it has taken so long to have our rights as indigenous peoples recognised in global governance and international law.**

Correspondingly there must be increased efforts to generate awareness across the various agencies of government to ensure that the particular and relevant provisions of the UN Declaration are appreciated and lead to revision of laws, policies and programs.


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WHAT ARE ‘INDIGENOUS RIGHTS’?

THIS EXTRACT FROM THE NATIONAL HUMAN RIGHTS CONSULTATION REPORT DEFINES INDIGENOUS RIGHTS WITHIN THE CONTEXT OF AUSTRALIA’S EXISTING HUMAN RIGHTS FRAMEWORK

There is in the international community continuing philosophical debate about the nature and source of human rights. Human rights are the ‘rights of humans’. If human rights are universal – that is, rights we all have in common because we are all part of humanity – can some human rights be exclusively enjoyed only by a subset of humanity?

The tensions and complexities in balancing the universal rights of humankind against the legitimate concerns of minorities are highlighted in the case of many of the world’s indigenous peoples. On 13 September 2007 the UN General Assembly tried to resolve some of these difficulties when it adopted the UN Declaration on the Rights of Indigenous Peoples (2007). While not legally binding on States parties, the instrument affirms that indigenous peoples are equal to all other peoples, while at the same time recognising the distinct rights of indigenous peoples.

The declaration seeks to protect individual and collective rights; cultural rights and identity; and rights to education, health, employment and language. It prohibits discrimination and promotes the full and effective participation of indigenous peoples in all matters that concern them. Additionally, it ensures the right of indigenous peoples to remain distinct and to pursue their own priorities in economic, social and cultural development.

At the time of adoption of the declaration a number of countries expressed concern that a balance between the competing interests had not been achieved. Four States – Australia, Canada, New Zealand and the United States, all of whom have sizeable indigenous populations – voted against the declaration. Eleven states abstained and 34 states were absent from the vote.

After the change of government in late 2007 Australia formally announced its support for the declaration in April 2009. The National Human Rights Consultation revealed, however, that the debate about distinctive indigenous rights is far from settled in the Australian community.

In the context of Indigenous Australians, the rights discussed by many Consultation participants related to the enjoyment of general ‘citizenship’ rights (or general rights that are afforded to all) by Aboriginal and Torres Strait Islander people. ‘Amelia’ posted the following blog on the Australian Youth Forum website: ‘Many [Aboriginal] people are living in very poor conditions, and are robbed of basic human rights because … [the] family they have been brought into has lost their culture, morals and pride.’ In another blog, ‘Nathan’ maintained that Indigenous Australians should be treated the same way as all other Australians:

Aboriginal people are in no way inferior to anyone else and should be able to function in today’s society. Of course you should offer them assistance finding jobs, getting education, but they should be made equal to any other citizen, regardless of race.

In contrast, other consultation participants spoke of the collective rights Indigenous Australians should have because they are the traditional owners of the land and waters: ‘Of course, they are the original inhabitants of Australia, they have a special status.’ The Close the Gap Steering Committee referred to earlier comments made by former Social Justice Commissioner and Australian of the Year Professor Mick Dodson:

It is because indigenous rights encompass both categories [citizenship rights and distinct indigenous rights] that a comprehensive recognition of indigenous rights requires a balancing act; holding in one hand the principle of equality or equity, and in the other the principle of difference.

UNIVERSAL HUMAN RIGHTS AND INDIGENOUS AUSTRALIANS

Many of the rights numerous participants in the Consultation’s community roundtables felt the rights that are not fully enjoyed by Aboriginal and Torres Strait Islander peoples fall into the category of economic, social and cultural rights – for example, the substandard housing; the poor educational outcomes of students attending schools in indigenous communities; the inferior quality, supply and price of groceries; the high mortality rates; and the limited physical access to...
health care facilities and treatment. David Cooper has made the point that ‘it is also important to understand that amongst these issues are some of the significant contributors to the discrimination and injustice faced by indigenous people today. So getting this right is also a fundamental issue of justice’. As long as the poor social indicators outlined in the Close the Gap Steering Committee’s submission – such as poor life expectancy, unemployment, homelessness, family violence and imprisonment – exist, the chasm of disadvantage will remain.

These views are consistent with the general sentiments of many Consultation participants who said economic, social and cultural rights should be protected just as much as the civil and political rights of all Australians. The interrelatedness and indivisibility of these rights is particularly relevant to Aboriginal and Torres Strait Islander people:

**Whether they are expressed as civil and political rights or economic, cultural and social rights, the fundamental notion underpinning human rights is that they are derived from the inherent dignity of every human person. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others.**

The Centre for Human Rights Education submitted, ‘Introducing human rights legislation which focuses on civil and political rights and excludes economic, social and cultural rights is unlikely to contribute to significant improvements in the day-to-day lives of Indigenous Australians’. The Committee sees merit in this argument, but it also acknowledges that there is among jurists and legal scholars debate about whether economic, social and cultural rights are justiciable. The Committee also notes that the complexities of implementing legislative protections for these rights precluded the Victorian Parliament and the ACT Legislative Assembly from including them in their human rights legislation.

Nonetheless, a number of submissions argued that fundamental civil and political rights, such as the right to a fair trial, are not fully protected and enjoyed by indigenous people in Australia and that a contributing factor to the over-representation of indigenous people in the criminal justice system is the lack of ‘accredited professional-level interpreter[s] for indigenous people who do not speak English as a first language’. Sir Harry Gibbs, former Chief Justice of the High Court of Australia, once said, ‘Justice can be done only if the evidence and arguments are fully and clearly understood by all concerned’.

Aboriginal Resource and Development Services submitted that, even outside the court room, the lack of interpreter assistance can exacerbate disadvantage by inhibiting access to essential government services and programs such as Centrelink and Medicare. Aboriginal and Torres Strait Islander Legal Services reported that in remote areas ‘one in five [indigenous people] experience difficulty in understanding or being understood by service providers’.

### INDIGENOUS-SPECIFIC RIGHTS

The Declaration on the Rights of Indigenous Peoples recognises a number of rights that are exclusively enjoyed by the world’s indigenous peoples. Arguably these distinctive rights should be enjoyed by indigenous peoples because of their unique status as the traditional owners of land, their relationship with the land and waterways, and their vulnerability to losing their traditional customs, knowledge and language. At the community roundtables indigenous participants spoke about the importance these rights have for the maintenance of their culture and their physical and spiritual survival: ‘[Living on the homelands] it’s where we belong … that is why we are strong, it gives us strength’. They also saw that protection of their intellectual property rights was integral to their cultural rights and fundamental to the government’s focus on indigenous economic development activities:

**Scientists have re-discovered a species they thought was extinct … only because of the traditional people who showed them … And the scientist goes back and writes it all up and gets credit from it, but he would never have known all that but for the traditional owner showing him. The traditional owners lose their rights, they don’t even get a mention … Aboriginal people and knowledge aren’t recognised and valued in any way. There isn’t any payment, no recognised award that pays traditional owners for their knowledge and time.**

The New Matilda Bill, a model human rights Act submitted by the Human Rights Act for Australia Campaign, recognises not only collective and individual rights of Aboriginal and Torres Strait Islander people in relation to their culture and traditions but also the right to ‘live in freedom, peace and security and to full guarantees against genocide or any other act of violence’. Although protection from violence is not a right that should exclusively apply to Indigenous Australians, a number of submissions highlighted the particularly high incidence of family violence and sexual assault in which Indigenous women and children are victims. The Wirringa Baiya Aboriginal Women’s Legal Centre described the severity of many of its cases as being so great that this ‘domestic violence … is best described as torture’.

Colmar Brunton Social Research’s work reveals that Consultation participants are concerned about different rights being granted to different minority groups in Australia at the risk of the majority being marginalised. For example, ‘If you are white and born in Australia you are discriminated [against]’ and ‘The majority groups are missing out’. This supports the notion that human rights are universal and applicable to all simply because we are all human; any specific rights for minority groups can be viewed as either a superior class of rights or evidence that a hierarchy of rights exists. Many participants felt they
suffered a form of reverse discrimination and resented the additional benefits Indigenous Australians were said to have received. Similar views were expressed by some young Australians who contributed their opinions through the Australian Youth Forum website:

Tragically Australia maintains separate law for Aboriginal groups, including land rights and exemption from many laws... The segregation of Australian society needs to end. Self-governance needs to be discontinued and land rights, at the very least, limited.

Some focus group and survey participants felt that Aboriginal and Torres Strait Islander people had too many rights, giving them 'more than a fair go'. While there 'was some recognition that Indigenous Australians are a special case', it was a common view that the same set of rights should apply to everyone and the difference 'should be in the expression of rights, rather than different rights'. To achieve this there might be a need to tailor general ‘citizenship’ rights (which are applicable to all), applying them in a way that attempts to improve the protection of human rights for Aboriginal and Torres Strait Islander peoples.

In *Kruger v Commonwealth* the High Court considered the constitutional validity of removing Indigenous children from their families under the Northern Territory’s *Aboriginals Ordinance 1918*. The plaintiffs, who were members of the Stolen Generations, unsuccessfully argued that this was in breach of their constitutional rights. This case highlights the weaknesses in the protection of certain rights within the existing Australian human rights framework.

ENDNOTES

2. See Chapter 3.


4. In all, 143 States voted in favour of the Resolution.

5. Australian Youth Forum, Submission.

6. ibid.


9. Alice Springs, Community Roundtable; Yirrkala, Community Roundtable.


11. ibid.


14. Law Council of Australia, Submission.


18. Aboriginal and Torres Strait Islander Legal Services, Submission.


20. Yirrkala, Community Roundtable.


22. Human Rights Act for Australian Campaign (New Matilda), Submission.

23. Wirringa Baiya Aboriginal Women’s Legal Centre, Submission.


25. ibid.

26. ibid.

27. ibid.


29. ibid.

30. ibid.

31. ibid.


Race discrimination: UN committee releases report and recommendations on Australia

A high-level UN committee has found that Australia needs to take urgent measures to address racism and racial discrimination, disadvantage and inequality, according to this report from the Human Rights Law Centre.

On 27 August 2010, the UN Committee on the Elimination of Racial Discrimination released its Concluding Observations following a review of Australia’s compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The Committee welcomed a number of recent positive developments in Australia, including the National Apology to the Stolen Generations, the endorsement of the UN Declaration on the Rights of Indigenous Peoples, the commitment to “Close the Gap” in indigenous health inequality, and Australia’s closer engagement with a number of UN human rights instruments and mechanisms.

The Committee raised serious concerns about a range of Australian laws, policies and practices, including the Northern Territory Intervention, the suspension of the Racial Discrimination Act, the treatment of refugees and asylum seekers, and the impact of Australia’s counter-terror laws.

The CERD Committee also expressed its regret that many recommendations from previous reports have not been properly implemented in Australia, including in relation to deaths in custody, the socio-economic disadvantage of Aboriginal and Torres Strait Islander peoples, gross over-representation of Aboriginal and Torres Strait Islander peoples in the prison population, Aboriginal land rights and the mandatory detention of asylum seekers.

The Committee made over 20 recommendations for concrete action to address racial discrimination, disadvantage and inequality in Australia. These recommendations include:

- Amend the Australian Constitution to include the recognition of Aboriginal and Torres Strait Islanders as First Nations Peoples
- Consider the negotiation of a treaty agreement to build a constructive and sustained relationship with indigenous peoples
- Reset the relationship with Aboriginal people based on genuine consultation, engagement and partnership and that Government actions affecting the Aboriginal communities respect Australia’s human rights obligations and conform with the Racial Discrimination Act
- Reform and remedy the discriminatory impact that the Northern Territory Emergency Response has had on affected communities, including restrictions on Aboriginal rights to land, property, social security, adequate standards of living, cultural development and work
- Amend the Native Title Act 1993 to address the persisting high standards of proof required for recognition of the relationship between indigenous peoples and their traditional lands, and the fact that in spite of large investment of time and resources by indigenous peoples, many are unable to obtain recognition of their relationship to land
- Increase access to justice for indigenous peoples, including through increased funding for Aboriginal legal aid and

Aboriginal and Torres Strait Islander Peoples

The Committee recommends that the Government:

- Comprehensively implement the International Convention on the Elimination of All Forms of Racial Discrimination in Australian law
- Strengthen federal anti-discrimination laws to ensure comprehensive and entrenched protection against racial discrimination
- Consider expanding the powers, functions and financing of the Australian Human Rights Commission, including the appointment of a full-time Race Discrimination Commissioner
- Develop a legal framework to prevent acts of Australian corporations which negatively impact on the rights of indigenous peoples domestically and overseas and to regulate the extra-territorial activities of Australian corporations abroad
- Ensure that acts of racial hatred are criminalised and prosecuted, and
- Consider ratifying those international human rights treaties which it has not yet ratified, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the Optional Protocol to the Convention Against Torture, and ILO Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Australia’s legal framework

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Aboriginal and Torres Strait Islander Peoples

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interpretative services
• In light of the grossly disproportional incarceration of indigenous people, dedicate sufficient resources to address the social and economic factors underpinning indigenous contact with the criminal justice system, including by adopting a justice reinvestment strategy, continuing and increasing the use of indigenous courts and conciliation mechanisms, diversionary and prevention programs and restorative justice strategies
• Ensure the provision of adequate health care to prisoners
• Adopt all necessary measures to preserve native languages and develop and carry out programmes to revitalise indigenous languages and bilingual and intercultural education for indigenous peoples respecting cultural identity and history, and
• Implement appropriate compensation payment schemes for the Stolen Generations and in relation to indigenous stolen wages.


INDIGENOUS RIGHTS TIMELINE

<table>
<thead>
<tr>
<th>YEAR</th>
<th>EVENT</th>
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<tbody>
<tr>
<td>1788</td>
<td>Colonisation begins in eastern Australia, without the consent of indigenous people being sought nor given.</td>
</tr>
<tr>
<td>1901</td>
<td>Commonwealth of Australia formed. Indigenous Australians are excluded from the census and the law-making powers of the Commonwealth Parliament.</td>
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<tr>
<td>1911</td>
<td>Federal Government takes control of the Northern Territory.</td>
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<tr>
<td>1937</td>
<td>National Native Welfare Conference adopts assimilation as national policy.</td>
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<tr>
<td>1962</td>
<td>All indigenous people are given the vote in Commonwealth elections.</td>
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<tr>
<td>1964</td>
<td>Charles Perkins and a number of white students launch the ‘Freedom Rides’, travelling on a bus through northwestern New South Wales towns to highlight discrimination.</td>
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<tr>
<td>1966</td>
<td>Gurindji people walk off Wave Hill Station in the Northern Territory, where they worked for little or no money. This protest leads to the modern land rights movement.</td>
</tr>
<tr>
<td>1967</td>
<td>Referendum held in which 90.7% of Australians vote ‘yes’ to count Indigenous Australians in the census and to give the Commonwealth Government the power to make laws for them.</td>
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<tr>
<td>1972</td>
<td>The Aboriginal Tent Embassy is established outside Parliament House, adopting the indigenous flag. Whitlam Government is elected; White Australia policy is abolished. Department of Aboriginal Affairs is established.</td>
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<tr>
<td>1975</td>
<td>Racial Discrimination Act is passed.</td>
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<tr>
<td>1976</td>
<td>Fraser Government passes the Aboriginal Land Rights (Northern Territory) Act.</td>
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<tr>
<td>1988</td>
<td>Bicentenary protests held in which tens of thousands march on Australia Day.</td>
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<tr>
<td>1991</td>
<td>Royal Commission into Aboriginal Deaths in Custody presents report with 339 recommendations, the final one being that a formal process of reconciliation between indigenous and non-indigenous Australia be undertaken.</td>
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<tr>
<td>1992</td>
<td>Mabo decision by the High Court recognises that native title existed before 1788 and continues today.</td>
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<tr>
<td>1993</td>
<td>Native Title Act.</td>
</tr>
<tr>
<td>1997</td>
<td>Bringing Them Home, the report of the inquiry into the Stolen Generations, is released. It recommends a national sorry day to commemorate the history and effects of removing children from their families.</td>
</tr>
<tr>
<td>1998</td>
<td>Native Title Amendment Act 1998 is passed; seen by many to reduce native title rights for indigenous people. First National Sorry Day – over 1 million signatures collected in sorry books.</td>
</tr>
<tr>
<td>2000</td>
<td>More than 300,000 people walk across Sydney Harbour Bridge in support of indigenous people’s rights and reconciliation.</td>
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<tr>
<td>2007</td>
<td>Little Children Are Sacred report is released.</td>
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<tr>
<td>2007</td>
<td>Howard Government announces its intervention into Northern Territory indigenous communities. Key policies of the intervention are only possible because the government suspends the Racial Discrimination Act.</td>
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<tr>
<td>2008</td>
<td>Prime Minister Kevin Rudd delivers the Apology to the Stolen Generations on 13 February.</td>
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<tr>
<td>2009</td>
<td>Australia supports the United Nations Declaration on the Rights of Indigenous Peoples.</td>
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<tr>
<td>2010</td>
<td>The intervention undergoes changes which only partially reinstate the Racial Discrimination Act, however many of the intervention measures remain in place. The National Congress of Australia’s First Peoples is established. Prime Minister Julia Gillard announces plans to recognise Indigenous Australians in the Constitution.</td>
</tr>
<tr>
<td>2012</td>
<td>The controversial ‘Stronger Futures’ laws are passed in the Senate on 29 June 2012 after a marathon debate. The laws were amended to reduce the review period from seven to three years. In September 2012, the Gillard government announces it will delay the constitutional referendum, citing concern at low levels of public awareness.</td>
</tr>
</tbody>
</table>

Sources: Adapted from timelines produced by SBS, Amnesty International, Reconciliation Network.
Reconciliation is about unity and respect between Aboriginal and Torres Strait Islanders and non-Indigenous Australians. It is about respect for Aboriginal and Torres Strait Islander heritage and valuing justice and equity for all Australians.

