



Australian
Human Rights
Commission

Social Justice Report 2011

ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER



Aboriginal & Torres Strait Islander
Social Justice Commissioner

© Australian Human Rights Commission 2011

This work is protected by copyright. Apart from any use permitted under the *Copyright Act 1968* (Cth), no part may be used or reproduced by any process without prior written permission from the Australian Human Rights Commission. Enquiries should be addressed to Public Affairs at: paffairs@humanrights.gov.au.

ISSN 1837-6428 (Print) and ISSN 1837-6436 (Online)

This publication can be found in electronic format on the Australian Human Rights Commission's website at: www.humanrights.gov.au/social_justice/sj_report/sjreport11/index.html.

For further information about the Australian Human Rights Commission, please visit: www.humanrights.gov.au or email paffairs@humanrights.gov.au. You can also write to: Social Justice Unit, Australian Human Rights Commission, GPO Box 5218, Sydney NSW 2001

Acknowledgments

The *Social Justice Report 2011* was drafted by Emilie Priday, Andy Gargett and Katie Kiss.

The Aboriginal and Torres Strait Islander Social Justice Commissioner thanks the following staff and interns of the Australian Human Rights Commission: Nick Burrage, Louise Bygrave, Allyson Campbell, Hannah Donnelly, Kirsten Grey, Chris Holland, Katerina Lecchi, Louise McDermott, Andrew Meehan, Annie Petit, Lisa Pusey (staff); Muzna Al Abed (Intern, University of New South Wales), Carolina Simpson, (Intern, University of Sydney), Peter Dawson, Rafael Szumer (Interns, The Aurora Project).

The Social Justice Commissioner especially thanks all those who assisted with the preparation of this Report. A full list of acknowledgements is contained at Appendix 1.

Design and layout JAG Designs

Printing Paragon Printers Australasia

Cover photography iStockphoto LP

Please be aware that this publication may contain the names or images of Aboriginal and Torres Strait Islander people who may now be deceased.



**Australian
Human Rights
Commission**

24 October 2011

The Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney

Social Justice Report 2011

I am pleased to present to you the *Social Justice Report 2011* (the Report), which I have prepared in accordance with section 46C(1)(a) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).

The AHRC Act provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner is to submit a report regarding the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the exercise and enjoyment of human rights by those persons.

The theme of the Social Justice and Native Title Reports for 2011 will relate directly to the Social Justice Commissioner's priorities concerning the relationships between Aboriginal and Torres Strait Islander peoples within their communities and giving full effect to the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration). This is also in line with the Australian Human Rights Commission's priority of tackling violence, harassment and bullying.

The relationships between Aboriginal and Torres Strait Islander peoples will be explored through the lens of lateral violence. Firstly, I will introduce the concept of lateral violence and its relevance to Aboriginal and Torres Strait Islander communities.

Second, I explore how a human rights framework, particularly the Declaration, can assist both Aboriginal and Torres Strait Islander communities and governments address lateral violence.

Finally, Appendix 2 provides a chronology of key events for 2010–2011.

The *Social Justice Report 2011* provides 13 recommendations for your consideration.

I look forward to discussing the Report with you.

Yours sincerely

Mick Gooda

Aboriginal and Torres Strait Islander Social Justice Commissioner

Australian Human Rights Commission

Level 3, 75 Pitt Street, Sydney, NSW 2000
GPO Box 5218, Sydney, NSW 2001

Telephone: 02 9284 9600

Facsimile: 02 9284 9611

Website: www.humanrights.gov.au

About the

Aboriginal and Torres Strait Islander Social Justice Commissioner

The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established in 1993. The office of the Social Justice Commissioner is located within the Australian Human Rights Commission.

The Social Justice Commissioner:

- reports annually on the enjoyment and exercise of human rights by Aboriginal Torres Strait Islander peoples, and recommends action that should be taken to ensure these rights are observed
- reports annually on the operation of the *Native Title Act 1993* (Cth) and its effect on the exercise and enjoyment of the human rights of Aboriginal and Torres Strait Islander peoples
- promotes awareness and discussion of human rights in relation to Aboriginal and Torres Strait Islander peoples
- undertakes research and educational programs for the purpose of promoting respect for, and the enjoyment and exercise of, human rights by Aboriginal Torres Strait Islander peoples
- examines and reports on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal and Torres Strait Islander peoples.

Office holders

- Mick Gooda: 2010 – present
- Tom Calma: 2004 – 2010
- William Jonas AM: 1999 – 2004
- Zita Antonios: 1998 – 1999 (Acting)
- Mick Dodson: 1993 – 1998

About the Social Justice Commissioner's logo



The right section of the design is a contemporary view of traditional Dari or head-dress, a symbol of Torres Strait Islander people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commissioner. The dots placed in the Dari represent a brighter outlook for the future provided by the Commissioner's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.

The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Social Justice Commissioner and the support, strength and unity which the Commissioner can provide through the pursuit of social justice and human rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander social justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

© Leigh Harris

Mick Gooda

Aboriginal and Torres Strait Islander Social Justice Commissioner

Mick Gooda is the Aboriginal and Torres Strait Islander Social Justice Commissioner. Mick commenced his term in February 2010.

Mick Gooda is a descendent of the Gangulu people of central Queensland. He is a senior executive with 25 years experience and a record of attaining high-level goals and leading multi-million dollar service programs and organisational reform.

Immediately prior to taking up the position of Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick was the Chief Executive Officer of the Cooperative Research Centre for Aboriginal Health (CRAH) for close to five and a half years. Here, he drove a research agenda which placed Aboriginal and Torres Strait Islander people 'front and centre' in the research agenda, working alongside world leading researchers. His work at the CRAH empowered Aboriginal and Torres Strait Islander people to lead the research agenda in areas including: chronic disease management; skin infections; and promoting cultural change in hospitals to make them more appropriate to the needs of Aboriginal and Torres Strait Islander people.

Mick has extensive knowledge of the diversity of circumstance and cultural nuances of Aboriginal and Torres Strait Islander peoples throughout Australia. He has been actively involved in advocacy in Indigenous affairs throughout Australia and has delivered strategic and sustainable results in remote, rural and urban environments. Mick has played a leadership role in a range of areas including: Acting Chief Executive Officer of the Aboriginal and Torres Strait Islander Commission and Senior Consultant to the Aboriginal Legal Service (WA).

He is highly experienced in policy and program development in the public and community sectors.

Mick is also currently a Board Member of the Centre for Rural and Remote Mental Health Queensland, and is the Australian representative on the International Indigenous Council which focuses on healing and addictions. He also has an interest in the Lateral Violence Program in Canada and has been working closely with the First Nation people of Canada on the relevance of this program to Australia.



For information on the work of the Social Justice Commissioner, please visit:
www.humanrights.gov.au/social_justice/index.html

Contents

Executive summary	7
Recommendations	14
Chapter 1:	
A cause for cautious optimism: The year in review	16
1.1 Introduction	18
1.2 Follow up from the <i>Social Justice Report 2010</i>	20
1.3 The Declaration	21
(a) Principled approach to the Declaration	22
(b) Self-determination	23
(c) Participation in decision-making and free prior and informed consent	24
(d) Non-discrimination and equality	30
(e) Respect for and protection of culture	39
1.4 Giving full effect to the Declaration	42
(a) Raising awareness and building capacity	42
(b) International mechanisms addressing Indigenous human rights	45
(c) National Action Plan for the Declaration	45
1.5 Conclusion and Recommendations	47
Chapter 2:	
Lateral violence in Aboriginal and Torres Strait Islander communities	50
2.1 Introduction	52
2.2 Understanding lateral violence	54
(a) Definitions of lateral violence	54
(b) Colonisation and the historical development of lateral violence	57
(c) Contemporary concepts of lateral violence	64
(d) Government role in creating the conditions for lateral violence	76
2.3 What does lateral violence look like?	83
(a) Bullying	84
(b) Social and emotional impacts of lateral violence	92
(c) Conflict leading to involvement in the criminal justice system	94
2.4 Conclusion	98
Chapter 3:	
A human rights-based approach to lateral violence	100
3.1 Introduction	102
3.2 Human rights and lateral violence	103
(a) The Declaration	106
(b) Applying the principles of the Declaration	107
(c) The Declaration to guide practical actions to address lateral violence	117
3.3 Conclusion	119

Chapter 4:	
Cultural safety and security: Tools to address lateral violence	120
4.1 Introduction	122
4.2 Defining cultural safety and cultural security	123
(a) Cultural safety	123
(b) Cultural security	125
4.3 Cultural safety in our communities	128
(a) Naming lateral violence	128
(b) Confronting bullying	132
(c) Dispute resolution	138
(d) Healing and social and emotional wellbeing	145
4.4 Creating cultural competency	150
(a) Moving towards cultural competency	151
(b) Hearing Aboriginal and Torres Strait Islander voices	153
(c) Empowerment: Using a strengths-based approach	162
4.5 Future directions in addressing lateral violence	165
4.6 Conclusion and Recommendations	166
Appendices	168
Appendix 1: Acknowledgments	170
Appendix 2: Chronology of events relating to the administration of Indigenous affairs, 1 July 2010 – 30 June 2011	171
Appendix 3: Membership of the Expert Panel on Indigenous Constitutional Recognition	198
Appendix 4: Expert Panel Terms of Reference	199
Appendix 5: Position paper on achieving Aboriginal and Torres Strait Islander health equality within a generation	200
Appendix 6: Further data on victimisation and offending	205



Executive Summary

It is with great pleasure that I present my second *Social Justice Report* (the Report) as the Aboriginal and Torres Strait Islander Social Justice Commissioner.

One of my primary responsibilities as the Aboriginal and Torres Strait Islander Social Justice Commissioner is to report annually on the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples, and to make recommendations on the action that should be taken to ensure that these rights are observed.¹ This responsibility is fulfilled through the submission of an annual *Social Justice Report*.²

In this year's Report, I review developments in the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islanders peoples between 1 July 2010 – 30 June 2011 (the reporting period).

Chapter 1: A cause for cautious optimism: The year in review

In this Chapter I reflect on the events that have taken place during the reporting period. My review of the year has been conducted in the context of giving full effect to the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration). I use its key principles of: self-determination; participation in decision making; non-discrimination and equality; and respect for and protection of culture, to guide this process.

In doing this, I provide commentary on significant developments related to the:

- National Congress of Australia's First Peoples
- Indigenous Human Rights Network Australia
- Northern Territory Emergency Response
- Australian Government's engagement framework
- recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution
- situation in Alice Springs
- Close the Gap campaign
- marking of 20 years since the Royal Commission into Aboriginal Deaths in Custody
- Indigenous Economic Development Strategy.

1 *Australian Human Rights Commissioner Act 1986* (Cth), s 46C(1)(a).

2 For previous Social Justice Reports see, Australian Human Rights Commission, *Social Justice Reports*, http://www.humanrights.gov.au/social_justice/sj_report/index.html (viewed 10 October 2011).

Having used the principles underpinning the Declaration to guide the review of the reporting period, I next examine some steps being taken to give it full effect. I then focus my attention on the need for raising awareness and building capacity in the development of a National Action Plan for the Declaration.

Chapter 2: Lateral violence in Aboriginal and Torres Strait Islander communities

Lateral violence is a significant problem facing Aboriginal and Torres Strait Islander communities. Lateral violence, also known as horizontal violence or intra-racial conflict, is a product of a complex mix of historical, cultural and social dynamics that results in a spectrum of behaviours that include gossiping, jealousy, bullying, shaming, social exclusion, family feuding, organisational conflict and physical violence. According to Richard Frankland, lateral violence includes:

[T]he organised, harmful behaviours that we do to each other collectively as part of an oppressed group: within our families; within our organisations and; within our communities. When we are consistently oppressed we live with great fear and great anger and we often turn on those who are closest to us.³

Lateral violence is a very sensitive topic. When I first raised this issue I was concerned that some would accuse me of airing our dirty laundry in public. The last thing we need is for certain sections of the society to add lateral violence to the litany of dysfunctions associated with Aboriginal and Torres Strait Islander communities. However, I reckon the benefits of speaking out about lateral violence far outweigh the risk of doing nothing.

Leading me to this conclusion is the encouragement I have received whenever I have raised this issue with Aboriginal and Torres Strait Islanders around Australia. There seems to be a considerable appetite within our communities to confront and deal with lateral violence.

Understanding lateral violence

Lateral violence has its roots in colonisation and control of Aboriginal and Torres Strait Islander people through:

- powerlessness
- the diminishment of traditional roles, structures and knowledge
- attacking and undermining Aboriginal and Torres Strait Islander culture and humanity
- creating conflict about Aboriginal and Torres Strait Islander identity.

While lateral violence has its roots in our history, it thrives today because of power imbalances, control by others, identity conflict, negative stereotypes and trauma continue to feed it.

Lateral violence in Aboriginal and Torres Strait Islander communities is intrinsically linked to the disadvantage we face relative to the broader Australian population, as well as the lack of participation that is afforded us in decision-making. While our human needs are unmet there will continue to be conflict and lateral violence in our communities.

Identity and in particular, notions of 'authenticity' or who is a 'real Aboriginal or Torres Strait Islander person' have become powerful weapons in lateral violence. These false divisions about Aboriginal and Torres Strait Islander identity fuel conflict and lateral violence when people step outside of narrow, prescribed roles about what is an 'authentic' identity.

3 R Frankland and P Lewis, *Presentation to Social Justice Unit staff*, Australian Human Rights Commission, 14 March 2011.

Lateral violence is also linked to negative stereotypes that create low self-esteem, in turn reinforcing the feelings of powerlessness which engender lateral violence. If we feel badly about ourselves, if we believe the negative stereotypes and accept a victim mentality which undermines our individual agency, then we are more likely to lash out in lateral violence.

The reality of lateral violence is that governments cannot and should not intervene to fix our internal relationships. This is simply not appropriate and takes further power away from our communities to be self-determining. However, it is undeniable that governments have had a role to play in the creation of the environments that breed lateral violence.

One of the greatest sources of tension and conflict in our communities is the ongoing issue of who speaks for community and to whom governments choose to listen. If governments continue to leave groups out from the engagement process or consult with the wrong people, not only do they miss out on the depth and diversity of views necessary to form good policy, but they also alienate groups from the process, possibly limiting the success and reach of the project. Alienation breeds powerlessness and can manifest in lateral violence.

Complicated government funding arrangements also operate not only to fragment our organisations but fragment our communities. I have heard countless stories where different organisations from the one community are fighting each other for small grants. This creates territorialism and becomes a battleground for latent disputes and lateral violence to be played out.

Lateral violence feeds off conditions where Aboriginal and Torres Strait Islander peoples are characterised as passive, troubled and dysfunctional who are unable to help themselves without some form of intervening hand from the government. Unfortunately, governments continue to see Aboriginal and Torres Strait Islander disadvantage from a deficit-based approach – addressing the ‘Indigenous problem’. Governments need to move to seeing us as capable and resilient and work in an empowering way to prevent the conditions that can lead to lateral violence.

What does lateral violence look like?

This Chapter also provides some case studies of lateral violence in Aboriginal and Torres Strait Islander communities. Examples are provided in looking at the historical and contemporary factors in Palm Island, cyber bullying, young people and bullying in schools, organisational conflict, workplace bullying, social emotional wellbeing and involvement in the criminal justice system.

Chapter 3: A human rights-based approach to lateral violence

Lateral violence is a human rights issue. Put simply, everyone has the right to be respected and safe,⁴ and lateral violence can also negatively impact on a number of other human rights.

The most promising overarching response to lateral violence in my view is a human rights-based framework based on the Declaration. As discussed in Chapter 1 the Declaration contains a number of key principles that underpin all of the rights it articulates. I believe these key principles will assist in exploring responses to lateral violence.

4 *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 (1948), article 5. At <http://www.un.org/en/documents/udhr/> (viewed 23 September 2011); *International Covenant on Civil and Political Rights*, 1966, articles 7, 9. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); *Convention on the Rights of the Child*, 1989, articles 2, 19. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 23 September 2011).

Self-determination

Self-determination, when realised, creates a community-wide agency that can stifle the toxicity of victimhood and powerlessness. This sense of being in control is transformative. A self-determining community not only exerts control but it also self-regulates. It decides how disputes are resolved, how decisions are made, what protocols for behaviour are acceptable, and it takes responsibility to ensure the well-being of the entire community.

Participation in decision-making

When a community is forced to live with an unequal power dynamic, their internal processes for making decisions and resolving conflicts break down. When these community norms deteriorate lateral violence can flourish. Efforts must be made to reinvigorate these processes.

External parties (governments, NGOs or industry), have obligations to ensure that Aboriginal and Torres Strait Islander peoples actively participate in decisions and processes that affect their rights.⁵ External processes should build cohesion, not divide our communities. To achieve this they should strengthen our internal decision-making processes.

The principle of free, prior and informed consent can be used to develop decision-making processes that address lateral violence.

Non-discrimination and equality

Racial discrimination reinforces negative stereotypes about Aboriginal and Torres Strait Islander peoples. Over time these stereotypes can become internalised and lead to lateral violence.

Whilst Aboriginal and Torres Strait Islander peoples continue to live in unequal conditions, our communities' human needs will not be met. Lateral violence will thrive in such environments.

In order to achieve circumstances of equality the structures of society must be reoriented to account for Aboriginal and Torres Strait Islander peoples difference. The onus is placed on governments and other third parties to accommodate this difference as well as the priorities developed by Aboriginal and Torres Strait Islander peoples around which our internal decision-making processes can be incorporated and fostered.

Respect for and protection of culture

Aboriginal and Torres Strait Islander peoples culture is a source of strength and should instil pride in our communities. However, lateral violence breeds unhealthy cultural norms that undermine the strength we can draw from our cultural identities.

The Declaration characterises culture as dynamic – that is, it can and does change over time. It also recognises that undertaking cultural activities and maintaining cultural institutions does not exclude us from also participating in mainstream society.⁶ The two are not mutually exclusive. We call it walking in two worlds.

Any understanding of culture must recognise the diversity within Aboriginal and Torres Strait Islander communities. Non-recognition of this difference feeds into a one-size-fits-all approach to Indigenous policy

5 Expert Mechanism on the Rights of Indigenous Peoples, *Progress Report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), para 4.

6 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 5, 11. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 23 September 2011).

design and implementation.⁷ This then inhibits government engagement processes from being able to accommodate differences within Aboriginal and Torres Strait Islander communities.

The Declaration to guide practical actions to address lateral violence

The table below demonstrates that actions based on this guidance would seek to remedy the historical and contemporary drivers of lateral violence.

Historical and contemporary drivers of lateral violence	Declaration
<ul style="list-style-type: none"> • Colonisation, oppression and control of Aboriginal and Torres Strait Islander peoples. • Feelings of powerlessness. • Meeting human needs. 	<ul style="list-style-type: none"> • Empowering Aboriginal and Torres Strait Islander communities to take control of their communities and aspirations.
<ul style="list-style-type: none"> • Loss of land, traditional roles, structures and knowledge. • Addressing trauma. 	<ul style="list-style-type: none"> • Promoting and developing community decision-making and dispute resolution protocols.
<ul style="list-style-type: none"> • Internalisation of negative stereotypes. • Meeting human needs. 	<ul style="list-style-type: none"> • Addressing discrimination and negative stereotypes by promoting equality that recognises difference.
<ul style="list-style-type: none"> • Loss of land, traditional roles, structures and knowledge. • Identity conflict. • Internalisation of negative stereotypes. 	<ul style="list-style-type: none"> • Building culture as a form of resilience and strength that promotes healthy cultural norms and recognises differences and diversity.

Chapter 4: Cultural safety and security: Tools to address lateral violence

In this Chapter I discuss practical strategies to create environments of cultural safety and security to address lateral violence.

A culturally safe and secure environment is one where our people feel safe and draw strength from their identity, culture and community. Cultural safety and security requires the creation of:

- environments of cultural resilience from within Aboriginal and Torres Strait Islander communities
- cultural competency by those who engage with Aboriginal and Torres Strait Islander communities.

Cultural safety in communities

A lot of the work needed to create cultural safety and security must take place at the community level. I provide case studies on a number of existing community responses to lateral violence including community

⁷ See for example Northern Territory Emergency Response Review Board, *Report of the Northern Territory Emergency Response Review Board*, Attorney-General's Department (2008). At http://www.nterreview.gov.au/docs/report_nter_review/default.htm (viewed 23 September 2011).

education and workshops; bullying prevention; dispute resolution; and healing programs. These case studies highlight some of the innovative work already underway and remind us that with the right support, communities have the ability to solve their own problems.

Creating cultural competency

The way our communities operate will always be shaped and informed by external influences. These influences can either empower and support our communities or undermine them. Governments, NGOs and industry must be sufficiently culturally competent, extending beyond individual cultural awareness to incorporate systems-level change.

Creating true cultural competency is an organisation-wide process. In regard to government service delivery, this requires building the capacity of all those involved in policy formation and implementation: from the Minister, through to policy makers right down to the on-the-ground staff who implement the policy.

Cultural competency occurs along a continuum. Awareness and cultural safety mechanisms need to be supported by brokerage and protocols to progress to cultural security.

Brokerage involves two-way communication where both parties are fully informed about the subject matter in discussion – this is consistent with the principle of free, prior and informed consent. Brokerage is about creating community networks between service providers and community members. Aboriginal and Torres Strait Islander staff employed by the service provider can play a crucial role as brokers to develop these networks.

Networks and relationship building must be supported by appropriate protocols. Protocols are the strategies to formalise the fact that service delivery must be developed in consultation with the particular community.⁸ Protocols include agreement on culturally informed practices that set rules for engagement with a particular community in relation to the delivery of services.

Effective engagement is also one of the key areas where governments must develop their competency if they are to work with us as enablers to address lateral violence. Engagement needs to be everyone's business. Cultural security cannot be created if effective engagement is restricted to expert brokers. The role of the broker is to assist in developing relationships, but all those who work with Aboriginal and Torres Strait Islander communities must also be able to provide cultural security. These experts should help develop the competency within an agency, not simply shoulder the engagement burden.

Creative mechanisms for engagement are important if governments are to implement their policy commitments and build the cultural competency required for effective engagement. These processes must not only respect Indigenous authority structures but also engage with the entire community to ensure they are not hijacked and used to inflame group divisions and tensions.

Effective engagement provides Aboriginal and Torres Strait Islander peoples the opportunity to have real influence over the decisions that impact on their community. Just as poor engagement creates a cycle of powerlessness, effective engagement creates a cycle of empowerment.

Increased Aboriginal and Torres Strait Islander presence within an agency or organisation can also lead to effective and culturally secure engagements. It is common sense that when working for an agency or organisation our people will have a greater understanding of the nuances required, and the internal politics at play, to ensure engagements build cohesion rather than bring division.

8 J Coffin, *Rising to the Challenge in Aboriginal Health by Creating Cultural Security* (2007) 31(3) *Aboriginal & Islander Health Worker Journal* 22, p 23.

Governments also have a role to play in raising awareness of lateral violence in their organisations for both Aboriginal and Torres Strait Islander and non-Indigenous staff. I provide a case study of awareness-raising in the Victorian Department of Justice. They have also developed a strong partnership with an Aboriginal and Torres Strait Islander organisation, The Victorian Aboriginal Community Controlled Health Organisation, to run a community education project on lateral violence. Respectful partnerships with Aboriginal and Torres Strait Islander organisations and communities are crucial to ensure that governments work in an empowering, culturally secure way to address lateral violence.

Future directions in addressing lateral violence

The issues, concerns and conclusions that have been raised in this Report are preliminary only. There is a real need to build on the theoretical underpinnings of lateral violence and the supporting anecdotal evidence with action research.

With this need in mind, my office has partnered with the University of Sydney to undertake a research project into lateral violence. This project will build on the initial research and analysis that I have conducted as preparation for this year's Social Justice and Native Title Reports.

I will use my future Social Justice and Native Title Reports to report on the progress of this research and the emerging body of evidence that will be developed around lateral violence.

Recommendations

Constitutional recognition

1. That the Australian Government make the report of the *Expert Panel on Constitutional Recognition of Indigenous Australians* public as soon as practicable following its submission.
2. That the Australian Government establish a campaign and appoint a community engagement team to drive forward the recognition of Aboriginal and Torres Strait Islander peoples in Australia's Constitution.
3. That the Australian Government fully resource a popular education strategy to be developed and rolled out from early 2012 to:
 - engage the wider community in relation to the proposals for change and the reasons why they have been proposed
 - provide an opportunity for the Australian community to discuss and debate the options and express views on the change to be taken to a referendum.

Northern Territory Intervention

4. The Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples in the Northern Territory to overcome disadvantage and identify and address other issues of concern in their communities, through the establishment of legislation, programs and policies, as necessary, which are consistent with international human rights standards.

International human rights mechanisms

5. That the Australian Government take steps to formally respond to, and implement, recommendations which advance the human rights of Aboriginal and Torres Strait Islander peoples, made by international human rights mechanisms, including:
 - treaty reporting bodies
 - the Special Rapporteur on the rights of indigenous peoples
 - United Nations Permanent Forum on Indigenous Issues
 - Expert Mechanism on the Rights of Indigenous Peoples.

Statement or Charter of Engagement

6. That the Australia Government develop a 'Statement or Charter of Engagement' to complement *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians*. This document should include the Government's commitment to be guided by the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* when engaging with Aboriginal and Torres Strait Islander peoples, including the right to participate in decision-making, and the principle of free, prior and informed consent.

Implementation of the recommendations from Social Justice Reports

7. That the Australian Government should implement outstanding recommendations from the *Social Justice Report 2010* and provide a formal response for next year's Report which outlines the Government's progress against the recommendations from both the *Social Justice Report 2010* and *Social Justice Report 2011*.

Implementation of the Declaration

8. That the Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples to develop a national strategy to ensure the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* are given full effect.

Lateral violence and cultural safety and security

9. That further research is undertaken to develop the evidence base around lateral violence in Aboriginal and Torres Strait Islander communities. This research should be supported by the Australian Government.
10. That all governments ensure that their engagement, policies and programs are implemented in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*. In particular, this should occur with respect to the right to self-determination, the right to participate in decision-making guided by the principle of free, prior and informed consent, non-discrimination and respect for and protection of culture.
11. That all governments, working with Aboriginal and Torres Strait Islander peoples, conduct an audit of cultural safety and security in relation to their policies and programs that impact on Aboriginal and Torres Strait Islander communities.
12. That all governments, working with Aboriginal and Torres Strait Islander peoples, based on the audit of cultural safety and security, develop action plans to increase cultural competence across their government.
13. That all governments, working with Aboriginal and Torres Strait Islander peoples, conduct education and awareness-raising sessions on lateral violence for both Aboriginal and Torres Strait Islander and non-Indigenous staff.

Chapter 1:

A cause for cautious optimism: The year in review

1.1 Introduction **18**

1.2 Follow up from the *Social Justice Report 2010* **20**

1.3 The Declaration **21**

1.4 Giving full effect to the Declaration **42**

1.5 Conclusion and Recommendations **47**



1.1 Introduction

As I reflect on the events that have taken place during the reporting period from 1 July 2010 to 30 June 2011, I see cause for optimism whilst also acknowledging there are still some areas that remain a concern. Over the last year we have reached some major milestones. For instance, we have seen the election of the two co-chairs and a board to the National Congress of Australia's First Peoples (National Congress), and we are also now engaged in a conversation with the Australian people about how we go about recognising Aboriginal and Torres Strait Islander peoples in our Constitution.

In January 2011 I was fortunate to be in Geneva when Australia underwent its first Universal Periodic Review (UPR) before the Human Rights Council of the United Nations.¹ I heard 50 out of the 53 nations that spoke refer to issues affecting Aboriginal and Torres Strait Islander peoples. I joined with Senator Kate Lundy, staff from the Australian Mission, civil society representatives and people like Les Malezer and Geoff Scott along with the President of the Australian Human Rights Commission (the Commission) Catherine Branson, on the floor of the room once it was over and we were all in fierce agreement about how well the process went.

I have great hope that over the years, as the UPR process develops, it will provide Aboriginal and Torres Strait Islanders with an ongoing opportunity for international oversight of the protection of our rights and interests.

I was also present in Parliament House when the Prime Minister presented her report on progress in implementing the Closing the Gap agenda on 9 February 2011. I also heard the response from the Leader of the Opposition. They both spoke of the challenge we face in meeting the target to close the gap in life outcomes between Aboriginal and Torres Strait Islander peoples and the rest of Australia by 2030. In fact the Prime Minister said she harboured doubts about whether this target could be met.

Far from being disappointed with their pronouncements, I am pleased that finally there is an acknowledgement of the scale of the challenge that faces all of us. This confirms my view expressed at the National Press Club last November when I said that fixing 'the myriad of challenges facing Aboriginal and Torres Strait Islander peoples ... will require the intergenerational commitment of the whole nation'.²

It has always been my belief that unless we understand the magnitude of this challenge we are destined to fail. Finally these acknowledgements from the Prime Minister and the Opposition Leader have given real meaning to the catchphrase 'that there is no quick fix and there is no silver bullet'.

At the moment, it seems to me most of the building blocks are in place that see us on the cusp of achieving great things for our communities in some areas. The National Congress has great potential for advancing how we advocate for ourselves. Importantly when it comes to the National Congress we have to give it the time and space to develop. It is, in my view, embarking on its journey and as I have said plenty of times, if the National Congress doesn't serve your needs join up and agitate for change.

We also have an exciting process unfolding as the push for constitutional reform enters its next phase in the coming year. Similarly, we are about to see new developments in the Close the Gap Campaign for Health Equality.

One of the major worries that I have, when reflecting on my agenda of 'stronger, deeper relationships', is the relationship between Aboriginal and Torres Strait Islander peoples and governments.

