



**Australian  
Human Rights  
Commission**

*everyone, everywhere, everyday*

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# Draft Indigenous Economic Development Strategy

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Australian Human Rights Commission Submission  
to the Minister for Families, Housing, Community  
Services and Indigenous Affairs

17 December 2010

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## **1 Introduction**

1. The Australian Human Rights Commission makes this submission to the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) in response to the draft Indigenous Economic Development Strategy (IEDS).
2. The Commission welcomes the opportunity to comment on such an important strategy. The Commission supports an IEDS developed in consultation and cooperation with Aboriginal and Torres Strait Islander peoples.
3. The Commission supports economic development for Aboriginal and Torres Strait Islander peoples and considers that an IEDS could assist them to realise their economic, social and cultural aspirations.
4. In order to be successful, economic development needs to be built on self-determination and effective participation in decision-making. The success of the IEDS will depend on its ability to effectively engage, respect and acknowledge Aboriginal and Torres Strait Islander peoples in all aspects of decision-making relating to their economic development. It is fundamental that the IEDS provides for economic development that is based on community decision-making and control.
5. The Commission understands that the IEDS is to 'open a new dialogue' about Aboriginal and Torres Strait Islander economic development. Therefore the Commission does not propose to comment on each of the specific priorities included in the IEDS, but rather provides brief comments which can guide this new conversation. The Commission provides a table at **Appendix A** which refers to previous comments made by the Commission and the Aboriginal and Torres Strait Islander Social Justice Commissioner relevant to each of the Strategic Priorities.
6. First the Commission outlines a principle-based framework to guide the future development of the IEDS that is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration). The Commission then highlights some key issues for inclusion in the IEDS, which are based on community decision-making and control.

## **2 Summary**

7. The Commission is of the view that the Declaration should guide the development and implementation of the IEDS. The Commission further considers that the IEDS is an opportunity for the Government to demonstrate its commitment to the Declaration.
8. Aboriginal and Torres Strait Islander peoples should be able to determine their own priorities for development. The Commission understands that these may be broader than the creation of individual wealth and engagement in the market economy. An IEDS should be developed in partnership with Aboriginal and Torres Strait Islander peoples and provide for community-led and controlled development.

9. The Commission considers that effective and meaningful Government engagement with affected Aboriginal and Torres Strait Islander communities is fundamental to Aboriginal and Torres Strait Islander peoples being able to fully participate in decision-making that affects their rights.
10. The Commission supports the development of Aboriginal and Torres Strait Islander peoples' capacity as a way of attaining their economic, social and cultural development aspirations. There must also be greater attention given to building the capacity within the Government to deliver an effective economic development strategy.
11. The Commission submits the following issues require further consideration in the development of the IEDS:
  - considerations for leveraging economic development through Aboriginal and Torres Strait Islander peoples' control over their lands, territories and resources
  - clarification of the links between the IEDS and the Government's Closing the Gap health policy agenda to facilitate better economic development outcomes
  - consideration of bilingual education approaches in schools to increase economic development opportunities and clarification of the link between the IEDS and the Aboriginal and Torres Strait Islander Education Plan
  - the importance of community based development initiatives in the areas of education, employment and creating safe communities.
12. The Commission makes these comments as part of the Government's 'new dialogue' and welcomes the opportunity to discuss these issues further.

### **3 Recommendations**

13. The Australian Human Rights Commission recommends that:

**Recommendation 1:** The Australian Government use the Declaration as the framework to guide the development and implementation of the IEDS.

**Recommendation 2:** The Australian Government provide financial and technical assistance to Aboriginal and Torres Strait Islander peoples and organisations to assist them to fully realise their social, cultural and economic development aspirations.

**Recommendation 3:** The Australian Government consult and cooperate in good faith with affected Aboriginal and Torres Strait Islander peoples, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing the IEDS. Further, that the Australian Government commit to developing a nationwide consultation and engagement framework underpinned by the Declaration, in partnership with Aboriginal and Torres Strait Islander peoples.

14. **Recommendation 4:** The Australian Government work with Aboriginal and Torres Strait Islander peoples, their representatives, and other organisations such as the Office of the Registrar of Indigenous Corporations to identify and develop capacity building opportunities for inclusion in the IEDS at the individual, organisational and community levels. Consideration should be given to skills deficits in addition to resourcing constraints.

**Recommendation 5:** The Australian Government support the establishment of an 'Indigenous Governance Institute' as recommended by the Indigenous Community Governance Project.

**Recommendation 6:** The Australian Government develop the cultural competency of government departments and ensure the coordination of government services and the implementation of programs, across departments, and across Federal and State departments and agencies.

**Recommendation 7:** The Australian Government provide support for an expert panel or roundtable to consider each area in the IEDS in further detail and make recommendations for inclusion in the IEDS.

15. **Recommendation 8:** The Australian Government should establish an independent review of the Native Title Act. Further, the IEDS should commit to this review as necessary to facilitate economic development opportunities through native title. The terms of reference for any such review should be developed in consultation with all affected groups, particularly Aboriginal and Torres Strait Islander peoples. However, the Commission considers that the review should at least involve an inquiry into:

- the current burden of proving native title
- the operation of the law regarding extinguishment
- the future act regime
- options for advancing negotiated settlements (including the potential for alternative, comprehensive settlements).

**Recommendation 9:** The Australian Government:

- clarify the link between the IEDS and the Government's Closing the Gap health policy agenda
- ensure a clear coordination of services across Government departments to enable health and economic development policies to work together effectively to create more sustainable outcomes for Aboriginal and Torres Strait Islander peoples.

**Recommendation 10:** The Australian Government include in the IEDS a commitment to supporting the reinstatement of bilingual education approaches in schools and commit to safeguarding the future of bilingual education through binding agreements with state and territory governments and the provision of ongoing resources to support its implementation. Further that the Government should clarify the link between the IEDS and the Aboriginal and Torres Strait Islander Education Plan.

16. **Recommendation 11:** The Australian Government commit in the IEDS to consulting with Aboriginal and Torres Strait Islander communities to develop employment programs appropriate to their respective circumstances.

**Recommendation 12:** The Australian Government should include in the IEDS a commitment to progressing a criminal justice policy approach based on 'justice reinvestment' to contribute to safer communities.

**Recommendation 13:** The Australian Government commit in the IEDS to continuing to fund community education and community development program initiatives aimed at preventing family violence in Aboriginal and Torres Strait Islander communities.

## 4 Key principles to guide the development of the IEDS

### 4.1 Full implementation of the Declaration

17. The Australian Government issued a formal statement of support for the Declaration on 3 April 2009. In doing so the Government said the Declaration was important in re-setting the Government's relationship with Aboriginal and Torres Strait Islander peoples.<sup>1</sup> The Minister for Families, Housing, Community Services and Indigenous Affairs has also said:

Resetting this relationship requires more than a verbal commitment; it demands urgent, ongoing and tangible action across all areas of disadvantage, including Indigenous economic development.<sup>2</sup>

18. The Commission considers that the proposed IEDS could present an opportunity for the Government to demonstrate its commitment to the Declaration. However, the Commission notes that while the IEDS includes 'Guiding Principles' that echo many of the sentiments of the Declaration, it makes no direct reference to the Declaration.<sup>3</sup>
19. Following his visit to Australia in August 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, recommended that the 'Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration on the Rights of Indigenous Peoples'.<sup>4</sup>

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<sup>1</sup> J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Statement on the United Nations Declaration on the Rights of Indigenous Peoples* (Speech delivered at Parliament House, Canberra, 3 April 2009). At [http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un\\_declaration\\_03apr09.aspx](http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx) (viewed 13 December 2010).