The Reconciliation movement is said to have begun with the 1967 referendum in which 90 per cent of Australians voted to remove clauses in the Australian Constitution which discriminated against Indigenous Australians. As a result of the referendum, Aboriginal people were to be counted in the census. The referendum established citizenship status and confirmed voting rights for all Indigenous Australians. The right to vote for Aboriginal people was legislated for by the Commonwealth in 1962 and by all States by 1965 when Queensland, as the last state, provided for indigenous enfranchisement.

As a consequence of the referendum result, Aboriginal affairs was seen as a joint Commonwealth-State responsibility and an Office of Aboriginal Affairs was established by the then Prime Minister, Harold Holt. This later became the Department of Aboriginal Affairs. It was almost ten years later before the power given to the Commonwealth by the 1967 referendum was actually used by the Commonwealth Government under Prime Minister Gough Whitlam to make laws for Aboriginal affairs a federal responsibility by the Aboriginal-Australian Fellowship at Sydney Town Hall.

Reconciliation is about unity and respect between Aboriginal and Torres Strait Islanders and non-Indigenous Australians

The first of these campaigns arose from the ‘Warburton Ranges controversy’ when the report of a select committee, which inquired into the state of Aborigines, was tabled in the Western Australian parliament in December 1956. The Select Committee made recommendations and held that a case could be made for the Commonwealth to fund some of the recommendations. The Commonwealth advised that this was not possible under the Constitution. This issue received widespread press coverage. On 29 April 1957 a petition was launched for a referendum to make Aboriginal affairs a federal responsibility by the Aboriginal-Australian Fellowship at Sydney Town Hall.

From his first exhibition in 1938, Namatjira’s popularity as a landscape painter of his Arrante country grew. His exhibitions sold out as soon as they were opened and, by the 1950s, Namatjira reproductions adorned the walls of many Australian middle-class living rooms. In 1954 Namatjira was presented to Queen Elizabeth, and, three years later, at 55 years of age, with the passage of the Welfare Ordinance, Albert Namatjira became an Australian citizen, although his adult children and other relatives were listed as wards.

The press and the Australian public were outraged at the gaol sentence imposed on Albert Namatjira when he was arrested for sharing alcohol with his family in 1958.

In February 1958, at a meeting in Adelaide, activists from all mainland states formed a national pressure group, the Federal Council for Aboriginal Advancement (FCAA). The first two goals of this new body were repeal of all legislation which discriminated against the Aborigines and amendment to the Commonwealth Constitution to give the Commonwealth Government power to legislate for Aborigines as with all other citizens.

The Freedom Ride of 1965 was a
Civil campaign which focused on the appalling living conditions which Aboriginal people endured living outside the towns, led by Charles Perkins. In the towns, Aboriginal people were routinely barred from clubs, swimming pools and cafes. The Freedom ride was an organised bus tour of western and coastal New South Wales towns, including Walgett, Gulargambone, Kempsey, Bowraville and Moree, by a group of University of Sydney students. The aim of the ride was to encourage and support Aboriginal people themselves to resist discrimination as well as ensure media coverage.

Other civil rights campaigns in the 1960s included the campaign for social service benefits, especially the old age pension and unemployment benefits which were denied to Aborigines in the 1950s, and access to earnings in the Queensland Trust Fund.

A campaign for equal wages and the Wave Hill walk-off

A campaign for equal wages in the 1960s contributed to a 1968 decision by the Conciliation and Arbitration Commission ruling on equal wages in the cattle industry. The achievement of equal wages in the pastoral industry however was a hollow victory as ‘families and whole communities were turned off properties where they had worked for generations. People drifted into towns and were given ‘sit-down’ money (unemployment benefits). They were no longer able to fulfil obligations to their country.’

In August 1966, Aboriginal pastoral workers at Wave Hill station in the Northern Territory walked off the job, unhappy with their poor working conditions and disrespectful treatment. The next year the group moved to Wattie Creek, a place of significance to themselves as Gurindji people. They erected a sign which included the word ‘Gurindji’, asserting a claim to Gurindji lands.

From wage rights to land rights

While the Aboriginal struggle to regain lands taken from them, using the laws and the parliamentary system of government, has a long history (beginning in 1846 when Aboriginal Tasmanians petitioned Queen Victoria); the Wave Hill walk-off was a significant event in the struggle for defining Aboriginal land rights with the Commonwealth government.

The [Wave Hill] walk-off ... drew attention to the fact that they were working on Gurindji land, the land of their forebears. The dispute widened and deepened. It became a claim for land.


‘Gurindji Blues’ was recorded by RCA records in 1971 with a young Yolngu spokesman, Galarrwuy Yunupingu, accompanying Ted Egan, the singer/songwriter who had a long association with Aboriginal people in the Northern Territory.

In 1972, a new government led by Gough Whitlam, promised to legislate for land rights. After a national campaign across five states involving unions, petitioning the Governor-General and the NT Administration; the Commonwealth exercised its power in relation to the Northern Territory pastoral lease at Wave Hill.

The original Wave Hill lease was surrendered and two new leases were issued: one to the Vesteys and one to the Murrumulla Gurindji Company. On 16 August 1975, Prime Minister Gough Whitlam went to Daguragu to issue the deeds. At the same time as he handed over the deeds, he poured a handful of Daguragu soil into Vincent Lingiari’s hand, symbolising that the land belonged always to the Gurindji people. The Wave Hill walk off site is now listed as a heritage site.

In 1976, the Aboriginal Land Rights (Northern Territory) Act recognised Aborigines as traditional land owners for the first time in Commonwealth legislation, based upon proof of their traditional association with the land.

The existence of native title rights of Aboriginal and Torres Strait Islander peoples at Australian law based on their historic rights as indigenous people was recognised in the judgement of the High Court of Australia in 1992 with the Mabo case.

National Reconciliation Week

National Reconciliation Week was first celebrated in 1996. National Reconciliation Week aims to give people across Australia the opportunity to focus on reconciliation between Indigenous and non-Indigenous Australians. It is a time to ‘reflect on achievements so far and on what must still be done to achieve Reconciliation’ (Reconciliation Australia).

Each year, National Reconciliation Week has a different theme. Some past themes have been Communities working Together (1998), Walking Together (1999), Sharing our future: The next steps (2000), Reconciliation: Keeping the Flame Alive (2001), and Reconciliation: It’s Not Hard to Understand (2003). The theme for 2011 was Let’s talk recognition.

National Reconciliation Week falls between 27 May and 3 June – two significant dates in the relations between Indigenous and non-Indigenous Australians, the anniversary of the 1967 referendum and Mabo Day, the anniversary of
the 1992 High Court judgement in the Mabo case.

27 May: Anniversary of the 1967 referendum

27 May is the anniversary of the 1967 referendum. The referendum altered the Australian Constitution (s. 127 and s. 51 xxvi) so that Aborigines could be included in the census count and so that the Commonwealth could make laws with respect to Aborigines as a race. Its intent was to end discrimination against Indigenous Australians.

The referendum provided the federal government with a clear mandate to implement policies to benefit Indigenous Australians. Also, counting Indigenous Australians in population statistics made the desperate state of Aboriginal health apparent.

3 June: Mabo Day – Anniversary of the High Court judgement on the Mabo case

Eddie Mabo was from Mer, one of the Murray Islands off the coast of Northern Australia. He argued in the High Court that Murray Islanders’ rights to their land were not extinguished by the annexation of the islands by the State of Queensland, or by subsequent Queensland or federal governments’ legislation.

On the 3 June the High Court of Australia handed down its judgement on the Mabo case. The High Court agreed with this view, and the idea of terra nullius – that Australia had been empty of people when settled by the British – was abandoned and the pre-existing rights of Indigenous Australians acknowledged. This was a massive boost to the struggle for the recognition of Aboriginal land rights, yet the movement for land and sea rights continues.

Council for Aboriginal Reconciliation and Reconciliation Australia

The Council for Aboriginal Reconciliation was established under the Council for Aboriginal Reconciliation Act 1991 and was charged with this mission:

The object of the establishment of the Council is to promote a process of Reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community ...

Council for Aboriginal Reconciliation Act 1991, Section 5

The Council worked closely with the Australian Local Government Association to have the issue of Reconciliation on the local community agenda. In January 2000, the Council for Aboriginal Reconciliation was replaced with a new private body, Reconciliation Australia. Reconciliation Australia is the current peak national organisation building and promoting Reconciliation between Indigenous and non-Indigenous Australians.

Corroboree 2000

On 27-28 May 2000, the Council for Aboriginal Reconciliation convened a major national event, Corroboree 2000, which was a landmark for Reconciliation in Australia. This event honoured and celebrated the achievements of Reconciliation so far, and set a framework for continuing the process beyond 2000.

On Sunday 28 May 2000 more than 250,000 people participated in the Corroboree 2000 Bridge Walk across Sydney Harbour Bridge in support of Indigenous Australians. The event highlighted the issue of a lack of an apology by the (then) Australian Government to the Stolen Generations.

Reconciling the Nation, 2000

In 2000, Unfinished Business: Reconciling the Nation was broadcast by SBS over ten days. It featured nine new films, six existing films and live coverage of the Sydney Harbour Bridge Walk. The season

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of Indigenous film coincided with Corroboree 2000, Reconciliation Week and National Sorry Day.

One of the documentaries broadcast, Whiteys Like Us (Landers 1999), provides an interesting insight into a group of white Australians participating in a Reconciliation Learning Circle. In the film, some members express resentment: ‘why are they getting more than me?’ echoing common myths about welfare and living conditions for Indigenous Australians. However, the group also demonstrates a desire for understanding and to move forward. The documentary leaves the viewer with the question of whether the issues will ever truly be acted upon by the non-indigenous community.

Fiction films screened as part of Unfinished Business include Confessions of a Headhunter (Riley 2000) and Road (McKenzie 2000). Both films explore the experience of indigenous people in contemporary urban Australia. In Confessions of a Headhunter Frank (Bruce Hutchinson), with the help of his cousin, lashes out after a statue of the indigenous warrior Yagan is beheaded. The film combines mystery and comedy and highlights the lack of recognition there is for the struggle of Indigenous Australians against colonisation.

A Wukidi ceremony for Dhakiyarr Wirrpanda, 2003

Dhakiyarr Wirrpanda, a Yolngu elder from northeast Arnhem Land, was found guilty of the murder of a white policeman and sentenced to death in 1934. After a controversial trial in the Northern Territory Supreme Court, Dhakiyarr was sentenced to death. An appeal to the High Court made this the first case of an Aboriginal Australian to be heard in that court.

Dhakiyarr’s case drew national and international attention to the treatment of Aboriginal people in Australia. The case, however, ended in tragedy for Dhakiyarr and his family. On 8 November 1934 the High Court directed that Dhakiyarr be released and returned to his country. Within 24 hours of his release from gaol Dhakiyarr vanished.

The records on Dhakiyarr’s case end in the mystery of his disappearance in Darwin in November 1934. In June 2003, seventy years after Dhakiyarr Wirrpanda speared policeman Albert McColl, the families gathered at the Supreme Court of the Northern Territory for a Wukidi ceremony that would free Dhakiyarr’s spirit and enable reconciliation between the Wirrpanda and McColl families. A Wukidi ceremony is part of Yolngu law, and resolves a conflict between tribes that have wronged each other.

On the 13th of February 2008, the Prime Minister, Kevin Rudd, tabled a motion in parliament apologising to Australia’s indigenous peoples, particularly the Stolen Generations and their families and communities.

Formal apology to Australia’s indigenous peoples, 2008

On the 13th of February 2008, the Prime Minister, Kevin Rudd, tabled a motion in parliament apologising to Australia’s indigenous peoples, particularly the Stolen Generations and their families and communities, for laws and policies which had ‘inflicted profound grief, suffering and loss on these our fellow Australians.’ The apology included a proposal for a policy commission to close the gap between Indigenous and non-Indigenous Australians in ‘life expectancy, educational achievement and economic opportunity.’

Respect and healing

Flora MacDonald, from the ACT Branch of Australians for Reconciliation, says:

... we need to include Aboriginal people and Torres Strait Islanders in our communities so that we can all learn from one another and develop a real awareness, understanding, appreciation and respect for the culture and history of indigenous Australia ...

The Council for Aboriginal Reconciliation suggested that the following activities may be suitable:

- Take part in planned National Reconciliation Week events and activities – your local Council and/or Australians for Reconciliation coordinator may be able to assist you.
- Ask your local Council, school and/or library to fly the Aboriginal, Torres Strait Islander and Australian flags throughout the week.
- Ask an indigenous community member to lead a heritage walk through your area and invite members of your community.
- Ask local businesses to display Reconciliation posters.
- Reconciliation is about sharing history – find out about the indigenous history of your area; ask a local indigenous person to come and talk to you and your group.
INDIGENOUS GOVERNANCE

COMMUNITY GUIDE EXTRACT FROM THE AUSTRALIAN HUMAN RIGHTS COMMISSION

What is indigenous governance?

Indigenous governance is about how we organise ourselves and make decisions about our lives in a culturally relevant way. Effective governance for Aboriginal and Torres Strait Islander peoples needs to start with us – with our peoples and with our communities.

Governance is the traditions (norms, values, culture, language) and institutions (formal structures, organisation, practices) that a community uses to make decisions and accomplish its goals. At the heart of the concept of governance is the creation of effective, accountable and legitimate systems and processes where citizens articulate their interests, exercise their rights and responsibilities and reconcile their differences.


What enables effective indigenous governance?

There are three connected components that enable effective governance in Aboriginal and Torres Strait Islander communities:

- Community governance
- Organisational governance
- The governance of governments and other external influences.

To be effective the three components must be grounded in human rights.

A HUMAN RIGHTS APPROACH TO INDIGENOUS GOVERNANCE

The Declaration can be used to provide practical guidance on governance in Aboriginal and Torres Strait Islander communities. Governance must be underpinned by the key principles in the Declaration.

Self-determination

Self-determination is about us deciding our own economic, social, cultural and political futures. Self-determination can be achieved if we have good community governance. This means ensuring effective, culturally relevant and legitimate processes that allow Aboriginal and Torres Strait Islander peoples to talk about their interests, exercise their rights and responsibilities, and resolve their differences.

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 3, United Nations Declaration on the Rights of Indigenous Peoples.

Participation in decision-making

Effective participation in decision-making involves three key elements:

- Duty to consult
- Good faith
- Free, prior and informed consent.

Together, these elements mean indigenous peoples must be recognised and treated as important stakeholders in the development, design, implementation, monitoring and evaluation of all policies and legislation that impact on our wellbeing.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 19, United Nations Declaration on the Rights of Indigenous Peoples.

Respect for and protection of culture

The Declaration sets out our right to maintain, protect and practice our cultural traditions and cultural heritage.
This includes providing effective mechanisms to protect:

- Our integrity as distinct peoples
- Our cultural values
- Our cultural, intellectual, religious and spiritual property
- Our children’s access to an education in our own language.

Culture within the context of our governance is about enabling us to continue our customary and historical – as well as our contemporary – ways of organising ourselves and making decisions about matters that affect us.

**Non-discrimination and equality**

The Declaration provides for our right to non-discrimination and equality. This includes government’s responsibility to take effective measures to protect our right to non-discrimination and equality, and prevent racial discrimination.

The principles of non-discrimination and equality mean that we should be able to govern ourselves without discrimination from individuals, governments and/or external stakeholders.

To achieve effective indigenous governance, we must embrace these principles and acknowledge that our governance is an interrelationship between our peoples and communities, our organisations and governments.

**A FRAMEWORK FOR EFFECTIVE GOVERNANCE IN ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES**

**Community governance**

Community governance is the way we can decide:

- What we want to achieve
- How we want to organise ourselves to achieve it.

Community governance allows us to determine who can speak when, for whom, to whom and about what on behalf of a community. It must ensure participation and respect the ideas of all members of the community, particularly those most vulnerable. Community governance should draw on and respect our strong cultures and traditions.

Effective community governance provides the foundation for our organisational governance and should guide government’s actions.

**Effective indigenous governance must start with us – with our peoples and our communities.**

M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, Native Title Report 2012.

**Organisational governance**

Organisational governance enables our organisations to get things done.

To be effective, our organisations must be seen as legitimate by both communities and governments. Organisational governance allows our organisations to have this legitimacy.

Effective organisational governance must align with community governance. It must be accountable to and have the capacity to engage with community as well as governments and external organisations. This means that organisations must have sound corporate governance structures and processes, including rules, reporting processes and dispute resolution mechanisms.