1 For more information on the UPR process see: Office of the High Commissioner for Human Rights, *Universal Periodic Review*, <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx> (viewed 13 October 2011).

2 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Towards a reconciled Australia* (Speech delivered at the National Press Club, Canberra, 3 November 2010). At http://humanrights.gov.au/about/media/speeches/social_justice/2010/20101103_npc.html (viewed 13 October 2011).

In this Report I will be talking about power relationships and lateral violence. Noel Pearson has described this power relationship in the following terms:

The indigenous people will possess 90 per cent of the knowledge of issues and spend 90 per cent of their time thinking about the solutions, while the politicians and bureaucrats across the table will have 10 per cent of the knowledge and spend even less time and attention on the issues. And yet the politicians and the bureaucrats will hold 90 per cent of the power to make decisions, and the hapless indigenous people have only 10 per cent of the power. And do you think those in possession of the power at least acknowledge the absurdity of this disparity in knowledge and power?³

While the Australian Government has made some attempt to improve their engagement with Aboriginal and Torres Strait Islander communities, there is still much work to do. The challenge for us is how to draw on each other's strengths to change this power imbalance and build the deeper, stronger relationship of which I speak.

The key to improving these relationships and further positive milestones lies in the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration).⁴ My overarching priority as Aboriginal and Torres Strait Islander Social Justice Commissioner is to advocate that the Australian Government work with Aboriginal and Torres Strait Islander peoples to give full effect to the Declaration.

To help advance this goal I have committed to being guided by the Declaration in the performance of my statutory functions, including in the preparation of this Report and the accompanying *Native Title Report 2011*.

This Chapter will provide a thematic, principled analysis of the year's major events in Aboriginal and Torres Strait Islander affairs, in the context of giving full effect to the Declaration. The reason for this is twofold. Firstly, there is often a lack of understanding about what human rights look like in practice. By providing practical examples from the year's events we can increase the awareness and understanding about how our work contributes to the realisation of rights. Secondly, the Declaration provides clear guidance about how to achieve these rights. This will guide us as we look at the further progress needed in the areas addressed in this Chapter.

3 N Pearson, 'Indigenes still in the political wilderness', *The Australian*, 7 August 2010. At <http://www.theaustralian.com.au/national-affairs/opinion/indigenes-still-in-the-political-wilderness/story-e6frgd0x-1225902288192> (viewed 13 October).

4 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007). At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 10 October 2011).

1.2 Follow up from the *Social Justice Report 2010*

The *Social Justice Report 2010* was my first report as Social Justice Commissioner and contains the agenda for my term. I also explored the significance of constitutional reform and profiled the developments in the Fitzroy Valley to argue that community-led development projects ensure the best outcomes for addressing concerns in Aboriginal and Torres Strait Islander communities.⁵ I made recommendations on the implementation of the Declaration, the need for a formal response from the Attorney General on my Social Justice and Native Title Reports, constitutional reform and developments in the Fitzroy Valley.⁶

Significant research and consultation goes into the development of my reports and the recommendations that flow from them. I believe that they reflect some of the major concerns facing Aboriginal and Torres Strait Islander communities and should not simply sit on the shelf gathering dust. This view is shared by the Special Rapporteur on the rights of indigenous peoples who has recommended that the reports of the Social Justice Commissioner 'should be given greater attention in government administration to promote a higher level of accountability and sensitivity to human rights commitments'.⁷

For this reason I work with the Australian Government to monitor the implementation of the recommendations. As outlined below, it is pleasing to see that many of the recommendations I made in reference to the constitutional reform process have been taken up. However, I remain concerned that progress has been slow in implementing the other recommendations related to the developments in the Fitzroy Valley and implementation of the Declaration. While I acknowledge that these were high level, long term recommendations, it is imperative that governments start working towards these goals.

5 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011). At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

6 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), pp xix–xxi. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

7 S J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 78.

1.3 The Declaration

The Declaration is the international instrument that provides the most authoritative guidance to governments about how their binding human rights obligations apply to Indigenous peoples. This was acknowledged by the Minister for Families, Housing, Community Services and Indigenous Affairs in her speech marking Australia's formal endorsement of the Declaration – 'Australia's existing international obligations are mirrored in the Declaration'.⁸

The Declaration contains the 'minimum [international] standards for the survival, dignity and well-being of the indigenous peoples of the world'.⁹ It reaffirms that Indigenous people are entitled to all human rights recognised in international law without discrimination. But it also acknowledges that, without recognising the unique and collective rights of Indigenous peoples and ensuring the protection of our cultures, we can never be truly free and equal. In one document, the Declaration catalogues all the existing human rights standards and interprets them giving full consideration to Indigenous peoples' unique historical, cultural and social circumstances.

The Declaration is also an instrument of reconciliation. It can be used to improve relationships between Indigenous peoples and the broader community but more particularly between governments and Indigenous peoples.

In Text Box 1.1 below Co-Chair of the National Congress of Australia's First Peoples Les Malezer discusses how the Declaration is a shared vision between the Indigenous and non-indigenous world.

Text Box 1.1:

Les Malezer – Statement to the United Nations General Assembly

Les Malezer was the Chair of the Global Indigenous Caucus when the Declaration was adopted by the UN General Assembly. Les had the honour of addressing the General Assembly on behalf of the Indigenous peoples of the world.

The adoption of the Declaration on the Rights of Indigenous Peoples by the United Nations marks a momentous and historic occasion for both Indigenous Peoples and the United Nations...Today's adoption of the Declaration occurs because the United Nations and the Indigenous Peoples have found the common will to achieve this outcome. The Declaration does not represent solely the viewpoint of the United Nations, nor does it represent solely the viewpoint of the Indigenous Peoples. It is a Declaration which combines our views and interests and which sets the framework for the future. It is a tool for peace and justice, based upon mutual recognition and mutual respect.¹⁰

8 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 (viewed 10 October 2011).

9 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), article 43. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 10 October 2011).

10 L Malezer in Australian Human Rights Commission, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples* (2010), p 10. At http://www.humanrights.gov.au/declaration_indigenous/declaration_full.html (viewed 10 October 2011).

The Declaration can also be an impetus for reconciling within our communities, guiding our stronger and deeper relationships. Both this Report and the *Native Title Report 2011* will explore this through the concept of lateral violence.

(a) Principled approach to the Declaration

As we know, Australia formally endorsed the Declaration on 3 April 2009. Since this happened over two years ago, progress to give full effect to the Declaration has been slow, despite the strong legal and moral arguments for the Australian Government to take concrete action.¹¹

In my view there is a lack of understanding about what implementation looks like – and this is impeding action. In many ways it is easy to understand why a lack of understanding might exist.

The Declaration is drafted in international legalese – technical language that is broad enough to reflect the diversity of all the world’s Indigenous peoples and is capable of being translated into the 5 official United Nations languages. The Declaration contains 46 articles as well as 24 preambular paragraphs so it is easy to ask, where do we start? And we are only now just beginning to see a body of expert commentary on the Declaration and its content emerge.¹² However, the difficulty of this task should not prevent action. Now is the time to start serious thinking and planning to turn these fine words into action.

Rather than looking at the Declaration as 46 separate articles I am of the view that a more holistic and integrated approach is required; one that looks to use the key principles that underpin the Declaration. These are:

- self-determination
- participation in decision-making and free, prior and informed consent
- non-discrimination and equality
- respect for and protection of culture

All of these principles must be also be guided by good faith between governments and Indigenous peoples.

I believe that these principles provide a useful lens through which to look at any human rights challenge confronting Aboriginal and Torres Strait Islander people. I demonstrate what such an approach could look like in Chapter 3 of this report where I talk about developing human rights based responses to lateral violence.

In the next sections of this Chapter I use these themes to examine some of the developments in the Indigenous policy space that have occurred during the reporting period.

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

12 See for example M Davis, ‘Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples’ (2008) 9 *Melbourne Journal of International Law* 439; C Charters and R Stavenhagen (eds), *Making the Declaration Work* (2009); J Hartley, P Joffe and J Preston (eds), *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action* (2010); International Law Association, Rights of Indigenous Peoples Committee, *The Rights of Indigenous Peoples: Interim Report*, Report to the Hague Conference (2010). At <http://www.ila-hq.org/download.cfm/docid/9E2AEDE9-BB41-42BA-9999F0359E79F62D> (viewed 10 October 2011); S Allen and A Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (2011).

(b) Self-determination

Self-determination is the central right of the Declaration. It is a collective right that manifests in a group of peoples.¹³

At its core self-determination is a right of choice, participation and control.¹⁴ And the right is inherently linked to the concept of democracy – to be able to choose who governs and to participate in decision-making. The Special Rapporteur on the rights of indigenous peoples, James Anaya suggests that:

the concept of self-determination of peoples is one that envisions an ideal path in the way individuals and groups form societies and their governing institutions... [P]eoples as such, including indigenous peoples with their own organic social and political fabrics, are to be full and equal participants at all levels in the construction and functioning of the governing institutions under which they live.¹⁵

In the sections below I review developments that are helping Aboriginal and Torres Strait Islander peoples take control of their lives.

(i) National Congress

It has been a big year for the National Congress, the representative body for Aboriginal and Torres Strait Islander peoples. For the first time in my life I was given the opportunity, along with the rest of the National Congress membership, to directly vote for our national leaders. This vote saw Jody Broun and Les Malezer declared as the first elected Co-Chairs. In June 2011 the first annual meeting of delegates was held, from which the first board was elected. Watching the National Congress mature from its formative stages into a fully operational body to give a voice to our people has been a real source of optimism.

The establishment of the National Congress has great potential to promote our rights to self-determination. It gives us an opportunity to have a meaningful say, at the national level, in the development of policies that affect us and provides a national voice to express our priorities and aspirations.

I am pleased to note that the Australian Government has signalled that it will work cooperatively with the National Congress and use it as its central point for engagement on Aboriginal and Torres Strait Islander policy issues,¹⁶ and to this end both are working to develop:

[A] formal agreement that will set out principles for engagement and identify shared priorities. This formal agreement will uphold the principles and spirit of the Declaration on the Rights of Indigenous Peoples and emphasise the importance of supporting empowerment of First Nation communities. The purpose of this Agreement is to build a structure that will enable successful engagement between Congress and the Government so that progress can be achieved on issues of concern to First Peoples. Initial discussions are being held this week to begin the process.¹⁷

13 See S J Anaya, 'The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era' in C Charters and R Stavenhagen (eds), *Making the Declaration Work* (2009) 184.

14 UNESCO, 'Conclusions and recommendations of the conferences' in M van Walt van Praag (ed) *The implementation of the right to self-determination as a contribution to conflict prevention* (1999), p 19; S J Anaya, *Indigenous Peoples in International Law* (2nd ed, 2004), ch 3.

15 S J Anaya, 'The right of self-determination in the post-declaration era' in C Charters and R Stavenhagen, *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (2009) 184, p 188.

16 J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, N Roxon, Minister for Health and Ageing, P Garret, Minister for School Education, Early Childhood and Youth, M Arbib, Minister for Indigenous Employment and Economic Development, Minister for Social Housing and Homelessness, W Snowdon, Minister for Indigenous Health, 'Delivering services to close the gap', (Media Release, 9 February 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/jm_m_closingthegap_9february2011.aspx (viewed 10 October 2011).

17 Statement tabled by L Malezer at the UN Human Rights Council, 18th session (21 September 2011).

I will watch with interest as the National Congress grows into the national voice for our people. But more than that, I will be working closely with the Co-Chairs, the Board and the National Congress more generally to advance the rights of Aboriginal and Torres Strait Islander peoples.

Later in this Chapter I look at how the representative structures of the National Congress have provided an ideal vehicle to advance efforts to close the health equality gap between Aboriginal and Torres Strait Islanders and non-Indigenous Australians. It is conceivable that other sectors could adopt similar models to ensure their voices are heard on the national stage.

(ii) Indigenous Human Rights Network Australia

The Indigenous Human Rights Network Australia (IHRNA)¹⁸ is a national network of people who advocate for the promotion and support of Indigenous human rights in Australia. IHRNA is supported by a Steering Committee that includes representatives of the Commission, Oxfam Australia, the Diplomacy Training Program and members of the Alumni, and Amnesty International Australia.

Capacity building is part and parcel of exercising the right of self-determination. IHRNA is an example of a tool that can build our capacity so that we can fully engage with the realisation of our human rights and interests.

Following the launch of the IHRNA social portal and website in 2010, IHRNA has established an online presence through both the Facebook and Twitter social networks. As at September 2011, the IHRNA network is made up of 545 members and is growing strongly.

In line with initial consultancy research recommendations, Regional Forums will be conducted in order to:

- formalise the governance structure of IHRNA
- gauge member feedback on strategies for implementing the Declaration
- outline human rights education relevant to Indigenous people
- demonstrate how IHRNA members and others can use IHRNA locally as community advocates.

It is anticipated that at the time of going to print, a number of Regional Forums will have already taken place around the country, with others scheduled to follow soon after.

(c) Participation in decision-making and free prior and informed consent

The importance of the right to participate in decision-making is reflected through its consistent reference in the Declaration.¹⁹ In Australia today, Aboriginal and Torres Strait Islander peoples do not have genuine decision-making authority and power over their lives and futures. That power and authority continues to rest in the hands of governments.²⁰

18 More information on IHRNA is available at www.ihrna.info/. For those interested in becoming an IHRNA member go to <http://ihrnaustralia.ning.com/main/authorization/signUp?>.

19 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 3–5, 10–12, 14, 15, 17–19, 22, 23, 26–28, 30–32, 36, 38, 40 and 41. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 10 October 2011); Expert Mechanism on the Rights of Indigenous Peoples, *Progress Report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), paras 7–41.

20 D Smith and J Hunt, *Do They Get It? Indigenous Governance: The Research Evidence and Possibilities for a Policy Dialogue with Australian Governments* (Speech delivered at the National Indigenous Policy Dialogue Conference, University of New South Wales, Sydney, 18–19 November 2010). At http://nipdc.arts.unsw.edu.au/assets/Powerpoints/Smith_Hunt.pdf (viewed 10 October 2011).

To ground this in reality, it has to be understood that the relationship between governments and Aboriginal and Torres Strait Islander peoples has been badly damaged by the consistent imposition of policies and legislation that are not designed in partnership with our communities. It needs to be understood we are an important part of the solution to our life situations therefore, governments should support our effective participation to be the agents of our own change.

The establishment of the National Congress goes some way to developing a mechanism for engagement with Aboriginal and Torres Strait Islander peoples. Beyond the National Congress, it is essential that governments develop an effective framework for engagement with Aboriginal and Torres Strait Islander peoples in order to generate positive relationships.

I next examine the developments in relation to the Northern Territory Emergency Response (NTER) and the Australian Government's engagement framework and how these impact on our rights to participate in decision-making.

(i) Northern Territory Emergency Response

Background

The NTER is a series of measures announced by the Howard Government on 21 June 2007 in response to the *Little Children are Sacred* report.²¹

A key concern for Aboriginal and Torres Strait Islander peoples was the deeming of the NTER measures to be special measures for the purposes of the *Racial Discrimination Act 1975* (Cth) (RDA) and the suspension of the RDA in relation to the provisions of the NTER legislation and any acts done under or for the purposes of those provisions.²² This meant that individuals had no right to bring a complaint under the RDA with respect to provisions of the legislation.

From June to August 2009 the Australian Government consulted with Aboriginal communities on ways that certain identified NTER measures could be 'redesigned', including lifting the suspension of the RDA. The result of this consultation was the passage of the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010* (Cth).

In the *Native Title Report 2010* I discussed the redesigned measures relating to land, in particular the compulsory acquisition of five-year leases and analysed the Government's consultation process.²³

21 P Anderson and R Wild, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007). At <http://www.inquirysaac.nt.gov.au/> (viewed 10 October 2011).

22 *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth), s 4; *Northern Territory National Emergency Response Act 2007* (Cth), s 132; *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth), ss 4, 6. The original NTER legislation also exempted the operation of the Northern Territory's anti-discrimination laws: *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth), s 5; *Northern Territory National Emergency Response Act 2007* (Cth), s 133; *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth), ss 5, 7. But see *Northern Territory National Emergency Response Act 2007* (Cth), Notes, Table A: 'Application, saving or transitional provisions' (*Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth), s 4(3)).

23 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2011), pp 80–98. At http://www.humanrights.gov.au/social_justice/nt_report/ntreport10/index.html (viewed 10 October 2011).

Most of the NTER measures were enacted for a period of five years. Many of these legislative measures are due to expire in August 2012, and funding measures are set to end on 30 June 2012.²⁴

Stronger Futures in the Northern Territory Discussion Paper

On 22 June 2011 the Australian Government released the *Stronger Futures in the Northern Territory* discussion paper (*Stronger Futures*) detailing its process for the next stage of the NTER.²⁵ The Government announced that its first step in this process would be for the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to undertake community consultations. These consultations began on 28 June 2011 and were intended to assist the Government in directing further action in partnership with Aboriginal communities.²⁶

Stronger Futures is meant to be a 'starting point for the conversation' and provided the framework for these consultations.²⁷ The paper acknowledges that Aboriginal people in the Northern Territory continue to experience unacceptable levels of disadvantage and affirms the Australian Government's ongoing commitment to address this disadvantage. The paper identifies eight priority areas of disadvantage in which the Government intends to progress action, and invites comment on how it could make improvements in these areas. These areas are:

- school attendance and educational achievement
- economic development and employment
- tackling alcohol abuse
- community safety
- health
- food security
- housing
- governance.²⁸

I believe that *Stronger Futures* represents an important opportunity for the Australian Government to work towards resetting the relationships between the Government and Aboriginal and Torres Strait Islander peoples that were badly damaged by the introduction of the NTER. This relationship can only be repaired through a sustained commitment to respectful, meaningful and effective engagement with our people.

24 See *Northern Territory National Emergency Response Act 2007* (Cth), s 6. Also see Australian Government, *Stronger Futures in the Northern Territory* (June 2011), p 4. At <http://www.indigenous.gov.au/index.php/stronger-futures-in-the-northern-territory/> (viewed 10 October 2011).

25 Australian Government, *Stronger Futures in the Northern Territory* (June 2011). At <http://www.indigenous.gov.au/index.php/stronger-futures-in-the-northern-territory/> (viewed 10 October 2011).

26 Prime Minister, Minister for Indigenous Affairs, Minister for Indigenous Health, Senator Crossin, 'Deliver a better future for Indigenous people in the Northern Territory', (Media Release, 22 June 2011). At <http://www.pm.gov.au/press-office/delivering-better-future-indigenous-people-northern-territory> (viewed 10 October 2011).

27 Australian Government, *Stronger Futures in the Northern Territory* (June 2011), p 9. At <http://www.indigenous.gov.au/index.php/stronger-futures-in-the-northern-territory/> (viewed 10 October 2011).

28 Australian Government, *Stronger Futures in the Northern Territory* (June 2011). At <http://www.indigenous.gov.au/index.php/stronger-futures-in-the-northern-territory/> (viewed 10 October 2011).

A number of respected Indigenous and non-Indigenous leaders including Rev Dr Djiniyini Gondarra OAM, Rosalie Kunoth-Monks, the Hon Malcolm Fraser, and the Hon Alistair Nicholson AO²⁹ raised concerns about the content of Stronger Futures and the consultation process. I share many of these concerns.

The NTER consultation processes: the need for meaningful and effective engagement

The 2011 Stronger Futures Consultations

In July 2011 I wrote to the Minister for Families, Housing, Community Services and Indigenous Affairs, urging the Government, in its conduct of the *Stronger Futures* consultations this year, to learn from the shortcomings in the last consultation process to ensure Aboriginal and Torres Strait Islander peoples can meaningfully participate in all stages of law and policy development. I also met with FaHCSIA staff to reiterate the concerns I raised with the Minister.

At the time of writing, I have received mixed anecdotal feedback regarding the consultation process.

Timeframe for consultation

I am concerned that only a six-week timeframe was allocated for the consultation. This timeframe is inadequate given the scope of the issues raised in the discussion paper. It is particularly concerning that consultations commenced only a few days after the discussion paper was released. Aboriginal Peak Organisations Northern Territory (APONT)³⁰ also suggests that the time allocated for individual consultations allowed for only superficial feedback.³¹

Attendance at consultations

APONT raised concerns that consultations in remote communities were not well-attended, or were dominated by a small number of people.³² My staff attended two consultations. In one consultation held in a remote community, only a small number of people attended. I was advised by a number of parties including Government officials and community members that this was because of cultural business. However I understand that community members gave permission for consultation to proceed.

In any event, the Government has advised me that they would return to this community to seek feedback from a wider representation of the community. It was also suggested that facilitators would return to other communities which were not well attended. I welcome this approach.

My staff also observed a public town meeting which was also not well attended. One attendee suggested that while she knew the date and venue of the meeting, the time was not advertised. Department officials have told me that the meeting was advertised on radio, in the local newspaper and on the town noticeboard.

29 See for example, A Nicholson, Correspondence to J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, Department of Families, Housing, Community Services and Indigenous Affairs, 27 June 2011; M Fraser, A Nicholson, I Viner, Correspondence to J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, Department of Families, Housing, Community Services and Indigenous Affairs, undated. At <http://www.concernedaustralians.com.au/> (viewed 10 October 2011).

30 APONT is an alliance of the Central and Northern Land Councils, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency, Aboriginal Medical Services Alliance of the Northern Territory.

31 Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures* (August 2011), p 12. At http://www.nlc.org.au/html/wht_pub.html (viewed 10 October 2011).

32 Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures* (August 2011), p 13. At http://www.nlc.org.au/html/wht_pub.html (viewed 10 October 2011).

The Government has also suggested that many stakeholders attended 'targeted' meetings, such as those for legal services, health services or in specific communities. I was advised that the public meetings were held for those not covered by the targeted meetings.

Provision of information

In order to respect Aboriginal and Torres Strait Islander peoples' right to participate in decision-making, it is critical that governments provide complete and accurate information to communities in an accessible, culturally appropriate and timely manner. While I understand the Government is working with the Aboriginal Interpreter Service (AIS), I am also of the understanding that that *Stronger Futures* was not translated into any Indigenous languages.³³

APONT has also reported that at some consultations, only an abridged version of *Stronger Futures* was provided.³⁴

Options for discussion

The *Stronger Futures* paper outlines eight key priorities for discussion. However there are a number of measures which appear to be excluded from discussions, including income management. Whilst significant changes have already been made to the income management scheme, it still has a disproportionate effect on Aboriginal people in the Northern Territory. According to the Government's own assertions, 94.2% of people on income management in the Northern Territory are 'Indigenous'.³⁵

APONT also noted that consultations excluded a number of significant issues which are relevant and important to Aboriginal people in remote communities, including income management and issues of customary law.³⁶

These issues will continue to have a significant impact on Aboriginal communities and remain of significant concern. I encourage the Government to consider community and stakeholder viewpoints on these issues and to take advantage of consultation opportunities such as this to seek feedback on other concerns held by communities.

Next Steps

I strongly urge the Government to create opportunities for further discussions in affected communities and with stakeholders following the allocated six-week period.

Further negotiations should be held with affected peoples and their representative organisations throughout the legislative and budget development process regarding the future of the NTER once the feedback from the initial six-week period is collated and considered.

Since the commencement of the NTER there have been considerable resources allocated to reviewing and consulting with Aboriginal and Torres Strait Islander people about the measures, and what needs to be

33 Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures* (August 2011), p 13. At http://www.nlc.org.au/html/wh_t_pub.html (viewed 10 October 2011).

34 Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures* (August 2011), p 13. At http://www.nlc.org.au/html/wh_t_pub.html (viewed 10 October 2011).

35 Commonwealth, *Official Committee Hansard: Senate Estimates (Additional Estimates)*, Senate Community Affairs Legislation Committee (25 February 2011), p 22 (L Hefren-Webb, Department of Families, Housing, Community Services and Indigenous Affairs). At http://www.aph.gov.au/hansard/senate/committee/committee_transcript.asp?MODE=YEAR&ID=80&YEAR=2011 (viewed 10 October 2011).

36 Aboriginal Peak Organisations Northern Territory, *Response to Stronger Futures* (August 2011), p 13. At http://www.nlc.org.au/html/wh_t_pub.html (viewed 10 October 2011).

done to effectively address the issues faced by those communities in the Northern Territory. I encourage the Government to consider all of this information in addition to the most recent consultations as they develop their legislative and budgetary responses and that the views and concerns of Aboriginal and Torres Strait Islander people in the Northern Territory are reflected in the resulting approach.

Finally, the Government and its agencies should then negotiate with Aboriginal and Torres Strait Islander peoples to make sure the policies and programs emerging from the legislation and budget are effectively and sustainably implemented.

I will continue to advocate for an approach to addressing disadvantage in the Northern Territory that is consistent with human rights.

(ii) Engagement strategy

Recommendation 3.5 from my *Social Justice Report 2010* called on the Australian Government to:

work with Aboriginal and Torres Strait Islander peoples to develop a consultation and engagement framework that is consistent with the minimum standards affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples*.³⁷

The Australian Government has developed *Engaging Today, Building Tomorrow – A framework for engaging with Aboriginal and Torres Strait Islander Australians* (Framework). The Framework has been designed to improve how Australian Public Service (APS) agencies engage with Aboriginal and Torres Strait Islander peoples on issues that affect them.³⁸

The Australian Government has advised that Aboriginal and Torres Strait Islander peoples were involved in the development of the Framework through a Reference Group. Engagement workshops were also held in regional South Australia and Queensland.³⁹

More than 2 000 copies of the Framework have been distributed across APS agencies since its release in National Reconciliation Week 2011.⁴⁰

The Framework states that it is consistent with the principles of the Declaration.⁴¹ While this statement is commendable it remains to be seen whether compliance with the Framework by APS agencies will result in the full and active participation of Aboriginal and Torres Strait Islander peoples in decision-making. As the Australian Government has said, the Framework is not prescriptive or mandatory in its application. Instead 'it encourages reflection on current practice across a broad range of mainstream and Indigenous business within agencies'.⁴²

37 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), p 121. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

38 Australian Government, *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians* (2011), p 3.

39 Department of Families, Housing, Community Services and Indigenous Affairs staff, *Email correspondence to Social Justice Commissioner's Office*, 14 September 2011.

40 Department of Families, Housing, Community Services and Indigenous Affairs staff, *Email correspondence to Social Justice Commissioner's Office*, 14 September 2011.

41 Australian Government, *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians* (2011), p 4.

42 Department of Families, Housing, Community Services and Indigenous Affairs staff, *Email correspondence to Social Justice Commissioner's Office*, 14 September 2011.

It is disappointing that compliance with the Framework is not mandatory. Given this, a reference within the Framework stating it is consistent with the Declaration rings hollow. When Governments have obligations to actively engage with us when making decisions that affect us, good faith is not discretionary. Without implementation across the APS the Framework has the potential to become more words we have heard before. I encourage the Government to make compliance with the Framework mandatory across the APS.

Further, to demonstrate its commitment to the Declaration I recommend that the Government develop a 'Statement or Charter of Engagement' to complement the Framework. This document should include the Government's commitment to be guided by the principles of the Declaration. A commitment by the Australian Government in this regard is particularly important if the Framework does not become mandatory.

In Chapter 4 of this Report I examine how culturally secure engagements can strengthen and empower Aboriginal and Torres Strait Islander communities. I will continue to work with the Australian Government to promote cultural security as they make efforts to improve engagement.

(d) Non-discrimination and equality

The remedial nature of the Declaration ensures that principles of non-discrimination and equality run throughout it. For example, the preambular paragraphs 3 and 4 state:

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind.

However, non-discrimination and equality does not mean everyone should be treated the same in all circumstances. Rather true equality recognises and accommodates difference.⁴³ This reflects the accepted human rights principle of substantive equality, where equality is not blind to differences⁴⁴ as explained in Text Box 1.2.

Text Box 1.2:

Declaration of Principles on Equality

Article 2 Equal Treatment

Equal treatment, as an aspect of equality, **is not equivalent to identical treatment**. To realise full and effective equality it is necessary to treat people differently according to their different circumstances, **to assert their equal worth** and to enhance their capabilities to participate in society as equals.⁴⁵

43 See *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 2. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 10 October 2011).

44 *South West Africa Case (Second Phase)* [1966] ICJ Rep 6, pp 303–305.

45 The Equality Trust, *Declaration of Principles on Equality* (2008). At <http://www.equalrightstrust.org/endorse/index.htm> (viewed 10 October 2011).

In exploring non-discrimination and equality, I consider the current process to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution, the situation in Alice Springs, the Close the Gap campaign and the marking of 20 years since the Royal Commission into Aboriginal Deaths in Custody.

(i) Constitutional reform

In setting out an agenda of hope for my tenure as Aboriginal and Torres Strait Islander Social Justice Commissioner, I identified constitutional recognition of Aboriginal and Torres Strait Islander peoples as a major priority, dedicating a chapter in the *Social Justice Report 2010* to the issue.⁴⁶ I reiterated this priority in my speech to the National Press Club in November 2010:

I firmly believe the time is right, here and now for the Australian people to formalise *at least* the recognition of the special and unique place of Aboriginal and Torres Strait Islander people in our nation, *in our Constitution*.⁴⁷

As it stands, the Constitution does not comply with the principles of non-discrimination and equality. Now is the time to set this right.

In the *Social Justice Report 2010* I recommended a number of steps that needed to be taken in order to move towards a referendum on recognition of Aboriginal and Torres Strait Islander peoples. I am pleased that many of these recommendations have been taken up. Text Box 1.3 documents these recommendations.

