

Factsheet: Aboriginal and Torres Strait Islander Peoples

Background

A recurring theme during Australia's first cycle review was the unacceptable level of disadvantage experienced by Aboriginal and Torres Strait Islander peoples. Countries called upon Australia to ensure the full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples*,¹ to commit to the recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution,² to intensify efforts to reduce the life expectancy gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians,³ and to address concerns raised about the disproportionate representation of Aboriginal and Torres Strait Islanders within the criminal justice system.⁴

The Australian Government has since made a number of commitments to improving outcomes in life expectancy, education, employment and health. Although advances have been made, there is still a long way to go to ensure the full enjoyment of human rights by Aboriginal and Torres Strait Islander peoples in Australia.

Key Issue – The UN Declaration on the Rights of Indigenous Peoples

The Declaration is yet to be implemented in law, policy and practice.

The Australian Government declared its support for the Declaration in 2009. Since that time, progress to implement the Declaration has been slow.

During 2014 a series of consultations about giving effect to the Declaration were held with Aboriginal and Torres Strait Islander communities and organisations.⁵ The *Declaration Dialogues*, conducted by the Commission in partnership with the National Congress of Australia's First Peoples, revealed that communities find the Declaration to be an empowering tool they can use to assert their rights in everyday life. Businesses are also demonstrating their willingness and commitment to use the Declaration as a basis for their engagement with Aboriginal and Torres Strait Islander communities.⁶

The Australian Government played a productive role at the World Conference on Indigenous Peoples in September 2014. The Conference Outcomes document commits Member States to develop, in consultation and cooperation with Indigenous peoples, national measures to achieve the ends of the Declaration.⁷

One simple measure that could be taken is to include the Declaration within the definition of human rights in the legislation that guides the operation of the parliamentary committee on human rights. This would ensure that all legislation that comes before the parliament is assessed for compliance with the Declaration.

Recommendation

The Commission recommends that Government develop, in partnership with Aboriginal and Torres Strait Islander peoples, a National Strategy to give effect to the Declaration; include the Declaration in the definition of human rights in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth); and review existing legislation, policies and programmes for conformity with the Declaration.

Key Issue – National Congress of Australia’s First Peoples

In responding to the first cycle UPR, Australia noted the recent creation of the National Congress of Australia’s First Peoples and committed to working closely with the organisation. However, the Australian Government has since wound back funding support for the National Congress of Australia’s First Peoples, a national NGO voice for Indigenous peoples.⁸

Recommendation

The Commission recommends that adequate funding be provided to the National Congress to build a representative Indigenous voice at the national level.

Key Issue – Constitutional recognition of Aboriginal and Torres Strait Islander peoples

The Commission acknowledges steps taken towards recognition of Aboriginal and Torres Strait Islander peoples in the Constitution:

- An independent Expert Panel recommended a model for recognition to the Government in **2012**
- In February **2013** the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) was passed – this acknowledges that Aboriginal and Torres Strait Islander people are the first inhabitants of this nation and identifies a broad timeframe for the holding of the referendum to recognise this, and provide other protection, in the Constitution
- Funding has been provided to Reconciliation Australia for the *Recognise* campaign to build community support.
- A Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was originally convened in June 2012 and again in 2013. This Committee has sought public submissions and conducted numerous consultations on models for reform. The Committee released its recommendations in its final report on 25 June 2015.

However, no model for constitutional change has been finalised nor the timeframe for a referendum announced.

Recommendation

The Commission recommends that Government finalise a model for constitutional recognition, following engagement of Aboriginal and Torres Strait Islander peoples, so that the process of building community support can advance.

Key Issue – Close the Gap

The Commission welcomes the commitment of Australian governments to targets to close the gap between Aboriginal and Torres Strait Islander people and non-Indigenous Australians across a range of key wellbeing indicators. Since 2011, there have been long-term improvements in infant mortality, maternal health, life expectancy rates and pre-school attendance. Other areas, such as employment and school attendance, have not seen improvements.

Closing the gap in health equality between Aboriginal and Torres Strait Islander peoples and other Australians is an agreed national priority.