**Governance of governments**

Governments must support, enable and empower Aboriginal and Torres Strait Islander peoples and organisations. In doing this, governments must reflect on their role in communities. They must look to remove barriers to effective governance as well as provide support to our organisations.

To do this, governments must:

- Recognise that empowerment is vital to achieving the goals of Aboriginal and Torres Strait Islander peoples
- Ensure government processes support strong community and organisational governance
- Respect and support our decision-making processes
- Reform funding and reporting processes to reduce unnecessary ‘red-tape’.

When engaging with Aboriginal and Torres Strait Islander communities, governments must:

- Provide relevant information in a culturally appropriate manner, including our own languages
- Provide us with adequate timeframes to make a decision
- Ensure all staff working in our communities are culturally competent
- Properly resource organisations so that they can effectively engage with governments.
The history of the Stolen Generations

A FACT SHEET FROM THE NATIONAL SORRY DAY COMMITTEE

Who were the Stolen Generations?

The term ‘Stolen Generations’ describes the many Aboriginal – and some Torres Strait Islander – people who were forcibly removed from their families as children by past Australian Federal, State and Territory government agencies, and church missions, from the late 1800s to the 1970s. These removals were carried out under acts of their respective parliaments, and the children removed were sent either to institutions or adopted by non-indigenous families.

Children taken by State and Territory authorities were often not permitted to have visits from their parents or families, such was the extent to which the separation from family, community and culture was enforced.

Nearly every Aboriginal family and community was affected by these policies of forcible removal – those taken away, the parents, sisters and brothers, uncles and aunts, and the communities themselves.

Why were children removed?

Throughout the early 1900s, the Australian public was led to believe that Aboriginal children were disadvantaged and at risk in their own communities, and that they would receive a better education, a more loving family, and a more civilised upbringing in adopted white families or in government institutions.

The reality was that Aboriginal children were being removed in order to be exposed to ‘Anglo values’ and ‘work habits’ with a view to them being employed by colonial settlers, and to stop their parents, families and communities from passing on their culture, language and identity to them. The children who were targeted for removal by the authorities of the time, in almost all cases, had one parent that was ‘white’ and one that was Aboriginal.

The objective behind the removal of these children then was often one of racial assimilation.

The term ‘Stolen Generations’ describes the many Aboriginal people who were forcibly removed from their families as children from the late 1800s to the 1970s.

The Aboriginal Protection Boards at the time believed that by separating these mixed race children from their families, community, land and culture, assimilation into white Australian society would be all the more effective, with the mixed descent Aboriginal population in time merging with the non-indigenous population.

The children removed and then placed in institutions or with new foster families so often received a lower standard of education, and sometimes no education at all, when compared with the standard of education available to white Australian children.

In Western Australia, for example, once removed, children were often placed in dormitories, trained as farm labourers and domestic servants, and by the age of 14 were sent out to work.

Experiences of the children

Experiences of the children taken from their families varied widely.

Some coped with the trauma of losing their families, and flourished, despite the prevailing sense and knowledge of their loss of and separation from their birth families, communities, land and culture.

I was very fortunate that when I was removed, I was with very loving and caring parents. The love was mutual … I know my foster parents were the type of people that always understood that I needed to know my roots, who I was, where I was born, who my parents were and my identity … I remember one day I went home to my foster father and stated that I had heard that my natural father was a drunk. My foster father told me you shouldn’t listen to other people: “You judge him for...
yourself, taking into account the tragedy, that someday you will understand’. Confidential submission 252, South Australia: woman fostered at 4 years in the 1960s.

However, once removed, so many children were encouraged to abandon and deny their own Aboriginal heritage and language in favour of western values and norms, and the English language.

My mother and brother could speak our language and my father could speak his. I can’t speak my language. Aboriginal people weren’t allowed to speak their language while white people were around. They had to go out into the bush or talk their lingo on their own. Aboriginal customs like initiation were not allowed. We could not leave Cherbourg to go to Aboriginal traditional festivals. We could have a corroboree if the Protector issued a permit. It was completely up to him. I never had a chance to learn about my traditional and customary way of life when I was on the reserves.

Confidential submission 110, Queensland: woman removed in the 1940s.

For many other children, who were placed with unsatisfactory foster parents or in institutions, as adults they continue to struggle to overcome their experiences of trauma, loss, isolation, and often, abuse.

I led a very lost, confused, sad, empty childhood, as my foster father molested me. I remember once having a bath with my clothes on ‘cause I was too scared to take them off. I was scared of the dark ‘cause my foster father would often come at night. I was scared to tell anyone ‘cause I once attempted to tell the local Priest at the Catholic church and he told me to say ten Hail Mary’s for telling lies. So I thought this was how ‘normal’ non-Aboriginal families were. I was taken to various doctors who diagnosed me as ‘uncontrollable’ or ‘lacking in intelligence’.

Confidential submission 788, New South Wales: woman removed at 3 years in 1946; experienced two foster placements and a number of institutional placements.

The Bringing Them Home report and the Stolen Generations Testimonies website both feature the first-hand stories of adults, who as children were forcibly removed from their families and communities. They tell their own stories of loss and separation from their families, communities, culture and land, social isolation, deplorable living conditions, neglect, and physical, mental and sexual abuse.

The institutions to which the children were taken were tasked with preparing ‘part-Aboriginal’ children to take their place in a society which treated non-white people as second class.

**Long-term impacts**

The forcible removal of Aboriginal children irrevocably broke parental links, severing cultural connection to family and country. As a measure of remedy, the emergence of the Link Up services across the country now mean that increasingly, Stolen Generations members are able to receive assistance and support when seeking to be reunited with their families.

The journey that Stolen Generations survivors embark on when looking to trace their family members as adults can be fraught with a range of varied and mixed emotions. Even when the opportunity to become reunited with ones family arises, it is incredibly difficult to shift the deep and understandable sense of resentment that is felt by many Stolen Generations survivors and their families.

For many, the question ‘how could the policies of forcible removal ever have been justified in light of the trauma and loss they caused’ has still yet to be answered.

Few Aboriginal and Torres Strait Islander families have escaped the impacts of the forcible removal of children. The end result is a deep sorrow in the psyche or spirit for many Aboriginal and Torres Strait Islander individuals, families and communities throughout Australia.

13 February 2008 marks the date of the Apology to the Stolen Generations. Why was the apology important? Have there been compensation claims and what is the Government doing to assist members of the Stolen Generations? Here are some straightforward answers to these questions and more.

1. **Who are the Stolen Generations?**

The term 'Stolen Generations' refers to Aboriginal and Torres Strait Islander Australians who were forcibly removed, as children, from their families and communities by government, welfare or church authorities and placed into institutional care or with non-indigenous foster families. The forced removal of Aboriginal and Torres Strait Islander children began as early as the mid 1800s and continued until 1970.

Many of these removals occurred as the result of official laws and policies aimed at assimilating the Aboriginal and Torres Strait Islander population into the wider community. The 1997 Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, conducted by the Human Rights and Equal Opportunity Commission, found that between 1 in 10 and 3 in 10 Aboriginal and Torres Strait Islander children were forcibly removed from their families and communities in the years 1910 to 1970.

The Western Australian and Queensland Governments have confirmed that during that period of time all Aboriginal and Torres Strait Islander families in their States were affected by the forced removal of children. It is not possible to know precisely how many children were taken because government records of these removals are poor and many government files are inaccurate. Much of what is known about these policies and their effects comes from the personal testimonies of those involved.

The Stolen Generations should not be confused with other government policies that aimed to help Aboriginal and Torres Strait Islander children in remote areas attend school, with their parents’ full consent. It should also not be confused with the removal of indigenous and non-indigenous children from dangerous circumstances under welfare policies that continue to apply today.

It’s important to understand that the term ‘Stolen Generations’ refers to those children who were removed on the basis of their race alone. In contrast to the removal of non-indigenous children, proof of neglect was not always required to remove Aboriginal and Torres Strait Islander children. That one of their parents was of Aboriginal or Torres Strait Islander descent was enough.

2. **How do we know their stories are true?**

All State and Territory governments have acknowledged past practices and policies of forced removal of Aboriginal and Torres Strait Islander children on the basis of race. As part of this formal acknowledgement, all State and Territory governments have apologised for the trauma these policies have caused.

The report of the Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, the *Bringing Them Home* report, contains extensive evidence of past practices and policies which resulted in the removal of children. It also details the conditions into which many of the children were placed and discusses the devastating impact this has had on individuals, their families and the broader Aboriginal and Torres Strait Islander community.

The Inquiry took evidence from Aboriginal and Torres Strait Islander people, government and church representatives, former mission staff, foster and adoptive parents, doctors and health professionals, academics, police and others. It received over 777 submissions, including 535 from Aboriginal and Torres Strait Islander individuals and organisations, 49 from church organisations and 7 from governments.

3. **Why was it important to apologise to the Stolen Generations?**

The *Bringing Them Home* report found that the forced removal of Aboriginal and Torres Strait Islander children from their families and communities has had life-long and profoundly disabling consequences for those taken, and has negatively affected the entire Aboriginal and Torres Strait Islander community. For many of the children, removal meant that they lost all connection to family, traditional land, culture and language and were taken to homes and institutions where they were often abused, neglected and unloved.

It never goes away. Just ‘cause we’re not walking around on crutches or with bandages or plasters on our legs and arms, doesn’t mean we’re not hurting. Just ‘cause you can’t see it doesn’t mean ... I suspect I’ll carry these sorts of wounds till the day I die. I’d just like it to be not quite as intense, that’s all. (Confidential Evidence 580, Queensland. *Bringing Them Home* report)

The reality of Australia’s Stolen Generations is not a thing of the distant past. Children were being inappropriately removed from their families by Australian authorities until 1970. Many people affected by the tragedy of the Stolen Generations are still alive today and live with its effects.

The *Bringing Them Home* report suggested that the first step in healing is the acknowledgment of truth and the delivery of an apology. The release of the report was followed by a wave of apologies to the Stolen Generations by state parliaments, judges, churches, civic associations, trade unions and ethnic groups. However, it remained the responsibility of the Australian Government, on behalf...
of previous Australian Governments who administered this wrongful policy, to acknowledge what was done and apologise for it.

This issue is a ‘blank spot’ in the history of Australia. The damage and trauma these policies caused are felt every day by Aboriginal people. They internalise their grief, guilt and confusion, inflicting further pain on themselves and others around them. It is about time the Australian Government openly accepted responsibility for their actions and compensate those affected.

(Archie Roach and Ruby Hunter in Buti A, Bringing Them Home the ALSA Way)

4. Why did Australians of today apologise for something they weren’t responsible for?

Individual Australians did not provide the Apology. The Apology was provided by the Australian Government in recognition of policies of past governments. Similarly, the former Australian Government apologised to Vietnam veterans for the policies of previous governments. No individual Australian was asked to take personal responsibility for actions of past governments.

5. What does the Apology mean to non-Indigenous Australians?

Following on from apologies already made by all State and Territory governments and the churches, an official apology to members of the Stolen Generations by the Australian Government was an important step towards building a respectful new relationship between Indigenous and non-Indigenous Australians. Respectful relationships are essential if we are to solve persistent problems.

In this way, the Apology lays the groundwork for us to work together more effectively towards achieving better outcomes for Aboriginal and Torres Strait Islander Australians. It was an important starting point in healing the wounds of the past and an historic step forward for our nation that we can be proud of.

The Apology was not an expression of personal responsibility or guilt by individual Australians but it does reflect our Australian values of compassion, justice and a fair go, and allows the victims of bad policy to feel that their pain and suffering has been acknowledged. It’s important that Australians understand the background to the Apology so they understand why it’s a step towards Reconciliation. It’s this understanding that will realise the great potential of this historic moment to move our nation forward.

“These days I don’t understand why it should be such a big deal to say sorry for the injustices that have been done to indigenous people. I know some people feel differently but, to me, saying sorry just feels necessary as a first step towards moving forward together.”

(Daniel Johns, lead singer of Silverchair)

6. Why should we apologise when many Aboriginal and Torres Strait Islander people are actually better off because they were removed from bad circumstances?

It is true that some Aboriginal and Torres Strait Islander children were removed from their families on genuine welfare grounds. It is also true that some children who were removed gained access to some advantages (such as increased educational opportunities), but evidence shows that the overwhelming impact of the forced removal policy was damaging.

Some people involved in the removal of children because of their race genuinely believed they were doing the right thing. As we now know, they were not.

The predominant aim of the forced removal of Aboriginal and Torres Strait Islander children from their families was to absorb or assimilate children with mixed ancestry (who were called ‘half-castes’) into the non-indigenous community. As Brisbane’s Telegraph newspaper reported in May 1937: “Mr Neville [the Chief Protector of WA] holds the view that within one hundred years the pure black will be extinct. But the half-caste problem is increasing every year. Therefore their idea is to keep the pure blacks segregated and absorb the half-castes into the white population. Perhaps it will take one hundred years, perhaps longer, but the race is dying.”

The Bringing Them Home report found that many children were removed solely on the basis of skin colour. Proof of this is in the fact that in many families children with paler skin were removed while their darker skinned siblings were left with the family.

The suggestion that Stolen Generations children were better off can only be assessed against the evidence of deprivation, neglect and abuse suffered by the children in the homes or institutions they were removed to. Almost a quarter of witnesses to the Bringing Them Home Inquiry who were fostered or adopted reported being physically abused. 1 in 5 reported being sexually abused. 1 in 6 children sent to institutions reported physical abuse and 1 in 10 reported sexual abuse.

7. Has the Apology led to claims for compensation from members of the Stolen Generations?

The Bringing Them Home report recommended the establishment of a national compensation fund for people affected by the forcible removal of Aboriginal and Torres Strait Islander children. The idea of the fund would be to offer reparation to those affected and avoid the courts having to deal with costly individual litigation. The United Nations Human Rights Committee has also recommended the Australian Government adopt a mechanism to compensate victims of the Stolen Generations. The Apology itself did not refer to compensation and the current Government has ruled out offering compensation to members of the Stolen Generations.

There has not been a rush of compensation claims following the Federal Government’s apology and those of State and Territory governments. However, the Tasmanian Government set up a compensation fund for members of the Stolen Generations in that State with $5 million in capped payments that was then divided among eligible people and their families. The governments of Queensland and Western Australia established ‘redress’
The residential schools. Survivors who suffered sexual and physical abuse in the Canadian Government also extended a formal apology to those who have suffered, and secondly it will acknowledge the serious harm done by previous governments to a class of people on the grounds of their race.

The apology led to a range of lawsuits and helped Ottawa’s Government to come to a settlement with First Nation representatives. As a result of the settlement, the Canadian Government provided a $1.9 billion compensation fund for the ‘common experience’ of all people who were affected by the removal of indigenous children. All residential school survivors are entitled to apply for the ‘common experience payment’. If the applicant is successful they receive a standard $10,000 in compensation and a further $3,000 for each year they were placed in the school. The Government has also provided an extra $3 billion in compensation to survivors who suffered sexual and physical abuse in the residential schools.

8. What has the Government done for members of the Stolen Generations since the Apology?

On 13 February 2009, the first anniversary of the Apology, the Australian Government announced its intention to establish a Healing Foundation to address trauma and aid healing in indigenous communities, with a particular focus on the Stolen Generations. $266.6 million over four years was allocated in the 2009-2010 Budget to establish the Healing Foundation, which was incorporated in October 2009. Since this time, the Healing Foundation has provided funding and support to various community-driven Aboriginal and Torres Strait Islander healing initiatives, and has been working to promote public awareness of healing issues. The Foundation will also conduct education and training initiatives, and engage in research and evaluation to investigate best practice in healing initiatives.

“Reconciliation for me is about recognising the past. Acting in the present. And building a better future.”

(The Hon. Paul Lennon, former Premier of Tasmania)

Case study: Canada’s ‘Common Experience Fund’

Canada’s indigenous population shares some of the experiences of Aboriginal and Torres Strait Islander Australians. From the early 1880s, indigenous Canadian children were removed from their homes on the basis of their race and placed in church-run, government funded residential schools. From 1920 until early 1970 this removal was experienced by practically all indigenous children. These schools were created to encourage assimilation and to suppress indigenous culture and language.

The United Church of Canada recently apologised for this “horrendous period of Canadian history” and the Canadian Government also extended a formal apology in the form of an action plan. The action plan included a statement of reconciliation in which the Canadian Government recognised and apologised for “the single most harmful, disgraceful and racist act” in their history.

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9. Why was the word ‘sorry’ important as part of the Apology?

The word ‘sorry’ holds special meaning in Aboriginal and Torres Strait Islander cultures. In many Aboriginal communities, sorry is an adapted English word used to describe the rituals surrounding death (Sorry Business). Sorry, in these contexts, expresses empathy, sympathy and an acknowledgment of loss rather than responsibility.

During the 2007 election campaign, then Opposition Leader Kevin Rudd also recognised the significance of the word sorry: “... simply saying that you’re sorry is such a powerful symbol. Powerful not because it represents some expiation of guilt. Powerful not because it represents any form of legal requirement. But powerful simply because it restores respect.”