Text Box 1.3:

Recommendations from the *Social Justice Report 2010* relating to constitutional recognition of Aboriginal and Torres Strait Islander peoples

- 2.1 That all Australian political parties commit to and participate in the constitutional reform process in good faith to progress recognition of the unique place and the rights of Aboriginal and Torres Strait Islander peoples.
- 2.2 That the Australian Government place constitutional reform on the Council of Australian Governments agenda as a national priority.
- 2.3 That the Australian Government establishes and fully resources a formal process to guide progress towards a referendum that:
 - (i) Includes a commitment to:
 - improve the lives of Aboriginal and Torres Strait Islander peoples
 - ensure the adequate protection of human rights for all Australians
 - ensure a solid foundation upon which to build a reconciled nation.

46 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), chapter 2. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

47 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Towards a reconciled Australia* (Speech delivered at the National Press Club, Canberra, 3 November 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20101103_npc.html (viewed 10 October 2011). Emphasis in original.

- (ii) Seeks to achieve and maintain bipartisan support, and has a strong focus on public education and facilitating popular ownership of the issues.
- (iii) Includes a strategy that facilitates engagement with Aboriginal and Torres Strait Islander peoples and the broader Australian community.

2.4 That the Australian Government adequately resource the provision of advice and assistance to the Expert Panel on Constitutional Recognition of Indigenous Australians including in relation to leadership and engagement, ambassadorial outreach, and technical advice.⁴⁸

An agreement between the Australian Greens and the Australian Labor Party was made in September 2010 and subsequently confirmed by the Prime Minister, committing the Australian Government to hold a referendum 'during the 43rd Parliament or at the next election on Indigenous constitutional recognition'.⁴⁹

To give effect to this commitment, on 23 December 2010 the Australian Government appointed the *Expert Panel on Constitutional Recognition of Indigenous Australians* (Panel). It is a Panel of community leaders, legal experts and members of parliament across the political spectrum who will provide advice on how best to recognise Aboriginal and Torres Strait Islander peoples in the Constitution (see Appendix 3 for Panel membership).

It is a welcome development that recognition of Aboriginal and Torres Strait Islander people in the Constitution maintains cross party support – as I reported in my *Social Justice Report 2010*,⁵⁰ maintaining this support is a critical factor in achieving a successful referendum.

The Panel terms of reference (see Appendix 4) required it to 'lead a broad national consultation and community engagement program to seek the views of a wide spectrum of the community'⁵¹ and report to Government on 'possible options for constitutional change to give effect to Indigenous constitutional recognition, including advice as to the level of support from Indigenous people and the broader community for each option by December 2011'.⁵² The Panel's work commenced with their first meeting held in February 2011.⁵³

Four principles were set by the Panel to guide its assessment of proposals for constitutional recognition of Aboriginal and Torres Strait Islander peoples:

- It must contribute to a more unified and reconciled nation.
- It must be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples.

48 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), p 65. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

49 The Australian Labour Party and the Australian Greens, *The Australian Greens and The Australian Labour Party ('The Parties') – Agreement*, p 2. At <http://www.alp.org.au/federal-government/government-agreements/> (viewed 10 October 2011).

50 See M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), p 60. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

51 Department of Families, Housing, Community Services and Indigenous Affairs, *Expert Panel Terms of Reference*, <http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/ExpertPanel.aspx> (viewed 10 October 2011).

52 Department of Families, Housing, Community Services and Indigenous Affairs, *Expert Panel Terms of Reference*, <http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/ExpertPanel.aspx> (viewed 10 October 2011).

53 Department of Families, Housing, Community Services and Indigenous Affairs, *Expert Panel on Constitutional Recognition of Indigenous Australians – Communiqué* 16–17 February 2011, http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/pages/communiqué_expert_panel_indig_17022011.aspx, (viewed 10 October 2011).

- It must be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums.
- It must be technically and legally sound.⁵⁴

National consultations commenced in May 2011. To assist with the national conversation, in April 2011 I published *Constitutional reform: Creating a nation for all of us*⁵⁵ and established a Constitutional reform webpage on the Commission website.⁵⁶

From early May until the end of September 2011, the Panel held more than 200 consultation meetings in 84 communities across metropolitan, regional and remote Australia. The Panel also received close to 3 500 submissions. The majority of people attending consultations and making submissions were supportive of constitutional recognition generally and in particular favoured the removal of Section 25.

As Ex-officio panel member, I have participated in consultations in Mutijulu, Umuwa, Alice Springs, Northern Sydney, Adelaide, Murray Bridge, Mildura, Broken Hill, Mt Gambier, Warrnambool and Darwin to hear the views of Aboriginal and Torres Strait Islander people and non-Indigenous Australians.

In my role as Aboriginal and Torres Strait Islander Social Justice Commissioner I have given 12 speeches on constitutional recognition during the reporting period and met with many individuals and organisations around the country.⁵⁷

I am pleased to report that in my discussions and consultations around the country, I have sensed a mood to change our nations Constitution so as to recognise Aboriginal and Torres Strait Islander people.

The Commission communicated some observations to the Panel highlighting the human rights principles that should inform any process to recognise Aboriginal and Torres Strait Islander people in the Constitution. Text Box 1.4 contains the main human rights issues that the Commission identified in relation to the work of the Panel.

Text Box 1.4:

The Commission's letter to the Expert Panel

The Commission identified the main human rights issues in relation to the work of the Panel:

- Participation in decision-making is a well-accepted principle of human rights law,⁵⁸ however there was no engagement with Aboriginal and Torres Strait peoples in the development of the Constitution. It is now critical that there is full engagement with Aboriginal and Torres Strait Islander peoples in the consideration of options for reform.

54 You Me Unity, *A National Conversation About Aboriginal and Torres Strait Islander Constitutional Recognition*, Discussion Paper (2011), p 16. At <http://www.youmeunity.org.au/be-informed/discussion-paper> (viewed 5 October 2011).

55 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Constitutional reform: Creating a nation for all of us*, Australian Human Rights Commission (2011). At <http://www.humanrights.gov.au/constitution/reform/index.html> (viewed 10 October 2011).

56 Australian Human Rights Commission, *Constitutional reform to recognise Aboriginal and Torres Strait Islander people in the Australian Constitution*, <http://www.humanrights.gov.au/constitution/index.html> (viewed 10 October 2011).

57 See Australian Human Rights Commissioner, *Speeches on Aboriginal and Torres Strait Islander Social Justice Issues*, http://www.humanrights.gov.au/about/media/speeches/social_justice/index.html (viewed 10 October).

58 For an overview of the international human rights legal framework on the right of Indigenous peoples to participate in decisions that affect them see: Expert Mechanism on the Rights of Indigenous Peoples, *Progress report on the study of indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council 15th session (2010), paras 7–41.

- Various human rights treaty committees at the United Nations have noted that the non-recognition of the pre-existing rights of Indigenous peoples has contributed to their marginalisation and ongoing discrimination. They have called for positive recognition of the place of Indigenous peoples as a measure to address this marginalisation.⁵⁹ Aboriginal and Torres Strait Islander peoples were excluded from discussions concerning the creation of a new nation to be situated on their ancestral lands and territories, were absent from its drafting and were excluded from the process of its adoption.⁶⁰ It is thus appropriate for Aboriginal and Torres Strait Islander peoples to be now recognised in the Constitution as the first peoples of this land.
- The right of all Australians to enjoy equality and not be discriminated against. The Commission sees three issues arising in this context
 - Ensuring the Constitution does not recognise and give effect to laws that discriminate on the basis of race. Therefore, section 25 should be removed. It recognises the possibility of a law of a State disqualifying all persons of a particular race from voting at elections and gives any such disqualification relevance for Commonwealth electoral purposes.
 - Ensuring the Constitution does not authorise the making of laws that discriminate on the basis of race. Laws that have overridden the protections of the *Racial Discrimination Act 1975* (Cth) have relied on the ‘races power in section 51(xxvi). The Commission considers it appropriate for the Constitution to be amended to ensure that racially discriminatory laws cannot be enacted.
 - Ensuring that the Commonwealth Parliament is authorised to make laws to promote racial equality. While it is clearly established in international law that a prohibition of discrimination does not prevent the taking of special measures to ensure achievement of equality in fact. For clarity, it may be appropriate for any provision proscribing discrimination on racial grounds to make clear that it is not intended to prevent the taking of actions aimed at addressing disadvantage or which are aimed at the preservation of language, culture or identity.⁶¹

The Panel will report its findings to the Australian Government by December 2011.⁶² It is my view that the Panel report should be made public as soon as practicable following its submission to Government.

Following this the constitutional reform process will enter into a new phase of awareness raising and advocacy of a ‘yes’ vote. I believe that there is a need for a campaign and community engagement team to be funded and appointed to drive forward the recognition of Aboriginal and Torres Strait Islander peoples in Australia’s constitution. This will need to be supplemented by a fully resourced popular education strategy to engage the wider public in the debate and provide a platform for input.

59 See for example Committee on the Elimination of Racial Discrimination, *General Recommendation 23: The rights of Indigenous peoples*, Un Doc A/52/18, annex V at 122 (1997).

60 See M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), p 29. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 10 October 2011).

61 C Branson, President, Australian Human Rights Commission, Correspondence to the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples, 7 October 2011.

62 Department of Families, Housing, Community Services and Indigenous Affairs, *Expert Panel Terms of Reference*, <http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/ExpertPanel.aspx> (viewed 10 October 2011).

I will be working with Government to ensure that the final report of the Panel is acted upon and that a process of community engagement is supported in 2012 so that we continue on our path towards this constitutional recognition of Aboriginal and Torres Strait Islander peoples.

(ii) Alice Springs

In April 2011 I spent three days in Alice Springs, visiting the town camps and meeting with residents and organisations in the area. During this time I saw that there is still much to do to realise non-discrimination and equality for the community.

Racism was raised as an issue with me in just about every meeting I attended. Residents reported disturbing levels of racial vilification and a severe lack of trust between the Indigenous and non-Indigenous communities.

There have been some strong improvements in the conditions of the town camps, for instance, birth weights of babies in Alice Springs have improved greatly with only 7% low birth weight, almost half of the national average.⁶³ I have also seen new two-bedroom houses ready for tenants to move into and the overall area seems better cared for.

However, I still have concerns in light of non-discrimination and equality. Town camp residents have been without access to things that most of Australia takes for granted, like a postal service or public telephones. People should have the same standard of basic service that any other Australian would expect, regardless of where they live. I am encouraged that the Minister of Families, Housing, Community Services and Indigenous Affairs, has advocated strongly rectifying this long-standing situation and I welcome the development of better access to services for town camp residents.⁶⁴

Given the high incidence of alcohol related harm in Alice Springs, I supported the argument for a floor price on alcohol at the price of full strength beer. Selling wine for 50 cents a standard drink is not helping anyone – Indigenous or non-Indigenous. I am pleased to see that major retailers, Woolworths and Coles have agreed to stop selling cheap wine in an effort to assist the community.⁶⁵

There are positive changes underway in Alice Springs, thanks to strong leaders and organisations. I am also pleased to see that the Government is working with the community to support them in their endeavours. The solution to the problems in Alice Springs lies in coordinated approaches driven by the community. I will continue to monitor the situation and engage with Aboriginal and Torres Strait Islander people in Alice Springs throughout my term.

(iii) Close the Gap Campaign for Indigenous Health Equality⁶⁶

The Close the Gap Campaign continues to be an important way of addressing non-discrimination for Aboriginal and Torres Strait Islander peoples by advocating for health equality.

63 S Bell, *Speech upon receiving the Menzies Medal* (Speech delivered at Menzies School of Health and Research, Darwin, 16 September 2011).

64 At the time of publication the Minister of Families, Housing, Community Services and Indigenous Affairs and the Minister for Indigenous Health announced a new postal service for the Alice Springs town camps. See Minister for Families, Housing, Community Services and Indigenous Affairs and Minister for Indigenous Health, 'First regular mail service to commence in Alice Springs town camp', (Media release, 17 October 2011).

65 P Martin, 'Alice Springs supermarkets to curb alcohol abuse' *The Age*, 24 June 2011. At www.theage.com.au/national/alice-springs-supermarkets-move-to-curb-alcohol-abuse-20110623-1ghgs.html (viewed 27 September 2011).

66 For background information about the Campaign see T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (2005), chapter 2. See also *Social Justice Reports 2008–2010*, http://humanrights.gov.au/social_justice/sj_report/index.html (viewed 10 October 2011); The Australian Human Rights Commission, *Close the Gap: Campaign for Indigenous Health Equality*, http://humanrights.gov.au/social_justice/health/index.html (viewed 10 October 2011).

The last year has seen some important developments. At a grass roots level, National Close the Gap Day on 24 March 2011 was a great success. Organised with great professionalism by Oxfam Australia, on behalf of the Campaign, this was the biggest and most successful in the five years it has been running with 838 events registered – 300 up from the previous year. In all, almost 120 000 people participated with 71% of these school students. The Close the Gap Campaign also held a Close the Gap Day Parliamentary Breakfast that attracted almost 30 Ministers and Members of Parliament.

The Close the Gap Campaign continues to maintain high level engagement with the Australian Government. A galvanising moment was the meeting between the Prime Minister and the Committee's Indigenous Leadership Group on the day of her report to Parliament on the 'Closing the Gap' reforms,⁶⁷ 9 February 2011.

The Close the Gap Campaign Steering Committee released its *Shadow Report – On Australian governments' progress towards closing the gap in life expectancy between Indigenous and non-Indigenous Australians* (Shadow Report) in February 2011.⁶⁸ Our Shadow Report notes that although significant amounts have been invested, a plan or partnership has been slow to develop. However, since February we have seen substantial progress made, and I am increasingly optimistic that by the end of my term as Commissioner we will see the plan and partnership well and truly established.

This year has also seen the restructuring of the Campaign Steering Committee. This included the resignation of Dr Tom Calma, the Campaign founder, as my Co-Chair on the Campaign Steering Committee. I take the opportunity here to pay tribute to Dr Calma, my predecessor as Social Justice Commissioner, for his tremendous contribution to the cause of health equality. He will continue as an active member of the Steering Committee. Jody Broun, Co-Chair of the National Congress was elected as the new Co-chair.

Throughout this period the Leadership Group has also been very active. This Leadership Group comprised of 14 Aboriginal and Torres Strait Islander health peak bodies and other health stakeholders, including the National Congress and the Commission. This 'group of 14' met many times over the first half of 2011 and worked to create a Position Paper that built on the work of the Close the Gap Campaign Steering Committee in relation to planning and partnership. This is included as Appendix 5 to this report.

A natural progression for the 'group of 14' was to create a partnership vehicle operating as part of the National Congress. On 15 August 2011, the *National Health Leadership Forum* (NHLF) established itself as the national representative body for Aboriginal and Torres Strait Islander health peak bodies. This role was recognised by the Indigenous Health Minister on 16 August and approved by the National Congress Board on 21 August 2011. The Diagram 1 illustrates the main features of the NHLF and how it operates in the National Congress structure.

67 Clarification of the terms "Close the Gap" and "Closing the Gap": "Close the Gap" was adopted as the name of the human rights based campaign for Indigenous health equality in 2006 led by the Close the Gap Campaign Steering Committee. The term 'closing the gap' entered the policy lexicon as a result of the Close the Gap Campaign's activities and has since been used to tag many different Indigenous policy initiatives from the COAG Closing the Gap Targets to the *National Partnership Agreement to Closing the Gap on Indigenous Health Outcomes* to the renaming of aspects of the Northern Territory Emergency Response (the intervention) as *Closing the Gap in the Northern Territory*. As a general rule, any initiative with "Closing the Gap" in the title is an Australian Government initiative. It is important to note that it does not necessarily reflect the human rights based approach of the Close the Gap Campaign as set out in this report, nor does the use of the term 'closing the gap' in relation to these initiatives necessarily reflect an endorsement of them by the Close the Gap Campaign Steering Committee.

68 Close the Gap Campaign Steering Committee, *Shadow Report – On Australian governments' progress towards closing the gap in life expectancy between Indigenous and non-Indigenous Australians* (2011). At http://humanrights.gov.au/social_justice/health/index.html (viewed 10 October 2011).

The NHLF is co-chaired by Jody Broun, a Co-chair of the National Congress, and Justin Mohamed, Chair of NACCHO. It has its own Secretariat. It will draw on the expertise of other bodies and individuals within the National Congress (and outside when necessary) by creating working groups. More broadly, it will draw on the National Congress structure to facilitate engagement and consultation with Aboriginal and Torres Strait Islander people, families and communities in relation to health matters.

A further function of the NHLF is to lead the Close the Gap Campaign for Indigenous Health Equality. This reflects the fact that the Close the Gap Campaign's Indigenous Leadership Group was the precursor to the NHLF.

The NHLF is leading the way in how the National Congress can work as an interface between peak bodies and government. I am excited by the potential of the NHLF to provide a strong advocacy voice in advancing health equality for our peoples. I believe it could also provide a blueprint on how the National Congress structure can operate for other sectors.

(iv) Twenty years since the Royal Commission into Aboriginal Deaths in Custody

On 12 April 2011 I hosted a public forum to mark the twenty years since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) handed down its findings. Sadly, we are in a situation where there are now more Aboriginal and Torres Strait Islander people in custody today, than there were twenty years ago. We make up around a quarter of the adult prison population⁶⁹ and over half of the juvenile detention population.⁷⁰ This over representation is unacceptable and underlies the systemic discrimination that Aboriginal and Torres Strait Islander people continue to face.

In the context of this sad anniversary, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs released their report, *Doing Time-Time for Doing, Indigenous youth in the criminal justice system*.⁷¹ I welcomed the report's holistic analysis of the factors leading to youth involvement with the criminal justice system and support the recommendations.

I particularly welcome the report's recommendation that justice targets be included in the Council of Australian Governments (COAG) Close the Gap Strategy.⁷² Dr Tom Calma, when he was Social Justice Commissioner, also made this recommendation in the *Social Justice Report 2009*.⁷³ While the current Closing the Gap initiatives in areas such as health, education and employment are welcome and will have a long-term positive effect on reducing imprisonment, targets addressing the current over-representation of young Indigenous people are crucial. I am pleased that the Attorney General has shown support for justice targets and the Standing Committee of Attorneys-General are pursuing further options.⁷⁴

69 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011) Productivity Commission, p 4.132. At [www.pc.gov.au/_data/assets/pdf.../key-indicators-2011-report.pdf](http://www.pc.gov.au/_data/assets/pdf/key-indicators-2011-report.pdf) (viewed 10 October 2011).

70 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011) Productivity Commission, p 4.137. At [www.pc.gov.au/_data/assets/pdf.../key-indicators-2011-report.pdf](http://www.pc.gov.au/_data/assets/pdf/key-indicators-2011-report.pdf) (viewed 10 October 2011).

71 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time, Time for Doing- Indigenous youth in the criminal justice system* (2011). At <http://www.aph.gov.au/house/committee/atsia/sentencing/report.htm> (viewed 10 October 2011).

72 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time, Time for Doing- Indigenous youth in the criminal justice system* (2011), p 40. At <http://www.aph.gov.au/house/committee/atsia/sentencing/report.htm> (viewed 10 October 2011).

73 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Australian Human Rights Commission (2010), p 56. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html (viewed 10 October 2011).

74 Standing Committee of Attorneys-General, *Communiqué Standing Committee of Attorneys-General 21–22 July 2011*. At <http://www.scag.gov.au/> (viewed 10 October 2011).

I am also pleased to see another authoritative report supporting justice reinvestment.⁷⁵ However, I am frustrated that we are yet to see any jurisdiction move towards trialling justice reinvestment.

I will continue to raise the issues around Aboriginal and Torres Strait Islander criminal justice issues in the hope that the next time we reflect on the RCIADIC we have more positive progress to note.

(e) Respect for and protection of culture

Aboriginal and Torres Strait Islander peoples belong to the oldest continuing culture in the world. When respected and nurtured, culture is a source of strength, resilience, happiness, identity and confidence.⁷⁶

Respect for and protection of culture and identity are a core component of the right to self-determination. Articles 11–13 of the Declaration specifically articulate how the right to culture applies to Indigenous peoples. More broadly cultural rights run throughout the Declaration, at least 17 of the 46 articles touch on culture and ‘one could find the cultural rights angle in each article of the Declaration’.⁷⁷

In considering the importance of culture I briefly analyse issues relating to lands, territories and resources, the concern that culture is marginalised in the Indigenous policy debate and the development of the Indigenous Economic Development Strategy.

(i) Lands, territories and resources

Aboriginal and Torres Strait Islander peoples relationship to lands, territories and resources is a fundamental part of our culture. Our rights to culture cannot be realised without respecting our spiritual connection to, and forms of ownerships of our country.⁷⁸

Through my work in the native title space, particular through my annual *Native Title Report*, I will lobby and advocate for reforms to native title and other legal and policy regimes that impact on our rights to lands, territories and resources. I will continue to advocate for reforms that are consistent with human rights standards and provide Aboriginal and Torres Strait Islander peoples with a just and equitable platform to realise our rights to lands, territories and resources. Our rights to country cannot be exercised in a vacuum, and I like my predecessor will advocate that Indigenous land policy must be developed in conjunction with other social and economic areas of policy.⁷⁹

I provide a full commentary on the developments in the native title system in Chapter 1 of the Native Title Report.

75 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time, Time for Doing-Indigenous youth in the criminal justice system* (2011), p 321. At <http://www.aph.gov.au/house/committee/atsia/sentencing/report.htm> (viewed 10 October 2011).

76 The Secretariat of the National Aboriginal and Islander Child Care, *National Aboriginal & Islander Children's Day*, <http://www.snaicc.asn.au/news-events/dsp-default.cfm?loadref=62> (viewed 10 October 2011).

77 E Stamatopoulou, ‘Taking Cultural Rights Seriously’ in S Allen and A Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (2011) 387, p 392.

78 See J Gilbert and C Doyle ‘A New Dawn over the Land: Shedding Light on Collective Ownership and Consent’ in S Allen and A Xanthaki (eds) *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (2011) 289.

79 See T Calma, *Caring for Culture, Caring for Country* (Speech at the Department of Environment, Water, Heritage and the Arts National Aborigines and Islanders Day Observance Committee (NAIDOC) Week Celebrations, 7 July 2008, Canberra). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2008/20080707_essentials_land_and_culture.html (viewed 10 October 2011).

(ii) Culture: a gap in the policy space

I have an ongoing concern that recognition of Aboriginal and Torres Strait Islander cultures and cultural differences is too frequently confined to the margins of the policy development and implementation process.

The Australian Government's Indigenous policy is driven by the COAG Closing the Gap targets and building blocks. There is currently no specific culture building block.

It is true that culture, language and identity should inform the COAG agenda through the Indigenous Engagement principle in the Service Delivery Principles scheduled to the National Indigenous Reform Agreement.⁸⁰ However, it is my concern that culture is often an afterthought in the development policy and programs. In Chapter 4 of this Report I will demonstrate the importance of creating a culturally competent bureaucracy. It is important that government policies and programs are designed in a manner that protects and promotes our culture or they will not have the maximum potential impact. However, respecting and protecting culture extends beyond a means to an end. It is a positive outcome in itself.

(iii) Indigenous Economic Development Strategy

As I have argued before in this Chapter, unless government policies and programs are designed in a manner that protects and promotes our culture they will not have the maximum potential impact. The Australian Government's *Draft Indigenous Economic Development Strategy* (IEDS)⁸¹ and the accompanying *Indigenous Economic Development Framework* and the *Action Plan 2010–2012*⁸² is a case in point. The aim of the IEDS is to 'increase the wellbeing of Indigenous Australians by supporting greater economic participation and self-reliance'.⁸³

The Commission provided a submission on the IEDS in December 2010.⁸⁴ In this submission we argued that culture is a strength upon which policy responses should be built. At its core this means empowerment and recognition of our cultural differences. The Commission recommended that the design of the IEDS be consistent with the Declaration. By virtue of the right to self-determination Aboriginal and Torres Strait Islander peoples should be able to 'freely pursue our economic, social and cultural development'⁸⁵ and to 'determine and develop priorities and strategies' for exercising our right to development.⁸⁶

To ensure the IEDS reflects the 'priorities and strategies' of Aboriginal and Torres Strait Islander peoples to pursue our own approaches to economic development, we need to be actively involved, in the design, development, implementation, monitoring and evaluation of the IEDS.⁸⁷

80 Council of Australian Governments, *National Indigenous Reform Agreement*, http://www.federalfinancialrelations.gov.au/content/national_agreements/downloads/IGA_FFR_ScheduleF_National_Indigenous_Reform_Agreement_Feb_2011.doc (viewed 10 October 2011).

81 Australian Government, *Indigenous Economic Development Strategy: Draft for Consultation* (2010). At http://resources.fahcsia.gov.au/IEDS/ieds_default.htm (viewed 10 October 2011).

82 Australian Government, *Indigenous Economic Development Strategy: Draft for Consultation* (2010), p1. At http://resources.fahcsia.gov.au/IEDS/ieds_default.htm (viewed 10 October 2011).

83 Australian Government, *Indigenous Economic Development Strategy: Draft for Consultation* (2010), p1. At http://resources.fahcsia.gov.au/IEDS/ieds_default.htm (viewed 10 October 2011).

84 Australian Human Rights Commission, *Submission to the Minister for Families, Housing, Community Services and Indigenous Affairs: Draft Indigenous Economic Development Strategy* (17 December 2010). At http://www.humanrights.gov.au/legal/submissions/sj_submissions/20101217_draft_Indigenous_dev.html (viewed 10 October 2011).

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

86 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), article 23. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 9 December 2010). Also see arts 4, 20 and 31(1).

87 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 18. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 9 December 2010).

Capacity building must be a key driver for the IEDS to be successful. Importantly this requires building the capacity of Aboriginal and Torres Strait Islanders and communities and also the capacity of government departments so that they can deliver on the objectives of the IEDS. This includes cultural competence to ensure policies and programs under the IEDS support the sustainability and self-determination of Aboriginal and Torres Strait Islander communities. Effective coordination across and within departments at all levels of government is also important.⁸⁸ This is supported by the Department of Finance's *Strategic Review of Indigenous Expenditure*. It recommended that a 'renewed commitment should be made within the Commonwealth to a coordinated, whole-of-government approach to the delivery of programs and services to Indigenous people'.⁸⁹

FaHCSIA has advised that it has considered the more than 100 submissions, met with identified key stakeholders to discuss the IEDS, and engaged in additional discussions with Aboriginal and Torres Strait Islander communities through the Indigenous Coordination Centres (ICC). It also advised that the final version of the IEDS will be released later this year.⁹⁰

I am hopeful that the final version of the IEDS incorporates the feedback of Aboriginal and Torres Strait Islander stakeholders and will protect and promote our cultures. I look forward to working with Aboriginal and Torres Strait Islander peoples, governments and the private sector to facilitate greater participation by Aboriginal and Torres Strait Islander peoples in economic development.

I discuss the IEDS in further detail in Chapter 1 of the *Native Title Report 2011*.

88 See Australian Human Rights Commission, *Submission to the Minister for Families, Housing, Community Services and Indigenous Affairs: Draft Indigenous Economic Development Strategy* (17 December 2010), p 8 At http://www.humanrights.gov.au/legal/submissions/sj_submissions/20101217_draft_Indigenous_devt.html (viewed 13 September 2011); T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2009*, Australian Human Rights Commission (2010), p 59. At http://www.humanrights.gov.au/social_justice/nt_report/index.html (viewed 26 September 2011).

89 Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure* (2010), p 289. At http://www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf (viewed 10 October 2011).

90 Native Title and Leadership Branch, Department of Families, Housing, Community Services and Indigenous Affairs, *Email correspondence to Australian Human Rights Commission*, 12 October 2011.

1.4 Giving full effect to the Declaration

The previous section of this Chapter has outlined some recent developments in light of the main principles of the Declaration. But as we can see, we still have some way to go before we give full effect to the Declaration. Significantly, the Special Rapporteur on the rights of indigenous peoples recommended that the Australian Government review all laws and policies for compliance with the Declaration.⁹¹ This is a recommendation with which I strongly agree. I will now report on some of the specific actions related to the promotion of the Declaration that took place during the reporting period.

(a) Raising awareness and building capacity

To give full effect to the Declaration we need to build the capacity of Aboriginal and Torres Strait Islander peoples and communities, governments, and other relevant players to enable them to effectively engage with the Declaration. This requires awareness-raising and capacity building. There have been three promising developments that my office has been involved with in the last year to increase awareness and capacity of people to engage with the Declaration.

(i) The Community Guide to the Declaration

On 13 December 2010, my Office launched a set of plain language resources to help Aboriginal and Torres Strait Islander peoples better understand and protect their rights. The materials produced were:

- a Community Guide to the Declaration
- an eight page overview of the Declaration
- a double sided poster that includes the full text of the Declaration.⁹²

The Community Guide to the Declaration uses real-life examples to explain the key principles of the Declaration and describe how communities can use it to promote practical action. These materials were produced with funding from the Christensen Fund and Oxfam Australia. A DVD version of the resource will be available shortly and further funding from the Christensen Fund for an interactive website has been secured.

Since being launched, there has been high demand for the materials from Aboriginal and Torres Strait Islander communities and organisations. Funding to print additional copies of the materials has been provided by FaHCSIA.

I believe these materials are a valuable resource to our communities and organisations to familiarise themselves with the Declaration and to develop ideas on how they can use the Declaration in their day-to-day business.

Our organisations can use the Declaration to bolster their lobbying and advocacy work in whatever sector they operate in. It is by using the Declaration and by quoting relevant articles that it will become the ordinary way of 'doing business'. A quote from Professor Mick Dodson cited in the Community Guide to the Declaration reflects this view and is outlined in Text Box 1.5.

91 S J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 74.

92 Soft copies of the Commission's Declaration materials can be downloaded from http://www.humanrights.gov.au/declaration_indigenous/index.html and hard copies can be ordered publications@humanrights.gov.au.