<sup>2</sup> Australian Government, *Indigenous Economic Development Strategy: Draft for Consultation* (2010), p iii. At [http://resources.fahcsia.gov.au/IEDS/ieds\\_default.htm](http://resources.fahcsia.gov.au/IEDS/ieds_default.htm) (viewed 19 October 2010).

<sup>3</sup> Australian Government, *IEDS*, note 2, pp 2–3.

<sup>4</sup> J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010),

20. The Commission supports this, and recommends that the Government use the Declaration as the framework to guide the development and implementation of the IEDS.

#### **4.2 Development with culture and identity**

21. The Declaration affirms the right of Aboriginal and Torres Strait Islander peoples to self-determination. By virtue of that right, they ‘freely determine their political status and freely pursue their economic, social and cultural development’.<sup>5</sup>
22. Aboriginal and Torres Strait Islander peoples also ‘have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions’, and to ‘determine and develop priorities and strategies for exercising their right to development’.<sup>6</sup> In particular, Aboriginal and Torres Strait Islander peoples have the right to ‘be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions’.<sup>7</sup>
23. Economic development priorities for Aboriginal and Torres Strait Islander peoples may be broader than the creation of individual wealth or engagement in the market economy.<sup>8</sup> That is, Aboriginal and Torres Strait Islander peoples may choose to pursue development with culture and identity. This is characterised by ‘a holistic approach that seeks to build on collective rights, security and greater control and self-governance of lands, territories and resources’.<sup>9</sup>
24. The draft IEDS covers a broad range of economic and social policy areas, including the pursuit of development opportunities connected to lands, territories and resources. However it is important that the IEDS also include the flexibility to allow Aboriginal and Torres Strait Islander peoples to pursue their own approaches to economic development including their individual aspirations and the development goals of communities. To ensure that the IEDS accurately reflects these aspirations, Aboriginal and Torres Strait

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para 74. At <http://unsr.jamesanaya.org/PDFs/Australia%20Report%20EN.pdf> (viewed 19 October 2010).

<sup>5</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), art 3. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 9 December 2010).

<sup>6</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, note 5, art 23. Also see arts 4, 20 and 31(1).

<sup>7</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, note 5, art 23.

<sup>8</sup> Australian Human Rights Commission, *Community Guide to the UN Declaration on the Rights of Indigenous Peoples* (2010), p. 41. At [http://www.humanrights.gov.au/declaration\\_indigenous/declaration\\_full.html](http://www.humanrights.gov.au/declaration_indigenous/declaration_full.html) (viewed 14 December 2010).

<sup>9</sup> Economic and Social Council, *United Nations Permanent Forum on Indigenous Issues Report on the ninth session (19-30 April 2010)*, UN Doc E/C.19/2010/15 (2010), para 5. At [http://www.un.org/esa/socdev/unpfii/en/session\\_ninth.html](http://www.un.org/esa/socdev/unpfii/en/session_ninth.html) (viewed 9 December, 2010).

Islander peoples need to be actively involved, in the design, development, implementation, monitoring and evaluation of the IEDS.<sup>10</sup>

25. The Commission encourages the Government to provide financial and technical assistance to Aboriginal and Torres Strait Islander peoples and organisations to fully realise their social, cultural and economic development aspirations.<sup>11</sup>

#### **4.3 *The need for effective and meaningful engagement with Aboriginal and Torres Strait Islander peoples***

26. Aboriginal and Torres Strait Islander peoples must be able to participate in decision-making that affects their rights. Article 19 of the Declaration provides:

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.

27. Governments are under a duty to consult ‘whenever a State decision may affect indigenous peoples in ways not felt by others in society’.<sup>12</sup> This duty requires government to consult effectively before adopting or implementing measures that may affect the rights of Aboriginal and Torres Strait Islander peoples.
28. In a recent study on the duty to consult, the Special Rapporteur considered that the objective of consultations ‘should be to obtain the consent or agreement of the indigenous peoples concerned’.<sup>13</sup> While he considered the strength of this objective will vary according to the circumstances,<sup>14</sup> in all cases, States should engage in ‘[a] good faith effort towards consensual decision-making’.<sup>15</sup> Consultation processes should therefore be framed ‘in order to make every effort to build consensus on the part of all concerned’.<sup>16</sup>
29. The Commission welcomes the Government’s statement that there will be ongoing engagement in the development of the IEDS and that ‘aims to ensure that those most affected are equal partners’ in the formation of the IEDS.<sup>17</sup> This approach is encouraging because, as the Special Rapporteur acknowledges:

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<sup>10</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, note 5, art 18. See Appendix B for a list of Principles for meaningful and effective engagement.

<sup>11</sup> This is consistent with article 39 of the Declaration which affirms Indigenous peoples’ right to have access to financial and technical assistance from States for the enjoyment of their rights: *United Nations Declaration on the Rights of Indigenous Peoples*, note 5, art 39.

<sup>12</sup> J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), paras 43, 44. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 29 September 2010).

<sup>13</sup> Anaya, *Report to the HRC 12<sup>th</sup> Session*, note 12, para 65.

<sup>14</sup> Anaya, *Report to the HRC 12<sup>th</sup> Session*, note 12, para 47.

<sup>15</sup> Anaya, *Report to the HRC 12<sup>th</sup> Session*, note 12, para 50.

<sup>16</sup> Anaya, *Report to the HRC 12<sup>th</sup> Session*, note 12, para 48.

<sup>17</sup> Australian Government, *IEDS*, note 2, p 8.

without the buy-in of indigenous peoples, through consultation, at the earliest stages of the development of Government initiatives, the effectiveness of Government programmes, even those that are intended to specifically benefit indigenous peoples, can be crippled at the outset.<sup>18</sup>

30. The Commission has developed a number of principles which should underpin effective and meaningful engagement at **Appendix B**.<sup>19</sup> The Commission recommends that the Government be guided by these principles in order to consult and cooperate in good faith with affected Aboriginal and Torres Strait Islander peoples, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing the IEDS.
31. The Commission further considers that the Government should develop a nationwide consultation and engagement framework, underpinned by the Declaration. This framework should be developed in partnership with Aboriginal and Torres Strait Islander peoples, and should be used to guide the development of future consultation processes for measures that affect the rights of Aboriginal and Torres Strait Islander peoples.

#### ***4.4 There is a need to focus on capacity development***

32. In order to assist Aboriginal and Torres Strait Islander peoples to attain their economic, social, and cultural aspirations, governments need to support capacity building initiatives.
  - (a) *Developing capacity of Aboriginal and Torres Strait Islander peoples*
33. In May 2006, the Aboriginal and Torres Strait Islander Social Justice Commissioner conducted a national survey of traditional owners and their representatives designed to determine their views regarding economic development of their land.<sup>20</sup> A key finding was that economic development was welcomed by traditional owners, though many lacked the capacity to develop ideas into enterprise. For example, many Prescribed Bodies Corporate (PBCs) struggle to perform basic administrative tasks — let alone engage strategically with economic development opportunities derived from their land.
34. In order for the IEDS to be effective, the Government must commit to providing greater support for capacity building initiatives.

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<sup>18</sup> Anaya, *Report to the HRC 12<sup>th</sup> Session*, note 12, para 34.

<sup>19</sup> These principles are extracted from the Social Justice Commissioner's upcoming *Native Title Report 2010* which will be released early next year. These elements are based on international human principles with input from native title stakeholders. The Commission is of the view that these principles can be employed across all areas of policy that affect Aboriginal and Torres Strait Islander peoples.