10. Does the Apology mean that Reconciliation has been achieved?

An apology from the Australian Government to the Stolen Generations is one important step in working together to achieve reconciliation between Aboriginal and Torres Strait Islander peoples and non-indigenous peoples. It is important because it removes a barrier to us establishing a better relationship as Indigenous and non-Indigenous fellow Australians.

Closing the life expectancy gap involves consistent, long-term action by governments and by all Australians, in health, education, housing, employment etc. – as well as in building respectful relationships that generate better outcomes for us all.

Aboriginal academic Marcia Langton suggested that a formal apology would achieve two things: firstly it will aid in the restoration of a sense of dignity and legitimacy to those who have suffered, and secondly it will acknowledge the serious harm done by previous governments to a class of people on the grounds of their race.

“True reconciliation between the Australian nation and its indigenous peoples is not achievable in the absence of acknowledgment by the nation of the wrongfulness of the past dispossession, oppression and degradation of the Aboriginal peoples.”

(Sir William Deane, Governor-General of Australia, 1997)

The Stolen Generations Alliance has said the Apology should be backed up with a national education campaign and a parliamentary inquiry to resolve all outstanding issues, including compensation payments. “The level of dysfunction that remains in the community as a result of the removal policy is way beyond an apology,” Alliance co-convener Jim Morrison claims.

Former Prime Minister Kevin Rudd has also said that “unless the great symbolism of Reconciliation is accompanied by an even greater substance, it is little more than a clanging gong”.

LAND RIGHTS IN AUSTRALIA

This article from the ReconciliACTION Network features an historical background on the struggle for land rights and acknowledgement of native title

Introduction

No one knows when Aboriginal and Torres Strait Islander (indigenous) people first arrived in Australia. Evidence suggests it happened some 70,000 years ago, and perhaps much longer. Land was and is central to indigenous societies, cultures and religions. This land and its environment was managed, nurtured, protected and respected by Aboriginal people in a cyclical process of birth, death and renewal that is central to much of Aboriginal philosophy. For Aboriginal Australians the land is the core of all spirituality, identity and purpose. This relationship is central to all issues that are important to Aboriginal people today. Aboriginal people are part of this land and always will be.

The land rights story is the history of Australia, and in a sense, has been tied to the Reconciliation movement itself. When the British first colonised Australia they did not enter into a treaty with the local people, as they had done in other countries such as Canada and New Zealand. They claimed that indigenous people did not have sovereignty that could be recognised, and that the land was owned by no one. It was on this basis they took control of Australia from Indigenous Australians and formed government.

The foundation of all property rights in Australia is built on this shaky basis – this lie about the ‘Aboriginal problem’ restrictions were put on the Aboriginal people’s ability to move around on the reserves. Over time generations of Aboriginal people were born and lived on reserves in particular areas. Much of Aboriginal resistance has been written out of Australian history, but has become better known in recent times.

Over the decades as different policies were developed to manage what was at the time considered the ‘Aboriginal problem’ restrictions were put on the Aboriginal people’s ability to move around on the reserves. Often these demands included the right to access or manage the traditional lands on Aboriginal rights, and some groups of Aboriginal people continued to live off the land. Aboriginal people were often prepared to share their country if the land was respected and were allowed to share in some of the wealth that was produced. This led to cooperative relationships or mutual coexistence in some areas.

However, as more settlers arrived in Australia Aboriginal people were shunted further away from their traditional land onto unwanted land, or reserves. Sometimes the forced movements were peaceful, but often there were open conflicts. Much of Aboriginal resistance has been written out of Australian history, but has become better known in recent times.

By the 1900s many Aboriginal people were employed as stockman and workers on local farms. Over time Aboriginal workers began to increase their fight for pay and conditions. Often these demands included the right to access or manage the traditional lands on
which the farms were built. There were a number of worker strikes in the 1940s and 1950s which gained increasing attention. In 1966 the Gurindji people led by Vincent Lingiari held a strike against poor conditions and pay. What was originally a wage issue became a claim for the return of some of their traditional lands.

The Gurindji strike was one of the first to gain widespread support for indigenous land rights. The Gurindji dispute was a significant turning point and a crucial symbol of the growing Aboriginal land rights struggle. Nine long years later the Gurindji claim was successful. In 1975 the land was handed back to the people by Prime Minister Gough Whitlam, and native title legislation was enacted.

More broadly from the late 1950s there was a new wave of Aboriginal protest. One of the key activist organisations formed was the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI). FCAATSI campaigned, and won, the return of several areas of land in the 1960s.

In 1963 the Yirrkala people of the Northern Territory sent a petition on bark in protest against the leasing of their land to a mining company. The government did not stop the lease but agreed that compensation should be paid for the loss of land.

Throughout the struggle for land rights, there have been many individual citizens and activist groups and organisations that have contributed. For example, Aboriginal activists such as Garry Foley and Kath Walker toured Australia speaking for the recognition of land rights, calling on the government to compensate $150 million for lost lands.

**Tent embassy**

A crucial development in the Aboriginal Land Rights movement was the erection of a small tent on the lawns outside Parliament House on Australia Day 1972.

For Aboriginal Australians the land is the core of all spirituality, identity and purpose. This relationship is central to all issues that are important to Aboriginal people today. Aboriginal people are part of this land and always will be.

It was an organised protest against the McMahon government’s refusal to recognise the Aboriginal demand for inalienable rights to land. Proclaiming the site as the ‘Aboriginal Embassy’, it symbolised Aboriginal people’s estrangement from land and gained a great deal of positive publicity. Despite the police forcibly removing the embassy and arresting a number of protesters, the Aboriginal embassy continued to reappear.

The Tent Embassy can also be viewed as a new level of Aboriginal activism and demonstrates the significance of land rights as a unifying and mobilising political cause.

**Mabo and native title**

The 1970s saw the first major legislation which recognised Aboriginal people’s right to land. The *Northern Territory Land Rights Act* set up a framework for Aboriginal people to take back control of many parts of the territory.

Independent indigenous land rights bodies such as the Northern Territory’s Northern and Central Land Councils and Western Australia’s Kimberley Land Council were established. Land rights legislation was also established in other states over the 1980s and ’90s.

One of the most important wins for the indigenous land rights movement was the Mabo Case. Eddie Mabo was among the Meriam people who were the traditional inhabitants of Murray Island in the Torres Strait. In 1982, Mabo presented the High Court of Australia with a declaration of his region’s land rights. After a long court battle for recognition, the Mabo case was handed down in 1992.

This landmark case finally recognised that native title did exist in Australia and that indigenous people still had the right to make claims over their traditional lands. Eddie Mabo had successfully proved that his people had a system of ownership and management of land which existed before the British arrived, and which still continues today. While the court did find that the process of settlement of Australia had extinguished native title in many areas, it also finally overturned the myth that Australia was *terra nullius*.

The Mabo case stimulated both increased awareness and support for indigenous rights, and a backlash of fear as Australians began to consider what the case may mean.
The government chose to respond by establishing a national Native Title Act. While many saw the Act as a positive move forward, as it established a way for indigenous people to make land rights claims without going to court, the Act was very controversial and many amendments were made before conservative politicians would pass it into law.

**Wik**

In 1996, native title was tested further through the courts by the Wik people of Cape York and the Thayorre people of Queensland. The court held that native title rights could ‘co-exist’ alongside rights of pastoralists on cattle and sheep stations. It also said that when pastoralists and Aboriginal rights were in conflict, the pastoralists’ rights would prevail, giving pastoralists certainty to continue with grazing and related activities, but not exclusive possession of the land. Graziers could continue to run their cattle or sheep and undertake all the activities related to doing this such as building fences, dams and other structures.

Despite the fact that pastoralists did not lose any rights as a result, the Wik decision led to a hysterical attack from pastoralists and conservative leaders, who demanded that native title be extinguished, or wiped out, on pastoral leases. Following their election, the Howard Government enacted a ‘10 Point Plan’ by winding back many of the rights recognised in the Native Title Act.

The foundation of all property rights in Australia is built on this shaky basis – this lie about the first Australian people and their land. Indigenous people have a long history of fighting for recognition and to reclaim the land that was taken from them. The fight continues today.

The Human Rights and Equal Opportunity Commission’s Aboriginal and Torres Strait Islander Social Justice Commissioner, in his Native Title Report had this to say:

“The Wik decision provided our country with a potential basis for co-existence between Indigenous and non-Indigenous Australians. The Federal Government’s Ten Point Plan destroyed that potential and produced the Native Title Amendment Bill 1997 (Cth) (‘the Bill’). The Bill rejects a fundamental and dynamic proposition contained in Wik: that where pastoral rights are inconsistent with co-existing native title rights, they prevail over them but do not extinguish the underlying native title. The Bill represents a concentrated drive towards the permanent extinguishment of native title. Whichever way you look at these proposals it is impossible to find a just and fair framework which seeks to balance Australian property rights. You see bias. You see gross infringements of the human rights of Aboriginal and Torres Strait Islander peoples. You see “bucket-loads of extinguishment”.

The limits of the Native Title Act as it came to exist can be seen today in the small number of successful native title claims. Native title claims can also take up to ten years to negotiate. Many of the successful claims come to be resolved through agreement between the government, land owners and traditional owners outside the Native Title Act framework. Addressing the limitations on this system and its overly legalistic nature remain a key part of the Reconciliation movement today.
NATIVE TITLE

December marks the anniversary of the 1996 High Court decision in the Wik case. The case followed on from the historic Mabo native title decision in 1992 and together, these cases underpin Australia’s native title system. Issues and controversy around native title still play a large role in the relationship between Indigenous and non-Indigenous Australians. Reconciliation Australia tries to answer some important questions about this issue.

1. What is native title?

Native title is the name for the ownership rights and interests of Aboriginal and Torres Strait Islander peoples in their traditional land that can be recognised by Australian law. In order for native title to be recognised, Aboriginal and Torres Strait islander people claiming native title must prove continuous customary connection to the land being claimed.

The National Native Title Tribunal states, native title rights and interests may include rights to:

- Live on the area
- Access the area for traditional purposes, like camping or to do ceremonies
- Visit and protect important places and sites, hunt, fish and gather food or traditional resources like water, wood and ochre
- Teach law and custom on country

In some cases, native title includes the right to possess and occupy an area to the exclusion of all others (often called ‘exclusive possession’). This includes the right to control access to, and use of, the area concerned. However, this right can only be recognised over certain parts of Australia, such as unallocated or vacant Crown land and some areas already held by, or for, Indigenous Australians.

2. Why does Australia have native title laws?

Aboriginal and Torres Strait Islander peoples’ occupation of Australia predates European settlement by at least 50,000 years. When the British arrived, they did not recognise that Aboriginal people had rights to land, so they regarded the land as freely available to the Crown. This has been described as the land being ‘terra nullius, land belonging to no one’. Aboriginal and Torres Strait Islander peoples’ land was taken without any agreement or compensation. This process is called ‘dispossession’.

In 1992, in what is known simply as the ‘Mabo case’, the idea that the settlement of Australia extinguished any Aboriginal rights to land was overturned by the High Court. Put simply, this decision said that under Australian law, indigenous people have rights to land – rights that existed before Europeans arrived and, where they have not been extinguished by lawful acts inconsistent with the survival of those rights, can still exist today. These rights are called native title.

The preamble to the Native Title Act sets out why dealing with what native title survives is important to indigenous people:

Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement. They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands. As a consequence, Aboriginal peoples and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society.

The Native Title Act is important for all Australians. As well as providing ways in which native title interests can be formally recorded and recognised in Australian law it confirms the validity of the titles granted by governments against native title and ways in which new interests in land such as mining leases can be created where native title still exists or may exist.

3. If Aboriginal and Torres Strait Islander peoples have rights to land, what does that mean for other land owners?

Generally speaking, native title gives way to the rights granted by governments and held by others. For example, freehold residential land and farmland, and land held under residential, commercial or community purpose leases which are inconsistent with the survival of any part of native title cannot be claimed. Public infrastructure such as roads, schools and hospitals are also exempt. This means that most of the land in towns and cities cannot be subject to a successful claim.

4. Does native title give Aboriginal and Torres Strait Islander peoples special rights?

Native title can only be claimed and recognised by and for indigenous people as the rights flow from their historic and continuing ownership.

5. How is native title different from land rights?

Although they are sometimes referred to as though they are the same thing, land rights and native title are quite different.

With land rights, the government recognises Aboriginal and Torres Strait Islander interest in the land where, for example, they have a traditional connection to the land or where traditional owners have lived in an
area for many years on reserves or missions by providing for a form of government granted legal tenure. These rights flow from Acts of Parliament. Most commonly the community owns the land as inalienable freehold title. Land rights are recognised in state laws as well as by Commonwealth law in the NT and the ACT.

6. Does native title stop development and slow economic growth?
Under the Native Title Act 1993, mining companies and other developers are required to negotiate with native title holders and others with a potential interest in the land before commencing any development. The interests of native title holders may well be affected by mining or other industries operating on native title land. Native title holders do not have the power to say no to developments; instead they have a right to negotiate. The outcome of successful negotiations may take the form of indigenous land use agreements (ILUAs). If the parties can’t reach a negotiated agreement within certain time limits the issue can be subject to compulsory mediation and determination by the National Native Title Tribunal.

Although native title is generally limited to traditional usage rights it may provide opportunities for indigenous economic development through the right to negotiate as well as such things as cultural tourism, fire and environmental management, and carbon sequestration. For example, in Arnhem Land in the Northern Territory, native title holders are involved in a fire management project called the West Arnhem Land Fire Abatement Project. Native title holders bring their deep knowledge of their land and invaluable skill and expertise to the project, which offsets some of the greenhouse gas emissions from the Liquefied Natural Gas plant in Darwin and brings social and economic benefits to their communities.

7. What is the Wik decision?
In 1996, four years after the Mabo decision another native title case went to the High Court. The Wik peoples of Cape York’s case further developed native title law by confirming that limited native title rights could still exist over lands which were held under pastoral leases where those remnant rights were not inconsistent with the rights of the pastoralist. Previous to this decision many people had believed that all such leases completely extinguished native title. As a result at the time it was a controversial decision.

8. What was the ’10 point plan’?
Due to the controversy and extensive public debate which followed the High Court’s decision in the Wik case, the Howard Government developed a ’10 point plan’ for amending the Native Title Act. The amendments were criticised for winding back some of the advancements for indigenous peoples’ capacity to make claims.

9. How is native title recognised?
To make a claim for native title, the relevant group of people must first file an application in the Federal Court seeking a determination that recognises them as native title holders. The public are notified of this application so that other interested parties can choose to become involved in the claim process.

The application may then be referred to the National Native Title Tribunal or another person or body for mediation. The Tribunal functions as a mediator between the Aboriginal or Torres Strait Islander claimants and all other parties, such as farmers, businesses and governments. The Tribunal does not decide whether or not native title exists – its role is to provide independent information and impartial assistance to all of the parties involved in a claim. The purpose of mediation is to give the parties a chance to come to an agreement about the native title claim without going to trial.

If an agreement is reached that native title exists, an application for a consent determination can be made to the Federal Court. If no agreement is reached the application can go to trial. The Court will then determine on the evidence whether or not native title exists, and if so what rights it carries.

It can be a long and complex process, involving difficult legal issues and extensive historical, archaeological and anthropological research. Claimants must establish a ‘continuing connection’ to the land and the ongoing survival of a decision making group which operates under rules which are traced back to pre European settlement. The difficulties faced by native title applicants, particularly in the more settled parts of Australia where there has been extensive extinguishment of native title and greater dispossession and dislocation of indigenous people is reflected in the large number of claims which have yet to be either determined or dismissed.

10. What is being done to make the native title process work better?
It is in everybody’s interests for native title claims to be resolved quickly and fairly. To try and achieve this,
there have been various attempts at reforming the process over the years. One of the most recent developments was the *Native Title Amendment Act 2009*, which gave the Federal Court the central role in managing native title claims and implemented other measures to improve the claims process.

In some cases, such as the Ord Stage 2 Agreement in Western Australia, State governments have adopted a wider approach to native title, including it in land use planning to ensure Aboriginal people have their rights recognised in a development context.

More recently, changes have also been made to the native title process in Victoria. Under the *Victorian Traditional Owner Settlement Act 2010* traditional owners can negotiate their claims with the Victorian Government outside of the Court process. Professor Mick Dodson, Chair of the Traditional Owner Land Justice Group which worked with the Victorian Government to make the changes, has said that the approach has the capacity to deliver more practical benefits and economic opportunities.

These examples show that governments have the capacity to make the native title process quicker, more flexible and more likely to ensure opportunities for economic development as well as recognition of traditional rights and interests.

**11. How does native title help to bring benefits to Aboriginal and Torres Strait Islander people?**

Native title can bring economic, social and spiritual benefits to Aboriginal and Torres Strait Islander communities.

For many Aboriginal and Torres Strait Islanders, just the recognition of native title rights is important. For them land or ‘Country’ as it is often called, is both a physical place created by ancestral beings and a sacred, invaluable place inhabited by ancestors. The ability to live on, access and make decisions about this Country is vitally important to people’s identity and culture.