Text Box 1.5:

Using the Declaration for change

Aboriginal and Torres Strait Islander peoples can use the Declaration for change, Mick Dodson argues that:

I think people should use the Declaration at every opportunity. If you are writing to government quote articles of the Declaration. If you're involved in health quote the health articles, if you are involved in native title or land rights quote the lands, territories and resources articles, if you are in education quote the articles about education and language. If you are on about political organisation talk about self-determination and our right to be autonomous and govern ourselves. For any aspect of Aboriginal or Torres Strait Islander life there is something in the Declaration that you can use and utilise to reinforce your arguments and what you and your mob are trying to do.⁹³

The Declaration can also be applied to the governance frameworks of our organisations to assist in measuring their success in achieving the rights outlined in the Declaration. For example, to advance our rights to participate in decision-making that affects us, our representative bodies should ensure they echo the voices of the Aboriginal and Torres Strait Islander peoples they represent. I expand on this in greater detail in Chapter 3 of this report.

I would encourage all Aboriginal and Torres Strait Islanders, organisations and communities to familiarise themselves with the Declaration and apply it to all of your work and day-to-day lives. The more informed the debate is, the more we will demystify what implementing it can look like, and the more we can provide constructive advice to governments.

(ii) Australian Public Service human rights training

The Australian Government's Human Rights Framework recognises that human rights education – in schools, in the community and in the APS – is a critical step in improving and promoting human rights in Australia.

To support the focus on public sector human rights education, the Attorney-General launched the *Public Sector Education Program* on 7 September 2011. This program includes a series of human rights education materials and training on how human rights relate to the work of the public sector. Information about the Declaration is included in this education program as an important instrument that 'informs the way governments engage with and protect the rights of Indigenous peoples'.⁹⁴ Information about the Declaration is incorporated in the introductory booklet *In Our Hands: A Guide to Human Rights for Australian Public Servants*.⁹⁵ This publication is available to all Australian Public Servants and was the basis of human rights workshops for over 1 000 Australian Public Servants in 2011 organised by the Attorney-General's Department.

93 M Dodson in Australian Human Rights Commission, *The Community Guide to the Un Declaration on the Rights of Indigenous Peoples* (2010), p 65 At http://www.humanrights.gov.au/declaration_indigenous/index.html (viewed 10 October 2011).

94 Attorney-General's Department, *In our hands: A guide to human rights for Australian public servants* (2011), p 10. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrightsandthepublicsector_InourHandsAhumanrightsguideforAustralianpublicsector_Whatisthisguide (viewed 10 October 2011).

95 Attorney-General's Department, *In our hands: A guide to human rights for Australian public servants* (2011), p 10. At http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrightsandthepublicsector_InourHandsAhumanrightsguideforAustralianpublicsector_Whatisthisguide (viewed 10 October 2011).

The Declaration is also referred to in numerous 'Guidance Sheets' on the rights and responsibilities contained in each of the seven core international human rights treaties to which Australia is a party.⁹⁶

These are pleasing developments; however I am concerned they do not go far enough. I reiterate my concern that the Declaration remains on the margins of the Human Rights Framework generally and this human rights training for Australian Public Servants more specifically. Considering the Declaration is the international instrument that provides the most authoritative guidance to governments as to how their binding human rights obligations apply to Indigenous peoples, it must be front and centre of any human rights and Framework and associated training.

(iii) National Human Rights Institutions

The adoption of the Declaration has provided renewed impetus for examining the ways in which National Human Rights Institutions (NHRIs) can advance the rights of Indigenous peoples. The role of NHRIs, like the Commission, in advancing the rights of the world's Indigenous peoples is being increasingly recognised.⁹⁷

The Special Rapporteur on the rights of indigenous peoples James Anaya has specifically acknowledged that the office of the Social Justice Commissioner is 'an exceptional model for advancing the recognition and protection of rights of indigenous peoples'.⁹⁸

The Asia Pacific Forum of National Human Rights Institutions (APF),⁹⁹ the peak body for NHRIs in our region, and the Office of the High Commissioner for Human Rights (OHCHR)¹⁰⁰ have identified great interest amongst NHRIs in relation to Indigenous peoples rights and the Declaration. However there is a need for capacity development. As such there is a strong desire for technical cooperation and the development of educative tools to assist NHRIs to promote Indigenous peoples rights and the Declaration at the national level.

In response the OHCHR has partnered with APF to produce a training toolkit NHRIs to support and strengthen the work that they are doing to advance the rights of Indigenous peoples. The Social Justice Unit, within the Commission has been engaged by the APF in July 2010 to draft the written component of these materials. It is expected that this tool kit will be published in 2012.

96 The Attorney-General's Department, *Human Rights Guidance Sheets*, http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_Humanrightsandthepublicsector_Humanrightsguidancesheets_Humanrightsguidancesheets (viewed 10 October 2011).

97 Human Rights Council, *Human rights and indigenous peoples*, 15th session, UN Doc: A/HRC/RES/15/7 (2010), para 12; United Nations Permanent Forum on Indigenous Issues, *Report on the ninth session*, UN Doc E/2010/43-E/C.19/2010/15 (2010), paras 53, 93; Expert Mechanism on the Rights of Indigenous Peoples, *Report of the 2nd Session*, UN Doc A/HRC/12/32 (2009), p 5; S J Anaya, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples*, James Anaya, Report to the General Assembly, 64th session, UN Doc A/64/338 (2009), para 71.

98 S J Anaya, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, James Anaya, *Addendum: Situation of indigenous peoples in Australia*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/37/Add.4 (2010), para 74.

99 Asia Pacific Forum of National Human Rights Institutions, *The APF's role in promoting and protecting the rights of Indigenous Peoples: Background paper*, United Nations Workshop on National Human Rights Institutions and the UN Declaration on the Rights of Indigenous Peoples, Bangkok, Thailand (16–17 December 2009).

100 Office of the High Commissioner of Human Rights, *Note on the outcome of the International Meeting on the Role of National Human Rights Institutions in Promoting the Implementation of the UN Declaration on the Rights of Indigenous Peoples*, United Nations Workshop on National Human Rights Institutions and the UN Declaration on the Rights of Indigenous Peoples, Bangkok, Thailand (16–17 December 2009).

(b) International mechanisms addressing Indigenous human rights

At the international level today there are a number of mechanisms that provide guidance to governments as they implement their human rights obligations as they relate to Indigenous peoples. These include:

- the treaty bodies monitor the implementation of human rights treaties¹⁰¹
- the United Nations Permanent Forum on Indigenous Issues
- the Expert Mechanism on the Rights of Indigenous Peoples
- the Special Rapporteur on the right of indigenous peoples.

Incorporating the recommendations of these mechanisms into government processes is an important way in which to give full effect to the Declaration.

(c) National Action Plan for the Declaration

Giving full effect to the Declaration will require reform across the policy landscape and different levels. During the reporting period we have commenced discussions about the need for a National Action Plan for the Declaration. This is an area of work that I will be pursuing with the Australian Government and Aboriginal and Torres Strait Islander communities for the remainder of my term.

Strategic thinking has already begun around ways to give full effect for the Declaration. For example we could see:

- legislative reform including:
 - scheduling the Declaration to the *Australian Human Rights Commission Act 1986* (Cth)
 - incorporating the Declaration in the definition of human rights for the purposes of the proposed Parliamentary Joint Committee on Human Rights
 - incorporating the Declaration (or the key themes outlined above) as a relevant consideration for the purpose of administrative decision-making that affects Aboriginal and Torres Strait Islander peoples
- incorporating the Declaration into the Human Rights Framework including the National Human Rights Action Plan
- the creation of dispute resolution and redress mechanism including administrative review
- education and awareness raising
- changes to the policy process from design through to implementation and monitoring
- promoting cultural competency in the bureaucracy from a systems and individual perspective
- influence the operation of national planning, priorities and agreements including the National Indigenous Reform Agreement, the COAG Targets and Building Blocks and National Partnership Agreements
- incorporating into the reporting framework of the Overcoming Disadvantage Reports produced by the Productivity Commission.

101 See Office of the High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008), chapter IV. At <http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx> (viewed 11 October 2011).

This list is far from exhaustive, but it makes it clear that implementing the Declaration is not something that will simply happen with the stroke of a legislative pen, nor departmental policy. It requires institutional and cultural change, as well as institutional capacity building and importantly it will take time. A holistic approach is needed; a National Action Plan.

Of course, to be consistent with the Declaration, an Action Plan must be developed in conjunction with Aboriginal and Torres Strait Islander peoples. I am currently advocating that the Australian Government enter a process with Aboriginal and Torres Strait Islander peoples to negotiate and develop such an Action Plan to give full effect to the Declaration. This is particularly relevant because of the Australian Government's Human Rights Framework which includes the development of a National Action Plan on Human Rights. Unfortunately, as already noted the Human Rights Framework does not explicitly acknowledge that the Declaration will guide how the Framework or Action Plan will be implemented as it impacts on Aboriginal and Torres Strait Islander peoples

I encourage the Government to commit in good faith to developing a strategy in partnership with Aboriginal and Torres Strait Islander peoples to ensure the principles of the Declaration are given full effect.

1.5 Conclusion and Recommendations

As I stated at the beginning, I believe that despite continuing concerns we are on the cusp of great things if we are able to make good on some of the unfinished business that affects our communities.

The next big challenge is achieving constitutional recognition for Aboriginal and Torres Strait Islander people. I hope that the next year begins the formal campaign which will be a uniting moment for all Australians. To help achieve this I make a number of recommendations to facilitate the process. I also make recommendations on a number of other issues raised in this Chapter.

Recommendations

Constitutional recognition

1. That the Australian Government make the report of the *Expert Panel on Constitutional Recognition of Indigenous Australians* public as soon as practicable following its submission.
2. That the Australian Government establish a campaign and appoint a community engagement team to drive forward the recognition of Aboriginal and Torres Strait Islander peoples in Australia's Constitution.
3. That the Australian Government fully resource a popular education strategy to be developed and rolled out from early 2012 to:
 - engage the wider community in relation to the proposals for change and the reasons why they have been proposed
 - provide an opportunity for the Australian community to discuss and debate the options and express views on the change to be taken to a referendum.

Northern Territory Intervention

4. The Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples in the Northern Territory to overcome disadvantage and identify and address other issues of concern in their communities, through the establishment of legislation, programs and policies, as necessary, which are consistent with international human rights standards.

International human rights mechanisms

5. That the Australian Government take steps to formally respond to, and implement, recommendations which advance the human rights of Aboriginal and Torres Strait Islander peoples, made by international human rights mechanisms, including:
 - treaty reporting bodies
 - the Special Rapporteur on the rights of indigenous peoples
 - United Nations Permanent Forum on Indigenous Issues
 - Expert Mechanism on the Rights of Indigenous Peoples.
-

Statement or Charter of Engagement

6. That the Australia Government develop a 'Statement or Charter of Engagement' to complement *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians*. This document should include the Government's commitment to be guided by the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* when engaging with Aboriginal and Torres Strait Islander peoples, including the right to participate in decision-making, and the principle of free, prior and informed consent.

Implementation of the recommendations from Social Justice Reports

7. That the Australian Government should implement outstanding recommendations from the *Social Justice Report 2010* and provide a formal response for next year's Report which outlines the Government's progress against the recommendations from both the *Social Justice Report 2010* and *Social Justice Report 2011*.

Implementation of the Declaration

8. That the Australian Government work in partnership with Aboriginal and Torres Strait Islander peoples to develop a national strategy to ensure the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* are given full effect.

Chapter 2: Lateral violence in Aboriginal and Torres Strait Islander communities

2.1 Introduction **52**

2.2 Understanding lateral violence **54**

2.3 What does lateral violence look like? **83**

2.4 Conclusion **98**



2.1 Introduction

Last year I set out my priorities for my term as Social Justice Commissioner.¹ My priorities revolve around the central idea that to address the disadvantage faced by Aboriginal and Torres Strait Islander peoples and build a more reconciled nation, we need to develop stronger and deeper relationships:

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

This year I am addressing the relationships within our own communities in my Social Justice and Native Title Reports.

Aboriginal and Torres Strait Islander communities face many challenges and sadly some of the divisive and damaging harms come from within our own communities. Ask any Aboriginal or Torres Strait Islander person and they will tell you stories of the back stabbing, bullying and even physical violence perpetrated by community members against each other. When we already have so many of the odds stacked against us, it is tragic to see us inflict such destruction on ourselves.

There is a name for this sort of behaviour: lateral violence. Lateral violence is often described as ‘internalised colonialism’² and according to Richard Frankland includes:

[T]he organised, harmful behaviours that we do to each other collectively as part of an oppressed group: within our families; within our organisations and; within our communities. When we are consistently oppressed we live with great fear and great anger and we often turn on those who are closest to us.³

The theory behind lateral violence explains that this behaviour is often the result of disadvantage, discrimination and oppression, and that it arises from working within a society that is not designed for our way of doing things.

The *Social Justice Report 2011*, in conjunction with the *Native Title Report 2011*, will start a conversation about lateral violence in our communities. Although it is not an easy conversation to have, it is one that is long overdue.

Last year, when I first raised the concept of lateral violence in this role, I was concerned that a frank airing of this issue might cause me some grief. I was prepared that some would accuse me of airing our dirty laundry in public. There were already enough bad news stories about Aboriginal and Torres Strait Islander peoples in the popular domain. The last thing we need is for certain sections of the society to add lateral violence to the litany of dysfunctions associated with Aboriginal and Torres Strait Islander communities.

When the time came to consider the drafting of this Chapter this year, I was concerned to achieve a balance between what could be seen as the identification of another one of these dysfunctions and the need to address an issue that has serious implications for us as Aboriginal and Torres Strait Islander peoples.

I have had to think long and hard about being open and honest about the damage that lateral violence does in our communities; am I contributing to the further demonisation of our people?

1 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), pp 19–26. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 21 September 2011).

2 R Frankland and P Lewis, *Presentation to Social Justice Unit staff*, Australian Human Rights Commission, 14 March 2011.

3 R Frankland and P Lewis, *Presentation to Social Justice Unit staff*, Australian Human Rights Commission, 14 March 2011.

While this is a view that some people may possibly take, the damage and impact caused by not doing anything about lateral violence is, in my view, far greater than the risk of speaking out.

In coming to this view, I've been buoyed by the encouragement I have received whenever I have raised this issue with Aboriginal and Torres Strait Islanders. There seems to be a considerable appetite within our communities to confront and deal with lateral violence.

I have been similarly challenged by how to confront this issue and how to get the balance right between painting lateral violence as another problem of a troubled people and explaining its historical context without apportioning blame.

Addressing lateral violence will require significant courage, goodwill and determination but I think the gains will be immense. While we continue to harm each other with lateral violence and while governments and industry operate in a way that fosters lateral violence, there will be little progress in improving the indicators that measure the gap between Aboriginal and Torres Strait Islander peoples and the broader Australian community. As I have consistently argued since becoming Social Justice Commissioner, real progress will only come from a basis of strong, respectful relationships.

This Chapter informs the conversation on lateral violence by providing an explanation, as well as examples, of lateral violence in our communities. This Chapter consists of two parts:

- The first part will describe and explain the concepts behind lateral violence, the historical processes and the role of governments in creating the conditions for lateral violence.
- The second part of this Chapter will look at the practical experience of lateral violence in Aboriginal and Torres Strait Islander communities, by examining organisational conflict, bullying, impacts on social and emotional health and physical violence leading to involvement with the criminal justice system.

Lateral violence is an emerging area of public discourse here in Australia, and consequently there is currently very little research and formal evidence about the experience of lateral violence in Aboriginal and Torres Strait Islander communities. While drawing on strong theoretical underpinnings, this report will also be based on anecdotal evidence from our communities, sharing our stories, struggles and successes as we begin to address lateral violence.

2.2 Understanding lateral violence

(a) Definitions of lateral violence

Lateral violence, also known as horizontal violence or intra-racial conflict, is a product of a complex mix of historical, cultural and social dynamics that results in a spectrum of behaviours that include:

- gossiping
- jealousy
- bullying
- shaming
- social exclusion
- family feuding
- organisational conflict
- physical violence.

Lateral violence is not just an individual's behaviour. It often occurs when a number of people work together to attack or undermine another individual or group. It can also be a sustained attack on individuals, families or groups.

The use of the term 'violence' can be confusing. As Text Box 2.1 notes, it is important to understand that lateral violence doesn't just refer to physical violence but also social, emotional, psychological, economic and spiritual violence.

John Liddle, in a speech during the first Aboriginal Men's Health Conference in Alice Springs, where the important Inteyerrkwe Statement of Apology was made, describes lateral violence:

By recognising actions such as malicious gossip as violence we can better appreciate that this kind of mental assault can be just as damaging as physical violence. We can appreciate the trauma that these attacks can have on others, and we can better understand how these attacks undermine both our communities and our own wellbeing.⁴

Some research has shown that like other forms of violence, lateral violence is cyclical in nature and includes discreet stages.⁵ Diagram 1 illustrates the process.

4 J Liddle in M Langton, 'The end of "big men" politics' (2008) 22 *Griffith Review* 11, pp 15–16. At <http://griffithreview.com/edition-22-moneysexpower/the-end-of-big-men-politics> (viewed 21 September 2011).

5 R Frankland and P Lewis, *Presentation to Social Justice Unit staff*, Australian Human Rights Commission, 14 March 2011.

Text Box 2.1:

What is violence?

The World Health Organization (WHO) defines violence as:

The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.⁶

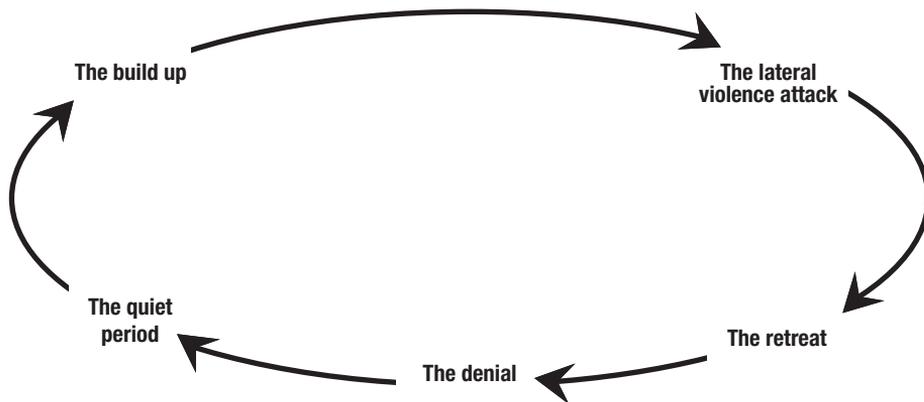
The WHO goes on to explain this definition further:

The inclusion of the word ‘power’, in addition to the phrase ‘use of physical force’, broadens the nature of violence to include those acts that result from a power relationship, including threats and intimidation. The ‘use of power’ also serves to include neglect or acts of omission, in addition to the more obvious violent acts of commission. Thus, ‘the use of physical force or power’ should be understood to include neglect and all types of physical, sexual and psychological abuse, as well as suicide and other self-abusive acts.

The definition covers a broad range of outcomes – including psychological harm, deprivation and maldevelopment. This reflects a growing recognition among researchers and practitioners of the need to include violence that does not necessarily result in injury or death, but that nonetheless poses a substantial burden on individuals, families, communities and health care systems worldwide...These consequences can be immediate, as well as latent, and can last for years after the initial abuse. Defining outcomes solely in terms of injury or death limits the full impact of violence on individuals, communities and society at large.⁷

Diagram 2.1:

The cycle of lateral violence



6 World Health Organization, *World report on violence and health* (2002), p 5. At http://www.who.int/violence_injury_prevention/violence/world_report/chapters/en/index.html (viewed 21 September 2011).

7 World Health Organization, *World report on violence and health* (2002), p 5. At http://www.who.int/violence_injury_prevention/violence/world_report/chapters/en/index.html (viewed 21 September 2011).

Like all forms of violence, lateral violence can become normalised if it is not challenged. The normalisation of violence, as well as the harm and trauma caused by all forms of violence, fuels the cycle of lateral violence.

These behaviours are not unique to Aboriginal and Torres Strait Islander communities. People everywhere deal with similar behaviours on a daily basis. However, what makes lateral violence different for us is that it stems from the sense of powerlessness that comes from oppression.

Lateral violence affects Indigenous peoples all around the world. In particular, there has been pioneering research and interventions to address lateral violence in Canada. Text Box 2.2 outlines some of the developments in Canada.

Text Box 2.2:

The Canadian experience of dealing with lateral violence

The history of Canadian Aboriginal peoples is different from Aboriginal and Torres Strait Islander peoples. However, there are also notable similarities in the way colonisation has attacked culture and the traditional structures that kept communities functioning in healthy ways.

The *Social Justice Report 2008* examined some of the Canadian history and journey to healing that informs the efforts to address lateral violence.⁸ In particular the legacy of forced removal of children has had a profound impact:

Like Australia, generations of Aboriginal children were taken away from their families. In Canada between 1800s and 1990s, over 130 government funded church run industrial schools, boarding schools and hostels operated for Aboriginal children. Many of these children suffered physical and sexual abuse, as well as the loss of family, community and cultural connection. It is estimated that there are approximately 86 000 survivors of the residential schools alive in Canada today and 287 350 people estimated to have been intergenerationally impacted.⁹

Canadian Aboriginal people have led the way in addressing lateral violence, in particular through the work of people like Allen Benson and Patti LaBoucane-Benson from the Native Counselling Services of Alberta. By starting the conversation about lateral violence through workshops, community training and the production of educational videos, they have brought the conversation to thousands of people, including Indigenous peoples in other countries like Australia, and started the healing process.

Lateral violence has also been identified by the Canadian Aboriginal Healing Foundation, an independent Aboriginal run corporation set up to deal with the legacy of the residential schools, as an example of the 'unresolved trauma' still facing communities. Lateral violence has been addressed within the broad suite of community based healing and culture revitalisation programs that fit within the three pillars of healing; 'reclaiming history, cultural interventions and therapeutic healing'.¹⁰

8 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), pp 147–197. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 21 September 2011).

9 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), p 177. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 21 September 2011).

10 L Archibald, *Final Report of the Aboriginal Healing Foundation, Volume III: Promising Healing Practices in Aboriginal Communities*, Aboriginal Healing Foundation (2006), p 16. <http://www.ahf.ca/downloads/final-report-vol-3.pdf> (viewed 21 September 2011).

Lateral violence programs have operated at the level of healing relationships for those affected as well as more broadly defined cultural renewal programs which aim to prevent lateral violence by increasing connection to and pride in culture. Given the high number of Aboriginal people forcibly removed from their communities and culture to residential schools, cultural renewal has been a particularly important area of work.

Lateral violence has also been identified in other contexts. For instance, the nursing profession has categorised the bullying that occurs amongst nurses as lateral violence.¹¹ Nurses have a relatively low status in the hospital environment and little power compared to other health professionals so it has been suggested that they act out towards other nurse colleagues to vent frustration. While the nursing context seems far removed from the situation of Indigenous peoples, there are common themes around power that I will be exploring below.

(b) Colonisation and the historical development of lateral violence

The concept of lateral violence has its origins in literature on colonialism from Africa¹² and Latin America,¹³ as well as the literature around the oppression of African Americans,¹⁴ Jewish people¹⁵ and women.¹⁶ The process of colonisation and other forms of oppression have their roots not only in the violent subjugation of groups but also more insidious forms of social control.

In order to establish power and control, the colonising powers positioned the groups being colonised as inferior to themselves, ignoring their basic humanity as well as their cultural identity, existing power structures and ways of life. Despite often fierce resistance on the part of the colonised groups, theorists such as Paulo Friere¹⁷ and Frantz Fanon¹⁸ argue that the colonised groups internalised the values and behaviours of their oppressors, leading to a negative view of themselves and their culture. This results in low self-esteem and often the adoption of violent behaviours.

Colonisation robbed groups of their power, autonomy and land. Living in a world where they are constantly portrayed as second class citizens at best, but often not even citizens at all, it is not surprising that colonised groups have struggled to maintain their own identities and confidence in their abilities. Their anger and frustration about the injustices has manifested itself in violence, not 'vertically' towards the colonisers responsible for oppression, but 'laterally' towards their own community.

The overwhelming position of power held by the colonisers, combined with internalised negative beliefs, fosters the sense that directing anger and violence toward the colonisers is too risky or fruitless. In this situation we are safer and more able to attack those closest to us who do not represent the potent threat of the colonisers. Or as Richard Frankland explains:

11 S Roberts, 'Oppressed group behaviour: implications for nursing' (1983) 5(4) *Advances in Nursing Science* 21.

12 F Fanon, *The Wretched of the Earth* (1963).

13 P Freire, *Pedagogy of the Oppressed* (1970).

14 S Carmichael and C Hamilton, *Black Power* (1967).

15 K Lewin, *Resolving Social Conflicts* (1948).

16 J Miller, *Toward a New Psychology for Women* (1976).

17 P Freire, *Pedagogy of the Oppressed* (1970).

18 F Fanon, *The Wretched of the Earth* (1963).

[Lateral violence] comes from being colonised, invaded. It comes from being told you are worthless and treated as being worthless for a long period of time. Naturally you don't want to be at the bottom of the pecking order, so you turn on your own.¹⁹

Gregory Phillips describes lateral violence as trying to 'feel powerful in a powerless situation'.²⁰ Acts of lateral violence establish new hierarchies of power within colonised groups that mimic those of the colonisers. That means, not only are we dealing with the harm that lateral violence causes individuals, we are also dealing with the destruction that it causes to the traditional structure and roles in our societies as we abandon our own ways and become the image of those who oppress us.

Looking back on our history, we see the same patterns here in Australia. Aboriginal and Torres Strait Islander peoples have been living together on our lands and with the environment for over 70 000 years. We have strong social structures, rich culture and complex ways of managing a harsh landscape. This included strong sophisticated systems of law. Aboriginal and Torres Strait Islander peoples had mechanisms to govern not only interpersonal relationships, but trade and territorial agreements between different nations, clans and groups. Men's and women's business, elders councils and ceremonies regulated all aspects of life and were used to remedy conflict.

Strict protocols for dispute and conflict resolution were developed and payback was limited to only the most severe offences like murder. Punishments were proportionate to the crime and physical violence was very rarely used:

[I]nstances of customary sanctioned violence were isolated instances of punishment governed by strict rules and regulations. Society was regulated through principles and values that determined everyone's cultural and social responsibilities and breaching those responsibilities attracted punishment.

The role of sanctioned violence was to ensure social cohesion and relative harmony, but...the threat of violence or abuse was often enough to act as a deterrent to antisocial behaviour. '*Fighting behaviour was controlled by elders and senior adults, and was carried out according to social rules in response to specified offences*'.²¹

However, when the British arrived on our shores, rather than respect our rights, the great lie of *terra nullius* was created: we simply didn't exist as fellow humans in the eyes of our colonisers, leading to the cycle of violence, oppression and dispossession.

We know that Aboriginal and Torres Strait Islander peoples did not give up their land without a fight. There are many courageous freedom fighters who mounted brave but ultimately doomed battles. Like the failed attempts at resistance in other colonised countries, Aboriginal and Torres Strait Islander peoples found there was effectively no way for them to challenge the colonisers as their power and resources were too great. This frustration planted the first seeds of lateral violence.

As large scale resistance became untenable Aboriginal and Torres Strait Islanders were forced onto missions and reserves. The missions and reserves set up the perfect conditions for lateral violence. The missions and reserves were based on the notion that Aboriginal and Torres Strait Islander peoples were a 'dying race' who could not be saved because of their supposed inferiority and inability to live in the 'modern world'.

19 R Frankland in Creative Spirits, *Bullying and Lateral Violence*, <http://www.creativespirits.info/aboriginalculture/people/bullying-and-lateral-violence.html> (viewed 21 September 2011).

20 G Phillips, *Healing Identity in contemporary Australia: what is a real/traditional/grassroots Aborigine* (Australian Institute of Aboriginal and Torres Strait Islander Studies Seminar Series, Canberra, 18 May 2009). At http://www.vimeo.com/moogaloo.swf?clip_id=9173079 (viewed 21 September 2011).

21 S Gordon, K Hallahan and D Henry, *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (2002), p 70. At http://www.strongfamilies.wa.gov.au/About/How_it_started/Gordon_inquiry (viewed 21 September 2011). Emphasis in original. In text referencing omitted.

The central premise of the mission and reserve system was that European culture was superior to Aboriginal and Torres Strait Islander culture. Aboriginal and Torres Strait Islander peoples were not allowed to practice their cultures or speak their languages. They lived in a system where every aspect of their lives was controlled by the authorities. The missions actively attacked our traditional roles, culture and social structures.²²

Again, the missions and reserves reinforced the powerlessness of Aboriginal and Torres Strait Islander peoples and the futility of resistance. Based on the necessity to survive, many Aboriginal and Torres Strait Islanders also began to adopt some of the behaviours and values of their oppressors and internalise the negative messages about their own culture and value.

The missions and reserves were the first real attempt to ‘divide and conquer’ Aboriginal and Torres Strait Islander peoples. The *Bringing Them Home* report graphically tells the story of how fair skinned Aboriginal and Torres Strait Islander children were forcibly removed from their families.²³ Fair skinned Aboriginal and Torres Strait Islanders, or those deemed to have been ‘assimilated’, were able to apply for exemptions from the Protection Act, setting up a situation that created social fractures and jealousy. These government attempts to control and define Aboriginal and Torres Strait Islander identity, in other words, determine who was Aboriginal and Torres Strait Islander and who was not, historically sets up one of the fundamental drivers of lateral violence. Text Box 2.3 examines the Protection Acts illustrating how Australian governments viewed issues of Aboriginal and Torres Strait Islander identity during this period of history.