<sup>20</sup> See T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2006*, Human Rights and Equal Opportunity Commission (2007). At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport06/index.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport06/index.html) (viewed 9 December 2010).

35. The Commission acknowledges the Government's commitment in the IEDS to 'building Indigenous leadership and capacity'<sup>21</sup> and to 'strengthening governance and capacity to improve policy, economic, financial and social decision-making'.<sup>22</sup> It is also positive that the Government has committed to strengthening the skills and capacity of the directors of Aboriginal and Torres Strait Islander corporations. However the Government must ensure that it goes beyond leadership and addresses fundamental capacity issues such as resourcing and skill deficits, including basic administrative and financial skills.<sup>23</sup> It must also address capacity issues at all levels.
  36. To this end the Government should work with Aboriginal and Torres Strait Islander peoples, their representatives, and other organisations such as the Office of the Registrar of Indigenous Corporations to identify and develop capacity building opportunities for inclusion in the IEDS at the individual, organisational and community levels. Consideration should be given to skills deficits in addition to resourcing constraints.
  37. The Commission also recognises that improved governance capacity means greater involvement in decision-making and ownership of outcomes. The IEDS should support development opportunities that are based on community decision-making and control, fit within the priorities of Aboriginal and Torres Strait Islander peoples and developed in consultation and cooperation with the affected Aboriginal and Torres Strait Islander peoples.
  38. To develop the capacity of communities to design and implement effective governance mechanisms and enjoy development opportunities, the Commission recommends that the Australian Government support the establishment of an 'Indigenous Governance Institute' as recommended by the Indigenous Community Governance Project.<sup>24</sup>
- (b) *Ensuring Government capacity to facilitate economic development*
39. In addition, it is important for government departments and agencies to develop their own capacity to deliver on the objectives of the IEDS. This includes cultural competence to ensure policies and programs support the sustainability and self-determination of Aboriginal and Torres Strait Islander communities.<sup>25</sup> For example, government officials must be able to position

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<sup>21</sup> Australian Government, *IEDS*, note 2, p 16.

<sup>22</sup> Australian Government, *IEDS*, note 2, p 19.

<sup>23</sup> For a consideration of capacity needs in PBCs, see Australian Institute of Aboriginal and Torres Strait Islander Studies, *Native Title Corporations*, <http://www.aiatsis.gov.au/ntru/pbc.html> (viewed 9 December 2010).

<sup>24</sup> See Reconciliation Australia, *The Indigenous Community Governance Project: Year Two Research Findings* (2007), p xvi. At <http://www.reconciliation.org.au/home/projects/indigenous-governance-research-project> (viewed 9 December 2010). Also see Center for Aboriginal Economic Policy Research, *Indigenous Community Governance*, <http://caepr.anu.edu.au/governance/index.php> (viewed 9 December 2010).

<sup>25</sup> T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2009*, Australian Human Rights Commission (2009), p 59. At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport09/index.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport09/index.html) (viewed 9 December 2010).

themselves to effectively engage with local Aboriginal and Torres Strait Islander communities, be they from remote, regional or urban locations.<sup>26</sup>

40. In addition, to ensure the best outcomes from a holistic IEDS, the Government needs to co-ordinate its approach to implementing policies for Aboriginal and Torres Strait Islander economic development. Effective coordination requires good working relationships underpinned by effective communication. This includes communication within the various levels of government and across their respective agencies.

## **5 Comments on specific aspects of the consultation draft**

41. Stakeholders have been asked to identify priorities that will increase Indigenous economic self-reliance.<sup>27</sup> The Commission makes comment on a few key issues it believes should be included in the IEDS. These comments are underpinned by the belief that economic development should be based on community decision-making and control.
42. As part of the Government's ongoing dialogue, the Commission believes each priority area should be given further consideration. To this end, the Commission recommends that in addition to ongoing engagement with Aboriginal and Torres Strait Islander peoples, the Government should consider support for an expert panel or roundtable to consider each area in further detail and make recommendations for inclusion in the IEDS.

### **5.1 Leveraging economic development through the use and control of lands, territories and resources**

43. The Commission welcomes the Government's aim, expressed in the IEDS, to '[i]ncrease the capacity of native-title holders and claimants to identify and exploit economic opportunities through improved agreements and procedural rights'.<sup>28</sup>
44. The Commission is deeply conscious of the significance to Aboriginal and Torres Strait Islander peoples of their right to their lands, territories and resources, and their right to development.<sup>29</sup> The Commission encourages the Government to ensure that Aboriginal and Torres Strait Islander peoples are able to access the opportunities they need to realise their social, cultural and economic aspirations associated with their lands, territories and resources.

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<sup>26</sup> It has also been suggested that government officials working with Aboriginal and Torres Strait Islander peoples must be supported with professional development training from nationally accredited training providers: Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008), p 49. At [http://www.terreview.gov.au/docs/report\\_nter\\_review/default.htm](http://www.terreview.gov.au/docs/report_nter_review/default.htm) (viewed 13 December 2010).

<sup>27</sup> Australian Government, *IEDS*, note 2, p iii.

<sup>28</sup> Australian Government, *IEDS*, note 2, p 18.

<sup>29</sup> See *United Nations Declaration on the Rights of Indigenous Peoples*, note 5; *Declaration on the Right to Development*, GA Resolution 41/128 (Annex), UN Doc A/RES/41/128 (1986). At <http://www.un.org/documents/ga/res/41/a41r128.htm> (viewed 23 November 2010).

45. This includes ensuring that Aboriginal and Torres Strait Islander peoples are able to access new and emerging markets, such as carbon markets.
46. More fundamentally, the rights of Aboriginal and Torres Strait Islander peoples to their lands, territories and resources must be recognised and strengthened before economic development can occur. The Commission agrees with the Special Rapporteur that ‘increasing indigenous peoples’ control over their lands and resources, self-determination and self-government is an essential component of advancing economic development and employment opportunities’.<sup>30</sup> This means that the barriers to economic development in the native title system must first be addressed.

(a) *Addressing barriers to economic development in the native title system*

47. Previous *Native Title Reports* have included extensive analysis and recommendations regarding the role of native title in achieving economic and social development for native title parties.<sup>31</sup> The native title system contains a number of barriers to the social and economic development of Aboriginal and Torres Strait Islander peoples. In particular, the previous Social Justice Commissioner identified six specific aspects of native title law and policy that can act as inhibitors to economic development. These include:

- the test for the recognition of native title
- the test for the extinguishment of native title
- the nature of native title: a bundle of rights
- the rules that regulate future development affecting native title rights
- inadequate resourcing for Indigenous bodies in the native title system
- the goals of governments’ native title policies.<sup>32</sup>

48. The Commission recommends that the Government commit in the IEDS to working with Aboriginal and Torres Strait Islander peoples to identify and address barriers to economic development within the *Native Title Act 1993* (Cth) and the broader native title system.

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<sup>30</sup> J Anaya, *Report on the Situation of indigenous peoples in Australia*, note 4, para 74. Also see T Calma, *Native Title Report 2009*, note 25, p 73.

<sup>31</sup> See, for example, W Jonas, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2003*, Human Rights and Equal Opportunity Commission (2004); T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2004*, Human Rights and Equal Opportunity Commission (2005); T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2005*, Human Rights and Equal Opportunity Commission (2005); T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2006*, Human Rights and Equal Opportunity Commission (2007). These reports are available online at [http://humanrights.gov.au/social\\_justice/nt\\_report/index.html](http://humanrights.gov.au/social_justice/nt_report/index.html) (viewed 26 November 2010). Also see Appendix A.