As one traditional owner says:

‘Home is like your house, but home to us is like our Country ... No matter where we go we’ll always come back to that tribal Country; where old people used to walk around and used to hunt. That’s another way of home. And wherever you go you’ll always come back and you’ll always have a sense of belonging in that place ... Even if a Martu person was born in one little tree in the desert somewhere and he went up north, first time he seen whitefellas, and he went up north or south or east or west and lived on someone else’s Country but he was longing for his Country and wanted to go back ... After he passed away he’ll always go back to his home. In his spirit, he’ll fly back to his home ... We come out through the Country, we come out through the dreams ... and then we live. And when we die we become part of the Country. That’s what we believe. When we die, we become one with the Country. Our spirit goes back.’

Curtis Taylor, Parnngurr, 2009

In addition to spiritual gains, native title can provide opportunities for social and economic advancement. Most new mining projects today involve opportunities for training and employment and business development. In other areas there are environmental management, tourism and other opportunities. For example, the rent that is collected from tourists visiting Uluru is used by the traditional owners to pay for community development projects in central Australia such as upgrading power supplies, youth services and supporting community members needing special health care. Native title holders, governments and some developers are continuing to work to improve the native title system so it can improve the lives and prospects of Indigenous Australians.

I was working in the Torres Strait in the late 1980s and I remember the buzz that went around Thursday Island when Koiki (Eddie Mabo) was back in town.

I was also on Thursday Island when a famous Queensland boat, the Melbidir, took those involved in the final hearings of the Mabo case around the Straits and finally to Murray Island. When it returned to Thursday Island, I remember my friend Lloydy Maza, a Murray Island man, entertaining lawyers, court reporters and boat crew, regaling them about the part they were playing in what would be one of the most important decisions made in the history of this country.

There is no doubt about it – the Mabo decision and the recognition that terra nullius was a myth was a defining moment for Aboriginal and Torres Strait Islander people. It was also a moment that divided the Australian community.

It is no secret that the mining industry and some state governments were particularly strident in their opposition, fuelled in no small part by headlines peddling ill-founded fears that the humble backyard would soon be swallowed up by Aboriginal and Torres Strait land claims.

But Eddie Mabo’s victory represented so much more than an argument about land rights.

As Professor Mick Dodson, the inaugural Social Justice Commissioner, observed in 1994, the “recognition of native title was more than a recognition of indigenous property interests, it is also about the recognition of our human rights”.

The Mabo decision and the recognition that terra nullius was a myth was a defining moment for Aboriginal and Torres Strait Islander people.

Native title was – and is – a promise to recognise Aboriginal and Torres Strait Islander people’s traditional connection to, and rights and interests in, their lands, territories and resources.

Twenty years on from the Mabo decision, we owe it to ourselves to ask what this promise has delivered for Aboriginal and Torres Strait Islander peoples?

The Native Title Act, as it was drafted in 1993, tried to balance the realities of the past with a fair way to deal with land in the future, based on contemporary notions of justice.

But one of the fundamental flaws of the native title system as we know it is that the concept of native title was based on the unfair principle that the Crown had the power to extinguish traditional indigenous ownership of land.

Although the government had the chance to redress some of the failings of the Native Title Act following the High Court’s Wik decision, which laid the ground rules for co-existence and reconciliation of shared interests in the land, the opposite happened.

What occurred instead was a...
significant weakening of Aboriginal and Torres Strait Islander people’s position and amendments which ensured that the Native Title Act could override one of Australia’s most important laws designed to protect human rights, the Racial Discrimination Act.

The process of recognising native title itself has also been frustrating from the start for Aboriginal and Torres Strait Islander peoples. While on the one hand, it brings hope and expectation of the return of country, on the other hand it can also be a process fraught with difficulties that opens up tensions and wounds around connections to country, family histories and community relationships.

These instances of ‘lateral violence’ fragment our communities as we navigate the native title system and sadly diminish the unique opportunity native title can and should deliver to overcome disadvantage. Despite all this, I am optimistic that the original promise of the Mabo decision can still be realised.

In February, Senator Rachel Siewert introduced into Parliament the Native Title Amendment (Reform) Bill. The bill is based in part on the recommendations of many stakeholders over the years, including my predecessor, Dr Tom Calma.

But it has also been introduced within the context of Australian government support for the United Nations Declaration on the Rights of Indigenous Peoples, which provides that states are to establish and implement “a fair, independent, impartial, open and transparent process... to recognise and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources”.

It’s time we addressed the most significant problems faced by Aboriginal and Torres Strait Islander people in their efforts to realise their rights to lands, territories and resources.

Many of us who are familiar with the intricacies of the native title system have been calling for years for the onus of proving native title to be reversed. This would mean that native title claimants would be presumed to have a continuous connection to their traditional country unless there is evidence that this connection has been significantly disrupted.

Currently, native title claimants have to provide all the information that’s required to demonstrate their continuous connection to country.

As these reforms sit before the federal Parliament, I find myself wondering what Eddie Mabo would think now?

I’d like to think he’d still hold out hope that the promise Mabo represented really will be fulfilled.
FAQS ON CONSTITUTIONAL RECOGNITION

ENGAGING IN THE NATIONAL CONVERSATION ABOUT EQUALITY AND RECOGNITION:
Frequently asked questions about constitutional recognition, answered by ANTaR

Why do we need to change the Constitution?

1. There is no mention of Aboriginal or Torres Strait Islander Peoples in the Constitution.
2. The Constitution contemplates laws that ban people from voting on the basis of their race [Section 25]. This power was last used to exclude Aboriginal people from voting in Queensland, up until 1965.
3. The Constitution contains a ‘races power’ [Section 51(xxvi)], which allows ‘special laws’ directed at the people of a particular race. Whilst this power enables laws to address disadvantage, it also leaves open the possibility that future governments could unfairly target particular ethnic or national groups.

Isn’t this all about symbolism? What will actually change for Aboriginal people on the ground?

The package of reforms recommended by the Expert Panel would have powerful symbolic and real practical effects for all Australians. In addition to recognising Aboriginal languages, cultures and prior occupation, it will also ensure that the Australian Government is able to make necessary laws to improve the lives of Aboriginal and Torres Strait Islander Peoples by addressing historic disadvantage and protecting heritage and culture. At the same time it will prevent future Parliaments from making racially discriminatory laws.

Australia is a multicultural society. Why should we recognise Aboriginal and Torres Strait Islander Peoples but not the cultural heritage of other Australians?

This process is about recognising the unique status of Aboriginal and Torres Strait Islander Peoples as the First Peoples of this land. However it is also about ensuring that all Australians are protected from discrimination on the basis of their ‘race’, colour or ethnic or national origin. Recognition and equality in Australia’s Constitution would show respect to the First Peoples and ensure a fair go for all.

The Panel was asked to examine a preamble to recognise Aboriginal and Torres Strait Islander Peoples but they have come back with a proposal to make major reforms to our Constitution. Has the Expert Panel over-reached?

In consultations conducted by the Expert Panel, Aboriginal and Torres Strait Islander Peoples expressed the view that any change needed to be meaningful and practical, not just symbolic. The Expert Panel decided that it would be contradictory to recognise the First Peoples while maintaining racially discriminatory provisions in our Constitution. It concluded that such discrimination needed to be clearly removed from our Constitution in order for it to “reflect the values

Why recognise?

Recognise explains why Australia needs to acknowledge Indigenous Australians in the Constitution

We need to fix the historical exclusion of Aboriginal and Torres Strait Islander peoples from Australia’s Constitution. And we need to remove discrimination – like the section of our Constitution that says people can be banned from voting based on race.

Our Constitution was written more than a century ago. By then, Aboriginal and Torres Strait Islander peoples had lived in this land for more than 40,000 years, keeping alive the world’s oldest continuous cultures. But Australia’s founding document did not recognise the first chapter of our national story.

It mentioned Aboriginal and Torres Strait Islander peoples only to discriminate. For the first six decades of our democracy, Indigenous Australians could not vote, and were excluded from being counted as citizens until 1967.

Today Australia prides itself on being a place of fairness. But our Constitution still does not recognise the first Australians. And it still lets the States ban people from voting based on their race.

We need to fix this, and bring the country together after so many chapters apart. It is the next step in reconciling our past. And it’s the right thing to do.

Recognise. Why Recognise?
The push to recognise Aboriginal and Torres Strait Islander peoples and remove discrimination from our Constitution is not new. Over the past few decades, many Aboriginal and Torres Strait Islander leaders have called for constitutional recognition.

In 1999, Prime Minister John Howard proposed a preamble to the Constitution, which recognised Aboriginal and Torres Strait Islander cultures – but it was defeated with the republic referendum.

In 2007, Mr Howard promised that if re-elected as Prime Minister, he would hold a referendum to recognise Indigenous Australians in the Constitution. It has been Coalition policy ever since. Kevin Rudd, as Opposition Leader, pledged bipartisan support for the proposal, regardless of the election outcome. It has been Labor policy ever since.

Adding further momentum, in July 2008 the Yolgnu and Bininj clans across Arnhem Land presented Mr Rudd with a statement calling on the government to “work towards constitutional recognition of our prior ownership and rights”. In accepting the communiqué, the Prime Minister pledged his support for recognition of indigenous peoples in the Constitution.

In 2010, Julia Gillard struck a deal to form government with Independent MP Rob Oakeshott and the Greens that included a commitment to hold a referendum on constitutional recognition by the 2013 election. An expert panel was appointed to advise on a model and process. It reported in January 2012.

In September 2012, Labor announced it would delay the referendum, citing concern at low levels of public awareness.

As an interim step towards a referendum, the Government proposed an Act of Recognition in the Parliament. The legislation has a sunset period of two years, which Liberal MP Ken Wyatt – the only indigenous federal MP – likened to a “post it note on the fridge” to remind the Parliament to finish the task.

Meanwhile, a grassroots movement of Australians is growing steadily to build the community support needed for a successful referendum.

Recognise provides a brief background on the latest steps towards constitutional recognition

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Meanwhile, a grassroots movement of Australians is growing steadily to build the community support needed for a successful referendum.

Australians are notoriously reluctant to support changes to the Constitution. What are the chances of this referendum succeeding?

There is no denying that Constitutional change is difficult to achieve in Australia. Since federation, only eight of forty-four referenda have won the approval of the Australian people. However, there are a number of reasons to be optimistic about this proposal. The experience of 1967 tells us that the Australian people will overwhelmingly support a proposal that addresses an historic wrong and enables a better future for Aboriginal and Torres Strait Islander Peoples. This proposal would do both. Polling commissioned in 2011 showed high levels of support for Constitutional change with more than 80 per cent of respondents supporting changes to remove racial discrimination.

The Expert Panel has proposed that the Commonwealth Government be given a power to make ‘special laws’ for Aboriginal people. Won’t this mean that they will be given preferential treatment?

The changes proposed will not create any new powers. Rather, they are designed to maintain the power the Commonwealth Government already has to make laws to:

a. Address the legacy of disadvantage that Aboriginal and Torres Strait Islander Peoples continue to experience, and
b. Uphold the First Australians’ rights to land, heritage and culture.

Importantly, the changes would protect future generations from laws that unfairly target Australians on the basis of their national origin, ethnicity or ‘race’. Constitutional recognition is not about preferential treatment, but is about acknowledging the unique status of Australia’s First Peoples and the need to continue efforts to close the gap. The changes proposed will not affect the Government’s existing powers to make laws to assist other groups experiencing disadvantage.

Is there support for these measures from the Aboriginal and Torres Strait Islander community?

There will always be a healthy range of opinions expressed in any free society; recent polling indicates Aboriginal and Torres Strait Islander Australians back the Expert Panel’s proposals. Results of a 2011 survey conducted by the peak representative body for Aboriginal and Torres Strait Islander Peoples – the
National Congress of Australia’s First Peoples – showed that almost 90% of respondents thought Constitutional Recognition of the First Peoples was important. Prominent Aboriginal Elders and community leaders like Lowitja O’Donoghue, Patrick Dodson, Marcia Langton, Mick Gooda and Noel Pearson have all given their support to Constitutional recognition as a concrete step on our national journey to achieve justice and reconciliation.

There are a lot of struggling non-indigenous families in Australia. Shouldn’t the Commonwealth make laws for people on the basis of need, not race?

The current changes are designed to ensure that the Commonwealth maintains the power it has had since 1967 to make positive laws with respect to Aboriginal and Torres Strait Islander Peoples and ensure existing laws remain valid. However, it also seeks to remove the Government’s power to make discriminatory laws and bring the Constitution in line with community expectations in the 21st Century.

Past generations of Australians have amended the Constitution so that the Commonwealth Government can provide a safety net. For example, in 1946, the Australian people approved a referendum that inserted a power for the Commonwealth Government to make social security laws. The package of reforms recommended by the Expert Panel is about addressing another deficiency in our Constitution: the unfinished business of our national reconciliation.

How does Australia’s Constitution compare to similar countries’ founding documents?

Australia lags behind other countries in recognising First Peoples in the Constitution and enshrining protection against racial discrimination.

The constitutions of Canada, Finland, Norway, Sweden, the Russian Federation, Bolivia, Brazil, Colombia, Ecuador, Mexico, the Phillipines and South Africa all recognise indigenous peoples in some way.

Canada, South Africa and India all have constitutional guarantees against racial discrimination, and New Zealand has a similar provision in its Bill of Rights. The 14th Amendment to the US Constitution contains an ‘equality before the law’ provision, which includes racial equality. The US Constitution also includes a power to ‘regulate commerce with ... the Indian tribes’.

In New Zealand, the Treaty of Waitangi, a negotiated agreement between the British Crown and the Māori, was signed in 1840 and recognised the prior occupation and the Māori and their continuing ownership of their lands.

How will constitutional recognition help to close the gap?

Constitutional recognition will have a real and lasting impact on Aboriginal and Torres Strait Islander health and wellbeing and help to close the gap.

Dr Maria Tomasic, President of the Royal Australian and New Zealand College of Psychiatrists has said: “the lack of acknowledgement of a people’s existence in a country’s constitution has a major impact on their sense of identity and value within the community, and perpetuates discrimination and prejudice which further erodes the hope of indigenous people. There is an association with socioeconomic disadvantage and subsequent higher rates of mental illness, physical illness and incarceration.”

Recognition will enable us together to reset the relationship between Australia’s First Peoples, governments and the broader community. Recognition and respect also form the basis of partnerships that are our best hope in overcoming historic disadvantage and closing the 10-17 year life expectancy gap.

CHAPTER 2
The intervention and closing the gap

Health and welfare of Australia’s Aboriginal and Torres Strait Islander Peoples

Following is an executive summary from the comprehensive series *The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples*, a compilation of articles released by the Australian Bureau of Statistics.

**Aboriginal and Torres Strait Islander peoples**
- The Aboriginal and Torres Strait Islander population comprises around 2.5% of the Australian population and is relatively young.
- Aboriginal and Torres Strait Islander Australians have lower life expectancy than non-Indigenous Australians.
- Aboriginal and Torres Strait Islander language and culture is being maintained.
- Socioeconomic outcomes for Aboriginal and Torres Strait Islander Australians continue to improve, but remain below those for non-Indigenous Australians.

**Torres Strait Islander people**
- Torres Strait Islander people comprise 0.3% of the total Australian population and 10% of the total Aboriginal and Torres Strait Islander population.
- Many health and welfare outcomes for Torres Strait Islander people were similar to those for all Aboriginal and Torres Strait Islander people.

**Education**
- Educational attainment among Aboriginal and Torres Strait Islander Australians continues to improve.
- Higher levels of educational attainment are associated with better health outcomes.

**Social and emotional wellbeing**
- Most Aboriginal and Torres Strait Islander adults reported being happy.
- Around one third of adults reported high/very high levels of psychological distress.
- Many Aboriginal and Torres Strait Islander people experienced discrimination.
- Around one in twelve Aboriginal and Torres Strait Islander adults have personally experienced removal from their natural family.

**Adult health**
- Aboriginal and Torres Strait Islander Australians have poorer self-assessed health and were more likely to report higher levels of psychological distress than non-Indigenous Australians.
- Latest results show a decline in Aboriginal and Torres Strait Islander smoking rates, while alcohol consumption remains steady.

**Mothers’ and children’s health**
- There are a number of positive findings in relation to maternal health and factors affecting childhood development, including high rates of breastfeeding and physical activity among Aboriginal and Torres Strait Islander children.

**Disability**
- Half of all Aboriginal and Torres Strait Islander people aged 15 years and over had a disability or long-term health condition.
- Disability was associated with poorer health and welfare outcomes for Aboriginal and Torres Strait Islander people.

**Housing circumstances**
- Most Aboriginal and Torres Strait Islander adults lived in rented housing, however, the proportion living in homes being purchased has increased.
- Fewer Aboriginal and Torres Strait Islander people lived in housing with major structural problems, but overcrowding rates remain similar.
- Aboriginal and Torres Strait Islander adults living in housing with structural problems were more likely to report high/very high levels of psychological distress.

**Access to health and community services**
- The majority of Aboriginal and Torres Strait Islander households could locally access a range of medical and hospital services when needed.
- Nationally, just over one-quarter of Aboriginal and Torres Strait Islander adults reported problems accessing one or more health services.
- Community services and facilities that were less likely to be locally available when needed included...
emergency services, police stations and school bus services.

- Parents/carers of around one in seven Aboriginal and Torres Strait Islander children needed (more) formal child care.

**ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES – DEMOGRAPHIC, SOCIAL AND ECONOMIC CHARACTERISTICS**

The Aboriginal and Torres Strait Islander population comprises around 2.5% of the Australian population and is relatively young:

- At June 30 2006, the estimated resident Aboriginal and Torres Strait Islander population was 517,000 people, or 2.5% of the total Australian population.
- In 2006, the Aboriginal and Torres Strait Islander population had a median age of 21.0 years compared with 37.0 years for the non-indigenous population.
- In 2011, the total fertility rate of Aboriginal and Torres Strait Islander females was estimated to be 2.74 babies per woman, compared with 1.88 babies per woman for all women in Australia.
- At June 2006, most Aboriginal and Torres Strait Islander people lived in non-remote areas with an estimated 32% of people living in major cities, 43% in regional areas, and 25% in remote areas.
- At June 2006, most Aboriginal and Torres Strait Islander people in Queensland.

Aboriginal and Torres Strait Islander Australians have lower life expectancy than non-Indigenous Australians:

- At the national level for 2005-2007, the gap between Aboriginal and Torres Strait Islander and non-indigenous life expectancy was 11.5 years for males and 9.7 years for females.
- Life expectancy at birth for Aboriginal and Torres Strait Islander males is estimated to be 67.2 years, compared with 78.7 years for non-indigenous males.
- Life expectancy at birth for Aboriginal and Torres Strait Islander females is estimated to be 72.9 years, compared with 82.6 years for non-indigenous females.

Aboriginal and Torres Strait Islander language and culture is being maintained:

- In 2008, 19% of Aboriginal and Torres Strait Islander people aged 15 years and over (adults) and 13% of Aboriginal and Torres Strait Islander children (aged 3-14 years) spoke an Aboriginal or Torres Strait Islander language.

- More Aboriginal and Torres Strait Islander people are identifying with a clan, tribal or language group, 62% in 2008 up from 54% in 2002.
- 70% of Aboriginal and Torres Strait Islander children (aged 3-14 years) and 63% of adults (15 years or over) were involved in cultural events, ceremonies or organisations in 2008.

Social outcomes for Aboriginal and Torres Strait Islander Australians continue to improve, but remain below those for non-Indigenous Australians:

- More Aboriginal and Torres Strait Islander people completed Year 12 – 22% of people aged 15 years and over in 2008, up from 18% in 2002.
- More Aboriginal and Torres Strait Islander people completed non-school qualifications – 40% of people aged 25-64 years in 2008, up from 32% in 2002.
- The unemployment rate for Aboriginal and Torres Strait Islander Australians fell from 23% in 2002 to 17% in 2008, but remained more than three times higher than the rate for non-Indigenous Australians (5% in 2008).

The Torres Strait Islander population comprises 0.3% of the total Australian population and 10% of the total Aboriginal and Torres Strait Islander population:

- At June 30 2006, the estimated resident Torres Strait Islander population was 53,300 people, or 0.3% of the total Australian population.
- Torres Strait Islander people comprised 10% of the total Aboriginal and Torres Strait Islander population nationally, and 23% of all Aboriginal and Torres Strait Islander people in Queensland.
- Nationally, more Torres Strait Islander adults spoke an Australian Indigenous language than all Aboriginal and Torres Strait Islander adults (31% compared with 19%).
- Torres Strait Islander people were more likely than all Aboriginal and Torres Strait Islander people to be participating in the labour force (73% compared with 65%) and to be employed (64% compared with 54%) in 2008.
- Many other health and welfare outcomes for Torres Strait Islander people were similar to those for all Aboriginal and Torres Strait Islander people.

**EDUCATION**

Educational attainment among Aboriginal and Torres Strait Islander Australians continues to improve:

- Apparent school retention rates for Aboriginal and Torres Strait Islander full-time students from Year 7-8 to Year 12 increased from 16% in 2001 to 49% in 2011.
- Nationally, the proportion of Aboriginal and Torres Strait Islander people aged 15 years and over completing Year 12 increased from 18% in 2002 to 22% in 2008. The rate of Year 12 completion has also...
improved in all states and territories.

- More Aboriginal and Torres Strait Islander people are completing non-school qualifications, 40% of 25-64 year olds in 2008, up from 32% in 2002.
- More Aboriginal and Torres Strait Islander young people were fully engaged in work and/or study in 2008. Just over half (54%) of young people aged 15-24 years were either working full-time, studying full-time, or both working and studying; up from 47% in 2002.

**Higher levels of educational attainment are associated with better health outcomes:**

- In 2008, 59% of Aboriginal and Torres Strait Islander people aged 15-34 years who had completed Year 12 reported excellent/very good self-assessed health compared with 49% of those who had left school early (Year 9 or below). For those aged 35 years and over, the rates were 43% and 25% respectively.
- The likelihood of smoking also decreased with higher levels of schooling, 34% of Aboriginal and Torres Strait Islander people aged 15-34 years who had completed Year 12 were current daily smokers compared with 68% of those who had left school early. For those aged 35 years and over, the rates were 36% and 48% respectively.

**SOCIAL AND EMOTIONAL WELLBEING**

**Most Aboriginal and Torres Strait Islander adults reported being happy:**

- In 2008, 72% of Aboriginal and Torres Strait Islander people aged 15 years and over (adults) reported being a happy person all or most of the time, with rates higher among adults living in remote areas (78%) than non-remote areas (71%).

**Around one-third of Aboriginal and Torres Strait Islander adults reported high/very high levels of psychological distress:**

- 31% of Aboriginal and Torres Strait Islander people aged 15 years and over reported high/very high levels of psychological distress. Rates were particularly high among those with a disability or long-term health condition, those who had been victims of violence, or who had experienced discrimination.

**Many Aboriginal and Torres Strait Islander people experienced discrimination:**

- More than one-quarter (27%) of Aboriginal and Torres Strait Islander people aged 15 years and over had experienced discrimination in the last 12 months.
- One in ten (11%) Aboriginal and Torres Strait Islander children aged 4-14 years reported being bullied at school because of their indigenous origin.

**Around one in twelve Aboriginal and Torres Strait Islander adults have personally experienced removal from their natural family:**

- In 2008, 8% (26,900 people) of Aboriginal and Torres Strait Islander people aged 15 years and over had been personally removed from their natural family, consistent with the rate reported in 2002 (also 8%).
- Of those who had experienced removal from their natural family, 35% assessed their health as fair or poor and 39% experienced high or very high levels of psychological distress, compared with 21% and 30% of those not removed.

**ADULT HEALTH**

**Aboriginal and Torres Strait Islander Australians have poorer self-assessed health and were more likely to report higher levels of psychological distress than non-Indigenous Australians:**

- In 2008, 44% of Aboriginal and Torres Strait Islander people aged 15 years and over reported excellent/very good health and 22% reported fair/poor health.
- Aboriginal and Torres Strait Islander people were twice as likely as non-indigenous people to report fair/poor health. This gap has remained unchanged since 2002.
- While nearly one-third of Aboriginal and Torres Strait Islander people aged 18 years and over had experienced high/very high levels of psychological distress, this was more than twice the rate for non-indigenous people.

**Both tobacco smoking and excessive alcohol consumption are major health risk factors. Latest results show a decline in indigenous smoking rates, while alcohol consumption remains steady:**

- Between 2002 and 2008, the proportion of Aboriginal and Torres Strait Islander current daily smokers fell from 49% to 45%, representing the first significant decline in smoking rates since 1994. However, Aboriginal and Torres Strait Islander people remained twice as likely as non-indigenous people to be current daily smokers.
- Around one in six Aboriginal and Torres Strait Islander people aged 15 years and over (17%) drank alcohol at chronic risky/high risk levels, similar to the rate reported in 2002 (15%).

**MOTHERS’ AND CHILDREN’S HEALTH**

**There are a number of positive findings in relation to maternal health and factors affecting childhood development including high rates of breastfeeding and physical activity among Aboriginal and Torres Strait Islander children:**

- In 2008, the majority of birth-mothers of Aboriginal and Torres Strait Islander children aged 0-3 years (87%) had regular check-ups while pregnant (at least one every two months).
- According to the 2008 National Aboriginal and Torres Strait Islander Social Survey, three-quarters (76%) of Aboriginal and Torres Strait Islander children aged 0-3 years had been breastfed.
- 74% of Aboriginal and Torres Strait Islander children aged 4-14 years were physically active for at least 60 minutes everyday, though the proportion was higher...
for those who lived in remote areas (84%).

- The proportion of children aged 0-14 years who lived in a household where members usually smoked inside the house decreased from 29% in 2004-05, to 21% in 2008.
- Most Aboriginal and Torres Strait Islander children aged 0-14 years brushed their teeth at least once a day (71%). However, 25% of children aged 10-14 years had a tooth or teeth filled because of dental decay and 20% of children aged 5-9 years had experienced dental decay.
- Eye or sight problems and ear or hearing problems were experienced by 7% and 9% of children aged 0-14 years respectively in 2008.

**DISABILITY**

**Half of all Aboriginal and Torres Strait Islander people aged 15 years and over had a disability or long-term health condition:**

- Nationally, 50% of Aboriginal and Torres Strait Islander people aged 15 years and over had a disability or long-term health condition in 2008. Around one in twelve (8%) had a profound/severe core activity limitation.
- In non-remote areas, Aboriginal and Torres Strait Islander adults were one and a half times as likely as non-indigenous adults to have a disability or long-term health condition, and more than twice as likely to have a profound/severe core activity limitation.

**Disability was associated with poorer health and welfare outcomes for Aboriginal and Torres Strait Islander people:**

- Aboriginal and Torres Strait Islander people with a disability were more than four times as likely as those without a disability to rate their health as fair/poor.
- Half (50%) of all people with a disability or long-term health condition were receiving a government pension or allowance as their principal source of income in 2008.
- 36% of people with a disability had problems accessing services, such as doctors, hospitals or employment services, compared with 24% of those without a disability.

**HOUSING CIRCUMSTANCES**

**Most Aboriginal and Torres Strait Islander people aged 15 years and over (adults) lived in rented housing, however the proportion living in homes being purchased is increasing:**

- In 2008, the majority of Aboriginal and Torres Strait Islander adults lived in housing that was rented (69%).
- More Aboriginal and Torres Strait Islander adults were living in housing that was being purchased in 2008 (20%) than in 2002 (17%).

**Fewer Aboriginal and Torres Strait Islander people lived in housing with major structural problems, but overcrowding rates remain similar:**

- While 26% of all Aboriginal and Torres Strait Islander households were living in dwellings with major structural problems in 2008, this has reduced significantly since 2002 (34%).
- In remote areas, the rate declined from 50% to 34% (of households) between 2002 and 2008.
- One-quarter (25%) of all Aboriginal and Torres Strait Islander adults lived in overcrowded housing in 2008 – this has not changed since 2002.

**Aboriginal and Torres Strait Islander adults living in dwellings with major structural problems were more likely to report high or very high levels of psychological distress compared with those who did not (37% compared with 28%).**

**ACCESS TO HEALTH AND COMMUNITY SERVICES**

The majority of Aboriginal and Torres Strait Islander households could locally access a range of medical and hospital services when needed:

- 62% of households could access Aboriginal health care services in 2008.
- 74% of households could access hospitals (63% in remote areas).
- 82% of households could access health/medical clinics (69% in remote areas).

**Nationally, just over one-quarter (26%) of Aboriginal and Torres Strait Islander people aged 15 years and over reported problems accessing health services such as long waiting times and cost:**

- Dentists, doctors and hospitals were the health services where people were most likely to experience problems (by 20%, 10% and 7% of people respectively).

**Beyond health services, there were similar levels of availability of community facilities and services to Aboriginal and Torres Strait Islander households nationally. Services and facilities that were less likely to be locally available when needed included:**

- Emergency services – not available for 20% of households.
- Police stations – not available for 17% of households.
- School bus service – not available for 17% of households nationally and 30% of households in remote areas.

**Parents/carers of around one in seven (14%) Aboriginal and Torres Strait Islander children aged 0-12 years needed (more) formal child care:**

- In remote areas, unavailability of child care was the most common reason for not using more formal care (40% of children needing more care). In non-remote areas, it was cost (31%).
CLOSING THE GAP – LIFE EXPECTANCY

This Q & A from Reconciliation Australia is part of a fact sheet series aimed at informing the community and stimulating conversations about the issues that affect us all.

On 11 February 2010, Prime Minister Kevin Rudd presented his annual Close the Gap report card, reflecting on how far we have come in our efforts to 'close the gap'. What does 'close the gap' mean? What does the life expectancy gap between Indigenous and non-Indigenous Australians have to do with reconciliation? Here are some straightforward answers to these questions and more.

1. What does 'close the gap' mean?
The phrase 'close the gap' is often used in the context of indigenous issues but it specifically refers to the gap in health and life expectancy. It is also more generally used to refer to the inequalities that exist between Indigenous and non-Indigenous Australians.

Following Prime Minister Rudd’s Apology to the Stolen Generations, the Government made a pledge to lead a national effort to close the life expectancy gap between Indigenous and non-Indigenous Australians. Prime Minister Rudd stated:

It is indeed an obscenity that in this prosperous nation, indigenous males die on average at the age of 59 – 18 years earlier than non-indigenous males. And indigenous females only live to 65 on average – compared to 82 for non-indigenous females ... While the mortality rate of Indigenous Australian babies is declining, it remains at more than 12 for every 1,000 live births – a rate nearly three times that of non-indigenous infants.

2. What is the life expectancy gap between Indigenous and non-Indigenous Australians?

In 2009 the Australian Bureau of Statistics released updated figures indicating that the average life expectancy gap between Indigenous and non-Indigenous Australians is around 11 years. Previously it was thought that the gap was around 17 years, however new calculation methods show that 11 years is a more accurate figure. These ABS figures reveal that the life expectancy of indigenous men is 11.5 years lower than for non-indigenous men, while the life expectancy of indigenous women is 9.7 years lower than for non-indigenous women.

These figures represent the average life expectancy gap between Indigenous and non-Indigenous Australians. In fact, in some areas of Australia the gap may be significantly higher for particular groups of Indigenous Australians.

3. How is the life expectancy gap determined?
The new methodology used by the ABS for measuring indigenous life expectancy matches death records with census data. The accuracy of this method depends on whether indigenous people are positively identified both in the census data and in death records.

Obtaining accurate death records for indigenous peoples is problematic as it relies on a third party to correctly identify the deceased’s status as Indigenous. Professor Ian Ring advises the Close the Gap coalition steering committee on this issue and argues that 26 per cent of indigenous deaths are not matched with a census record. This means that the latest figure of 11 years still lacks some accuracy.

Previously the ABS has released life expectancy figures for Indigenous Australians based on experimental estimates. The figure has moved from 20, to 17, to 11 years due to the use of various methodologies and is not meant to show an actual improvement in the life expectancy of indigenous people.

4. Why is there such a big life expectancy gap between Indigenous and non-Indigenous Australians?
The cause of the life expectancy gap is deeply embedded in a number of social determinants. Indigenous Australians face a number of basic disadvantages in comparison to non-Indigenous Australians; these disadvantages have negatively affected the life expectancy of Indigenous Australians.

Indigenous disadvantage has been consistently tracked by the Productivity Commission since 2002 when the first Overcoming...
Indigenous Rights

Indigenous Disadvantage reports were commissioned. The Productivity Commission’s research suggests young child mortality, disability and chronic disease are the most significant factors affecting indigenous life expectancy. These factors are caused by poor living conditions, a lack of safe and supportive communities, restricted education and training opportunities, and lower economic participation which in turn contribute to lowering indigenous life expectancy.

For example, rheumatic heart disease is almost nonexistent in the developed world however it still affects around three per cent of Indigenous Australians. Indigenous Australians are eight times more likely than non-Indigenous Australians to be hospitalised for rheumatic heart disease and nearly 20 times as likely to die from it.

The United Nations report, The State of the World’s Indigenous Peoples reinforces this notion of inequality, arguing that indigenous peoples experience disproportionately high levels of maternal and infant mortality, malnutrition, cardiovascular illnesses, HIV and other infectious diseases.

The Australian Medical Association has described the gap in indigenous health as “both a symptom of, and a contributor to, the cycle of poverty in indigenous communities”.

Closing the gap: targets and building blocks

In 2008 COAG set specific and ambitious targets for Closing the Gap:

1. To close the life expectancy gap within a generation
2. To halve the gap in mortality rates for indigenous children under five within a decade
3. To ensure access to early childhood education for all Indigenous four year olds in remote communities within five years
4. To halve the gap in reading, writing and numeracy achievements for children within a decade
5. To halve the gap in indigenous Year 12 achievement by 2020
6. To halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade.

COAG recognises that overcoming indigenous disadvantage will require a sustained commitment from all levels of government to work together and with indigenous people, with major effort directed to seven action areas or ‘building blocks’.

The building blocks endorsed by COAG are:

• Early Childhood
• Schooling
• Health
• Economic Participation
• Healthy Homes
• Safe Communities
• Governance and Leadership.

The building blocks are linked – achieving the Closing the Gap targets requires progress in each of these areas. Strategies aimed at achieving improvements in any one area will not work in isolation.