Text Box 2.3: The Protection Acts

Each Australian State and Territory enacted legislation that legalised the government’s control and management of the lives and destinies of Aboriginal peoples, and later Torres Strait Islanders. The legislation that defined Aboriginal and Torres Strait Islander identity was based on abhorrent notions of blood quantum and based solely on the perspectives of the colonisers, rather than our own feelings on belonging and connection. For example the *Native Title Administration Act 1936 (WA)* defined a ‘native’ as:

- (a) any person of the full blood descended from the original inhabitants of Australia;
- (b) subject to the exceptions stated in this definition any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, excepting however any person who is –
 - (i) a quadroon²⁴ under twenty-one years of age who neither associates with or lives substantially after the manner of the class of persons mentioned in paragraph (a) in this definition unless such quadroon is ordered by a magistrate to be classed as a native under this Act;

22 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997), Part 2. At http://www.humanrights.gov.au/social_justice/bth_report/report/index.html (viewed 21 September 2011).

23 Human Rights and Equal Opportunity Commission, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997). At http://www.humanrights.gov.au/social_justice/bth_report/report/index.html (viewed 21 September 2011).

24 A ‘quadroon’ was defined as ‘a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original full blood’: *Native Title Administration Act 1936 (WA)*, s 2.

- (ii) a quadroon over twenty-one years of age, unless that person is by order of a magistrate ordered to be classed as a native under this Act, or requests that he be classed as a native under this Act; and
- (iii) a person of less than quadroon blood who was born prior to the 31st day of December, 1936, unless such person expressly applies to be brought under this Act and the Minister consents.²⁵

The use of blood quantum was taken to extraordinary levels. In Western Australia in 1952 public servants used fractions as minute as 1/128th Aboriginal descent to determine welfare benefits.²⁶

The Protection Acts were intended to have a long-term effect, aimed at integrating the Aboriginal population into the broader population where possible, and isolating those that could not be integrated in accordance with the Acts.

In effect, the Acts reduced those under the Act to 'State wards', and 'limited the reproduction of part-Aboriginal offspring – the so-called 'half-caste menace' – seen at the time as a threat to an ideal 'White Australia'.²⁷

Although presented at the time as a charitable, humane and philanthropic measure, the 1897 Act in its practical outcome was oppressive and restricted the freedom of Aboriginal people more effectively than the sale of opium.²⁸

In the name of their 'protection' Aboriginal people who had survived the early 'disorder', the outright violence and particularly 'governmental form of warfare', were herded into missions and reserves by the 'ordering' state.²⁹

Below are excerpts from one example of the Protection Acts, the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* (Qld) that is referred to in the quote above. The Protection Act in Queensland survived until the 1970s.³⁰

Aboriginal Protection and Restriction of the Sale of Opium Act 1897 (Qld)

Section 3

The following terms shall, in this Act (unless the context otherwise indicates), bear the several meanings set against them respectively:

"Half-caste" – Any person being the offspring of an aboriginal mother and other than an aboriginal father: Provided that the term "half-caste," wherever it occurs in this Act elsewhere than in the next following section, shall, unless the context otherwise requires, be construed to exclude every half-caste who, under the provisions of the said section, is deemed to be an aboriginal.

25 *Native Title Administration Act 1936* (WA), s 2.

26 See R Broome, *Aboriginal Australians: A history since 1788* (4th ed, 2010), p 197

27 Museum of Australian, *Documenting a Democracy – Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld), <http://foundingdocs.gov.au/item-sdid-54.html#significance> (viewed 21 September 2011).

28 Museum of Australian, *Documenting a Democracy – Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld), <http://foundingdocs.gov.au/item-sdid-54.html#significance> (viewed 21 September 2011).

29 D Tedmanson, 'Isle of exception: sovereign power and Palm Island' (2008) 4(2) *Emerald: critical perspectives on international business* 142, p 148.

30 H McRae, G Nettheim, T Anthony, L Beacroft, S Brennan, M Davis and T Janke, *Indigenous Legal Materials: Commentary and Materials* (4th ed, 2009), p 26.

Section 4

Every person who is –

- a) An aboriginal inhabitant of Queensland; or
- b) A half-caste who, at the commencement of this Act, is living with an aboriginal as wife, husband, or child; or
- c) A half-caste who, otherwise than as wife, husband, or child, habitually lives or associates with aboriginals;

shall be deemed to be an aboriginal within the meaning of this Act.

Section 6

The Governor in Council may from time to time appoint, for the purpose of carrying the provisions of this Act into effect, fit and proper persons, to be severally called "Protector of Aboriginals," who shall, within the Districts respectively assigned to them, have and exercise the powers and duties prescribed.

Section 7

The Governor in Council may appoint such and so many Superintendents for the reserves, situated within such Districts as aforesaid, as may be necessary for carrying the provisions of this Act into effect.

Section 8

Every reserve shall be subject to the provisions of this Act and the Regulations.

Section 9

It shall be lawful for the Minister to cause every aboriginal within any District, not being an aboriginal excepted from the provisions of this section, to be removed to, and kept within the limits of, any reserve situated within such District, in such manner, and subject to such conditions, as may be prescribed. The Minister may, subject to the said conditions, cause any aboriginal to be removed from one reserve to another.

Section 10

Every aboriginal who is –

- a) Lawfully employed by any person under the provision of this Act or the Regulations, or under any other law in force in Queensland;
- b) The holder of a permit to be absent from the reserve; or
- c) A female lawfully married to, and residing with, a husband who is not himself an aboriginal;
- d) Or for whom in the opinion of the Minister satisfactory provision is otherwise made;

shall be excepted from the provisions of the last preceding section.

Section 11

It shall not be lawful for any person other than an aboriginal, not being a Superintendent or a person acting under his direction and not being a person authorised under the Regulations, to enter or remain or be within the limits of a reserve upon with aboriginals are residing, for any purpose whatsoever.

Section 31

The Governor in Council may from time to time, by Proclamation, make Regulations for all or any of the matters following, that is to say, –

- (1) Prescribing the mode of removing aboriginals to a reserve, and from one reserve to another;
- (3) Authorising entry upon a reserve by specified persons or classes of persons for specified objects, and defining those objects, and the conditions under which such persons may visit or remain upon a reserve, and fixing the duration of their stay thereupon, and providing for the revocation of such authority in any case;
- (6) Apportioning amongst, or for the benefit of, aboriginals or half-castes, living on a reserve, the net produce of the labour of such aboriginals or half-castes;
- (7) Providing for the transfer of any half-caste child, being an orphan, or deserted by its parents, to an orphanage;
- (8) Prescribing the conditions on which any aboriginal or half-caste children may be apprenticed to, or placed in service with, suitable persons;
- (10) Prescribing the conditions on which the Minister may authorise any half-caste to reside upon any reserve, and limiting the period of such residence, and the mode of dismissing or removing any such half-caste from such reserve;
- (11) Providing for the control of all aboriginals and half-castes residing upon a reserve, and for the inspection of all aboriginals and half-castes, employed under the provisions of this Act or the Regulations;
- (13) Imposing the punishment of imprisonment, for any term not exceeding three months, upon any aboriginal or half-caste who is guilty of a breach of the Regulations relating to the maintenance of discipline and good order upon a reserve;
- (14) Imposing, and authorising a Protector to inflict summary punishment by way of imprisonment, not exceeding fourteen days, upon aboriginals or half-castes, living upon a reserve or within the District under his charge, who, in the judgment of the Protector, are guilty of any crime, serious misconduct, neglect of duty, gross insubordination, or wilful breach of the Regulations;
- (16) Prohibiting any aboriginal rites or customs that, in the opinion of the Minister, are injurious to the welfare of aboriginals living upon a reserve;

Section 33

It shall be lawful for the Minister to issue to any half-caste, who, in his opinion, ought not to be subject to the provisions of this Act, a certificate, in writing under his hand, that such half-caste is exempt from the provisions of this Act and the Regulations, and from and after the issue of such certificate, such half-caste shall be so exempt accordingly.

Although the detail of the Protection Acts varied across Australian jurisdictions, all of these legislative measures imposed the classificatory system of who was or was not living under the Act.³¹

31 The Protection Acts can be found at AIATSIS, *To Remove and Protect*, <http://www1.aiatsis.gov.au/exhibitions/removeprotect/index.html> (viewed 21 September 2011).

This system of classification set up tensions in Aboriginal and Torres Strait Islander communities as well as often irreconcilable conflicts for many individuals. Text Box 2.4 gives one example of paradoxes of living between two worlds.

Text Box 2.4: Living between two worlds

An Aboriginal and Torres Strait Islander Commission report, *As a Matter of Fact*, describes one example of the way the Protection Act defined the lives of Aboriginal and Torres Strait Islanders, even when individuals were granted exemption. The complexity of the situation can be seen below:

In 1935 a fair skinned Aboriginal man of part Indigenous descent was ejected from a Hotel for being Aboriginal. He returned to his home on the mission station to find himself refused entry because he was not an Aborigine. He tried to remove his children but was told he could not because they were Aboriginal. He walked to the next town where he was arrested for being an Aboriginal vagrant and placed on the local reserve. During World War II he tried to enlist but was told he could not because he was Aboriginal. He went interstate and joined up as a non-Aboriginal. After the war he could not acquire a passport without permission because he was Aboriginal. He received exemption from the Aborigines Protection Act, and was told he could no longer visit relatives on the reserve because he was not Aboriginal. He was denied entry to the Returned Services Club because he was Aboriginal.³²

Ironically, while the protection system developed complex blood quantum calculations to decide 'how Aboriginal' individuals were, they had no regard for the existing tribal, clan and family group divisions that are important markers of culture and identity. This resulted in groups who were forced off their own land being made to live in close quarters with those they should not associate with on missions and reserves. In the past, these tensions were managed through avoidance and other social controls but when different groups were forced onto missions and reserves, serious conflicts arose.

In summary, this very brief look at the process of colonisation of Aboriginal and Torres Strait Islander peoples in Australia explains how colonisation creates the conditions for lateral violence through:

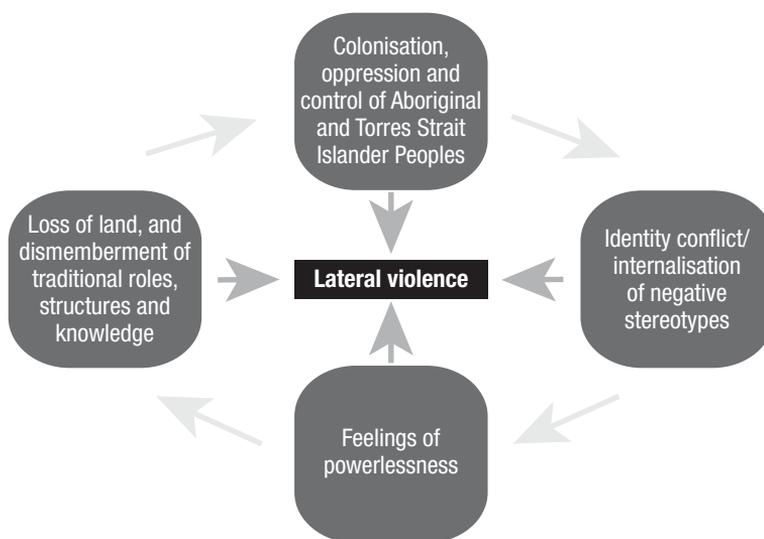
- Powerlessness – colonisation sets up a power dynamic where Aboriginal and Torres Strait Islander peoples felt powerless in the face of colonisers, breeding anger and frustration with no appropriate way for them to be vented. Colonisation created a system where every aspect of Aboriginal and Torres Strait Islander peoples' lives were controlled. This robbed Aboriginal and Torres Strait Islander peoples of their right to self-determination.
- The dismemberment of traditional roles, structures and knowledge – colonisation diminished traditional culture and roles as well as eroding the traditional structures for dealing with conflict.
- Attacking and undermining Aboriginal and Torres Strait Islander culture and humanity – colonisation denied the value of Aboriginal and Torres Strait Islander cultures. It was a fundamental attack on the humanity of Aboriginal and Torres Strait Islanders and our capacity to function as a society, community and family. Aboriginal and Torres Strait Islanders were seen as 'lesser people' with an

32 Aboriginal and Torres Strait Islander Commission, *As a Matter of Fact* (1998), p 60. At www.actdgp.asn.au/content/Document/as%20a%20matter%20of%20fact.pdf (viewed 21 September 2011).

‘uncivilised culture’. Serious negative consequences were put in place for continuing to practice culture and language. The violence of the colonisation process served to reinforce the apparent worthlessness of our peoples. In this environment, Aboriginal and Torres Strait Islanders began to adopt some of the behaviours and values of the colonisers and internalise some of the negative attitudes about their own culture in order to survive. This undermined pride and added to feelings of powerlessness.

- Creating conflict about Aboriginal and Torres Strait Islander identity – government authorities began to decide who was Aboriginal or Torres Strait Islander, setting up divisions and jealousies in communities.

Diagram 2.2:
The origins of lateral violence



The next section of this Chapter will bring us into the present and look at the contemporary drivers of lateral violence in Aboriginal and Torres Strait Islander communities.

(c) Contemporary concepts of lateral violence

Our history of colonisation casts a dark shadow across our present. While lateral violence has its roots in our history, it thrives today because power imbalances, control by others, identity conflict, negative stereotypes and trauma continue to feed it.

(i) Power, needs and disadvantage

Let me say firstly, I do not think that Aboriginal and Torres Strait Islander peoples are powerless. Our history is full of many brave communities and individuals who have done their best to look after their families, communities and culture. We all have choices and we all have responsibility for the lives we lead.

However, power is a web and we are held down because of it and it is indisputable that Aboriginal and Torres Strait Islander peoples still deal with an unequal power dynamic. From the fact that we are yet to be recognised in the Australian Constitution; that governments seldom work in true partnership with us; and that we are the most disadvantaged group on a range of social indicators; it is clear that the power balance remains unequal.

Noel Pearson describes the power dynamics at play, arguing the 'lower down the social pyramid you go, the more intense the dynamic is'.³³ Based on his work, Pearson suggests:

For those at the bottom, the gravitational forces are so strong as to almost prevent progress.

Some would say this is the nature of oppression. Whenever the forces of social class come to bear at the lower end of society, then lateral violence and fellow envy is all-consuming. There's no one lower down to direct any downward envy, so one can only look to these laterally to ensure they don't improve their lot.

I see this every day among the people with whom I work, whom I love and whose futures I work to try and improve. People striving to climb to a better life who are thwarted. People who do not think it is right that anyone should climb to a better life. People who have hope but not the courage; the desire but not the will. And I don't blame them for their sense of debilitation.³⁴

Marcia Langton has also discussed the underlying power issues involved in lateral violence, arguing that lateral violence is:

[T]he expression of anomie and rage against those who are also victims of vertical violence and entrenched and unequal power relations.³⁵

This 'anomie and rage' is also a product of the sense of powerlessness that many feel at not being able to have their basic needs met. Basic needs are not just food, water and shelter but also include the needs that all human beings have to feel heard, valued and autonomous. People need to meaningfully participate in the decisions that affect their lives.

Human needs theory helps explain this further, giving us another way to look at what is happening below the surface of conflicts like lateral violence. According to human needs theorists, one of the primary causes of conflicts like lateral violence is 'people's unyielding drive to meet their unmet needs on the individual, group and societal level'.³⁶ Expanding on Maslow's hierarchy of needs, as explained in Text Box 2.5 below, theorists such as John Burton have argued that many conflicts could be resolved if human needs were met.³⁷

33 N Pearson, 'Individualism versus communalism', *The Australian*, 6 August 2011. At <http://www.theaustralian.com.au/national-affairs/opinion/individualism-versus-communalism/story-e6frgd0x-1226109346928> (viewed 21 September 2011).

34 N Pearson, 'Individualism versus communalism', *The Australian*, 6 August 2011. At <http://www.theaustralian.com.au/national-affairs/opinion/individualism-versus-communalism/story-e6frgd0x-1226109346928> (viewed 21 September 2011).

35 M Langton, 'The end of "big men" politics' (2008) 22 *Griffith Review* 11, p 15. At <http://griffithreview.com/edition-22-moneysexpower/the-end-of-big-men-politics> (viewed 4 August 2011).

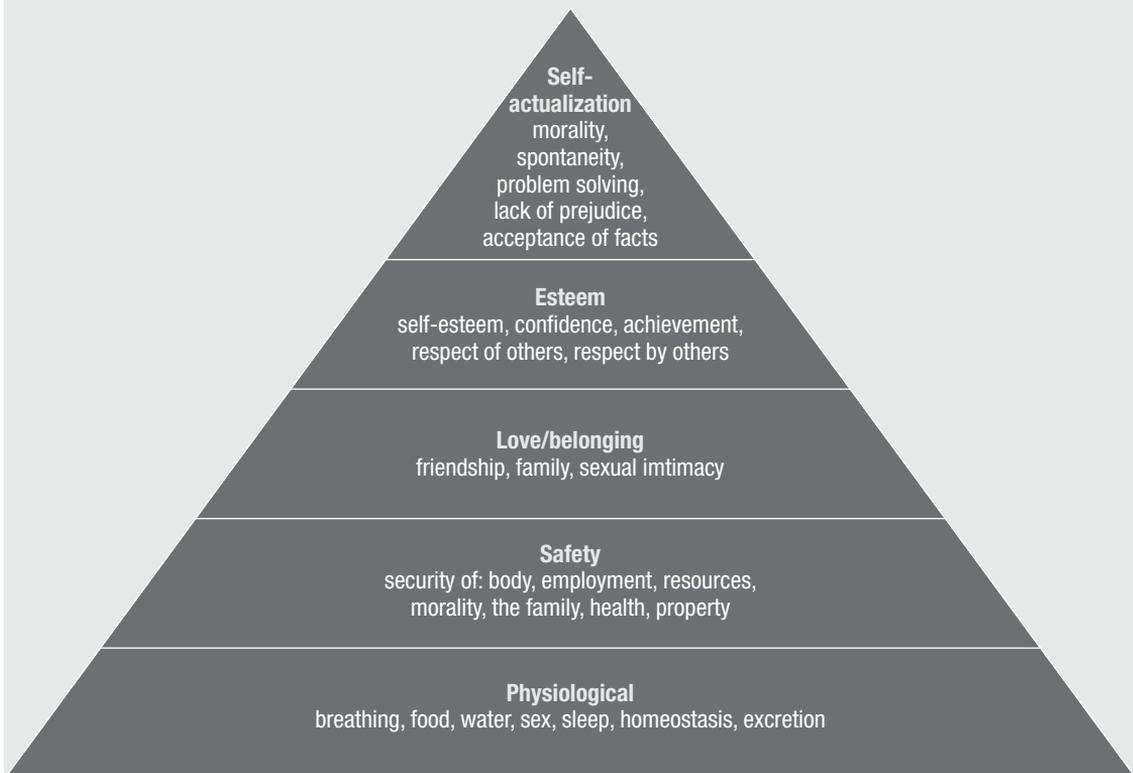
36 H Kok, 'Reducing Violence: Applying the Human Needs Theory to the Conflict in Chechnya' (2007) 3(11) *Review of International Law and Politics* 89, p 90.

37 J Burton in H Kok, 'Reducing Violence: Applying the Human Needs Theory to the Conflict in Chechnya' (2007) 3(11) *Review of International Law and Politics* 89, p 90.

Text Box 2.5:

Maslow's hierarchy of needs

The hierarchy of needs is a theory in psychology, proposed by Abraham Maslow in his 1943 paper *A Theory of Human Motivation*.³⁸ As the diagram below illustrates, the different categories of needs must be met from the ground up, meaning that physiological needs, followed by safety, love/belonging and esteem needs must be met before the highest order needs, self-actualisation, can be met.



There are three main categories of human needs according to conflict resolution practitioner, Andries Odendaal: acceptance needs, access needs and security needs. Text Box 2.6 outlines these different types of needs.

38 A Maslow, 'A Theory of Human Motivation' (1943) 50(4) *Psychological Review* 370.

Text Box 2.6:

Human needs

Acceptance needs

We all have a strong need for dignity. We need to be accepted for who we are and to be treated with respect. When we experience discrimination, oppression, humiliation or marginalisation, we shall most probably resent it so deeply that we shall be willing to spend an extraordinary amount of effort – and even resort to violence – in order to address our frustration.

Access needs

This refers to the need of all people to have access to life sustaining resources (land, housing, water, employment, economic opportunities). It also refers to the need to participate in political and economic processes that control and regulate access to those resources. Access needs are frustrated when perceptions or practices of exclusion exist.

Security Needs

‘Security’ is used here in the more holistic meaning of the word. It does not only refer to safety from physical harm and danger, but also safety from hunger and want. People need to feel safe; to have the sense of security that they may sleep in peace and have sufficient to eat. It is not only the actual experience of insecurity, but also the fear of future insecurity that drive conflict behaviour.³⁹

Burton’s categorisation of human needs also moves beyond the material to encompass:

- distributive justice
- safety and security
- belongingness
- self esteem
- personal fulfilment
- identity
- cultural security
- freedom
- participation.⁴⁰

I think it is important to make clear at this point that lateral violence is intrinsically linked to the disadvantage that Aboriginal and Torres Strait Islander peoples face relative to the broader Australian population, as well as the lack of participation that is afforded to them in decision-making. I will discuss the role of government in the creation of conditions leading to lateral violence below and will devote significant discussion to cultural safety and security in Chapter 4. However, in the context of Aboriginal and Torres Strait Islander communities, this means that while these needs are unmet there will continue to be conflict and lateral violence in our communities.

39 A Odendaal, *The Role of Identity in the Formation of Conflict Cycles: A Perspective from Human Needs Theory* (Presentation to the UNITAR 2011 Training Programme to Enhance the Conflict Prevention and Peacemaking Capacities of Indigenous Peoples’ Representatives, Versoix, Switzerland, 19 July 2011).

40 J Burton in H Kok, ‘Reducing Violence: Applying the Human Needs Theory to the Conflict in Chechnya’ (2007) 3(11) *Review of International Law and Politics* 89, p 90.

For instance, while we continue to trail behind non-Indigenous rates of school achievement, employment and health outcomes, there will remain an undercurrent of anger and frustration that our human needs, and ultimately our human rights, are not being met. Unfortunately, this anger and frustration will most likely turn in on itself and attack our community through expressions of lateral violence.

The problem is that this interaction between powerlessness, unmet needs and disadvantage is cyclical. The more harm we do to ourselves through lateral violence, the more risk factors increase for disadvantage. The circuit breaker needs to be addressing lateral violence in our communities.

(ii) Identity conflict

As previously discussed, the assault on identity first emerged during the colonial process as part of assimilation policies to determine who would become part of mainstream society where:

[C]omplex systems of classification and control were an intrinsic part of the colonial administration aimed at 'exterminating' one type of Aboriginality and replacing it with a more acceptable 'sanitised' version.⁴¹

Identity and in particular, notions of 'authenticity' have become powerful weapons in lateral violence. An Australian Institute of Aboriginal and Torres Strait Islander Studies Research Discussion paper by Scott Gorringer, Joe Ross and Cressida Fforde based on a workshop with Aboriginal and Torres Strait Islander participants, elaborates on the link between lateral violence and identity, with one participant stating:

Lateral violence comes from identity problems. Identity is the sleeper. If you have a strong spirit all the rest of you is supported. When we don't know who we are, something else jumps in to take that place.⁴²

While Aboriginal and Torres Strait Islander peoples still have to deal with media and broader community ignorance and insensitivity about who is a 'real Aboriginal person' it is distressing that so much of the venom about identity conflict comes from within our communities. Gorringer, Ross and Fforde argue:

Words that undermine Aboriginal identity are commonly used as insults and tools of social exclusion (such as 'coconut', 'textbook black' or 'air conditioned black'), as are accusations of supposed privilege and favouritism applied to those perceived as (or even accused of being) 'real blackfellas'. In doing so, a sense of division is created between individuals, groups, communities and even geography – thus the language/no language, remote/urban or north/south 'divide'.⁴³

These false divisions about Aboriginal and Torres Strait Islander identity, or 'hierarchies of blackness',⁴⁴ fuel conflict and lateral violence when people step outside of these narrow, prescribed roles. For instance, Noel Pearson has spoken about the supposed clash between 'modern' identities as individuals in a 'market capitalist system'⁴⁵ and 'communalist traditions and dynamics'.⁴⁶ Pearson reflects on the role of pioneering Aboriginal and Torres Strait Islander rights advocate, Charlie Perkins, in challenging this false dichotomy:

41 S Maddison, 'Voice and Diversity in Indigenous Politics' (2009) 7 (11) *Indigenous Law Bulletin* 19, p 20.

42 S Gorringer, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 8. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 21 September 2011).

43 S Gorringer, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 5. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 21 September 2011).

44 G Phillips, *Healing Identity in contemporary Australia: what is a real/traditional/grassroots Aborigine* (Australian Institute of Aboriginal and Torres Strait Islander Studies Seminar Series, Canberra, 18 May 2009). At http://www.vimeo.com/moogaloo.swf?clip_id=9173079 (viewed 21 September 2011).

45 N Pearson, 'Individualism versus communalism', *The Australian*, 6 August 2011. At <http://www.theaustralian.com.au/national-affairs/opinion/individualism-versus-communalism/story-e6frgd0x-1226109346928> (viewed 21 September 2011).

46 N Pearson, 'Individualism versus communalism', *The Australian*, 6 August 2011. At <http://www.theaustralian.com.au/national-affairs/opinion/individualism-versus-communalism/story-e6frgd0x-1226109346928> (viewed 21 September 2011).

Charlie Perkins was clear about the importance of individual endeavour and the pursuit of wealth, and that this was not inconsistent with his Aboriginal identity. He came under criticism publicly and from within indigenous circles for this. I look back on my own youthful views – when I did not understand the double standard that made it ok for any white fella to do something that Perkins was not supposed to do – and I feel ashamed to have held those views. I woke up to the defeating view and came to appreciate a great friendship with a man who was trying to negotiate peace in the conflict between Aboriginal individualism and Aboriginal community.⁴⁷

This sort of criticism of Aboriginal and Torres Strait Islanders who find success in the non-Indigenous world is more than just the characteristically Australian ‘tall poppy syndrome’. There may be elements of jealousy at work for those who manage to succeed where others do not, or as Noel Pearson explains again:

Paul Keating once told me, the problem with your mob is you’re like crabs in a bucket. If one of you starts climbing out and gets his claws on the rim, about to pull himself over the top to freedom, the other mob will be pulling him back down into the bucket. You all end up cooked.⁴⁸

However, if we look beneath this instinct, again we will see that notions of identity are at stake. Aboriginal and Torres Strait Islanders who work in the government or industry, do not leave their Aboriginal or Torres Strait Islander identity and culture at the door when they go to work. False distinctions about who is ‘community’ and who is not undermines the strong connections that exist for Aboriginal and Torres Strait Islanders who live a less ‘traditional’ lifestyle. This is a source of great hurt for many people who I speak with that juggle the challenges of their community, family and professional obligations, often with little recognition for the hard work and complex ground they tread.

Conflict generated by identity is also in sharp relief in the way the native title system operates. The *Native Title Report 2011* will provide an in depth analysis of how the native title system contributes to lateral violence and identity conflicts.

(iii) Negative stereotypes

Negative stereotypes are not new to Aboriginal and Torres Strait Islander peoples. As I have explained above, the process of colonisation is intimately linked with the creation of negative ideas about the colonised group to justify the position of the colonisers. Sadly we still live in a world where there are many negative stereotypes about Aboriginal and Torres Strait Islander peoples. We are perceived by some sections of the broader society as drunks, criminals, welfare dependant, lazy, violent and victims just to name a few.

What is even sadder, is that we have internalised some of these negative stereotypes and they colour our expectations and self-perception. This sort of internalised racism is a well-researched area overseas and is described as:

[A]cceptance of attitudes, beliefs or ideologies by members of stigmatised ethnic/racial groups about the inferiority of one’s own ethnic/racial group (e.g. an Indigenous person believing that Indigenous people are naturally less intelligent than non-Indigenous people).⁴⁹

47 N Pearson, ‘Individualism versus communalism’, *The Australian*, 6 August 2011. At <http://www.theaustralian.com.au/national-affairs/opinion/individualism-versus-communalism/story-e6frgd0x-1226109346928> (viewed 21 September 2011).

48 N Pearson, ‘Individualism versus communalism’, *The Australian*, 6 August 2011. At <http://www.theaustralian.com.au/national-affairs/opinion/individualism-versus-communalism/story-e6frgd0x-1226109346928> (viewed 21 September 2011).

49 Y Paradies, R Harris and I Anderson, *The Impact of Racism on Indigenous Health in Australia and Aotearoa: Towards a Research Agenda*, Cooperative Research Centre for Aboriginal Health, Discussion Paper 4 (2008), p 4. At www.lowitja.org.au/files/craah_docs/Racism-Report.pdf (viewed 21 September 2011).

For instance, Chris Sarra, a leading Indigenous educator, has conducted extensive research on the way Aboriginal and Torres Strait Islander children perceive themselves, based on the dominant negative stereotypes that abound. Sarra argues:

The greatest tragedy is that young black kids make choices about these perceptions as well. Too many aspire to be these negative things thinking that they are supporting their Aboriginal identity. So those who do well get picked on by other kids who say 'you're a coconut' etc. These kids think that the negative stereotype is a cultural identity but of course it is not.⁵⁰

Another way to think about this according to former Western Australian Premier Carmen Lawrence is as a 'self-fulfilling prophecy':

A **self-fulfilling prophecy** occurs when expectations about an individual's behaviour cause that person to act in ways which confirm the expectations. The phenomenon has been measured in many situations and it is clear that minority groups in any society are the most vulnerable to such effects, especially if the expectations are negative and constantly repeated. So often do Indigenous Australians hear that they are sick, lazy and unproductive that they internalise these opinions and become convinced of their own unfitness.⁵¹

These sorts of negative stereotypes create a victim identity, positioning Aboriginal and Torres Strait Islanders as 'problem people'.⁵² Negative stereotypes create low self-esteem, in turn reinforcing the feelings of powerlessness which engender lateral violence. If we feel badly about ourselves, if we believe the negative stereotypes and accept a victim mentality which undermines our individual agency, then we are more likely to lash out in lateral violence.