<sup>32</sup> T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2005*, Human Rights and Equal Opportunity Commission (2006), p 35. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/index.html#2005](http://www.humanrights.gov.au/social_justice/sj_report/index.html#2005) (viewed 13 December 2010).

49. In particular, the Commission considers that a global, holistic review of the operation of the Native Title Act is required. The Special Rapporteur recommended that:

The Commonwealth and state governments should ensure that all laws and administrative practices related to lands and natural resources align with international standards concerning indigenous rights to lands, territories and resources. To this end, the Government should establish a mechanism to undertake a comprehensive review at the national level of all such laws and related institutions and procedures, giving due attention to the relevant reports of the Australian Human Rights Commission and the Committee on the Elimination of All Forms of Racial Discrimination.<sup>33</sup>

50. The Commission supports this recommendation, and considers that the Australian Government should establish an independent review of the Native Title Act. The IEDS should commit to this review as necessary to facilitate economic development opportunities through native title.
51. The terms of reference for any such review should be developed in consultation with all affected groups, particularly Aboriginal and Torres Strait Islander peoples. However, the Commission considers that the review should at least involve an inquiry into:

- the current burden of proving native title
- the operation of the law regarding extinguishment
- the future act regime
- options for advancing negotiated settlements (including the potential for alternative, comprehensive settlements).

*(b) Strengthening governance and capacity*

52. In the IEDS, the Government indicates that it aims to strengthen governance and capacity 'to improve policy, economic, financial and social decision-making'.<sup>34</sup> In this area, the Government will:

- encourage more sustainable and transparent management of native title benefits for current and future generations
- help build corporate governance experience in Indigenous corporations that manage assets on behalf of a community or group.

53. The Commission recognises the importance of government support to assist native title groups to negotiate beneficial agreements and develop robust governance structures. The Commission considers that such support should focus on capacity development, rather than on increased regulation, review or assessment. Without access to adequate financial resources and expert advice, Aboriginal and Torres Strait Islander peoples are unlikely to be able to

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<sup>33</sup> J Anaya, *Report on the Situation of indigenous peoples in Australia*, note 4, para 85.

<sup>34</sup> Australian Government, *IEDS*, note 2, p 19.

enter into ‘sustainable’ agreements, enforce the implementation of such agreements or develop effective governance structures.<sup>35</sup>

54. The Commission has also previously submitted comments on the Government’s options for clarifying how native title payments should be treated for tax purposes, and refers the Government to its previous submission.<sup>36</sup>

(c) *Security of tenure*

55. The Commission notes with concern that the IEDS assumes secure tenure is required to facilitate Aboriginal and Torres Strait Islander economic development.<sup>37</sup> To date, there has been a lack of evidence provided to support this assumption. This approach to development does not support building governance, capacity and promoting self-sustaining and self-governing communities.<sup>38</sup>
56. Secure tenure does not of itself attract government investment. Government policies may prevent investment where certain tenure requirements are not met, but this is at the discretion of governments.<sup>39</sup> The Commission considers issues such as remoteness, education, health, job readiness, poor infrastructure and the failure of governments to respect Aboriginal and Torres Strait Islander forms of ownership, including native title, are substantially more important and have a greater impact on the economic development of communities.<sup>40</sup>
57. In the *Native Title Report 2009* the then Social Justice Commissioner outlined a number of principles that the Government should follow when considering land tenure reform.<sup>41</sup> The Commission encourages the Government to use these principles to guide their tenure reform policies.

(d) *Home ownership*

58. There can be significant benefits in home ownership. However for home ownership to provide these social and economic benefits, Aboriginal and Torres Strait Islander peoples should not be set up to fail. The financial circumstances of the owner must support the requirements of home ownership, including the costs of providing repairs.<sup>42</sup>

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<sup>35</sup> For further information, see Australian Human Rights Commission, *Submission on the Discussion paper: Leading practice agreements: maximising outcomes from native title benefits* (30 November 2010).

<sup>36</sup> For further information, see Australian Human Rights Commission, *Submission on the Consultation Paper: Native Title, Indigenous Economic Development and Tax* (30 November 2010).

<sup>37</sup> Australian Government, *IEDS*, note 2, pp 16–18.

<sup>38</sup> T Calma, *Native Title Report 2006*, note 25, p 74. Also see chapter 4.

<sup>39</sup> T Calma, *Native Title Report 2006*, note 25, p 136.

<sup>40</sup> T Calma, *Native Title Report 2006*, note 25, p 125.

<sup>41</sup> T Calma, *Native Title Report 2006*, note 25, pp 185-187.

<sup>42</sup> T Calma, *Native Title Report 2009*, note 25, p 138.

59. Any home ownership scheme that is facilitated in the IEDS should be underpinned by principles including providing the community and participants with clear and appropriate information, such as economic modelling, reports on the condition of houses, financial planning and legal advice.<sup>43</sup>
- (e) *Homelands as a pathway to economic development*
60. The homelands movement of the Northern Territory is an example of successful Aboriginal community development, governance and self-determination on Aboriginal ancestral lands with cultural and spiritual significance to the Aboriginal people who live there.<sup>44</sup> Homelands provide social, spiritual, cultural, health and economic benefits to residents.
61. Some homeland communities have pursued economic development through cultural tourism<sup>45</sup> or land management and conservation projects on their traditional country,<sup>46</sup> including fire abatement projects that serve to mitigate the effects of climate change.<sup>47</sup> The Commission recommends that the IEDS includes support for homelands.<sup>48</sup>

## ***5.2 Economic development requires healthy communities***

62. The Commission notes that the IEDS Action Plan 2010-2012 lists increased Government investment in Aboriginal and Torres Strait Islander health<sup>49</sup>. However the IEDS refers to the link between Aboriginal and Torres Strait Islander health and economic development only in passing.<sup>50</sup> While the IEDS is an initiative of the Government's broad Closing the Gap policy agenda<sup>51</sup>, the IEDS itself does not clarify how the IEDS can work specifically with the Government's Closing the Gap health policy<sup>52</sup> to facilitate better outcomes.

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<sup>43</sup> For further information see T Calma, *Native Title Report 2009*, note 25, pp 188-187.

<sup>44</sup> T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2009), ch 4. At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport09/index.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport09/index.html) (viewed 9 December 2010).

<sup>45</sup> T Calma, *Social Justice Report 2009*, note 44, p 131.

<sup>46</sup> T Calma, *Social Justice Report 2009*, note 44, p 130.

<sup>47</sup> See the case study on the Western Arnhem Land Fire Abatement Project in T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*, Human Rights and Equal Opportunities Commission (2008), ch 12. At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport07/index.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport07/index.html) (viewed 9 December 2010).

<sup>48</sup> For recommendations on homelands see T Calma, *Social Justice Report 2009*, note 45, p 139.

<sup>49</sup> Australian Government, *Indigenous Economic Development Strategy: Action plan 2010-2012* (2010), pp 5-6. At [http://resources.fahcsia.gov.au/IEDS/act\\_default.htm](http://resources.fahcsia.gov.au/IEDS/act_default.htm) (viewed 9 December 2010).

<sup>50</sup> Australian Government, *IEDS*, note 2, p 11.

<sup>51</sup> Australian Government, *Closing the Gap*, [http://www.indigenous.gov.au/About/Pages/closing\\_gap.aspx](http://www.indigenous.gov.au/About/Pages/closing_gap.aspx) (viewed 14 December 2010).

<sup>52</sup> For information on the Close the Gap Campaign for Indigenous Health Equality which has operated out of the Australian Human Rights Commission since April 2007 see: Australian Human Rights Commission, *Close the Gap: Indigenous Health Campaign*, [http://www.humanrights.gov.au/social\\_justice/health/index.html](http://www.humanrights.gov.au/social_justice/health/index.html) (viewed 13 December 2010).