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A number of historical events have also played an important role in affecting indigenous life expectancy. Various events have affected indigenous life expectancy, including land dispossession and the Stolen Generations (see Apology to the Stolen Generations on page 23). The psychological trauma and grief of this separation has had significant consequences for the health and wellbeing of the Indigenous Australians affected and their families.

5. What goals have been set around closing the gap?

The Council of Australian Governments has set six targets in an attempt to reduce the disadvantage faced by Indigenous Australians and close the life expectancy gap:

1. Halve the mortality gap between Indigenous children and other children under age five within a decade
2. Provide access to early childhood education for all indigenous four-year olds in remote communities within five years
3. Halve the gap in literacy and numeracy achievement between indigenous students and other students within a decade
4. Halve the gap between indigenous and non-indigenous students in rates of Year 12 attainment or an equivalent attainment by 2020
5. Halve the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade

6. Have any improvements in life expectancy been achieved in recent years?

Improvements have been recorded in areas which contribute to indigenous life expectancy. In March 2010, Professor Ian Anderson of the National Indigenous Health Equality Council announced that indigenous child death rates are improving and may in fact halve by 2018. Improvements have also
been seen in employment data – with the percentage of indigenous people employed growing from 43 per cent to 48 per cent between 2001 and 2006.

Nevertheless, certain factors contributing to life expectancy have worsened. For example, Irene Fisher, CEO of the Sunrise Health Service, claims that many health problems such as anaemia and malnutrition have worsened and figures on substance abuse and domestic violence have also increased.

The 2009 Overcoming Indigenous Disadvantage report also revealed disappointing progress. Since 2003, indigenous child abuse has worsened, and the rate of substantiated notifications for child abuse or neglect has more than doubled since 1999-2000. Other data suggests that indigenous people are hospitalised as a result of domestic violence at a rate 34 times higher than non-indigenous people and imprisonment rates for indigenous women and men has increased by 46 and 27 per cent respectively.

The Australian Reconciliation Barometer, released in 2009 by Reconciliation Australia, reported that 92 per cent of Australians believe that programs to address indigenous disadvantage have been successful. These attitudes, amongst others, have encouraged the Australian Government to devote greater attention to achieving improvements. As a result, almost $1 billion of the 2009-2010 budget has been allocated to improving indigenous health, a significant increase compared to previous budgets.

7. Aren’t all Australians treated equally when it comes to health services?

Many Australians believe that both indigenous and non-indigenous Australians are treated exactly the same when using health services. In fact, as the Australian Indigenous Doctors’ Association has found, access to primary health care services continues to be a barrier for Aboriginal and Torres Strait Islander people. The 2007 Australian Medical Association Report Card on Aboriginal and Torres Strait Islander health attributes this to financial, geographic, personal and cultural barriers that work against the delivery of an effective health system for Indigenous Australians.

In 2006, the Australian Institute of Health and Welfare found that while Aboriginal and Torres Strait Islander people were more likely to be hospitalised than other Australians, they were less likely to receive a medical or surgical procedure while in hospital. This could be due to a number of factors including communication and language difficulties, institutionalised racism, geography and presentation late in the course of illness.

8. What is the life expectancy gap between indigenous and non-indigenous people in other countries?

Recent statistics released in the United Nations Report The State of the World’s Indigenous Peoples indicate that Australia and Nepal have the world’s worst life expectancy gaps between indigenous and non-indigenous people. The gap in New Zealand is around 11 years lower for Indigenous people, while in the United States, life expectancy is 2.4 years lower for indigenous people.
Closing the gap: the indigenous reform agenda

Closing the Gap is a commitment by all Australian governments to improve the lives of Indigenous Australians, and in particular provide a better future for indigenous children.

A national integrated Closing the Gap strategy has been agreed through the Council of Australian Governments (COAG), the peak intergovernmental forum in Australia. COAG brings together the Prime Minister, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association.

Closing the Gap is linked to a wider reform of Commonwealth-State financial relations. COAG’s national agreements and partnerships, in areas such as education, housing and health, have a clear focus on overcoming indigenous disadvantage. In addition, COAG has committed an additional $4.6 billion investment in indigenous-specific National Partnerships to be rolled out over coming years.

COAG has agreed to specific timeframes for achieving six Closing the Gap targets, relating to indigenous life expectancy, infant mortality, early childhood development, education and employment.

Underpinning Closing the Gap is a new way of working across government and of engaging with indigenous communities. Governments are cooperating to better coordinate their services and funding. Clear responsibilities, specific targets and rigorous reporting will help to keep governments on track.

Engagement and partnership with indigenous people and communities, building on their ideas, strengths and leadership, will help to find sustainable solutions to long-standing problems.

Closing the Gap is a cross-community effort. The corporate, NGO and philanthropic sectors are also important to assisting indigenous people and communities and contributing to Closing the Gap.

A Closing the Gap brand framework has been developed by the Department of Families, Housing, Community Services and Indigenous Affairs and endorsed by the Hon Jenny Macklin MP for Australian Government use. This should be used to brand any program or policy that contributes to the objectives of Closing the Gap.

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In Canada, the difference in life expectancy between Indigenous and non-Indigenous people is 8.1 years for males and 5.5 years for females.

9. What can you do to help ‘close the gap’?

Each year, milestones and anniversaries such as National Close the Gap Day and NAIDOC Week see hundreds of events taking place in schools, workplaces, shopping centres, community halls, churches and public spaces throughout the country as people celebrate and raise awareness of issues facing Indigenous Australians. These events also help to encourage the government and other groups to continue taking positive action in closing the gap. National Close the Gap Day Coordinator Gary Highland has urged the public to continue to participate in national events such as these to mount pressure on the government to ensure that their commitments are achieved by 2030.

THE NORTHERN TERRITORY INTERVENTION: AN OVERVIEW

This guide extract from Amnesty International explains some of the issues involved in the intervention, from a human rights perspective.

In 2007, the Federal Government announced far-reaching policies affecting Aboriginal communities in the Northern Territory. Using a report documenting child sexual abuse in these communities as justification, the Federal Government launched the Northern Territory Emergency Response, also known as the intervention.

Aboriginal leader Pat Dodson, known as the ‘father of reconciliation’, reflects on the events that took place:

June 21, 2007, may well be seen as a defining date in Australian history. That day changed government/indigenous relationships profoundly.

The stated aim of the intervention was to protect children, however while it included some positive initiatives, it also included a range of policies that discriminate against Aboriginal people. Describing government policies as “a regime of coercive paternalism,” Pat Dodson continues:

There is no argument that the urgent immediate priority is to protect children. The welfare of our children and our families remains the key to our lives and future. But this priority is undermined by the Government’s heavy-handed authoritarian intervention and its ideological and deceptive land reform agenda.

The agenda is to dismantle the foundations of the Northern Territory Aboriginal Land Rights Act. It seeks to excise residential community settlements from the Aboriginal land estate under special Commonwealth Government five-year leases, and the abolition of an authorisation entry protocol called the permit system.

The Government has not made a case in linking the removal of land from Aboriginal ownership and getting rid of the permit system with protecting children from those who abuse them.

SOME POLICIES INTRODUCED AS PART OF THE INTERVENTION

• Management of people’s income
  Indigenous people in areas affected by the intervention who receive payments, such as Newstart Allowance or the Baby Bonus now have 50 per cent of their income controlled by the government. This policy has been applied to people whether they manage their income well or not and targets all indigenous people regardless of need.

• Compulsory leases of indigenous-owned land
  These leases give the government “exclusive possession” of land which is owned by Aboriginal people. The five year leases allow the Government to demolish, repair, or replace any existing building without the consent of the owners.

• Blanket bans
  Alcohol, gambling and pornography are banned in prescribed communities and signs announcing these bans are placed at the entrance to indigenous communities.

• Abolishing the permit system
  The permit system gave Aboriginal people control over who entered their land. The Northern Territory Land Rights Act recognised Aboriginal land as private property, and the permit system ensured Aboriginal people had the same rights as other owners of private property to decide who can and cannot enter.
• Offering government services in exchange for leases
  Under the intervention, prescribed communities are offered government services, such as housing and housing maintenance on the condition that they sign away their property rights by leasing land that they own to the government.

No other group in Australian society receives services on this basis. To make it legal to implement the intervention, the Racial Discrimination Act and Northern Territory anti-discrimination laws were suspended. Australian and international law prohibits discrimination on the grounds of race, however, the governments claimed that it was necessary to override human rights in order to protect children.

**AMNESTY INTERNATIONAL’S VIEW ON THE INTERVENTION**

- Many policies did not protect children or were not related to achieving this goal (including the compulsory acquisition of land, the abolition of the permit system and offering housing and other services in exchange for giving up rights to land).
- Many policies did not relate to the goals expressed in the media to justify the intervention.
- Many policies offered benefits (such as health services or anti-violence programs) that could have been provided without breaching human rights.
- Many policies reflect a return to the paternalistic approach of the past and policies of ‘assimilation’. Paternalism involves a ‘father-child’ relationship between governments and indigenous people, where governments act on their view of what is ‘best’ for indigenous people. Under policies of assimilation, the lifestyle and values of ‘mainstream’ Australia were treated as the model that everyone in Australia should fit into.

This approach was followed in an era where indigenous people were not recognised as citizens, were not counted in the census, had no rights to traditional land, had their wages stolen and had their families torn apart.

**ENDNOTE**


DOES THE INTERVENTION STILL BREACH HUMAN RIGHTS?

Following protests from Aboriginal groups and human rights organisations, the Federal Government introduced laws which changed the intervention. While there are some welcome changes, most of the fundamental issues remain unresolved, according to Amnesty International.

Racial Discrimination Act reinstated but discriminatory elements of the NT intervention remain

The Racial Discrimination Act (RDA, 1975) is one of Australia’s most important laws for protecting human rights. In order to implement the intervention, the Federal Government suspended the operation of the RDA. This is because the intervention’s measures specifically targeted Aboriginal people and were therefore discriminatory. The RDA remained suspended for three years before the Federal Government restored its operation. However, many aspects of the intervention remain discriminatory.

While the government has reinstated the operation of the RDA, it also needs to:

• End the policy of offering government services on the condition that Aboriginal people give up their property rights by leasing their land to the government for up to forty years.

• Provide compensation for discrimination that people have already been subjected to while the RDA was suspended.

• Remove the power of the Federal Government to compulsorily acquire Aboriginal-owned or controlled lands.

• End compulsory income management, which is still discriminatory, as the people who are affected by these policies are overwhelmingly Aboriginal. There is therefore a question of whether the provisions constitute indirect discrimination in breach of the RDA. A more human rights compatible approach would be to remove the compulsory nature of the income management scheme and replace it with voluntary income management.

Income management

Compulsory income management (IM) continues in the Northern Territory. It has been applied to other groups as well as to Aboriginal people, such as people receiving Newstart and Parenting Payment for more than three of the last six months. However, because Aboriginal Peoples are among the poorest groups in Australian society, they are disproportionately affected.

Under the new approach, Aboriginal people whose income was managed in the past automatically remain part of the IM system. All people whose income is managed are assumed to need it unless they success fully prove to Centrelink staff that they manage their money well. Applying for exemption remains a difficult process. It is also embarrassing for people to be asked to prove that they do not need their money controlled by the government in order to spend it properly.

As a 2010 report from the Commonwealth Ombudsman has noted, there is a “steady stream of complaints” relating to the government’s new approach to IM. This report, published as part of the government’s own evaluation into its policies affecting Aboriginal people in the Northern Territory, indicates that the Ombudsman will be conducting an investigation into arrangements relating to the new IM policies.

The whole IM system is blind to historic and current abuses of
human rights and how they cause poverty. The government could see poverty in Aboriginal communities as the consequence of colonisation and dispossession, and as the result of Aboriginal people being locked out of the economic benefits that others have reaped from the lands that were taken from them. Instead, the government places the responsibility for poverty solely on the shoulders of people who are poor. Taking the impact of history out of the equation means that governments avoid responsibility for addressing problems that they themselves have caused or legitimised.

**Government arguments about suspending rights**

Indigenous Affairs Minister Jenny Macklin has responded to critics of the intervention by saying: “When it comes to human rights, the most important human rights that I feel as a minister I have to confront is the need to protect the rights of the most vulnerable, particularly children, and for them to have a safe and happy life and a safe and happy family to grow up in.”

Amnesty International believes that the situation of indigenous people in Australia today highlights the need to strengthen the protection of indigenous people’s rights rather than diminish them. The needs of women and children, which have been used to justify the intervention, can be addressed without diminishing human rights.

Human rights belong together as a package. They are interdependent and mutually reinforcing. Human rights need to be respected and celebrated as the conditions in which all people can flourish, rather than be treated as obstacles in the way of government action. Governments can only limit human rights in extremely rare circumstances, and if they do, they must follow the standards and principles specified by international human rights law.

Under international law, it was never legitimate for the government to suspend the RDA to implement the intervention. International standards require that any actions that suspend the right to be free from racial discrimination must comply with being a ‘special measure’. A special measure is a form of affirmative action that enables particular groups of people to enjoy human rights on an equal basis with other people.

In order to classify as a special measure, such actions must:
- Involve the consent of the affected group of people
- Be temporary
- Be limited in scope
- Be for the benefit of the people affected, not to their detriment.

**Positive changes**

Some positive changes in the government’s 2009 amend-ments include:
- The removal of some discriminatory clauses in intervention legislation
- Plans for community-developed initiatives to deal with alcohol, replacing blanket bans
- Incentives for people to undertake financial literacy courses and to save money.

**Lack of evidence in support of government policies**

The evidence being used to justify the continuation of the intervention is completely inadequate. There is no clear evidence that it has improved the situation of indigenous women and children in the Northern Territory.

The intervention was introduced without an evaluation framework and without processes that would allow the government to assess the impact of its policies. In the absence of this framework, the government has measured ‘outputs’, such as the amount of spending and services provided, without measuring the impact on the wellbeing of community members. Without evidence of positive outcomes for communities, the government is in no position to claim that the intervention is necessary.

Northern Territory intervention extended ... but is it working?

Support for, and opposition to, the Stronger Futures legislation and the original intervention is about much more than socioeconomic status. However, in the long term, that is what these policies will be judged upon. At the moment the results are mixed, observes Nicholas Biddle

The last sitting week of parliament before the winter recess may well be remembered for the historic senate vote made late into the night. This legislation, with bipartisan support, agreed to the extension and modification of a contentious set of policies that are likely to have a profound impact on some of the world’s most vulnerable people.

No, I’m not living in a parallel universe where legislation was passed on the vexed issue of asylum seekers. Rather, I am referring to the passage of the Stronger Futures legislation. The three related bills will, in essence, extend many of the provisions of the Northern Territory Intervention (also known as the Northern Territory Emergency Response) until 2022.

According to reports, Amnesty International Australia labelled the legislation a ‘travesty’.

Key parts of the legislation include:
• Continuation of alcohol restrictions
• The potential for income support payments to be suspended due to poor school attendance
• And voluntary (as opposed to compulsory) leases of Aboriginal land.

Unlike the original NTER legislation, the Stronger Futures bills were designed to comply with the Racial Discrimination Act 1975.

This does not mean, of course, that the legislation was welcomed by all or even most indigenous or human rights organisations. According to reports on Friday, Amnesty International Australia labelled the legislation a ‘travesty’.

The co-chairs of the National Congress of Australia’s First People (Jody Broun and Les Malezer) put out a statement saying that, despite the assurances of the government that the laws meet Australia’s relevant obligations, they should still be examined by the Parliamentary Joint Committee on Human Rights.

Much of the resistance to the bills relates to what many see as being a flawed consultation process.

There is no doubt that the government went to great expense to discuss the legislation with indigenous communities across the NT. According to documentation supporting the legislation there were more than 450 meetings across 100 communities in mid-2011.

However, it is not the breadth, but rather the depth of consultation that many have taken issue with. For example, Jacqueline Philips from Australians for Native Rights said that which was passed in the dying days of the Howard Government is the reference to an independent review of the legislation after three years. One could argue though that, in order for this review to have credibility, it should commence now so that changes in outcomes and attitudes can be properly tested, rather than being reliant on individual recall.

Another major difference is the explicit focus on “Closing the Gap” in outcomes between the indigenous and non-indigenous population. For example, at the time of the May budget when the $3.4 billion for the Stronger Futures legislation was announced, the media release was titled “Investing to close the gap on indigenous disadvantage”.

So how has the intervention changed life in the Northern Territory? There are some data available that can provide answers.

We won’t have data on life expectancy for a while.

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Indigenous Rights

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However, it is worth considering how a few other socioeconomic outcomes have been tracking since the original intervention.

**Few would argue that the government should step away from remote indigenous communities and historic underinvestment is in many ways what got us to the current state.**

Even after adjusting for inflation, median household income for indigenous households in the NT increased by about 12.7% between the 2006 and 2011 censuses. However, there were even more rapid gains for non-indigenous households meaning that the gap actually widened over the period.

Employment data from the 2011 census isn’t available yet. However, looking at estimates from the Labour Force Survey (which for the NT has quite large sampling error) the best one can say is that there has probably been a small improvement in the proportion of the indigenous population employed since the intervention, but that the gap between the indigenous and non-indigenous percentage still remains more or less the same.