These negative stereotypes are not just internalised on an individual basis, they can be applied to others in our families and communities as well. This means that if we view those closest to us negatively as well, they become more 'deserving' victims of lateral violence. Internalising these negative stereotypes not only affects our self-respect but also our respect for others.

Aboriginal and Torres Strait Islander peoples are well aware of the negative stereotypes that exist and how they play out across the broader society. Because of the constant barrage of negative images of Aboriginal and Torres Strait Islander communities in the mainstream media, according to Sarah Maddison:

[T]here is a strong tendency for Aboriginal people to smother tensions and disagreements. Given the intense media interest in any sign of trouble in Aboriginal communities, there is a prevailing pressure on communities to appear trouble free, meaning that many less prominent community issues are sidelined from general discussion and often remain unresolved.⁵³

Jackie Huggins has argued against this 'distinct double standard':⁵⁴

50 S Gorringe, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 7. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 21 September 2011).

51 C Lawrence, *Us and Them: Breaking Down the Barriers* (Paper presented at Fulbright Conference: Healthy People Prosperous Country, July 11, 2008).

52 R Frankland, M Bamblett, P Lewis and R Trotter, *This is "Forever Business": A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 19.

53 S Maddison, 'Voice and Diversity in Indigenous Politics' (2009) 7 (11) *Indigenous Law Bulletin* 19, p 20.

54 S Maddison, 'Voice and Diversity in Indigenous Politics' (2009) 7 (11) *Indigenous Law Bulletin* 19, p 20.

When Blacks publicly analyse and criticise each other it is perceived as in fighting. However, when non-Aboriginals do the same it is considered a healthy exercise in intellectual stimulation. Why is the area of intra-racial Aboriginal debate such a sacred site?⁵⁵

This situation creates tension in our debates. On one hand, it is very easy for disagreements to get out of hand in the public realm, quickly degenerating into the ugliest forms of lateral violence, where we attack the person, not the policy. However, on the other hand, it is crucial that the diversity of views and experience of Aboriginal and Torres Strait Islander peoples is expressed and recognised in order to solve the problems in our communities.

In other words, these negative stereotypes stifle our diversity and compromise our ability to discuss and take charge of the important issues that face our communities. While we give currency to negative stereotypes we provide the weapons for lateral violence to attack our communities.

(iv) Trauma

Lateral violence clearly causes trauma for individuals, families and communities. The next part of this Chapter will provide some examples of the impact of lateral violence on Aboriginal and Torres Strait Islander communities. However, it is important to recognise that given the cyclical nature of lateral violence unresolved trauma is one of its drivers.

Trauma and healing have been dealt with extensively in the *Social Justice Report 2008*.⁵⁶ Trauma for Aboriginal and Torres Strait Islander peoples can be experienced in three inter-related ways according to Gregory Phillips:

- Situational trauma – trauma that occurs as a result of a specific or discrete event, for example from a car accident, murder or being taken away.
- Cumulative trauma – it is subtle and the feelings build up over time, for example racism.
- Inter-generational trauma – if trauma is not dealt with adequately in one generation, it often gets passed down unwittingly in our behaviours and in our thought systems. For example, if you want to heal children and youth, you have to heal yourself as well to break the cycle.⁵⁷

Lateral violence fits into all three of these categories. It manifests in individual acts of violence (situational violence), it is based on and breeds internalised racism (cumulative trauma) and has resulted from the historical processes of colonisation, dispossession and forcible removal of children (inter-generational trauma).

The cumulative nature of the trauma caused by lateral violence is significant for communities. Although an individual act of lateral violence, be it bullying, backstabbing or gossiping can target one person, the traumatic impact can reverberate across the community because of the close community and kinship ties in Aboriginal and Torres Strait Islander communities. For instance, family members often get drawn into the conflict, especially if it reignites old feuds. This can escalate the situation rapidly, sometimes spilling into a full blown community crisis. When this crisis fans out to the entire community it reinforces the negative stereotypes that communities are dysfunctional, always in conflict and not safe places. This spreads feelings of trauma and insecurity.

55 J Huggins, 'Always Was, Always Will Be' in M Grossman (ed), *Blacklines: Contemporary Critical Writings by Indigenous Australians* (2003) 60, p 65.

56 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), Chapter 4. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 21 September 2011).

57 G Phillips in T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2009), p 153–154. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 21 September 2011).

The impact of trauma does not stop there. It is very difficult for a community in crisis to function effectively as many people are tied up in conflict or disempowered by the effects of trauma. Similarly, the cumulative effects of grief and sorry business are profound in our communities, where we are constantly confronted with funerals, illnesses, conflict and other sources of stress and loss. In this situation it is difficult for a community to muster its strengths and take an active role participating in decision-making.

Importantly, we need to recognise that if we don't work to address the trauma created by lateral violence, it will spill over into the next generation. It is crucial that we are serious about the trauma and harm that it causes and take steps to break the cycle now.

(v) Historical and contemporary causes of lateral violence coming together: Palm Island case study

The previous discussion has looked at some of the concepts that explain how lateral violence comes about in our communities. To give an example of how the historical and contemporary issues are played out in our communities, Text Box 2.7 examines how lateral violence has evolved on Palm Island. Palm Island is not alone in experiencing lateral violence but I think it provides a particularly stark example of how the policies of colonisation, including the Protection Act, have set the scene for lateral violence. Palm Island is also a remote and isolated location so many of the past and present injustices take place off the main stage and only ever come into the spotlight when intense violence takes place, feeding the negative stereotypes about our communities. In the face of this, the people of Palm Island have acted courageously to keep their families together and maintain their cultures as much as possible.

Text Box 2.7:

Palm Island – A continuum of conflict

Palm Island... breached almost every known principle of human rights and freedom. It was...a concentration camp for Aborigines the most notorious, authoritarian, racist institution in Australian history.⁵⁸

Historical Background

Traditionally, the lands of the Manbarra people, Palm Island (also known as Challenger Bay) was first gazetted as an Aboriginal Reserve in 1914⁵⁹ by the Queensland Government under *The Aboriginals Protection and Restriction of the Sale of Opium Acts 1897 – 1934* (the Act).⁶⁰

Following the removal of the traditional owners and the destruction of the Hull River Reserve (now known as Mission Beach) by a cyclone, Palm Island became fully operational as a reserve in 1918.

58 K Windshuttle in D Tedmanson, 'Isle of exception: sovereign power and Palm Island' (2008) 4(2) *Emerald: critical perspectives on international business* 142, p 151.

59 Palm Island was re-gazetted in 1938 and 1941, each time adding surrounding islands within the Palm Island group: Queensland Government State Archives, *Agency Details: Palm Island Aboriginal Settlement*, <http://www.archivessearch.qld.gov.au/search/AgencyDetails.aspx?AgencyId=76> (viewed 21 September 2011).

60 *The Aboriginal Preservation and Protection Act 1939* (Qld), and *The Torres Strait Islands Affairs Act 1939* (Qld) provided the subsequent legislative framework, with new Protection Acts being passed in 1965 and 1971, which were also closely moulded on the original 1897 legislation: see Museum of Australian, *Documenting a Democracy – Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld), <http://foundingdocs.gov.au/item-sdid-54.html#significance> (viewed 21 September 2011).

Removals

It is estimated that 7 198 Aboriginal people were removed across Queensland during the years 1911–40; and at least 13 076 Aboriginal children were separated from their country and their families between the years 1859–1972.⁶¹ Palm Island was the first reserve to receive children under the *State Children's Act 1911* (Qld).⁶²

Records indicate that during 1918–71 almost 4 000 people were removed to Palm Island. This was more than half the total population removed to government reserves in Queensland.⁶³ Most were removed for trivial offences and this is reflected in a number of family histories of those removed to Palm Island for the 'offence' of simply being an 'Aboriginal child'⁶⁴ or being deemed to be a 'half-caste'.⁶⁵

Other crimes that resulted in removal included drinking alcohol, being without employment, being found off an Aboriginal reserve without a permit, living too close to a white settlement, being an orphan, or cohabitating with a person other than an Aborigine.⁶⁶

It was in this light that Palm Island was labelled a penal settlement despite the fact that the Queensland Government argued that it was not.⁶⁷

The process of removal was often 'physically torturous' and resulted in 'long-term mental and emotional distress', with people being arrested, often placed in neck chains, and marched by foot under the supervision and often abuse of police troopers long distances to the coast, where they were then transported across to Palm Island. A non-Indigenous health worker on Palm Island at the time recalled:

There was a whole group come down from Coen [Far North Queensland]. They'd walked the whole distance. Police would be on horseback...A policeman got one of the native girls pregnant on the way... The girl was only fourteen or fifteen.⁶⁸

It has been reported that by the end of the 1930s Aboriginal people from some 40 different tribal, language, or clan groups⁶⁹ with incompatible territorial and kinship ties were forcibly relocated to Palm Island.⁷⁰

In recognition of their different relationship to the Island and its surrounding territories, historical residents were called the Bwngcolman (pronounced Bwook-a-mun).

Fertile ground for lateral violence

The microcosm thus founded on the island was a distortion of Indigenous culture, in that alien and sometimes warring clans, together with Torres Strait Islanders, were forced to live and work in shared facilities.⁷¹

61 M Copland in J Watson, *Palm Island: Through a Long Lens* (2010), p 38.

62 J Watson, *Palm Island: Through a Long Lens* (2010), p 78.

63 M Copland in J Watson, *Palm Island: Through a Long Lens* (2010), p 38.

64 See M Kennedy, *Born a Half Caste* (1990).

65 D King and M Vick, 'Keeping 'Em Down: Education on Palm Island Under Queensland's Aboriginal Acts' (1994) 23(1) *History of Education Review* 1, p 7.

66 D King and M Vick, 'Keeping 'Em Down: Education on Palm Island Under Queensland's Aboriginal Acts' (1994) 23(1) *History of Education Review* 1, p 7.

67 E Scott in J Watson, *Palm Island: Through a Long Lens* (2010), p 121.

68 C Edmondson in J Watson, *Palm Island: Through a Long Lens* (2010), p 78.

69 People were relocated from all over Queensland including from the Kandju, Kuku Yalanji, Yidangi, Kongkanji, Birri Gubba and Kokoimudji peoples from across the north-east and the Kalkadoon of the north-west of Queensland.

70 J Watson, *Palm Island: Through a Long Lens* (2010), p 40.

71 C Taylor, 'This Fiction, It Don't Go Away': Narrative as an Index to Palm Island's Past and Present' (2009) 16(1) *Queensland Review* 35, p 36.

Despite the challenges and constant oppression faced by those removed to Palm Island under the Act, Aboriginal and Torres Strait Islander peoples managed to form long-lasting and secure relationships that continue today. However, these challenges have created significant stress and resulted in bouts of conflict over the years. The history, both past and present, of Palm Island provides fertile ground for lateral violence to flourish.

The potential for lateral violence in the Aboriginal and Torres Strait Islander population on Palm Island is significantly increased due to a number of factors that have occurred during the history of colonisation on the Island. These include:

- Deliberate attempts to destroy traditional social relations including kinship ties, and ignoring traditional law on inter-group marriage, prohibiting meetings between ‘inmates’ and the speaking of traditional languages.
- Draconian punishments applied for non-criminal offences including ‘being sent to jail for two weeks for waving to a boy’, ‘or turning up two minutes late for morning work parade’.⁷²
- Indigenous (and non-Indigenous) police were used to enforce compliance.
- Every aspect of Aboriginal and Torres Strait Islander peoples’ lives including the need to seek permission to access earnings, and to move around and visit or keep family together, were controlled by the State.
- The process of obtaining exemption from the Act divided Aboriginal and Torres Strait Islander peoples into those who were regarded to be successfully assimilated versus those who were not.

In an effort to maintain culture, identity and self-determination, Aboriginal and Torres Strait Islander peoples on Palm Island resisted. While children were separated from their families and placed in dormitories, elders set up specified camps in an attempt to ‘live the lifestyles which they had in their own country’,⁷³ with groups from close localities forming joint camps.⁷⁴ Residents also successfully conducted a strike in 1957, in protest against cuts to wages and the treatment of women.⁷⁵

Despite these efforts, western education and law was imposed and government control over all aspects of each and every Aboriginal and Torres Strait Islander’s life was enforced.⁷⁶

From the earliest implementation of the Acts, Aboriginal or Torres Strait Islander identity has been used as a weapon, justifying removal, exclusion or control. ‘The very act of removing people from their homelands and relocating them in a place with which they had no affiliation played a critical role in undermining their traditional culture’.⁷⁷

Identity among other things, continues to be a source of conflict used against Aboriginal and Torres Strait Islander peoples both within and external to those who continue to live on Palm Island.

72 D King and M Vick, Keeping ‘Em Down: Education on Palm Island Under Queensland’s Aboriginal Acts’ (1994) 23(1) *History of Education Review* 1, p 8.

73 D King and M Vick, ‘Keeping ‘Em Down: Education on Palm Island Under Queensland’s Aboriginal Acts’ (1994) 23(1) *History of Education Review* 1, p 7.

74 J Watson, *Palm Island: Through a Long Lens* (2010), p 40.

75 Palm Island Aboriginal Shire Council, *Palm Island History*, http://www.piac.com.au/community_info/history/palm_island_history.php (viewed 21 September 2011).

76 J Watson, *Palm Island: Through a Long Lens* (2010), pp 48– 49.

77 D King and M Vick, ‘Keeping ‘Em Down: Education on Palm Island Under Queensland’s Aboriginal Acts’ (1994) 23(1) *History of Education Review* 1, p 6.

The complexity of the forced co-location of some 57 different Indigenous tribal, language, or clan groups on a small Island with such a violent and brutal history, chronic unemployment levels of over 95 percent, one of the highest suicide rates in the country and a mortality rate for adult males of around 50 years of age, creates many challenges for the Island's representative Community Council.⁷⁸

Issues including alcohol and drug abuse, assault and sexual abuse, gambling, theft, and violent conflict contribute to the ongoing struggle to overcome the disadvantage experienced by those living there.

It is often the tension between those charged with addressing the above issues on the Island, such as the Palm Island Shire Council, and those who are struggling with the ongoing effects of the trauma associated with colonisation that result in lateral violence in the community.

With the deliberate and articulated desire to allow conflict to foment between the various groups forced into exile there – 'if there is to be any letting off of steam, they would go for each other'. 'Horizontal violence', exacerbated so much by the introduction of alcohol, was widely tolerated until recent times... Moreover, at each critical point of Palm Island's history, when the violence threatens to become 'vertical' and is directed at the oppressor, the mask of benevolence falls.⁷⁹

Grounds for a continuum of conflict

The Island's problems are far from over, in fact, the trouble is symptomatic of the Island's sad history.⁸⁰

While the potential for conflict or lateral violence between Aboriginal and Torres Strait Islander peoples living on Palm Island was well secured in the establishment of the Reserve, the ongoing isolation and exclusion of Aboriginal and Torres Strait Islander peoples living on the Island from the broader Australian community, exacerbates the effects of similar policies redesigned to reflect a contemporary context.

The violent death in police custody of Mulrunji Doomadgee in 2004, and the subsequent events, is a tragic example of the continuing oppression of people living on Palm Island under the complete control of, and financial reliance on the state.

Images of the violent protests by the Palm Island community; the imposed 'state of emergency' resulting in a military style police operation; the removal and arrest of 26 community members and the incarceration of Lex Wotton who subsequently had his right to free speech removed, was extensively reported in national and international media. This served to reinforce the negative stereotypes portrayed for many years of the life experienced on Palm Island. However, the media profile has also exposed the extent of control, injustice and systemic racism experienced even today, by Aboriginal and Torres Strait Islander peoples.

Mulrunji's death in custody, takes place against the history of dispossession, colonial state control, state ordered and enforced "dispersals" of people from their own territories into camps and the generations of deprivation and violence... The tragedy surrounding his death demonstrates that a continuity of colonial control persists in Australia. No treaty instrument recognises Indigenous prior sovereignty or protects their unique citizenship status as first peoples and consequently the state can at any time reinstate its rule by "exception" over an Indigenous domain, already disempowered by violent colonial invasion and dispossession... The dramatic events surrounding Mulrunji's death... begs the question of whether the Island has ever been freed from the "state of exception" established through the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* (Qld).⁸¹

78 D Tedmanson, 'Isle of exception: sovereign power and Palm Island' (2008) 4(2) *Emerald: critical perspectives on international business* 142, p 151.

79 J Watson, *Palm Island: Through a Long Lens*, (2010), pp 157–158.

80 D Tedmanson, 'Isle of exception: sovereign power and Palm Island' (2008) 4(2) *Emerald: critical perspectives on international business* 142, p 155.

81 D Tedmanson, 'Isle of exception: sovereign power and Palm Island' (2008) 4(2) *Emerald: critical perspectives on international business* 142, pp 152, 160.

While the Palm Island community have stood together to fight the injustice associated with this ongoing situation, it is debilitating circumstances such as these, where people are denied hope, and a sense of access to justice or a level of control over their own lives, where lateral violence thrives.

(d) Government role in creating the conditions for lateral violence

The reality of lateral violence is that governments cannot and should not intervene to fix our internal relationships. This is simply not appropriate and takes further power away from our communities to be self-determining. However, it is undeniable that governments have had a role to play in the creation of the environments that breed lateral violence.

Earlier in this Chapter I discussed how historical government actions premised on discriminatory notions of racial superiority have broken down traditional forms of authority and created tensions within Aboriginal and Torres Strait Islander communities. These included:

- forced relocations through the establishment of mission and reserves
- creating exemptions from the Protections Acts for fair skinned Aboriginal and Torres Strait Islander individuals
- the usage of complex blood quantum to calculate who was or was not an Aboriginal or Torres Strait Islander person
- the devaluing and demonisation of Aboriginal and Torres Strait Islander cultures
- the denial of any decision-making authority or control over our own lives
- continuing social exclusion and lack of participation in society.

Governments need to be aware of the legacy of these policies and make sure that their actions empower rather than disempower. Governments must work with our communities as enablers and facilitators. They can also work to remove existing structural and systemic impediments to healthy relationships within our communities.

Let me be clear, I do not think there is an agenda on the part of governments to create the conditions for lateral violence in our communities. In some cases, the conditions that lead to lateral violence are a product of unintended consequences. In other cases they are yet another symptom of a system of government that is not designed or equipped to work in partnership with Aboriginal and Torres Strait Islander communities. This is a further reflection of the need to strengthen the relationships between governments and Aboriginal and Torres Strait Islander peoples.

Nonetheless, we are still seeing too many examples of government processes creating or perpetuating the conditions of conflict that result in lateral violence. I will now examine some examples that impact on many communities.

(i) Engagement that divides

One of the greatest sources of tension and conflict in our communities is the ongoing issue of who speaks for community and to whom governments choose to listen. The perception that government always consults with

certain individuals, families or other groups fuels jealousy and division, especially when there are contested issues or funding at stake.

Engagement that is ineffective or that only listens to certain community factions fosters community division and can perpetuate lateral violence. The Victorian Aboriginal Child Care Agency (VACCA) argues:

The process of colonisation has created confusion when it comes to voice and self-determination. Who speaks for country? Who speaks for current historically mixed Aboriginal communities? Who speaks for the various areas of policy and human services delivery? ... the lack of cultural knowledge on the part of governments and the non-indigenous community in general has led to policies which continually cuts across the often informal Aboriginal community authority structures.⁸²

This lack of cultural knowledge means that the wrong people are often consulted by government:

In recent history lots of people were brought together. Although it may be appropriate for only one group to speak or make a decision, government wants to bring everyone together [to consult], and this actually erodes or marginalises someone's powerbase.⁸³

The problems created by poor engagement run deeper than jealousy and confusion. A real danger is that the Aboriginal and Torres Strait Islander groups who do not feel they are being listened to by government become disillusioned with the whole process. Again VACCA argues:

The problem that is left with Aboriginal leaders and communities is that they are given the choice of either out right rejecting the imposed engagement structures or engaging with them, despite their problematic nature, to make some gains for their communities.⁸⁴

If governments continue to leave groups out from the engagement process or consult with the wrong people, not only do they miss out on the depth and diversity of views necessary to form good policy, but they also alienate groups from the process, possibly limiting the success and reach of the project. Alienation breeds powerlessness and can manifest in lateral violence.

This problem of engagement has been noted by the *Strategic Review on Indigenous Expenditure* conducted by the Department of Finance. Text Box 2.8 shows that it is important that governments recognise and adapt to diversity in Aboriginal and Torres Strait Islander communities.

82 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 108.

83 S Gorrige, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 9. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 21 September 2011).

84 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 108.

Text Box 2.8:

Strategic Review on Indigenous Expenditure

The *Strategic Review on Indigenous Expenditure* emphasised the importance of effective engagement with Aboriginal and Torres Strait Islander peoples. It noted that governments must ensure their engagements account for diversity within Indigenous communities and that all voices within the community are heard:

Governments also need to recognise that Indigenous ‘communities’ are most often heterogeneous, rather than homogeneous, groups. The phrase ‘community’ tends to evoke an image of an homogenous group with inherent allegiances, natural solidarity and a collective voice. However, this does not necessarily reflect the reality of life in many communities. Many of these communities are often highly heterogeneous, comprising several Indigenous families, clans or language groups with few traditional ties, whose genesis stemmed from successive government policies over many decades which led to many Indigenous groups moving from their traditional lands. The breakdown of customary law and the lack of shared systems for dispute resolution for the different groups now living together seriously inhibit attempts by Indigenous leaders and governments to develop shared visions for the future, to foster cooperative relationships and implement effective strategies for change.

Another issue is the tendency for governments and their employees to view resident Indigenous community organisations as representing the ‘whole community’ and to focus their community engagement and consultations on these organisations alone. In some cases, these organisations may only represent key families in a region rather than the diversity of views, interests and needs. Whilst these organisations are often key providers in their region and their views are of particular importance, especially concerning policies and programs for service delivery, careful assessment of the whole of community views is needed for balance and equity.⁸⁵

I am well aware that effective engagement can be difficult for governments to implement. On the one hand many of the communities that I speak to feel like they are consulted to death yet on the other hand, they feel disengaged and isolated from decision-making processes. I am constantly being told by communities that governments are not hearing their voices, ‘no matter what we say they do not listen and nothing changes’.

We need to strive for a culture of engagement where a true dialogue is created between policy makers and communities who are impacted by policy decisions. This culture of engagement should ensure that the right people speak for their community or country whilst also providing an opportunity for all community members to feel like they have participated in the process. It is fundamental that this process operates without coercion or pressure coming from either within our communities or externally from governments.

(ii) Deficit-based approach

Lateral violence feeds off conditions where Aboriginal and Torres Strait Islander peoples are characterised as passive, troubled and dysfunctional who are unable to help themselves without some form of intervening hand from the government. Marcia Langton argues:

The crisis in Aboriginal society is now a public spectacle, played out in a vast ‘reality show’ through the media, parliaments, public service and the Aboriginal world. This obscene and pornographic spectacle shifts

85 Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure* (2010), p 247. At http://www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf (viewed 21 September 2011).

attention away from everyday lived crisis that many Aboriginal people endure – or do not, dying as they do at excessive rates...

It seems almost axiomatic to most Australians that Aborigines should be marginalised: poor, sick, and forever on the verge of extinction. At the heart of this idea is a belief in the inevitability of our incapability – the acceptance of our 'descent into hell'.⁸⁶

It is an unfortunate reality that governments of all persuasions continue to have a tendency to address Aboriginal and Torres Strait Islander disadvantage from a deficit-based approach – addressing the 'Indigenous problem'.

A deficit-based approach means that our communities are perceived consistently as not having the capabilities to overcome the challenges confronting them. Governments see these challenges as problems that they are required to fix through active intervention. Of course, governments do have a role to play in delivering services so that Aboriginal and Torres Strait Islanders can live in conditions equal to all other Australians, but the problem is that this approach is not necessarily undertaken in partnership with Aboriginal and Torres Strait Islander communities, or built on the ethos that those in communities are best placed to develop and implement the solutions. The unintended consequence is that governments orient themselves as 'the deliverer of all of the solutions'.⁸⁷ As Noel Pearson has argued this breeds passivity and powerlessness within our communities and denies us the opportunity to take responsibility.⁸⁸

Marcia Langton describes how this portrayal of disadvantage reinforces powerlessness:

Paradoxically, even while Aboriginal misery dominates the national media frenzy – the perpetual Aboriginal reality show – the first peoples exist as virtual beings without power or efficacy in the national zeitgeist.⁸⁹

As highlighted by Gorringer, Ross and Fforde powerlessness creates a cycle of transgenerational inferiority, with one of the workshop participants explaining:

If people are brainwashed to think they're inferior then there is a collapse and people begin to act in negative ways and this is served up as proof of 'inferiority'. This gets handed down to our kids who hear it all around. [We] need to remember how great we were and go forward from a position of strength.⁹⁰

A sense of victimhood in our communities feeds into caustic environments where lateral violence is perpetuated. Rather than confronting unacceptable behaviour like lateral violence an identity of victimhood that is further fed by deficit approaches ultimately transforms our communities into the toxicity of passivity and powerlessness.

In its fullest expression a deficit-based mentality becomes explicitly stigmatising. This is most graphically illustrated by the blue signs – banning alcohol and pornography – that were erected at the entrance of the 73 prescribed communities under the Northern Territory Emergency Response (NTER). In my address to the National Press Club, entitled *Towards a reconciled Australia* I touched on the damage caused by the blue signs:

86 M Langton, 'Trapped in the Aboriginal reality show' 19 *Griffith Review* 143, pp 145, 161. At <http://griffithreview.com/edition-19-re-imagining-australia/trapped-in-the-aboriginal-reality-show> (viewed 21 September 2011).

87 N Pearson, *Our Right to Take Responsibility* (Paper for Institute of Public Administration Australia (Victoria) Seminar Gold Leadership Forum, Melbourne, 20 October 2002), p 5. At www.vic.ipaa.org.au/document/item/106 (viewed 21 September 2011).

88 N Pearson, *Our Right to Take Responsibility* (Paper for Institute of Public Administration Australia (Victoria) Seminar Gold Leadership Forum, Melbourne, 20 October 2002), p 5. At www.vic.ipaa.org.au/document/item/106 (viewed 21 September 2011).

89 M Langton, 'Trapped in the Aboriginal reality show' 19 *Griffith Review* 143, p 162. At <http://griffithreview.com/edition-19-re-imagining-australia/trapped-in-the-aboriginal-reality-show> (viewed 21 September 2011).

90 S Gorringer, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 7. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 21 August 2011).

Each of the Intervention communities had big blue signs erected outside them which, amongst other things, loudly proclaimed restrictions on alcohol and pornography – as if everyone living behind those signs are alcoholic, perverts and perpetrators!

I invite the residents of Yarralumla, Redhill, Woollara, Mosman and Toorak, to name just a few well-known, middle-class suburbs, to contemplate how they would feel with similar signs erected at the entrance to their communities.

These signs continue to diminish the people living behind them and they diminish us as a nation.⁹¹

These blue signs characterised all people within the prescribed communities as perpetrators. This is despite the clear evidence emanating from the *Little Children are Sacred*, the report that served as the catalyst for the NTER. This report did indicate that child sexual abuse was serious, widespread and often unreported. Yet it also dispelled as myth that Aboriginal men are the only offenders of sexual abuse. In fact, not surprisingly, it found that most Aboriginal men who the inquiry spoke with regarded sexual abuse as abhorrent.⁹²

Again let me be clear I am not saying that child sexual abuse should not have been addressed. Or that it was not a problem that warranted action. Our women and children have a right to be safe and secure. But I am saying that it should not have been addressed from such a broad brushed deficit approach. Indeed *Little Children* called for the total opposite:

What is required is a determined, coordinated effort to break the cycle and provide the necessary strength, power and appropriate support and services to local communities, so they can lead themselves out of the malaise: in a word, **empowerment!**⁹³

The approach typified by the blue signs damages our communities and reinforces negative stereotypes; stereotypes which we sometimes use as weapons to turn on our own through lateral violence.

(iii) Fragmented funding arrangements

Scarcity of resources and competition for funding is unfortunately part and parcel of operating in the modern service delivery environment. However, the bureaucratic maze that Aboriginal and Torres Strait Islander organisations must negotiate seems endless. The current bureaucratic and administrative burdens facing Aboriginal and Torres Strait Islander organisations that accompany their day-to-day operation can act as impediments to running effectively which in turn can result in powerlessness. Lateral violence thrives in disempowered organisations.

The *Strategic Review of Indigenous Expenditure* found that Australian Government Indigenous-specific programs are unduly complex and confusing with excessive red tape.⁹⁴ These findings are consistent with a range of previous studies that examine government funding arrangements.⁹⁵ A body of evidence suggests

91 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Towards a reconciled Australia* (Speech delivered at the National Press Club, Canberra, 3 November 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20101103_npc.html (viewed 21 September 2011).

92 P Anderson and R Wild, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007), p 57. At <http://www.inquirysaac.nt.gov.au/> (viewed 21 September 2011).

93 P Anderson and R Wild, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007), p 13. At <http://www.inquirysaac.nt.gov.au/> (viewed 21 September 2011). Emphasis in original.