63. Health and economic development are intrinsically linked. Good health is an essential foundation for the capacity of a person (and, by extension, their community) to access employment and the full benefits of participation in the economy. Therefore any plan for economic development within Aboriginal and Torres Strait Islander communities also needs to address the long-standing health issues in those communities. The Commission is of the view that ensuring coordinated social policy across disadvantage indicators is a crucial element to overcoming Aboriginal and Torres Strait Islander disadvantage.<sup>53</sup>
64. Given this, the Commission encourages the Government to:
- clarify the link between the IEDS and the Government's Closing the Gap health policy agenda
  - ensure a clear coordination of services across Government departments to enable health and economic development policies to work together effectively to create more sustainable outcomes for Aboriginal and Torres Strait Islander peoples.

### ***5.3 Education is a platform for economic development***

65. The Commission is encouraged that the IEDS includes a strong focus on Aboriginal and Torres Strait Islander education.<sup>54</sup> Ensuring a focus on literacy and numeracy levels at the earliest stages can contribute to the creation of future employment and development opportunities. Education is also 'a critical underpinning' of development with culture and identity.<sup>55</sup>
66. The IEDS refers to the five-year Aboriginal and Torres Strait Islander Education Action Plan as a way of achieving the Closing the Gap targets.<sup>56</sup> The Commission supports the Government's ongoing engagement with Aboriginal and Torres Strait Islander peoples through the Education Action Plan to identify priorities for future education outcomes. However the Government should ensure that the Education Action Plan is also linked to the IEDS for effective policy coordination.
67. The Commission also suggests that recognition should be given in the IEDS and the Education Action Plan to bilingual education models and the importance of preserving of Aboriginal and Torres Strait Islander languages to economic and community development.

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<sup>53</sup> Australian Human Rights Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Australian Government's native title payments discussion paper – Optimising Benefits from Native Title Agreements* (4 March 2009), para 91. At [http://www.humanrights.gov.au/legal/submissions/sj\\_submissions/20090304\\_ntpayments.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/20090304_ntpayments.html) (viewed 13 December 2010).

<sup>54</sup> Australian Government, *IEDS*, note 2, pp 9-10.

<sup>55</sup> Economic and Social Council, *Permanent Forum*, note 9, para 9.

<sup>56</sup> Australian Government, *IEDS*, note 2, p 9.

(a) *The importance of language for economic development*

68. The art and tourism industries provide an important source of employment to Aboriginal and Torres Strait Islander communities. This industry is sustained through the protection of Aboriginal and Torres Strait Islander culture and language.<sup>57</sup> Given the preservation of languages can increase employment options for Aboriginal and Torres Strait Islander peoples,<sup>58</sup> the Commission considers it important for the Government to integrate strategies to preserve Aboriginal and Torres Strait Islander language and culture in the IEDS.<sup>59</sup>
69. Aboriginal and Torres Strait Islander culture and knowledge are sustained through language.<sup>60</sup> Aboriginal and Torres Strait Islander cultural knowledge plays a role in environmental management including preserving ecosystems and understanding patterns of climate change.<sup>61</sup> Not only can this potentially increase employment options, it is also essential to the sustainability of the environment in the long term. Sustainability is the key to long term economic development.

(b) *Bilingual education approaches in schools*

70. Bilingual education is considered to be one way to keep Aboriginal and Torres Strait Islander languages and culture alive.<sup>62</sup> Evidence from an Australian study also demonstrates marginally better English literacy outcomes for students from bilingual schools at the end of primary school compared with students from non-bilingual schools with similar languages, demography and contact histories.<sup>63</sup> These skills have been identified in the IEDS as important for employment outcomes.<sup>64</sup>
71. The Commission recommends that the Government include in the IEDS a commitment to supporting the reinstatement of bilingual education approaches in schools. Further, that the Government commit to safeguarding the future of bilingual education through binding agreements with state and territory

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<sup>57</sup> T Calma, *Social Justice Report 2009*, note 44, pp 63, 101.

<sup>58</sup> See T Calma, *Social Justice Report 2009*, note 44, p 63.

<sup>59</sup> See recommendations in T Calma, *Social Justice Report 2009*, note 44, ch 3.

<sup>60</sup> T Calma, *Social Justice Report 2009*, note 44, p 62.

<sup>61</sup> For example, see T Calma, *Social Justice Report 2009*, note 4, pp 62-63.

<sup>62</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education* (2008), UN Doc A/HRC/EMRIP/2009/2. At

<http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/2nd/index.htm> (viewed 12 December 2010).

<sup>63</sup> Department of Employment, Education and Training, Northern Territory Government, *Indigenous Languages and Culture in Northern Territory Schools Report 2004 – 2005* (2004) pp 34-37. At [http://www.det.nt.gov.au/\\_data/assets/pdf\\_file/0009/5130/ILCreport.pdf](http://www.det.nt.gov.au/_data/assets/pdf_file/0009/5130/ILCreport.pdf) (viewed 13 December 2010). Also see recent reports which suggest that National Assessment Program Literacy and Numeracy (NAPLAN) results have fallen in some schools in the Northern Territory where bilingual education was stopped: M Schliebs, 'Four hours of English policy hitting test results', *The Australian*, 16 November 2010.

<sup>64</sup> Australian Government, *IEDS*, note 2, p 9.

governments and the provision of ongoing resources to support its implementation.<sup>65</sup>

#### **5.4 Facilitating employment opportunities**

72. The IEDS has identified reforms to the Community Development Employment Projects (CDEP) scheme as a way to commit to 'urgent, ongoing and tangible action' to address Aboriginal and Torres Strait Islander disadvantage.<sup>66</sup> The Social Justice Commissioner has previously expressed concerns about these reforms and identified a risk that the overall unemployment rates among Aboriginal and Torres Strait Islander peoples will increase.<sup>67</sup>
73. The Commission notes the importance and desirability of supporting people to progress towards mainstream employment where such employment is available. However, in some cases there are disincentives for Aboriginal and Torres Strait Islanders to pursue mainstream employment. For example, once a certain level of salary is reached, employees may lose eligibility for subsidised public housing.<sup>68</sup> This is problematic if salaries are not commensurate to the high cost of living in mining areas.<sup>69</sup> In other cases, mainstream employment is not always available.<sup>70</sup>
74. The CDEP or a similar scheme should be available in communities to provide purposeful work on useful community projects.<sup>71</sup>
75. The development of a stable paid workforce within communities should be supported through:
- adequate and sustained funding of services including in relation to traditional infrastructure and management of traditional lands
  - employment of local Aboriginal and Torres Strait Islander peoples in the provision of Government programs, such as the delivery of health services, and providing and improving housing and infrastructure in communities
  - support for local business and employment development initiatives

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<sup>65</sup> See also, Anaya, *Report on the Situation of Indigenous Peoples in Australia*, note 4, paras 95, 97.

<sup>66</sup> Australian Government, *IEDS*, note 2, p iii.

<sup>67</sup> T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunities Commission (2008), pp 280-285. At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 9 December 2010). Also see J C Altman and K Jordon, *Submission to Senate Community Affairs Committee Inquiry into the Family Assistance and other Legislative Amendment (2008 Budget and Other Measures) Bill 2008* (20 April 2008). At [http://www.aph.gov.au/senate/committee/clac\\_ctte/family\\_assistance\\_09/submissions/sublist.htm](http://www.aph.gov.au/senate/committee/clac_ctte/family_assistance_09/submissions/sublist.htm) (viewed 13 December 2010).