Census data, however, shows that there has been both relative and absolute gains in terms of indigenous education outcomes over the past 5 years or so. In 2006, 16.6% of Indigenous Australians in the NT aged 15 to 24 years were participating in some form of education. By 2011, this had risen to 22.4%. There was a slight decline in the same percentage for the non-indigenous NT population (38.0% to 37.8%) meaning that the gap narrowed over the period.

The way 2011 census data is currently available makes it difficult to look at changes in early childhood education. However, using a rather crude proxy (the number of children participating in preschool as a percentage of the population aged three to five years), we can see some considerable gains.

In 2006, 22.5% of indigenous children aged three to five in the Northern Territory were participating in preschool, compared to 36.3% of non-indigenous children. By 2011, the indigenous percentage had risen to 30.2% compared to 37.1% for the non-indigenous population.

Support for, and opposition to, the Stronger Futures legislation and the original intervention is about much more than socioeconomic status. However, in the long term, that is what these policies will be judged upon. At the moment the results are mixed.

**Few would argue that the government should step away from remote indigenous communities and historic underinvestment is in many ways what got us to the current state.** However, if a week is a long time in politics, then a decade is an age. A 15-year intervention (of which we are five years into) should be based on the best available evidence.

Dr. Nicholas Biddle is a Fellow at the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU).

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The 30-year cycle: indigenous policy and the tide of public opinion

Indigenous affairs policy reform is strongly influenced by a pendulum of public opinion and over an approximate 30-year cycle, notes Mark Moran

Last week, the Stronger Futures legislation passed through the senate – laws which extend the Northern Territory intervention for another 10 years. The relative merits and faults of the legislation aside, equally noteworthy is the policy’s duration. It was Howard who initiated the intervention in 2007, but there is a longer tradition at play here of public opinion shaping and forming indigenous policies.

From protection to the intervention

Such is indigenous affairs that we can divide the past century into policy eras.

The first is known as the protection era, spanned the period from the late 19th century to the 1930s. Ostensibly based on the need to protect Aboriginal people from the ravages of settlers, native police and disease, Aboriginal people were made wards of the state. Most aspects of life were subject to institutional controls, including segregation into mission dormitories, indentured employment into the pastoral industry, relocations of whole families, and forced removal of children.

This was followed by the assimilation era from the end of World War II to the late 1960s, when indigenous people were expected to advance and be absorbed into mainstream society, including through citizenship. Some of the institutional controls were relaxed but others remained. Traditional cultural practices were discouraged and mission and government settlements became hubs of modernisation, where Christian values, employment, education, housekeeping and family norms were taught.

A seismic policy shift occurred with the election of the Whitlam government in 1972, ending almost 23 years of conservative party rule. During his three-year term, Whitlam heralded in the self-determination era, with its flagship policies of land rights, decentralised governance and outstations. The policy envisaged autonomous de-colonised self-governing entities managing their lives in culturally appropriate ways.

Following Whitlam’s ignoble dismissal, the Fraser Liberal government tinkered with the policy over its seven year term but left the basic cut and thrust unchanged. It was not until the 13 years of the Hawke and Keating Labor governments that much of the innovation and change in self-determination played out, including native title and the bold self-governance initiative of the Aboriginal and Torres Strait Island Commission (ATSIC). Following its election in 1996, the Howard Liberal government set to work winding back the policy, culminated in the closure of ATSIC in 2005.

Normalisation

I have long wondered why the Fraser Government did not wind back self-determination, to the conservative assimilation policies that preceded Whitlam, and have largely remained a stalwart of conservative policies since. Almost 40 years later, I think similar forces are at play with the Rudd and Gillard government ‘steading the wheel’ of the intervention, much to the cries of alarm from rights advocates and the Labor Left.

There is something else at play here, beyond expressions of indigenous disadvantage, evidence and political principle.

An important factor in why the Fraser Government did not wind back self-determination was that public sentiment had moved on. Similarly, the Gillard government has felt the momentum of public opinion as it has worked out what to do with the intervention. Damming reports of alcohol-fuelled violence and child neglect continued to dominate public attention. The train of public opinion has left the station.

In his recent book Belonging Policy powerfully determines what happens on the ground in remote Aboriginal communities, often in unintended and surprising ways.
Together, Patrick Sullivan proposes that the current policy period be coined “normalisation”, with its “intention to re-engage the State with its Aboriginal people and normalise their relations with their communities and with the wider population”.

Its flagship policies are increased government engagement, income management, stabilisation, mainstreaming, and the catch cries “closing the gap” and “real jobs”. Long gone are the institutional controls, but back are some of the modernisation themes from the earlier assimilation era.

The cycle of public opinion

Looking back across the self-determination era of old and the normalisation era to date, there appears to be a pattern that is repeating. Despite their political differences, ruling governments find themselves beholden to similar points in a cycle of public opinion.

First is the reformist government that brings in the change (Whitlam and Howard). Then there is the consolidating government which tinkers but keeps the main policy thrust (Fraser and Rudd/Gillard). This is followed by the return of the implementing government which deepens and then is perceived to overreach to the next tipping point (Hawke/Keating and perhaps Abbott?). And around the 30-year anniversary, there is a shift in public opinion which heralds in a new policy era.

According to this past pattern, we can speculate that we are approaching the mid-point of the normalisation era.

The Stronger Futures legislation has signalled bipartisan support to at least 2022. And whatever effects remote communities are now feeling from normalisation, when the Liberal Party next returns to power there may be deeper reforms to come.

As the originators of the policy, the Liberal Party will be the ones to be cast as overreaching, until there is a new tipping point in public opinion. Then a new reformist Labor government will herald in a new policy era of yet unknown dimensions, possibly with elements of self-determination recast.

The 30-year metronome

Of course, the past is no predictor of the future, and there are many other competing tensions at play. I do not wish to gloss over the depth of human need or evidence supporting different alternatives. Nor the competing political principles in the triangle of equality, guardianship and choice, as described by ANU’s Will Sanders.

My point is that indigenous affairs policy reform is strongly influenced by a pendulum of public opinion, on an approximate 30-year metronome. A potent policy driver to disadvantage in remote Aboriginal communities is what other Australians think of that disadvantage. The residents of these communities are not sufficient in number or political alignment to constitute a significant political force at the ballot box.

Similar in a way to asylum seekers, their plight captures the attention of the public, which politicians are beholden to. The clients of indigenous affairs policy include other Australians, and 30 years is about the limit of their memory.

Policy powerfully determines what happens on the ground in remote Aboriginal communities, often in unintended and surprising ways. No matter how well policy is conceived, delivery on the ground is where it counts, and where it consistently fails.

It helps to understand that many of the drivers of indigenous affairs policy do not derive from the places they are intended to serve. Some do, but not all. And we may have to wait another 20 years before policy is seriously reassessed.

Mark Moran is Adjunct Associate Professor at University of Queensland and is a development practitioner with experience in indigenous and international contexts.

THE CONVERSATION

WORKSHEETS AND ACTIVITIES

The Exploring Issues section comprises a range of ready-to-use worksheets featuring activities which relate to facts and views raised in this book. The exercises presented in these worksheets are suitable for use by students at middle secondary school level and beyond. Some of the activities may be explored either individually or as a group.

As the information in this book is compiled from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Is the information cited from a primary or secondary source? Are you being presented with facts or opinions?

Is there any evidence of a particular bias or agenda? What are your own views after having explored the issues?

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WRITTEN ACTIVITIES 55
MULTIPLE CHOICE 56
Brainstorm, individually or as a group, to find out what you know about indigenous rights. Complete your responses on a separate sheet of paper if more space is required.

1. What are the key rights issues confronting the world’s indigenous peoples?

2. What is native title, and what key historical events led to its recognition in Australia?

3. Who are the Stolen Generations? Why was it important for Australia’s governments to apologise to them?

4. What is the Northern Territory National Emergency Response, and why is it controversial?
The Reconciliation movement is said to have begun with the 1967 referendum to remove clauses from the Australian Constitution which discriminated against Indigenous Australians.

Research the history of indigenous rights in Australia and make a list of important Reconciliation milestones. Propose further steps which could be taken towards further advancing Reconciliation between Indigenous and non-Indigenous Australians.
Complete this multiple choice questionnaire by circling your preferred response for each question. The answers are at the end of this page.

1. In what year was the Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly?
   a. 1877
   b. 1901
   c. 1977
   d. 2001
   e. 2007

2. What is the meaning of the term terra nullius?
   a. Land of terror
   b. No land
   c. No terror
   d. Land belonging to no one
   e. Land belonging to the Crown

3. When did the British First Fleet arrive and take formal possession of Australia, without consent or consultation with the indigenous peoples?
   a. 1770
   b. 1788
   c. 1807
   d. 1877
   e. 1888

4. What was the initial reason cited by the Australian federal government for the 2007 intervention in Northern Territory indigenous communities?
   a. Alcohol abuse
   b. Gambling problems
   c. Child abuse
   d. Domestic violence
   e. Drug use
   f. Youth crime

5. The Racial Discrimination Act was implemented in Australia in what year?
   a. 1965
   b. 1975
   c. 1985
   d. 1995
   e. 2005

6. In what year was the formal apology offered to Australia's indigenous peoples for past laws and policies which had inflicted profound grief, suffering and loss on Indigenous Australians?
   a. 1968
   b. 1978
   c. 1988
   d. 1998
   e. 2008

MULTIPLE CHOICE ANSWERS
1 - e; 2 - d; 3 - b; 4 - c; 5 - b; 6 - e.
The Howard Government enacted a '10 Point Plan' by The 1970s saw the first major legislation which A crucial development in the Aboriginal Land Rights In 1975, land was handed back to the Gurindji people Between 1 in 10 and 3 in 10 Aboriginal and Torres Strait On the 13th of February 2008, the Prime Minister, Kevin National Reconciliation Week was first celebrated in In 1967 a referendum was held with 90.7% of Australians and Torres Strait Islander peoples at Australian law based On Sunday 28 May 2000, more than 250,000 people In the judgement of the High Court of Australia in 1992 National Reconciliation Week was first celebrated in In 1962, all indigenous people were given the vote in Commonwealth elections. In 1967 a referendum was held with 90.7% of Australians and Torres Strait Islander peoples in the Constitution. The easter movement was the erection of a small tent on the laws outside Parliament House on Australia Day 1972. The 1970s saw the first major legislation which the Northern Territory Land Rights Act set up a framework for Aboriginal people to take back control of many parts of the territory. The Howard Government enacted a '10 Point Plan' by winding back many of the rights recognised in the The 1996 High Court decision in the Wik case followed on from the historic Mabo native title decision in 1992 and together, these cases underpin Australia's native title system. Aboriginal and Torres Strait Islander peoples' occupation of Australia predates European settlement by at least 50,000 years. When the British arrived, they did not recognise that Aboriginal people had rights to land, so they regarded the land as freely available to the Crown. This has been described as the land being 'terra nullius', land belonging to no one. Under the Native Title Act 1993, mining companies and other developers are required to negotiate with native title holders and others with a potential interest in the land before commencing any development. The Native Title Amendment Act 2009, gave the Federal Court the central role in managing native title claims and implemented other measures to improve the claims process. There is no mention of Aboriginal or Torres Strait Islander peoples in the Constitution. The Aboriginal and Torres Strait Islander population comprises around 2.5% of the Australian population and is relatively young. Aboriginal and Torres Strait Islander Australians have lower life expectancy than non-Indigenous Australians. Around 1 in 12 Aboriginal and Torres Strait Islander adults have personally experienced removal from their natural family. Half of all Aboriginal and Torres Strait Islander people aged 15 years and over have a disability or long-term health condition. 1 in 10 (11%) Aboriginal and Torres Strait Islander children aged 4-14 years have reported being bullied at school because of their indigenous origin. While the mortality rate of Indigenous Australian babies is declining, it remains at more than 12 for every 1,000 live births – a rate nearly 3 times that of non-indigenous infants. Indigenous people are hospitalised as a result of domestic violence at a rate 34 times higher than non-indigenous people. Imprisonment rates for indigenous women and men has increased by 46% and 27% respectively. In 2007, the Federal Government launched the Northern Territory Emergency Response, also known as the 'intervention'. The Racial Discrimination Act (1975) is one of Australia's most important laws for protecting human rights. In order to implement the 'intervention', the Federal Government suspended the operation of the Racial Discrimination Act. The controversial 'Stronger Futures' laws were passed in the Senate on 29 June 2012 after a marathon debate. This e-book is subject to the terms and conditions of a non-exclusive and non-transferable SITE LICENCE AGREEMENT between THE SPINNEY PRESS and: Rose Bay Secondary College, Dover Heights, katherine.ethimiou@det.nsw.edu.au
Aboriginal or Torres Straight Islander Peoples
People who are of Aboriginal and Torres Straight Islander descent, and identify as Australian Aboriginals and/or Torres Straight Islanders, and are accepted as such by the community in which they live or have lived.

Human rights
The rights people are entitled to simply because they are human beings, irrespective of their citizenship, nationality, race, ethnicity, language, sex, sexuality, or abilities. Human rights become enforceable when they are codified as conventions, covenants, or treaties, or as they become recognised as customary international law.

Indigenous Australians
The original inhabitants of the Australian continent and nearby islands. It is an inclusive term used when referring to both Aboriginal and Torres Strait Islanders.

Indigenous governance
How Aboriginal and Torres Strait islander people organise themselves and make decisions about their lives in a culturally relevant way. The three connected components that enable effective governance in Aboriginal and Torres Strait Islander communities are community governance, organisational governance, the governance of governments and other external influences.

Indigenous peoples
People who have a set of specific rights based on their historical ties to a particular territory, practising unique traditions and retaining social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. There are more than 370 million indigenous people spread across 70 countries worldwide. These groups are particularly vulnerable to exploitation, marginalisation and oppression by nation states that may still be formed from the colonising populations, or by politically dominant ethnic groups.

Land rights
A term that represents the evolving struggle of Aboriginal and other indigenous peoples for the absolute legal and moral acknowledgement of prior ownership of their land and recognition of all accompanying rights and obligations which flow from this association. Land Rights (capitalised) refers to the legislation.

Mabo
The 1992 Mabo decision by the High Court of Australia resulted in the overturning the fiction of terra nullius. The successful claimant was Torres Strait Islander, Eddie Mabo.

Native title
The name for the ownership rights and interests of Aboriginal and Torres Strait Islander peoples in their traditional land that can be recognised by Australian law. In order for native title to be recognised, Aboriginal and Torres Strait Islander people claiming native title must prove continuous customary connection to the land being claimed.

Northern Territory National Emergency Response
Also known as 'the intervention', this was a package of changes to welfare provision, law enforcement, land tenure and other measures, introduced by Prime Minister John Howard in 2007. The stated aim of the intervention was to protect children, however while it included some positive initiatives, it also included a range of policies that discriminate against Aboriginal people. It has since been replaced by the Stronger Futures Policy.

Racism
The belief that human races have distinctive characteristics which determine their respective cultures, and which usually involve the idea that one's own race is superior and therefore has the right to rule or dominate others. It also includes offensive or aggressive behaviour to members of another race stemming from such a belief, and which can constitute a policy or system of government and society based on it.

Self-determination
Self-determination is about Aboriginal and Torres Strait Islander peoples deciding their own economic, social, cultural and political futures.

Sorry
The word ‘sorry’ holds special meaning in Aboriginal and Torres Strait Islander cultures. In many Aboriginal communities, sorry is an adapted English word used to describe the rituals surrounding death (Sorry Business). Sorry, in these contexts, expresses empathy, sympathy and an acknowledgment of loss rather than responsibility.

Stolen Generations
Describes the many Aboriginal and some Torres Strait Islander people forcibly removed from their families as children by past Australian Federal, State and Territory government agencies, and church missions, from the late 1800s to the 1970s. These removers were carried out under Acts of parliament, and the children removed were sent either to institutions or adopted by non-indigenous families.

Terra nullius
A concept in international law meaning ‘a territory belonging to no one’ or ‘over which no one claims ownership’. This concept is related to the legal acceptance of occupation as a means of peacefully acquiring territory, however, a fundamental condition of a valid occupation is that the territory should belong to no one. The concept has been used to justify the colonisation of Australia, however a 1992 High Court decision rejected terra nullius and recognised indigenous native title.

Wik
The 1996 High Court decision which states that the grant of a pastoral lease does not necessarily extinguish (remove) native title and that native title rights may coexist with the rights of some leaseholders. The Court said that where there is a conflict between native title rights and the rights of the leaseholder, the rights of the leaseholder prevail. The court case was launched by the Wik People of Cape York.
Websites with further information on the topic


ANTaR  www.antar.org.au

Australian Human Rights Commission  www.humanrights.gov.au

Australian Indigenous HealthInfoNet  www.healthinfonet.ecu.edu.au

Australian Institute of Aboriginal and Torres Strait Islander Studies  www.aiatsis.gov.au


Collaborating for Indigenous Rights (National Museum of Australia)  http://indigenousrights.net.au

Human Rights Law Centre  www.hrlc.org.au


National Native Title Tribunal  www.nntt.gov.au

National Sorry Day Committee Inc  www.nsdc.org.au

RECOGNISE  www.recognise.org.au

Reconciliation Australia  www.reconciliation.org.au

Reconciliation Victoria  www.reconciliationvic.org.au


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