94 Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure* (2010), p 11. At http://www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf (viewed 21 September 2011).

95 See Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure* (2010), p 300. At http://www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf (viewed 21 September 2011).

that the funding arrangements for Aboriginal and Torres Strait Islander organisations are more complex than mainstream organisations.⁹⁶ Text Box 2.9 cites the factors that create this bureaucratic burden as identified by the *Strategic Review of Indigenous Expenditure*.

Text Box 2.9: Strategic Review of Indigenous Expenditure

The *Strategic Review of Indigenous Expenditure* examined repeated calls for the Australian Government to reduce the administrative burden and complexity of funding arrangements associated with Indigenous programs. The report noted the following 'well known and extensively documented' justifications for these petitions:

- existence of multiple 'like' programs which overlap and duplicate each other in places, while also leaving gaps in others, together leading to complexity and confusion
- programs with poorly articulated objectives often underpinned by flawed assumptions and weak program logic which then raise unrealistic expectations of what can actually be achieved through the program
- short term, staccato and 'pilot' funding arrangements with no commitment to ongoing funding and disconnected from the reality of the scale and timing of investment needed to drive lasting change
- annual funding rounds for ongoing service needs which draw heavily on the limited administrative and management capacity of community organisations
- multiple and complex funding arrangements – both within and across government agencies – with a need for greater commonality in their alignment and contract management approaches even though the contracting party throughout is the 'Commonwealth of Australia'
- the barriers created by these funding arrangements for long term planning and recruiting and retaining skilled and motivated staff who are essential for achieving the gains sought in challenging contexts
- an approach by many program managers on contractual rather than relational governance, leading to management styles that micro-manage Indigenous and other organisations, and stifle innovation and agility by local providers
- the unintended consequence of these funding arrangements in diverting precious resources from service delivery towards administrative compliance
- the compounding negative effects for the sustainability and organisational capacity of Indigenous organisations.⁹⁷

96 J Dwyer, K O'Donnell, J Lavoie, U Marlina and P Sullivan, *The Overburden Report: Contracting for Indigenous Health Services*, Cooperative Research Centre for Aboriginal Health (2009), p 53. At http://www.lowitja.org.au/files/craah_docs/Overburden%20update%20FINAL.pdf (viewed 21 September 2011).

97 Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure* (2010), p 300. At http://www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf (viewed 21 September 2011).

These factors can all contribute to reducing the effectiveness of our organisations and can contribute to cultures of powerlessness. I am not saying that all Aboriginal and Torres Strait Islander organisations are powerless or dysfunctional. However, what I am saying is that the hurdles that governments set up for our organisations can be higher than those for other organisations and are unrealistic. Rather than support and build the capacity of our organisations, complex government funding requirements can become the business of our organisations, taking them away from their fundamental service delivery role.

There seems to be a curious circularity to this situation where organisations' core business becomes satisfying these complex reporting and accountability regimes rather than the delivery of the programs for which they are funded. Confronted with this stark choice many organisations, not surprisingly, opt to secure their funding at the expense of service delivery. This leads to compromised outcomes in which the lack of results are used as a blunt instrument to indicate the incompetence of organisations, which in turn puts their funding at risk.

When I think of these cycles, the words of Carmen Lawrence above in relation to self-fulfilling prophecy seem hauntingly familiar.

This does not empower our organisations to do their work, it makes them feel like they are constantly chasing the dollars to survive rather than thrive into the future.

Complicated funding arrangements operate not only to fragment our organisations but fragment our communities. I have heard countless stories where different organisations from the one community are fighting each other for small grants. The problems around scarcity of resources have also been noted by a participant in the research conducted by VACCA:

If the outlook for all of that is limited I think it sets up competitiveness. There's this idea that there's not much there and you've got to grab it. And it sets up...conflict.⁹⁸

This creates territorialism and becomes a battleground for latent disputes to be played out.

(iv) Native title, land rights and cultural heritage regimes

It is no secret that the native title system provides a platform through which lateral violence can be perpetuated. Aboriginal and Torres Strait Islander peoples often identify the native title system as it currently operates as a source of conflict in their lives. Another participant in the VACCA research stated:

I think partly it's the way institutions, governments and others structure things, I mean look at the way Native Title for example it, has contributed to that conflict. It has encouraged people to go within themselves more and look for difference, as opposed to connection.⁹⁹

The current system brings issues of identity and the authority to speak for country into sharp focus.

In addition to this, across Australia, there are various land rights and cultural heritage regimes that sit uncomfortably alongside the native title system. While these systems should be working together for the benefit of Aboriginal and Torres Strait Islander peoples, the various regimes can operate to exacerbate conflict. For example the interaction between native title and land rights regimes can foster divisions between traditional owners (native title system) and historical people (land rights).

I discuss these issues in greater detail in the *Native Title Report 2011*.

98 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 79.

99 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 79.

2.3 What does lateral violence look like?

The previous section of this Chapter looked at the principles that underpin our understanding of lateral violence. This section will move from the theoretical to the real world lived experience of lateral violence in Aboriginal and Torres Strait Islander communities.

As I have stated previously, the research into lateral violence in Australia is still in its infancy. The most authoritative source at this stage comes from the work of VACCA. Text Box 2.10 provides a graphic illustration of the some of the ways lateral violence has affected communities in Victoria.

Text Box 2.10: Communities under pressure in Victoria

VACCA describes some of the ways lateral violence is expressed in Koori communities in Victoria:

We observed in our research and amongst our interviewees a weight amongst the communities.... The communities we attended are all under pressure. All are living with an axe over them. From funding agencies, from communities and from broader society. The social pressures are overwhelming. People spoke of going to twenty funerals a year, rather than this being an occasional statement, it was all too common a statement. Young and old people spoke of extreme physical, emotional and spiritual violence amongst the communities and how it horrified and exhausted them and at the same time occasionally dragged them in. A former prisoner spoke of being used as a thug in some family or community war and how he cried when he told of how he had beat his cousin at the orders of an Elder. A young grandmother told how she would not take her grandchildren shopping as she did not want them see her beaten or abused in the street. Other people told us of Elders being beaten fortnightly for their pensions, Elders ordering bashings of relatives and 'enemies' like pseudo Mafioso gangs. These are some of the countless incidents we were told of in just a few communities throughout Victoria. Daily there are incidents happening or being played out as you read this document.¹⁰⁰

The examples I use here are based partly on research and partly on anecdotal evidence. This is not a comprehensive examination of all the different sorts of lateral violence that affect Aboriginal and Torres Strait Islander communities either. However, it does reflect many of the concerns shared with me as I have spoken with people both from urban, rural and remote communities about lateral violence.

Talking about lateral violence and related issues is very sensitive and I am grateful to all community members, workers and researchers who have shared their stories for this report. It requires courage to name a problem as entrenched and insidious as lateral violence. Together, we are taking the first step in tackling lateral violence.

100 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 50.

(a) Bullying

Bullying is one of the most common and destructive forms of lateral violence. Bullying is when someone (or a group of people) with more power, repeatedly and intentionally use negative words and/or actions against someone causing distress and damaging wellbeing.¹⁰¹ It can be both direct (such as hitting or teasing) and indirect (such as spreading rumours or gossip or deliberately excluding someone). ‘Carrying yarns’ or malicious gossiping and rumour mongering is another way that many Aboriginal and Torres Strait Islanders describe indirect bullying.

Bullying is something that can happen to anyone and takes place in a range of different contexts, including in families, communities, workplaces, schools and cyberspace. This section will look at some examples of bullying related to these contexts.

(i) Cyber bullying

As technology has developed so too have the tools of bullying. Cyber bullying is a term that is used to describe the bullying and harassment that takes place through the use of technology. It includes using Facebook and other social networking sites and forums, email, Twitter, instant messaging programs and mobile phones to spread rumours or gossip, and post and send hurtful photos, videos, messages and comments.¹⁰²

Cyber bullying is particularly harmful because of the potential for internet postings to go ‘viral’¹⁰³ meaning that they are rapidly disseminated to an extremely large audience in the click of a button. Some forms of cyber bullying can also be conducted anonymously. When individuals are not accountable for their actions, it can lead to more extreme forms of cyber bullying.

While we don’t know much about the incidence of cyber bullying in Aboriginal and Torres Strait Islander communities, we do know that it affects at least one in ten students.¹⁰⁴

Social media sites can provide empowering spaces where young people can explore and affirm their Indigenous identity but members can also use these sites to develop their own hierarchies of who is and isn’t Indigenous. Although this sort of lateral violence is not new, the use of technology means that a lot more people can receive this hurtful information, compared to verbally ‘carrying yarns’ or spreading malicious gossip and ‘running people down’ by making personal attacks on their character and credibility.

Text Box 2.11 examines the damaging impacts of social networking sites on mobile phones in the Northern Territory. Unfortunately, this is not an isolated incident. I have heard about similar forms of cyber bullying in many different communities.

101 Reach Out, *What is Bullying?*, <http://au.reachout.com/find/articles/bullying-what-it-is> (viewed 21 September 2011).

102 Australian Human Rights Commission, *Cyber bullying, Human Rights and bystanders*, at <http://www.humanrights.gov.au/bullying/cyberbullying/index.html> (viewed 21 September 2011).

103 D Boyd, ‘Social Network Sites as Networked Publics: Affordances, Dynamics, and Implications’ in Z Papacharissi (ed), *Networked Self: Identity, Community and Culture on Social Network Sites* (2010) 39.

104 D Cross, T Shaw, L Hearn, M Epstein, H Monks, L Lester and L Thomas, *Australian Covert Bullying Prevalence Study*, Child Health Promotion Research Centre, Edith Cowan University (2009), p 42. At <http://www.deewr.gov.au/Schooling/NationalSafeSchools/Pages/research.aspx> (viewed 11 August 2011).

Text Box 2.11:

Mobile phones as weapons of lateral violence

In the Northern Territory, many communities are finding mobile phones are often the medium through which gossip, bullying and other forms of lateral violence are spread. Eileen Deemal-Hall has worked with communities through the Northern Territory Department of Justice and says 'we've got health warnings on cigarette packets, but we have nothing on the mobile phones – some applications are hazardous'.¹⁰⁵

One of these applications is Telstra Bigpond's *Diva Chat*, a chat service available on mobile phones. *Diva Chat* allows phone users to choose a username and send messages to each other. This is a popular way for its users, primarily younger women, to communicate with each other because no phone credit is needed.

But *Diva Chat* has also been causing problems in Aboriginal and Torres Strait Islander communities across Australia, with the application being used to send abusive messages.

Eileen Deemal-Hall believes that the appeal of *Diva Chat* lies in its anonymity. She says 'you can give yourself a username and send whatever message you like'.¹⁰⁶ Sergeant Tanya Mace from Yuendumu police station believes that this anonymity is appealing to the women who use *Diva Chat* in her community:

Women, they sit there and ... they talk stories... and think about how they can have a go at their enemies. I'm not speaking about everyone but generally the women will hide behind their phone, without fear of confrontation.¹⁰⁷

Eileen Deemal-Hall believes *Diva Chat*'s popularity with young women is a typical example of the oppressed becoming the oppressors, 'women have been oppressed for thousands of years, now they've discovered a way they can be in control'.¹⁰⁸

The individual messages that are sent using *Diva Chat*, Bluetooth, Push and other technologies are causing widespread troubles that are involving many members of families, extended families and entire communities. According to Eileen Deemal-Hall:

Although it can be gossiping and family fighting, it can also extend to discussions over land issues, for example in Queensland land issues were being discussed over *Diva Chat*. The end result is families and whole communities fighting.¹⁰⁹

Nicki Davies, co-ordinator of mediation services in Yuendumu echoes these sentiments and believes that it is the youngest who are most vulnerable to this form of cyber-bullying.

It doesn't just affect individuals, it affects the whole community. My greatest concern is for the children. The kids take on the thoughts and emotions of adults, they're carrying on adult's fights.¹¹⁰

105 E Deemal-Hall, *Phone communication with the Social Justice Commissioner's Office*, 11 July 2011.

106 E Deemal-Hall, *Phone communication with the Social Justice Commissioner's Office*, 11 July 2011.

107 T Mace, *Phone communication with Social Justice Commissioner's Office*, 14 July 2011

108 E Deemal-Hall, *Phone communication with the Social Justice Commissioner's Office*, 11 July 2011.

109 E Deemal-Hall, *Phone communication with the Social Justice Commissioner's Office*, 11 July 2011.

110 N Davies, *Phone communication with Social Justice Commissioner's Office*, 27 July 2011.

Recent evidence shows that Aboriginal children appear more likely to be involved in bullying than non-Aboriginal children.¹¹¹ It also shows that children who become involved in bullying are likely to experience reduced social and emotional wellbeing and face problems at school. As Nicki describes:

[S]o many kids have a genuine fear of going to school, you see people walking down the street who are looking around when they walk to see who is around, or they are just trying hard to be invisible.¹¹²

Many communities in the Northern Territory are developing their own ways to stop cyber bullying, but holding individuals accountable is proving problematic. Determining who sends anonymous messages is a difficult process, even when a hosting company can identify a phone number, the register of who purchased the phone and its number is often not kept properly. In many communities there is also likely to be shared use of a mobile phone. Sergeant Mace says: 'I describe a mobile phone as a communal asset, one person owns it but 20 people use it'.¹¹³

The community of Maningrida, on the north coast of Arnhem Land, was troubled by young people misusing mobile phones to spread gossip which caused family fighting. Although phone providers were supposed to be checked for the 100 points of ID, this protocol was not being followed. The community has now taken the decision to stop selling phones to people under the age of 18.

Other communities such as Hermannsburg/Ntaria and Galiwin'ku have also developed plans to achieve community safety and manage technology.¹¹⁴ The community of Yuendumu has developed a reporting system to address the misuse of *Diva Chat* which will be explored in Chapter 4.

(ii) Young people and bullying in schools

Bullying affects a large number of school aged Aboriginal and Torres Strait Islander children. The Western Australian Aboriginal Child Health Survey found that one third of students aged 12–17 years had been bullied at school and one quarter had been 'picked on'.¹¹⁵

An in-depth study of Yamatji children in the mid west of Western Australia by Juli Coffin found that over 40% of primary school students reported that they 'saw or experienced bullying every day or nearly every day'.¹¹⁶ High school students reported a lower incidence, with 16% reporting that bullying was a daily occurrence. Adults interviewed indicated that they felt 'bullying was part of childhood and happened everywhere'.¹¹⁷

According to the research conducted by Juli Coffin, the vast majority of bullying experienced by Aboriginal children was intra-racial.¹¹⁸ In other words, this bullying can be seen as another example of lateral violence impacting on our children and young people.

111 J Coffin, A Larson, D Cross, 'Bullying in an Aboriginal Context' (2010) 39 *The Australian Journal of Indigenous Education* 77.

112 N Davies, *Phone communication with Social Justice Commissioner's Office*, 27 July 2011.

113 T Mace, *Phone communication with Social Justice Commissioner's Office*, 14 July 2011.

114 E Deernal-Hall, *e-mail communication with Social Justice Commissioner's Office*, 12 July 2011.

115 S Zubrick, S Silburn, D Lawrence, F Mitrou, R Dalby, E Blair, J Griffin, H Milroy, J De Maio, A Cox and J Li, *The Western Australian Aboriginal Child Health Survey Volume Two: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Curtin University (2005), pp 247–251. At http://www.ichr.uwa.edu.au/waachs/publications/volume_two (viewed 21 September 2011).

116 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39 (1) *The Australian Journal of Indigenous Education* 77, p 80.

117 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39(1) *The Australian Journal of Indigenous Education* 77, p 80.

118 J Coffin, 'Making Them Stop it: What Aboriginal Children and Youth in Australia Are Saying About Bullying' (2011) 6(1) *First Peoples Child and Family Review* 83, p 90.

Like other forms of lateral violence, identity issues are an integral part of the bullying described by Aboriginal and Torres Strait Islander children and young people. Triggers for bullying include:

[B]eing from a different area, being fair or very dark skinned/different looking to the norm, or socialising with different cultural groups especially non-Aboriginal children.¹¹⁹

Childhood and adolescence are critical times for identity formation and to have your cultural identity called into question, 'attacks the core of Aboriginal children and youths' being'.¹²⁰

Issues of cultural identity also interplay with the negative stereotypes of Aboriginal and Torres Strait Islander peoples. For instance, many of the children and adults in Juli Coffin's research thought that bullying was:

['J]ust something Aboriginal people do' and intrinsically linked to being a 'proper Aboriginal'.¹²¹

This idea reinforces the negative stereotypes about Aboriginality. Juli Coffin notes that none of the children or young people interviewed had anything good to say about being Aboriginal. If young people do not have pride in their culture and identity, it increases the risk that they will feel powerless and go on to perpetrate further lateral violence.

Long standing feuds and cultural obligations are also a factor in this type of lateral violence. Children get drawn into feuds that are passed down the generations and have strong obligations to defend their family. This perpetuates the cycle of lateral violence and also brings other people into the conflict. Once the children are engaged in the conflict, it is then not uncommon for the older relatives to get involved, often escalating the situation to physical violence.

Children and young people who experience bullying report that they do not want to go to school where they are likely to be further victimised. Juli Coffin found that most parents and caregivers responded to their child's experience of bullying by keeping them home from school until the situation settles down.¹²² While the parents have their child's best interests at heart, children must attend school or the 'cycle of non-attendance and non-achievement'¹²³ begins. This suggests that there needs to be stronger partnerships between parents and schools to tackle bullying. Chapter 4 will provide a positive example based on the *Solid Kids, Solid Schools* program.

However, the most disturbing aspect of bullying that Juli Coffin found from her research was the way violence has been profoundly normalised in the lives of these children and young people.¹²⁴ Both parents and children identified the levels of family and community violence as leading to an acceptance of violence as normal, describing how young children are initially scared after seeing violent behaviour but as they grow older 'a normal pattern was for them to either ignore it, or to rush out to watch, discuss and even join in'.¹²⁵ One research participant described the reactions of children to violence in his community:

119 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39(1) *The Australian Journal of Indigenous Education* 77, p 82.

120 J Coffin, 'Making Them Stop it: What Aboriginal Children and Youth in Australia Are Saying About Bullying' (2011) 6(1) *First Peoples Child and Family Review* 83, p 95.

121 J Coffin, 'Making Them Stop it: What Aboriginal Children and Youth in Australia Are Saying About Bullying' (2011) 6(1) *First Peoples Child and Family Review* 83, p 94.

122 J Coffin, 'Making Them Stop it: What Aboriginal Children and Youth in Australia Are Saying About Bullying' (2011) 6(1) *First Peoples Child and Family Review* 83, p 93.

123 J Coffin, *Phone Communication with Social Justice Commissioner's Office*, 8 August 2011.

124 J Coffin, *Phone Communication with Social Justice Commissioner's Office*, 8 August 2011.

125 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39(1) *The Australian Journal of Indigenous Education* 77, p 82.

If they are inside say watching a DVD then they hear someone fighting they press pause and go and watch the fight have a good laugh and then go back inside like nothing happen.¹²⁶

Our children have the right to live free from violence, not in a world where the manifestations of lateral violence are common place and accepted. Similarly, these acts of feuding or family violence should never be seen as 'cultural'. They must be seen for what they are: unacceptable and illegal physical violence. Again, our children have the right to live in a world where their strong, rich culture is not denigrated by those who try and excuse their actions through false notions of culture. This perpetuates the cycle of lateral violence.

(ii) Organisational conflict

Our organisations are another battleground for feuds and bullying to be played out. The weapons of choice here are nepotism, gossiping and harassment. When our organisations are under siege from lateral violence their effectiveness is diminished.

Organisations beset with lateral violence are riddled with cliques and underhanded deals. Community organisations are designed to represent their entire communities, not specific family groups or individuals to the exclusion of others:

Nepotism is a way for people seeing not as just in employment, you know, singling out a mob of people going to an AGM and writing a board member on, or going to a group of meetings and just... causing trouble you know. And that's what really gets on your nerves...that some people think that because they are part of a group, a family group, that they can go and they are entitled to that.¹²⁷

When lateral violence is played out like this it undermines trust in organisations. The organisations themselves become trapped into the cycle of lateral violence and are viewed as supporting one faction or family group instead of the entire community.

I remember visiting a town in Western Australia where I explained this situation to a person new to Aboriginal and Torres Strait Islander affairs who quickly digested this information and then said:

Now let me get this right, the Government pays this one faction to keep all of these other factions away from this service.

This situation breeds further community resentment and unrest.

Research by VACCA found that 37% of respondents reported not feeling culturally safe or welcome in Koori organisations, a further 6% weren't sure and 29% didn't answer the question.¹²⁸ The researchers argue that lateral violence is a large part of these feelings of ambivalence.

Recent research conducted by the Office of the Registrar of Indigenous Corporations (ORIC) found that internal disputes constitute the third most prevalent 'class' of failure within Indigenous corporations.¹²⁹

Text Box 2.12 is a snapshot of case studies drawn from the research that indicate how conflict can cause corporate failure.

126 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39(1) *The Australian Journal of Indigenous Education* 77, p 82.

127 *The silence ward – understanding lateral violence* (Produced by Golden Seahorse Productions for the Victorian Aboriginal Community Controlled Health Organisation, funded by the Koori Justice Unit, Department of Justice, Victoria, 2010), 14:14.

128 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 66.

129 Office of the Registrar of Indigenous Corporations, *Analysing key characteristics in Indigenous corporate failure: Research Paper* (2010), p 46. At http://www.oric.gov.au/html/publications/other/Analysing-key-characteristics-in-Indigenous-corporate-failure%20failure_v-2-2.pdf (viewed 21 September 2011).

Text Box 2.12:

Indigenous Corporate Failure Report

ORIC examined 93 cases of Indigenous corporate failure. The following case studies are examples of how internal conflict has contributed to the failure of the corporation.

Case study 10

A review of case study 10 revealed a totally crippled Indigenous corporation:

- Members of the Governing Committee can no longer meet in the same room.
- The manager has usurped the power of the Committee but is not capable of satisfactorily managing the corporation's affairs.
- A group of four members of the Committee, who despite having a majority, have been ostracised by the manager, who refuses to deal with them and has effectively banned them from the office.
- Two Committee members are supported by the manager and they have attempted to create a Committee by invalidly 'appointing' further members and subsequently passing resolutions noting that the four excluded members are no longer on the Committee.

Case study 18

A review of case study 18 showed an organisation that was in turmoil because of divisive elements within the community:

- There are two factions each claiming to represent the Governing Committee.
- There is little possibility of these two groups reconciling their differences and working together for the good of the organisation.
- The office of the organisation has been closed by one of the factions and the affairs of the organisation are effectively in limbo.

Case study 20

A review of case study 20 found a break down within the corporation that has led to paralysis:

- There are two groups claiming to be the legitimate Governing Committee.
- The dispute has become protracted involving solicitors and the police and there is little likelihood of the dispute being resolved at a local level.
- It appears that neither Committee has a legitimate claim to manage the corporations affairs.
- It is considered that acknowledgement of one Committee over the other will only open the gates to legal challenges by the other Committee, the outcome of which may only be resolved in a court of law.

Case study 22

A review of case study 22 found the corporation's failure is associated with disputes within the community:

- There is a complete communication breakdown within the Aboriginal community itself that has resulted in a sense of alienation between certain members of the corporation and factions within the community.
- There have been allegations of threatening and intimidating behaviour.
- The chairperson currently has an apprehended violence order against a community member.
- The chairperson and administrator argue that the Committee acts in the broader interests of the Aboriginal community. A 'vocal' minority disagree suggesting it is rife with 'nepotism, cronyism and poor governance'.¹³⁰

I discuss the damage lateral violence is doing in our organisations in more detail in the accompanying *Native Title Report 2011* where I specifically look at its impacts on Prescribed Bodies Corporate.

In addition to undermining the performance of our organisations, lateral violence as workplace bullying appears to be having negative impacts on employment retention.

(iv) Workplace bullying and employment retention

Bullying and harassment in the workplace is increasingly being recognised as having negative impacts on employment retention for Aboriginal and Torres Strait Islanders.¹³¹ This type of behaviour is lateral violence.

Workplace bullying is a challenge that is confronting Australia as a nation. It is estimated that between 2.5 and 5 million people will experience workplace harassment at some time during their career and that the costs of workplace bullying could be as much as \$36 billion per year when the hidden and opportunity costs are considered.¹³²

Workplace bullying appears to have a disproportionate effect on Aboriginal and Torres Strait Islander workers. A graphic example is the experience of Aboriginal and Torres Strait Islander health workers who have higher levels of burnout, absenteeism, chronic illness related to stress and lower retention rates.¹³³

Josie Winsor argues that Aboriginal and Torres Strait health workers feel as though they are 'caught in a vice getting pressure from all sides'.¹³⁴ Issues of powerlessness are played out within the profession as Aboriginal and Torres Strait Islander health workers are constantly reminded that they are at the 'bottom of the health system ladder',¹³⁵ despite the fact that their work requires immense skill and dedication.

130 Office of the Registrar of Indigenous Corporations, *Analysing key characteristics in Indigenous corporate failure: Research paper* (2010), pp 38, 48–49, 64. At http://www.oric.gov.au/html/publications/other/Analysing-key-characteristics-in-Indigenous-corporate%20failure_v-2-2.pdf (viewed 21 September 2011).

131 See J Winsor 'Workplace bullying' (2001) 25(3) *Aboriginal and Islander Health Worker Journal* 4.

132 Australian Human Rights Commission, *Good practice, good business: Eliminating discrimination and harassment from your workplace: Workplace bullying*, www.humanrights.gov.au/employers/ (viewed 21 September 2011).

133 B Flick, 'Aboriginal Health Workers; Slaves or Miracle Workers?' (1995) 19(3) *Aboriginal and Islander Health Worker Journal* 10.

134 J Winsor 'Workplace bullying' (2001) 25(3) *Aboriginal and Islander Health Worker Journal* 4, p 6.

135 J Winsor 'Workplace bullying' (2001) 25(3) *Aboriginal and Islander Health Worker Journal* 4, p 6.

The identity issues surrounding lateral violence also affect Aboriginal and Torres Strait Islander health workers as they suffer criticism from their communities. Kathy Abbott, a respected Aboriginal and Torres Strait Islander health worker, describes some of this criticism which includes snide comments like, 'She's walking around with them doctors, she must be one of them',¹³⁶ highlighting the problems Aboriginal and Torres Strait Islander health workers have in being accepted in both the medical world and their own communities.

This tension around identity is not only a problem for health workers. I have heard similar issues raised by Aboriginal and Torres Strait Islanders who have had success in many different areas. Another aspect of the cyclical nature of lateral violence is that people who are seen as successful are often the targets of lateral violence in their communities because they are seen as 'coconuts' or not 'community' enough. To avoid further victimisation, these individuals can disengage from their communities because it is not worth the risk of such hurt. Paradoxically, this leads to further questions about their community connections and 'authenticity' as an Aboriginal or Torres Strait Islander person.

Further compounding this, Josie Winsor explains that lateral violence is not only damaging work environments for Aboriginal and Torres Strait Islander health workers, but also extends to their home life:

[T]he unusual situation of the Aboriginal health worker is that we work and live in the same community and the 'horizontal violence' is not only experienced within the workplace, but also in our personal lives.¹³⁷

Of course, this does not just apply to Aboriginal and Torres Strait Islander health workers but all Aboriginal and Torres Strait Islanders who work in their community:

These people don't knock off work at five or even have a weekend off. They are often paid for a forty hour week but often or more likely work sixty or seventy. The pressures they face are phenomenal. They are often the people who are in a volunteer capacity on several committees; they do this out of hours on top of their normal job. They are often the people who get many calls 'out of hours'... They are mediators in conflict, they are bearers of news when someone has passed away, they do eulogies, they are also mothers, fathers, uncles, aunties, and they are often the back bone of a community. In many cases they are also subjected to extreme incidents of lateral violence.¹³⁸

Again, this affects not only Aboriginal and Torres Strait Islanders who work in the community but indeed anyone who has a good understanding of how the system works and can offer support in times of crisis. When you add this to existing work commitments, you can see how many Aboriginal and Torres Strait Islanders in the workforce have immense burdens to carry.

Bearing this in mind, the burnout, stress and absenteeism are not surprising. Living and working in caustic environments further compounds trauma which deepens the cycle of lateral violence.

The Australian Public Service Commission's 2009 *Census Report* has provided further anecdotal evidence of the negative impacts of bullying within the workplace.

- Indigenous employees were twice as likely as non-Indigenous employees Australian Public Service (APS) wide to report that they had experienced discrimination, bullying and/or harassment in their agency in the last 12 months.
- Just over one in four (27%) Indigenous employees reported that they had experienced bullying and/or harassment in the workplace in the last 12 months. This is an increase from 23% in 2005.

136 K Abbott in J Winsor 'Workplace bullying' (2001) 25(3) *Aboriginal and Islander Health Worker Journal* 4, p 6.

137 J Winsor 'Workplace bullying' (2001) 25(3) *Aboriginal and Islander Health Worker Journal* 4, p 5.

138 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 50.

- Those who have experienced harassment and/or bullying are almost twice as likely as those who haven't to 'signal their intention to leave the APS in the next three years'.¹³⁹

In addition to this research, I have been informed on multiple occasions when discussing lateral violence that it is a key contributing factor that is driving our people out of the workforce or discouraging them from engaging with it.

The evidence base casually linking lateral violence to employment retention requires bolstering. However, the current available evidence would appear to support the idea that lateral violence is one inhibiting factor that is undermining the achievements of the COAG Closing the Gap target in relation to employment rates.

(b) Social and emotional impacts of lateral violence

Social and emotional wellbeing is the way Aboriginal and Torres Strait Islanders describe the 'importance of connection to land, culture, spirituality, ancestry, family and community, and how these affect the individual'.¹⁴⁰ Lateral violence assaults individual and community wellbeing, so it seems common sense that there are also profound social and emotional wellbeing impacts.