<sup>68</sup> T Calma, *Native Title Report 2006*, note 20, p 144.

<sup>69</sup> T Calma, *Native Title Report 2006*, above.

<sup>70</sup> T Calma, *Social Justice Report 2007*, note 67, p 284.

<sup>71</sup> T Calma, *Social Justice Report 2007*, above.

- placing obligations on, and providing support to, mainstream employers such as mining companies and government departments to employ local Aboriginal people rather than ‘fly in-fly out’ arrangements
- by assisting community members to live in areas where jobs exist but return regularly to their communities.<sup>72</sup>

76. The Commission recommends that in the IEDS the Government commit to consulting with Aboriginal and Torres Strait Islander communities to develop employment programs appropriate to their respective circumstances.

## **5.5 *Creating a secure environment for economic development***

77. The IEDS states that ‘safe and secure communities create environments that promote social engagement, achieve better educational outcomes’.<sup>73</sup> The Commission believes supporting safe and secure communities deserves higher priority in relation to creating a foundation for community development. There are a couple of areas the IEDS should focus on to address this issue.

### *(a) Addressing high imprisonment rates*

78. Removing individuals from communities through imprisonment weakens communities and impairs their ability to engage in development opportunities. As Aboriginal and Torres Strait Islander imprisonment rates are unacceptably high, this is of immediate concern.<sup>74</sup>

79. The IEDS should include a commitment to progressing a criminal justice policy approach based on ‘justice reinvestment’ to address this issue.<sup>75</sup> Under this approach, money that would have been spent on imprisonment is reinvested in community led programs and services that address the underlying causes of crime in communities where there is a high concentration of offenders.<sup>76</sup>

### *(b) Addressing community and family violence*

80. Any government response to violence in communities needs to target all causes holistically, from the triggers of violence to the entrenched social issues that foster it.

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<sup>72</sup> T Calma, *Social Justice Report 2007*, above.

<sup>73</sup> Australian Government, *IEDS*, note 2, p 18.

<sup>74</sup> Nationally, Indigenous adults are 14 times more likely to be imprisoned than non-Indigenous adults: Australian Bureau of Statistics, *Prisoners in Australia*, Issue 4517.0 (2009). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02009?OpenDocument> (viewed 1 November 2010).

<sup>75</sup> See recommendations in T Calma, *Social Justice Report 2009*, note 44, p 56; Australian Human Rights Commission, *Submission to the ICERD Committee* (8 July 2010), pp 16-17. At [http://www.humanrights.gov.au/legal/submissions/united\\_nations/ICERD2010.html](http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html) (viewed 9 December 2010).

<sup>76</sup> T Calma, *Social Justice Report 2009*, note 44, p 9.

81. Women, men and children need to be able to be involved in the design and development of programs aimed at addressing community development, safety and preventing violence.<sup>77</sup> Community development and education is critical to breaking the cycle of intergenerational violence that afflicts Aboriginal and Torres Strait Islander communities.<sup>78</sup>
82. The Commission recommends that in the IEDS the Government commits to continuing to fund community education and community development programs initiatives aimed at preventing family violence in Aboriginal and Torres Strait Islander communities.

## **6 Appendices**

83. **Appendix A** - Table referring to previous comments by the Commission and Social Justice Commissioner relevant to the IEDS strategic priorities.
84. **Appendix B** – Principles for meaningful and effective engagement.

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<sup>77</sup> T Calma, *Social Justice Report 2007*, note 67, p 191.

<sup>78</sup> Australian Human Rights Commission, *Submission to the ICERD Committee*, note 75, pp 15-16. See also T Calma, *Social Justice Report 2007*, note 67, pp 194-95.

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Strategic Priority	Issue	Reference <sup>79</sup>
<b>Framework</b>	Engagement with Aboriginal and Torres Strait Islander peoples	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, pp 6-7, 84-90, ch 3</li> <li>• <i>Native Title Report 2008</i>, pp 161-163</li> </ul>
	Implementing the <i>United Nations Declaration on the Rights of Indigenous Peoples</i>	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2008</i>, ch 2</li> <li>• <i>Native Title Report 2009</i>, pp 42-44</li> </ul>
	Ensuring Government policy is underpinned by a human rights framework	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, p 3, ch 4</li> <li>• <i>Social Justice Report 2008</i>, ch 2</li> </ul>
<b>1. Education and Individual Capabilities</b>	Education is important for economic development: <ul style="list-style-type: none"> <li>• remote Indigenous education</li> <li>• bilingual education</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2006</i>, ch 2</li> <li>• <i>Social Justice Report 2007</i>, ch 2</li> <li>• <i>Social Justice Report 2008</i>, ch 3</li> <li>• <i>Social Justice Report 2009</i>, pp 89-101</li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission</i> (17 August, 2009), section 9.3</li> <li>• <i>Submission to the ICERD Committee</i> (8 July 2010), part 6.6</li> <li>• <i>Submission to the draft Indigenous Education Action Plan 2010-2014</i> (8 March 2010), parts 1 and 2</li> </ul>
	Transitions from school to employment	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2009</i>, app 3</li> </ul>

<sup>79</sup> A list of references is included at the end of this Appendix.

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	Preservation of Aboriginal and Torres Strait Islander languages is important for economic development	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2009</i>, ch 3</li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission</i> (17 August 2009), sections 8, 9.2</li> <li>• <i>Submission to the ICERD Committee</i> (8 July 2010), section 6.7</li> <li>• <i>Submission under the Universal Periodic Review Process</i> (2010), para 7</li> </ul>
	Creating Aboriginal and Torres Strait Islander leaders	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, p 10</li> </ul>
	Development requires healthy individuals and communities	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2008</i>, ch 5</li> <li>• <i>Submission on the Inquiry into Overcoming Indigenous Disadvantage</i> (15 August 2008)</li> <li>• <i>Submission to the Native Title Payments Discussion Paper</i> (4 March 2009), para 91</li> <li>• <i>Submission to the ICERD Committee</i> (8 July 2010), section 6.5</li> <li>• <i>Submission to the draft Indigenous Education Action Plan 2010-2014</i> (8 March 2010), parts 1, 2</li> </ul>
<b>2. Jobs</b>	Employment opportunities	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, pp 38-48</li> <li>• <i>Social Justice Report 2007</i>, pp 280 - 285</li> <li>• <i>Native Title Report 2007</i>, ch 10</li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people</i></li> </ul>

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		– <i>Australian mission</i> (17 August 2009), section 9.4
	Welfare reform	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, ch 2</li> <li>• <i>Social Justice Report 2007</i>, pp 268-280</li> <li>• <i>Submission to the ICERD Committee</i> (8 July 2010), section 6.11</li> </ul>
<b>3. Business and Entrepreneurship</b>	Skills development	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2007</i>, ch 5</li> <li>• <i>Native Title Report 2008</i>, ch 2</li> <li>• <i>Native Title Report 2009</i>, ch 1</li> <li>• <i>Submission to the Inquiry into the Native Title (Amendment) Bill 2006</i> (25 January 2007), part B</li> </ul>
	Homelands can provide a pathway to economic developments	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2009</i>, ch 4</li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission</i> (17 August 2009), section 10.4</li> <li>• <i>Submission to the Outstation Policy Discussion Paper</i> (15 December 2008)</li> <li>• <i>Submission to the ICERD Committee</i> (8 July 2010), section</li> </ul>