Recommendation

The Commission recommends that Government, working with Aboriginal and Torres Strait Islander peoples, redouble efforts to achieve the closing the gap targets, and implement the recommendations of the Close the Gap Campaign's Progress and Priorities Report 2015.⁹

Key Issue – Criminal Justice

Aboriginal and Torres Strait Islander adults and juveniles, are significantly over-represented in Australia's prison population.¹⁰ The overrepresentation of Aboriginal and Torres Strait Islander Australians as both victims and offenders remains one of the most glaring disparities between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians.

There are currently not targets relating to justice outcomes in the Government's Closing the Gap commitments. The Commission and NGOs have advocated that targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander people. The justice targets could be included in the existing Close the Gap framework.¹¹ Justice reinvestment strategies have also been recommended by the Senate Legal and Constitutional Affairs Committee and successive Social Justice Commissioners.¹² Justice reinvestment involves diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending.

The Australian Government has announced a \$13.4 million reduction in funding of the Indigenous Legal Aid and Policy Reform Program. The cuts will take effect from 1 July 2015. The reduction in funding may affect various services provided by the community controlled not-for-profits funded out of this program, including legal assistance, community legal education, prison, law reform and advocacy activities.¹³

Recommendation

The Commission recommends that Australian Governments adopt justice targets and introduce justice reinvestment trials to reduce Indigenous incarceration rates.

The Commission recommends that adequate funding be provided for Indigenous legal aid.

¹ UPR Recs 106 and 107.

² UPR Recs 104, 105 and 107.

³ UPR Recs 113, 115–118.

⁴ UPR Recs 90, 92, 93 and 95.

⁵ Australian Human Rights Commission, *Social Justice Report 2014*, p 162. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 3 December 2014).

⁶ Australian Human Rights Commission, *Social Justice Report 2014*, p 162. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 3 December 2014).

⁷ *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*, GA Res 66, UN Doc No A/69/L.1, 2014, paras 7-8. At <http://wqip2014.org/wp-content/uploads/2014/09/N1453491-WCIP-FINAL-DOCUMENT-EN.pdf> (viewed 18 June 2015).

⁸ Australian Government, *Budget 2014–15: Budget Measures, Budget Paper No 2 (2014)*, p 185. At http://budget.gov.au/2014-15/content/bp2/download/BP2_consolidated.pdf (viewed 21 March 2015).

⁹ Close the Gap Campaign Steering Committee, *Progress and Priorities Report 2015*. At <https://www.oxfam.org.au/2015/02/close-the-gap-progress-and-priorities-report-2015/> (viewed 21 March 2015).

¹⁰ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2014 (2014)*, p 4.100 (Box 4.12.1). At <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014#report> (viewed 22 June 2015): Between 2000 and 2013 the imprisonment rate for Aboriginal Torres Strait Islander adults increased by 57%. Most recent statistics show Aboriginal and Torres Strait Islander adults are imprisoned at 13 times the rate of non-Indigenous adults. Aboriginal children are imprisoned at 24 times the rate of non-Indigenous young people. Australian Institute of Health and Welfare, *Youth Justice in Australia 2012–13 (2014)*, p 13. At <http://www.aihw.gov.au/publication-detail/?id=60129546738> (viewed 22 June 2015): On an average day in 2012-13, Indigenous children aged 10–17 were 16 times as likely to be under community-based supervision as non-Indigenous young people and 28 times as likely to be in juvenile detention.

¹¹ See Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014 (2014)*, pp 117-123. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 22 June 2015).

¹² Senate Legal and Constitutional Affairs Committee, *Value of a justice reinvestment approach to criminal justice in Australia (2013)*, p 124. At http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index (viewed 21 March 2015); Australian Human Rights Commission, *Social Justice and Native Title Report 2014 (2014)*, p 12. At <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-0> (viewed 5 March 2015).

¹³ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2014 (2014)*, p 24. At <https://www.humanrights.gov.au/publications/social-justice-and-native-title-report-2014> (viewed 22 June 2015).