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		<p>6.13</p> <ul style="list-style-type: none"> <li>• <i>Submission under the Universal Periodic Review Process (2010), para 7</i></li> </ul>
	Aboriginal and Torres Strait Islander businesses	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2006, ch 6</i></li> <li>• <i>Social Justice Report 2008, ch 2</i></li> </ul>
<b>4. Financial Security and Independence</b>	Home ownership and housing	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2006, chs 2, 7</i></li> <li>• <i>Native Title Report 2009, pp 138-139, ch 4</i></li> <li>• <i>Submission to the ICERD Committee (8 July 2010), section 6.8</i></li> </ul>
	Options for leasing	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2009, ch 4</i></li> </ul>
	Leveraging the native title system and control of Aboriginal and Torres Strait Islander land for economic development outcomes	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2006</i></li> <li>• <i>Native Title Report 2007, chs 1, 2, 10, 11, 12</i></li> <li>• <i>Native Title Report 2008, chs 2–5, pp 285-288</i></li> <li>• <i>Native Title Report 2009, pp 21-26, 72-75, ch 3</i></li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission (17 August 2009), section 11.1</i></li> <li>• <i>Submission to the ICERD Committee (8 July 2010), section 6.12</i></li> <li>• <i>Submission to the Inquiry into the Native Title Amendment Bill (No 2) 2009 (Cth) (27 November 2009)</i></li> <li>• <i>Submission to the Inquiry into the Native Title Amendment Bill 2009 (Cth) (24 April 2009), part 2</i></li> </ul>

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		<ul style="list-style-type: none"> <li>• <i>Submission to the Discussion paper on proposed minor native title amendments</i> (19 February 2009), part 2</li> <li>• <i>Submission on the Government’s Second Discussion Paper: Technical Amendments to the Native Title Act 1993</i> (22 December 2006)</li> </ul>
	Security of tenure	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2006</i>, chs 2, 7</li> <li>• <i>Native Title Report 2009</i>, ch 4</li> </ul>
	Environmental management	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2006</i>, ch 1</li> <li>• <i>Native Title Report 2008</i>, chs 5, 6</li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission</i> (17 August 2009), sections 7, 11</li> <li>• <i>Submission on the Proposed Wild Rivers Declarations</i> (November 2008), sections 4.1, 5.3, 5.4</li> </ul>
	Cultural heritage	<ul style="list-style-type: none"> <li>• <i>Native Title Report 2008</i>, chs 5,7, case study 2</li> <li>• <i>Social Justice Report 2009</i>, ch 3</li> <li>• <i>Submission on the Proposed Wild Rivers Declarations</i> (November 2008), section 4.1</li> <li>• <i>Submission under the Universal Periodic Review Process</i> (2010), para 7</li> </ul>
<b>5. Strengthening Foundations</b>	Strengthening infrastructure and service delivery	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, chs 1–3</li> </ul>
	Strengthening governance and capacity	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, pp 8–9, 90–96</li> <li>• <i>Social Justice Report 2007</i>, chs 2–6</li> </ul>

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		<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2009</i>, pp 66-72, 112-116</li> </ul>
	Community safety and security	<ul style="list-style-type: none"> <li>• <i>Social Justice Report 2006</i>, appendix 2</li> <li>• <i>Social Justice Report 2007</i>, chs 2, 3</li> <li>• <i>Social Justice Report 2008</i>, ch 4</li> <li>• <i>Social Justice Report 2009</i>, ch 2</li> <li>• <i>Submission to the Inquiry into the Transportation of Detained Persons</i> (May 2010), issue 3</li> <li>• <i>Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission</i> (17 August 2009), sections 3, 7</li> <li>• <i>Submission to the Inquiry into the Northern Territory National Emergency Response Legislation</i> (10 August 2007)</li> <li>• <i>Submission to the ICERD Committee</i> (8 July 2010), sections 6.9, 6.10</li> <li>• <i>Submission under the Universal Periodic Review Process</i> (2010), para 6</li> </ul>

**References**

**Native Title Reports**

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2009*, Australian Human Rights Commission (2010). At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/ntreport09/index.html](http://www.humanrights.gov.au/social_justice/nt_report/ntreport09/index.html) (viewed 9 December 2010).

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2008*, Australian Human Rights Commission (2009). At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html#2008](http://www.humanrights.gov.au/social_justice/nt_report/index.html#2008) (viewed 9 December 2010).

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2007*, Human Rights and Equal Opportunities Commission (2008). At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html#2007](http://www.humanrights.gov.au/social_justice/nt_report/index.html#2007) (viewed 9 December 2010).

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T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2006*, Human Rights and Equal Opportunities Commission (2007). At [http://www.humanrights.gov.au/social\\_justice/nt\\_report/index.html#2006](http://www.humanrights.gov.au/social_justice/nt_report/index.html#2006) (viewed 9 December 2010).

### Social Justice Reports

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2010). At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport09/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html) (viewed 9 December 2010).

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009). At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport08/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html) (viewed 9 December 2010).

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Australian Human Rights Commission (2008). At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/sjreport07/index.html](http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html) (viewed 9 December 2010).

T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Australian Human Rights Commission (2007). At [http://www.humanrights.gov.au/social\\_justice/sj\\_report/index.html#2006](http://www.humanrights.gov.au/social_justice/sj_report/index.html#2006) (viewed 9 December 2010).

### Submissions

Australian Human Rights Commission, *Taking stock of Australia's human rights record: Submission by the Australian Human Rights Commission under the Universal Periodic Review Process* (2010). At [http://www.humanrights.gov.au/upr/upr\\_submission2010.html](http://www.humanrights.gov.au/upr/upr_submission2010.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (8 July 2010). At [http://www.humanrights.gov.au/legal/submissions/united\\_nations/ICERD2010.html](http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Standing Committee on Environment and Public Affairs Inquiry into the Transportation of Detained Persons* (14 May 2010). At [http://www.humanrights.gov.au/legal/submissions/sj\\_submissions/20100514\\_transportation\\_detained.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/20100514_transportation_detained.html) (viewed 12 December 2010).

Steering Committee of the Close the Gap Campaign for Indigenous Health Equality, *Submission against the draft Indigenous Education Action Plan 2010-2014* (8 March 2010). At [http://www.mceecdya.edu.au/mceecdya/indigenous\\_education\\_2010\\_consultation\\_submissions,30611.html](http://www.mceecdya.edu.au/mceecdya/indigenous_education_2010_consultation_submissions,30611.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Native Title Amendment Bill (No 2) 2009 (Cth)* (27 November 2009). At [http://www.humanrights.gov.au/legal/submissions/sj\\_submissions/20091127\\_Native\\_Title2.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/20091127_Native_Title2.html) (viewed 12 December 2010).

## **APPENDIX A: Australian Human Rights Commission and Aboriginal and Torres Strait Islander Social Justice Commissioner: comments by IEDS Strategic Priority**

Indigenous Peoples' Organisations Network of Australia, *Submission to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people – Australian mission* (17-28 August 2009). At [http://www.humanrights.gov.au/social\\_justice/publications/srip\\_2009/index.html](http://www.humanrights.gov.au/social_justice/publications/srip_2009/index.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Native Title Amendment Bill 2009 (Cth)* (24 April 2009). At [http://www.humanrights.gov.au/legal/submissions/2009/20090424\\_ntab.html](http://www.humanrights.gov.au/legal/submissions/2009/20090424_ntab.html) (viewed 12 December 2010).

Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Native Title Payments Discussion Paper – Optimising Benefits from Native Title Agreements* (4 March 2009). At [http://www.humanrights.gov.au/legal/submissions/sj\\_submissions/20090304\\_ntpayments.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/20090304_ntpayments.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner in response to the Attorney-General's discussion paper on proposed minor native title amendments* (19 February 2009). At [http://www.humanrights.gov.au/legal/submissions/2009/20090219\\_proposed.html](http://www.humanrights.gov.au/legal/submissions/2009/20090219_proposed.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Submission to the Office of Indigenous Policy, NT Department of Chief Minister – Outstation Policy Discussion Paper* (15 December 2008). At [http://www.humanrights.gov.au/legal/submissions/sj\\_submissions/20081215\\_outstations.html](http://www.humanrights.gov.au/legal/submissions/sj_submissions/20081215_outstations.html) (viewed 12 December 2010).

Australian Human Rights Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Minister for Natural Resources and Water's Proposed Wild Rivers Declaration* (November 2008). At [http://www.humanrights.gov.au/legal/submissions/2008/200811\\_wild\\_rivers.html](http://www.humanrights.gov.au/legal/submissions/2008/200811_wild_rivers.html) (viewed 12 December 2010).

Human Rights and Equal Opportunity Commission, *Submission to the Legislative Council's Standing Committee on Social Issues on the Inquiry into Overcoming Indigenous Disadvantage* (15 August 2008). At [http://www.humanrights.gov.au/legal/submissions/2008/20080815\\_disadvantage.html](http://www.humanrights.gov.au/legal/submissions/2008/20080815_disadvantage.html) (viewed 12 December 2010).

Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Northern Territory National Emergency Response Legislation* (10 August 2007). At [http://www.humanrights.gov.au/legal/submissions/2007/NTNER\\_Measures20070810.html](http://www.humanrights.gov.au/legal/submissions/2007/NTNER_Measures20070810.html) (viewed 12 December 2010).

Human Rights and Equal Opportunity Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Senate Committee on Legal and Constitutional Affairs on the Inquiry into the Native Title (Amendment) Bill 2006* (25 January 2007). At [http://www.humanrights.gov.au/legal/submissions/nta\\_bill\\_250107.html](http://www.humanrights.gov.au/legal/submissions/nta_bill_250107.html) (viewed 12 December 2010).

Human Rights and Equal Opportunity Commission, *Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner in response to the Attorney-General's Second Discussion Paper: Technical Amendments to the Native Title Act 1993* (22 December 2006). At [http://www.humanrights.gov.au/legal/submissions/nta\\_final\\_letterhead.html](http://www.humanrights.gov.au/legal/submissions/nta_final_letterhead.html) (viewed 12 December 2010).

## **APPENDIX B: Principles for meaningful and effective engagement**

### **Features of a meaningful and effective consultation process<sup>1</sup>**

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#### **1. The objective of consultations should be to obtain the consent or agreement of the Aboriginal and Torres Strait Islander peoples affected by a proposed measure**

In all cases, States should engage in '[a] good faith effort towards consensual decision-making'.<sup>2</sup> Consultation processes should therefore be framed 'in order to make every effort to build consensus on the part of all concerned'.<sup>3</sup>

#### **2. Consultation processes should be products of consensus.**

The details of a specific consultation process should always take into account the nature of the proposed measure and the scope of its impact on indigenous peoples. A consultation process should itself be the product of consensus. This can help ensure that the process is effective.

#### **3. Consultations should be in the nature of negotiations**

Governments need to do more than provide information about measures that they have developed on behalf of Aboriginal and Torres Strait Islander peoples and without their input. Further, consultations should not be limited to a discussion about the minor details of a policy when the broad policy direction has already been set.

Governments need to be willing and flexible enough to accommodate the concerns of Aboriginal and Torres Strait Islander peoples, and work with them in good faith to reach agreement. Governments need to be prepared to change their plans, or even abandon them, particularly when consultations reveal that a measure would have a significant impact on the rights of Aboriginal and Torres Strait Islander peoples, and that the affected peoples do not agree to the measure.

#### **4. Consultations need to begin early and should, where necessary, be ongoing**

Aboriginal and Torres Strait Islander peoples affected by a law, policy or development process should be able to meaningfully participate in all stages of its design, implementation and evaluation.

#### **5. Aboriginal and Torres Strait Islander peoples must have access to financial, technical and other assistance**

The capacity of Aboriginal and Torres Strait Islander communities to engage in consultative processes can be hindered by their lack of resources. Even the most well-intentioned consultation procedure will fail if Aboriginal and Torres Strait Islander peoples are not resourced to participate effectively. Without adequate resources to attend meetings, take proposals back to their communities or access appropriate expert advice, Aboriginal and Torres Strait Islander peoples cannot possibly be expected to consent to or comment on any proposal in a fully informed manner.

#### **6. Aboriginal and Torres Strait Islander peoples must not be pressured into**

## **APPENDIX B: Principles for meaningful and effective engagement**

### **making a decision**

Aboriginal and Torres Strait Islander peoples should be able to participate freely in consultation processes. Governments should not use coercion or manipulation to gain consent.

In addition, Aboriginal and Torres Strait Islander peoples should not be pressured into decisions through the imposition of limited timeframes.

### **7. Adequate timeframes should be built into the consultation process**

Consultation timeframes need to allow Aboriginal and Torres Strait Islander peoples time to engage in their decision-making processes and cultural protocols.

Aboriginal and Torres Strait Islander peoples need to be given adequate time to consider the impact that a proposed law, policy or development may have on their rights. Otherwise, they may not be able to respond to such proposals in a fully informed manner.

### **8. Consultations should be coordinated across government departments**

Governments should adopt a 'whole of government' approach to law and policy reform, pursuant to which consultation processes are coordinated across all relevant departments and agencies. This will assist to ease the burden upon Aboriginal and Torres Strait Islander peoples of responding to multiple discussion papers and reform proposals.

### **9. Consultations need to reach the affected communities**

Government consultation processes need to directly reach people 'on the ground'. Given the extreme resource constraints faced by many Aboriginal and Torres Strait Islander peoples and their representative organisations, governments cannot simply expect communities to come to them.

Governments need to be prepared to engage with Aboriginal and Torres Strait Islander peoples in the location that is most convenient for, and is chosen by, the community that will be affected by a proposed measure.

### **10. Consultations need to respect representative structures and decision-making processes**

Governments need to ensure that consultations follow appropriate community protocols, including representative and decision-making mechanisms.

The best way to ensure this is for governments to engage with communities and their representatives at the earliest stages of law and policy processes, and to develop consultation processes in full partnership with them.

### **11. Governments must provide all relevant information, and do so in an accessible way**

To ensure that Aboriginal and Torres Strait Islander peoples are able to exercise their rights to participate in decision-making in a fully informed way, governments

## APPENDIX B: Principles for meaningful and effective engagement

must provide full and accurate information about the proposed measure and its potential impact.

This information needs to be clear, accessible and easy to understand. Information should be provided in a plain-English format, and, where necessary, in language.

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<sup>1</sup> This Appendix summarises the 'Features of a meaningful and effective consultation process' set out in Chapter 3 of the *Native Title Report 2010* which is to be launched in early 2011. It builds on international standards and draws on feedback from Native Title Representative Bodies (NTRBs), Native Title Service Providers (NTSPs) and Prescribed Bodies Corporate (PBCs) regarding meaningful and effective consultation processes in the native title system, as well as comments by Aboriginal and Torres Strait Islander peoples' organisations as expressed in their submissions to recent public inquiries and international processes.

<sup>2</sup> J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, Report to the Human Rights Council, 12th session, UN Doc A/HRC/12/34 (2009), para 50. At <http://unsr.jamesanaya.org/PDFs/Annual2009.pdf> (viewed 21 September 2010).

<sup>3</sup> Anaya, above, para 48.