Given that lateral violence is such a new area of inquiry in Australia, it is not surprising that research looking at the links between lateral violence and social and emotional wellbeing has not been done yet. Similarly, social and emotional wellbeing is a holistic way of looking at what helps and hinders individuals, so it would be counter productive to reduce the complexity of social and emotional wellbeing to the single factor of lateral violence.

However, based on the conversations that I have had with people and the emerging international literature around social and emotional wellbeing and cultural safety,¹⁴¹ I think it would be remiss to ignore lateral violence as part of the complex mix of factors that impact negatively on social and emotional wellbeing. Just because we don't have definitive data yet doesn't mean that people aren't suffering. An important step in combating lateral violence is that we openly acknowledge the harm it is inflicting in our communities.

While research has recently shown that 90% of Aboriginal and Torres Strait Islanders reported feeling 'happy' most/all/some of the time we cannot deny the severity of mental health problems in our communities.¹⁴² The most recent *Overcoming Indigenous Disadvantage* report updates some of the key indicators of mental health and social and emotional wellbeing problems facing our communities. Text Box 2.13 provides a summary from this report.

139 Australian Public Service Commission, *2009 Census Report: Aboriginal and Torres Strait Islander APS Employees* (2009), pp 40–41, 47. At <http://www.apsc.gov.au/publications10/censusreport2009.htm> (viewed 21 September 2011).

140 Social Health Reference Group, *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Well Being 2004–2009*, Australian Department of Health and Ageing (2004), p 9. At [http://www.health.gov.au/internet/main/publishing.nsf/content/8E8CE65B4FD36C6DCA25722B008342B9/\\$File/wellbeing.pdf](http://www.health.gov.au/internet/main/publishing.nsf/content/8E8CE65B4FD36C6DCA25722B008342B9/$File/wellbeing.pdf) (viewed 21 September 2011).

141 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), pp 29–30.

142 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 7.53. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

Text Box 2.13:

Social and emotional wellbeing indicators

Overcoming Indigenous Disadvantage 2011 reported that:

- Aboriginal and Torres Strait Islanders reported experiencing a high/very high level of psychological distress at two and a half times the rate for non-Indigenous people (32% compared to 12%).¹⁴³
- Between 2004–05 and 2008 the proportion of Aboriginal and Torres Strait Islanders experiencing a high/very high level of psychological distress increased from 27% to 32%, while the proportion of non-Indigenous people remained relatively stable, leading to an increase in the gap.¹⁴⁴
- From 2004–05 to 2008–09 Aboriginal and Torres Strait Islanders were hospitalised for mental and behavioural disorders at around 1.7 times the rate for non-Indigenous people.¹⁴⁵
- In 2005–2009, after taking into account the different age structures of the two populations, for those jurisdictions for which suicide death data are available, the suicide death rate for Aboriginal and Torres Strait Islanders was 2.5 times the rate for non-Indigenous people (figure 7.8.1).¹⁴⁶
- After adjusting for differences in the age structure of the two populations, Aboriginal and Torres Strait Islanders were hospitalised for non-fatal intentional self-harm at two and a half times the rate for non-Indigenous people (3.5 per 1 000 compared to 1.4 per 1 000 in 2008–09).¹⁴⁷

Research has shown that the experience of stressful life events, such as the death of a family member or illness or inability to get a job, has a detrimental effect on the social and emotional wellbeing of Aboriginal and Torres Strait Islanders. The National Aboriginal and Torres Strait Islander Social Survey (NATSISS) paints a picture of the toll that stressful life events have with:

- 77% of Aboriginal and Torres Strait Islanders over 15 years of age reporting that they or their close family or friends have experienced at least one life stress event in the last 12 months
- the most common types of stressors were death of a family member or close friends (39%), serious illness or disability (31%) and inability to get a job (22%)

143 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 7.53. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

144 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 7.53. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

145 *Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 7.53. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

146 *Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 7.62. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

147 *Steering Committee for the Review of Government Service Provision, Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 7.62. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

- 42% reported at least three stressors in the last 12 months
- 35% of those who experienced at least one stressor also reported high/very high levels of psychological distress
- levels of psychological distress were higher for those who had witnessed violence (54%) or been experienced abuse or violent crime (53%).¹⁴⁸

Some of these life stress events are directly related to lateral violence. But the impact of dealing with this level of stress and subsequent psychological distress wears people down and can lead to feelings of powerlessness. This can also create the conditions for lateral violence.

The ways lateral violence affects social and emotional wellbeing are multilayered and of course vary in every individual based on their own strengths and risk factors. The impacts of lateral violence behaviours like bullying can lead to severe emotional distress and isolation. The experience of violence, be it emotional or physical, can lead to trauma for the victim.

However, what makes the social and emotional wellbeing impact of lateral violence subtly different from other experiences of bullying and violence is that it operates in a way that:

- undermines cultural identity with attacks based on incorrect notions of ‘authenticity’
- is a consequence of oppression and powerlessness
- feeds on negative stereotypes that devalue pride in culture and individual self-worth.

Because of these historical, cultural and social dynamics at play, the impact of lateral violence manifests itself in a way that is beyond an individualised view of mental illness. There is no pill to cure the legacy of oppression which includes the damage of your own people attacking your identity or the hopelessness that comes from living in a world that doesn’t value your own culture and worth. As Chapters 3 and 4 will outline in greater detail, the cure must start with healing, empowerment and cultural security.

(c) Conflict leading to involvement in the criminal justice system

Like social and emotional wellbeing impacts, the research around lateral violence leading to involvement with the criminal justice system is still embryonic. There is much work that needs to be done in this area and we need to be very careful in how we approach it.

Again, I think it is probably a mistake to reduce the complexity of involvement with the criminal justice system, in particular, violent offending, down to the single cause of lateral violence. We know from a lot of evidence that substance abuse, lack of education and employment opportunities, experience of violence, abuse and other underlying factors can all contribute to violent offending.¹⁴⁹ Nonetheless, I think lateral violence is part of an explosive mix in some cases. Lateral violence helps explain how a history of dispossession, marginalisation and trauma can erupt against those who are closest to us.

148 Australian Bureau of Statistics, *The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples: Social and Emotional Wellbeing: Life Stressors – Adults*, Report 4704.0 (2010). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter430Oct+2010> (viewed 21 September 2011).

149 J Wundersitz, *Indigenous Perpetrators of Violence: Prevalence and risk factors for offending*, Australian Institute of Criminology, Research and Public Policy Series 105 (2010). At <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp105.aspx> (viewed 21 September 2011).

(i) How does lateral violence lead to involvement with the criminal justice system?

As I travel around the country talking to people I am often given anecdotal evidence that suggests a link between lateral violence and involvement with the criminal justice system. For instance, in 2008 I attended the annual gathering of the Koori Courts in Melbourne attended by some 120 people made up of judges, magistrates, Elders and respected people and staff. Once I explained the concept of lateral violence I was told that it was the genesis of many of the cases of assault that came before their courts.

Although it is yet to be investigated in formal research, I would suggest that a great number of the physical assaults that are reported to police involving two or more Aboriginal and Torres Strait Islanders' are in fact manifestations of lateral violence. Lateral violence can also be a factor in family violence. Marcia Langton has argued that:

[T]he most at risk of lateral violence in its raw physical form are family members, and in the main, the most vulnerable members of the family: old people, women and children. Especially the children.¹⁵⁰

When we hear about the long running feuds in communities that spill over into violence, this can be seen as a manifestation of lateral violence as well. For instance, you can look at the situation in Yuendumu where we have seen a very fractured and marginalised community embroiled in conflict and also see elements of lateral violence at work.

This sort of community tension leading to violence is not just an issue in remote communities. Long standing feuds between families and groups also take place in urban and rural areas. VACCA have conducted research around lateral violence and cultural safety where young people have reported being told by older family members to attack other community members as part of long held feuds.¹⁵¹ This has led to involvement with the criminal justice system.

Whilst many of the instances of lateral violence leading to contact with the criminal justice system are, as I say above, anecdotal and need further investigation, what is not anecdotal is the Aboriginal and Torres Strait Islander violent victimisation rates outlined below.

(ii) A statistical picture of Aboriginal and Torres Strait Islander violent victimisation

The statistical picture of violent victimisation for Aboriginal and Torres Strait Islanders is both disturbing and incomplete. Despite limitations in data, we are able to confidently say that Aboriginal and Torres Strait Islanders are more likely to be victims of family violence and other violence where there is a relationship with the offender than non-Indigenous Australians. However, given that Indigenous status is not routinely recorded for victims or offenders, our interpretation of the data is based largely on the assumption that partners and family members of victims are also Aboriginal and Torres Strait Islander.

There are also inherent issues with under reporting of violent crimes which I will discuss further below. However, Australian Institute of Criminology research has identified a relationship to the offender as a risk factor associated with increased victimisation, concluding that 'most victims of violence suffer at the hands of those closest to them'.¹⁵²

150 M Langton, 'The end of "big men" politics' (2008) 22 *Griffith Review* 11, p 15. At <http://griffithreview.com/edition-22-moneysexpower/the-end-of-big-men-politics> (viewed 21 September 2011).

151 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 50.

152 C Bryant and M Willis, *Risk Factors in Indigenous Violent Victimisation*, Australian Institute of Criminology, Technical and Background Paper (2008), p 40. At <http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp030.aspx> (viewed 1 September 2011).

There is no single method of calculating the incidence of violence so a statistical analysis draws on a range of different sources.¹⁵³ One way of looking at the level of victimisation is in terms of hospitalisation. Nationally, in 2008–2009:

- Aboriginal and Torres Strait Islanders were hospitalised for family violence related assaults at 23 times the rate of non-Indigenous people.
- Aboriginal and Torres Strait Islander women were hospitalised as a result of assault by a family member other than their spouse or partner at 52 times the rate for non-Indigenous women.
- Aboriginal and Torres Strait Islander males were hospitalised as a result of assault by their spouse or partner at 41.8 times the rate for non-Indigenous males.
- In remote areas Aboriginal and Torres Strait Islanders were hospitalised as a result of family violence at 35 times the rate of non-Indigenous people.¹⁵⁴

Homicide is probably the most thoroughly researched area of violent victimisation. While it is a relatively uncommon crime, with 335 recorded homicides of Aboriginal and Torres Strait Islanders and 2 019 homicides of non-Indigenous people during the 10 year period from 1999–2009, the rate of homicide for Aboriginal and Torres Strait Islanders is 8.5 times the rate for non-Indigenous people.

Nationally, in 2008–2009:

- the victim and offender were intimate partners in 60.9% of Aboriginal and Torres Strait Islander homicides compared to 24.2% of non-Indigenous homicides
- there were no Aboriginal and Torres Strait Islander homicides where the victim and offender were strangers, whereas the victim and offender were strangers in 18% of non-Indigenous homicides
- a domestic altercation was the motive for 66% of Aboriginal and Torres Strait Islander homicides and 34% of non-Indigenous homicides.¹⁵⁵

Further research comparing Aboriginal and Torres Strait Islander and non-Indigenous homicides between 1999–2009, prepared by the Australian Institute of Criminology for this report, also shows that Aboriginal and Torres Strait Islanders are more likely to be killed by family members or intimate partners. Intimate partners were responsible for 46% of the Indigenous on Indigenous homicides recorded during this period, compared with 26% of non-Indigenous homicides.¹⁵⁶

(iii) Non-disclosure of violence

Criminologists often refer to non-disclosure of violence as the ‘dark figure of crime’,¹⁵⁷ with crime statistics bringing to light only a fraction of the violent crimes committed. We know this is a particular problem in

153 For further information on victimisation and offending from police records see Appendix 6.

154 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 4.125. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

155 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 4.125. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 21 September 2011).

156 Australian Institute of Criminology, Information provided to Office of the Social Justice Commissioner, 14 June 2011. For more detailed information see Appendix 6.

157 M Willis, *Non-disclosure of violence in Australian Indigenous communities*, Australian Institute of Criminology, Trends and issues in crime and criminal justice No 405 (2011), p 1. At <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.aspx> (viewed 30 August 2011).

Aboriginal and Torres Strait Islander communities where a lack of trust in the criminal justice system and a lack of access to Police and other support services hampers disclosure.¹⁵⁸ However, I think that lateral violence also contributes to this non-disclosure, creating a situation where individuals and groups bully and intimidate victims to prevent them coming forward.

Let me explain how this plays out in communities. A survey of Aboriginal and Torres Strait Islander community safety found:

[F]ear of further violence and 'payback', or culturally related violent retribution, were the most common reasons for women not reporting violent victimisation.¹⁵⁹

It is not just fear for themselves that prevents women from disclosing but also the possibility that disclosure of violence or abuse will lead to violence between families or in the wider community. For example, the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Commission Inquiry into sexual abuse found evidence of serious assaults, including a 'mass brawl'¹⁶⁰ resulting from child abuse and sexual assault allegations.

Those in positions of power can prevent disclosure by socially, culturally and economically excluding victims and their families. Again, the APY Lands Inquiry heard evidence from a witness about the consequences of disclosure of crimes:

It's to do with people in positions of power and judging by the closing of ranks and no-one being prepared to talk. A whole family can find themselves without food, house access etc because they are blocked by those in power and everyone keeps quiet.¹⁶¹

When crimes are not disclosed we have a culture of silence where victims remain voiceless and powerless. This undermines individual and community wellbeing and perpetuates toxic power structures which can fuel the cycle of lateral violence and violent offending.

158 M Willis, *Non-disclosure of violence in Australian Indigenous communities*, Australian Institute of Criminology, Trends and issues in crime and criminal justice No 405 (2011), p 5. At <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.aspx> (viewed 30 August 2011).

159 M Willis, *Non-disclosure of violence in Australian Indigenous communities*, Australian Institute of Criminology, Trends and issues in crime and criminal justice No 405 (2011), p 4. At <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.aspx> (viewed 30 August 2011).

160 M Willis, *Non-disclosure of violence in Australian Indigenous communities*, Australian Institute of Criminology, Trends and issues in crime and criminal justice No 405 (2011), p 4. At <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.aspx> (viewed 30 August 2011).

161 E P Mulligan, *Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Commission Inquiry: A report into sexual abuse* (2008), p 110.

2.4 Conclusion

This Chapter has introduced the concept of lateral violence, where it comes from and what it means for our communities. As the examples I have used show, lateral violence is a profound problem for Aboriginal and Torres Strait Islander peoples, although up until now, it has rarely been named for what it is.

Lateral violence draws power from being nameless and invisible. The first step to tackling lateral violence is naming it and exposing the ways it impacts our communities. This allows us to then take a stand and declare zero tolerance for this sort of abuse in our communities. This Chapter has been a first step in this process. It is now over to communities, governments and industry to take a hard look at their interactions to put a stop to lateral violence. This will lead to stronger, deeper relationships on all levels.

This Chapter has been focused on explaining the problem of lateral violence, its deep historical roots and related concepts that explain the contemporary experience of lateral violence. In many ways, this Chapter has painted a distressing picture, with few positive stories to tell. However, in the next two Chapters I will shift the conversation to the solutions, providing a human rights based framework to guide our response to lateral violence. We will see that there are already great projects underway that provide a strong sense of hope and purpose in dealing with lateral violence.

Chapter 3:

A human rights-based approach to lateral violence

3.1 Introduction **102**

3.2 Human rights and lateral violence **103**

3.3 Conclusion **119**



3.1 Introduction

When we look at the many issues that face Aboriginal and Torres Strait Islander communities, it is easy to get paralysed by their complexity, entrenched nature and the sheer size of the challenge. But as an optimist, I believe that there is a lot that we can do to address these problems. There are many different tools available to suit the varying circumstances that face our diverse communities. Lateral violence is no different.

The most promising overarching response to lateral violence in my view is a human rights-based framework based on the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration). I think the Declaration offers excellent guidance for the development of strong and healthy relationships within our communities and organisations.

This Chapter outlines how lateral violence is a human rights issue and how human rights standards, particularly those contained in the Declaration, can provide a useful framework to address lateral violence. I argue that by applying these human rights standards, the problems associated with lateral violence can be tackled through an ‘assertion of Indigenous agency and responsibility’.¹

While this might sound abstract, the purpose of this Chapter is to use these ideas to begin generating practical solutions. Human rights standards are the first step in empowering communities. This in turn will help us address the causes and consequences of lateral violence. Human rights also place obligations on governments and other third parties to ensure that their actions do not contribute to lateral violence.

Using the language of human rights also gives us another way to talk about lateral violence. As I’ve said in Chapter 2, this is a tough conversation. However, I believe that if we frame our conversations in terms of human rights, that is the internationally recognised standards that governments have already committed to, we have a less confrontational and potentially more transformative way to talk about lateral violence.

1 S Gorringe, J Ross and C Fforde, ‘*Will the Real Aborigine Please Stand Up!*: Strategies for breaking the stereotypes and changing the conversation’, AIATSIS Research Discussion Paper 28 (2011), p 8. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 23 September 2011).

3.2 Human rights and lateral violence

Lateral violence is a human rights issue. Put simply, everyone has the right to be respected and safe.² The weapons of lateral violence such as harassment and bullying are violations of this human right. Text Box 3.1 examines how lateral violence can negatively impact on a number of human rights.

Text Box 3.1:

Lateral violence and human rights

Lateral violence can affect a number of human rights including:

- **The right to be free from violence** whether mental, emotional or physical.³
- **The right to life, freedom from torture and security of person**⁴ – lateral violence can have serious negative impacts on Aboriginal and Torres Strait Islander peoples and may result in depression, self-harm and suicide.⁵ It also deprives people of a sense of safety both in themselves and their community.
- **The highest attainable standard of physical and mental health**⁶ – lateral violence can have negative impacts on physical and mental health causing physical injuries, stress-related illness, depression and other health issues.
- **Freedom of expression and to hold opinions without interference**⁷ – the impacts of lateral violence may prevent individuals from freely expressing their opinions.

- ² *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 (1948), article 5. At <http://www.un.org/en/documents/udhr/> (viewed 23 September 2011); *International Covenant on Civil and Political Rights*, 1966, articles 7, 9. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); *Convention on the Rights of the Child*, 1989, articles 2, 19. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 23 September 2011).
- ³ For example see *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 7, 22(2). At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 23 September 2011); *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 (1948), article 5. At <http://www.un.org/en/documents/udhr/> (viewed 23 September 2011); *International Covenant on Civil and Political Rights*, 1966, article 7. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); *Convention on the Rights of the Child*, 1989, article 19. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 23 September 2011); Committee on the Elimination of Discrimination Against Women, *General Recommendation 12: Violence against women*, UN Doc A/44/38 at 76 (1990). At <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12> (viewed 23 September 2011); Committee on the Rights of the Child, *General Comment 13: The right of the child to freedom from all forms of violence*, UN Doc CRC/C/GC/13 (2011). At http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.doc (viewed 23 September 2011).
- ⁴ *International Covenant on Civil and Political Rights*, 1966, articles 6, 7, 9. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, articles 1, 2. At <http://www2.ohchr.org/english/law/cat.htm> (viewed 20 September 2011).
- ⁵ See C Tatz, *Aboriginal Suicide is Different: Aboriginal youth suicide in New South Wales, the Australian Capital Territory and New Zealand: towards a model of explanation and alleviation*, Criminology Research Grants (1999). At <http://www.criminologyresearchcouncil.gov.au/reports/tatz/> (viewed 23 September 2011).
- ⁶ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), article 24. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 23 September 2011); *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 (1948), article 25. At <http://www.un.org/en/documents/udhr/> (viewed 23 September 2011); *International Covenant on Economic, Social and Cultural Rights*, 1966, article 12. At <http://www2.ohchr.org/english/law/cescr.htm> (viewed 23 September 2011); *Convention on the Rights of the Child*, 1989, article 24. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 23 September 2011).
- ⁷ *International Covenant on Civil and Political Rights*, 1966, article 19. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 (1948), article 19. At <http://www.un.org/en/documents/udhr/> (viewed 23 September 2011).

- **The right to participate in decision-making and the principle of free, prior and informed consent**⁸ – lateral violence can create caustic environments where people withdraw from opportunities to actively participate in decision-making that affects them and their rights.⁹ Lateral violence can also exclude people from participating in decision-making processes. Furthermore, the presence of coercion (be it force, bullying or pressure) is inconsistent with the principle of free, prior and informed consent.¹⁰
- **The right to work and fair working conditions**¹¹ – a workplace that is besieged with lateral violence is an unsafe working environment.¹² As highlighted in Chapter 2 these environments can result in higher absenteeism from the workplace and in extreme circumstances can lead to people disengaging from the workforce.
- **The right to education**¹³ – lateral violence in the school and education setting can impede Aboriginal and Torres Strait Islander children’s right to education. Indigenous young people who have been bullied at school report that this has negatively impacted upon their school attendance and academic performance.¹⁴
- **The right to culture and to participate in cultural life**¹⁵ – lateral violence attacks and undermines an individual’s identity and authenticity as an Aboriginal or Torres Strait Islander. As a consequence lateral violence threatens an individual’s safety in their cultural identity.

8 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 5, 13(2), 18, 19, 20(1), 23, 27, 30(2), 32, 36, 38. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 20 September 2011); *International Covenant on Civil and Political Rights*, 1966, article 25. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); Human Rights Committee, *General Comment 25: The Right to Participate in Public Affairs, Voting and the Right of Equal Access to Public Service* (art 25), UN Doc CCPR/C/21/Rev.1/Add.7 (1996), para 5. At [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument) (viewed 23 September 2011).

9 The *Native Title Report 2011* examines how it is not uncommon for Aboriginal and Torres Strait Islander people to withdraw from participating in their native title claim to avoid the conflict, grief and trauma it causes.

10 Working Group on Indigenous Populations, *Standard-setting: Legal commentary on the concept of free, prior and informed consent. Expanded working paper submitted by Mrs. Antoanella-Iulia Motoc and the Tebtebba Foundation offering guidelines to govern the practice of Implementation of the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources*, UN Doc E/CN.4/Sub.2/AC.4/2005/WR.1 (2005), para 56.

11 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), article 17. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 23 September 2011); *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 (1948), article 23. At <http://www.un.org/en/documents/udhr/> (viewed 23 September 2011); *International Covenant on Civil and Political Rights*, 1966, articles 6, 7. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011).

12 See Australian Human Rights Commission, *Information for Employers*, At http://www.humanrights.gov.au/info_for_employers/ (viewed 23 September 2011).

13 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), article 14. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 23 September 2011); *Convention on the Rights of the Child*, 1989, article 28, 29. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 23 September 2011); *International Covenant on Economic, Social and Cultural Rights*, 1966, article 13. At <http://www2.ohchr.org/english/law/cescr.htm> (viewed 23 September 2011).

14 Australian Bureau of Statistics (ABS), *The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples*, Catalogue No. 4704.0 (2008). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4704.0/> (viewed 23 September 2011).

15 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 11–13. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 23 September 2011); *International Covenant on Civil and Political Rights*, 1966, article 27. At <http://www2.ohchr.org/english/law/ccpr.htm> (viewed 23 September 2011); *International Covenant on Economic, Social and Cultural Rights*, 1966, article 15. At <http://www2.ohchr.org/english/law/cescr.htm> (viewed 23 September 2011).

- **The right of development of the child**¹⁶ – childhood development is a ‘holistic concept embracing [a] child’s physical, mental, spiritual, moral, psychological and social development’.¹⁷ Communities beset with lateral violence will inhibit a child’s holistic development.

The above Text Box demonstrates that lateral violence is clearly a human rights issue. In Chapter 2 I outlined at length how powerlessness is a key driver of lateral violence. For example Gregory Phillips described it as trying to ‘feel powerful in a powerless situation’.¹⁸ A human rights framework offers an alternative to using lateral violence to feel powerful. Peter Bailey explains how human rights are linked with power:

In its naked form, power is neutral. But the unregulated exercise of power, in whomever’s hands, is the primary threat to human rights. Rightly exercised power... can be a potent vehicle in the promotion and protection of human rights. Unconstrained power leads almost inevitably to tyranny and the restriction, or elimination, of the rights of the less powerful...

The reverse of the concern about those who hold power is the capacity human rights have to *empower* those who have little or no power. Empowering the powerless and regulating the powerful are associated with the revolutionary aspects of human rights...

The quintessential concern of the human rights enterprise is to raise to a status of dignity and equality each powerless person – persons who for reasons such as law, poverty, race, religion or gender are unable to achieve dignity, fairness, basic equality and justice...

Human rights set standards to guide the exercise of power into positive and advantaging, rather than destructive and disadvantaging, courses.¹⁹

It is precisely because human rights standards can empower the powerless whilst regulating the damaging exercises of power that I believe they offer practical guidance in developing responses to lateral violence. In particular I believe that a human rights-based response is effective because:

- It provides governments and communities with a set of minimum and objective standards which can be used to establish a framework for a society based on dignity and equality.²⁰
- Addressing lateral violence and building stronger and deeper relationships within our communities is something that we as Aboriginal and Torres Strait Islanders must address. A human rights-based response places Aboriginal and Torres Strait Islander peoples as key actors in addressing lateral violence.²¹

16 *Convention on the Rights of the Child*, 1989, article 6. At <http://www2.ohchr.org/english/law/crc.htm> (viewed 23 September 2011).

17 Committee on the Rights of the Child, *General Comment 5: General measures of implementation for the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/5 (2003), para 12. At http://www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc (viewed 23 September 2011).

18 G Phillips, *Healing Identity in contemporary Australia: what is a real/traditional/grassroots Aborigine* (Australian Institute of Aboriginal and Torres Strait Islander Studies Seminar Series, Canberra, 18 May 2009). At http://www.vimeo.com/moogaloop.swf?clip_id=9173079 (viewed 23 September 2011).

19 P Bailey, *The Human Rights Enterprise in Australia and Internationally* (2009), p 5.

20 See M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *The practical power of human rights* (Speech delivered at Queensland University of Technology Faculty of Law Public Lecture Series, Brisbane, 19 May 2010. At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100519_practical_power.html (viewed 23 September 2011).

21 United Nations Development Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN Agencies* (2003). At <http://www.undg.org/index.cfm?P=221> (viewed 8 September 2011).

- Human rights incorporate responsibilities – all people are entitled to enjoy all human rights but they also have responsibilities to respect others rights.²² Consequently, Aboriginal and Torres Strait Islander peoples have responsibilities to each other and to their communities to eradicate lateral violence.

Since coming into the position of Social Justice Commissioner I have advocated that human rights have practical power, that they provide a practical framework or roadmap for creating a fair and just society.²³ Developing responses to lateral violence requires this sort of framework. In the next section of this Chapter I will examine how the human rights standards contained in the Declaration can help develop our responses.

(a) The Declaration

Lateral violence is grounded in the historical oppression and colonisation that continues to thrive in our current environment because it feeds on powerlessness, identity conflict, negative stereotypes and trauma. The Special Rapporteur on the rights of indigenous peoples argues that the Indigenous human rights movement is underpinned by the acknowledgement that:

[H]istorical phenomena grounded in racially-discriminatory attitudes are not just blemishes of the past but rather translate into current inequities.²⁴

With this in mind it is useful to view the Declaration as a remedial instrument – created in response to discrimination and denial of human rights – and it can be used to address the contemporary effects of oppression and colonisation.²⁵ The Declaration also catalogues in one place all human rights contained in international law and interprets them as they apply to the unique historical, cultural and social circumstances of Indigenous peoples. As a consequence the Declaration guides my exploration of responses to lateral violence.

I believe that Aboriginal and Torres Strait Islander peoples can use the Declaration in developing healthy, respectful and inclusive relationships, be they within their community, organisations or families. For example we can ask, are our representative organisations obtaining our free, prior and informed consent or how are they ensuring people participate in decisions that affect them?

The Declaration should also guide our relationships with governments and other third parties. It is, after all, an instrument of reconciliation.²⁶ Therefore the way governments and others engage with us should be informed by the Declaration. Doing so can help ensure that these engagements strengthen rather than divide our communities.

Applying the Declaration as a standard would require our internal relationships, and those with governments and other third parties, to be conducted within, and contribute to creating, communities where each member feels secure in their identity and role within that community. This is a culturally safe and secure environment.

22 See Australian Human Rights Commission, *Cyberbullying, human rights and bystanders*, <http://humanrights.gov.au/bullying/cyberbullying/index.html> (viewed 7 September 2011).

23 See M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *The practical power of human rights* (Speech delivered to Queensland University of Technology Faculty of Law Public Lecture Series, Brisbane, 19 May 2010). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2010/20100519_practical_power.html (viewed 23 September 2011).

24 S J Anaya, 'The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era' in C Charters and R Stavenhagen (eds), *Making the Declaration Work* (2009) 184, p 191.

25 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 6. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 23 September 2011).

26 The Declaration states that 'recognition of the rights of indigenous peoples in this Declaration will enhance the harmonious and cooperative relations between the State and indigenous peoples': *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), preambular para 18. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 23 September 2011).

(b) Applying the principles of the Declaration

As discussed in Chapter 1 the Declaration contains a number of key principles that underpin all of the rights contained within it, including:

- self-determination
- participation in decision-making and free, prior and informed consent
- non-discrimination and equality
- respect for and protection of culture.

These key principles will assist in exploring responses to lateral violence.

(i) Self-determination

In Chapter 2 I outlined how the human needs theory provides insight into lateral violence – in circumstances where human needs are unmet there will continue to be conflict and lateral violence.

The source of this conflict can be addressed by enabling self-determination because it creates a process for the satisfaction of human needs. Importantly, these are the needs as determined by the people exercising the right, not the needs imposed by outside forces. In this context human needs extends to include concepts of distributive justice, identity and cultural security.²⁷

Historically Indigenous peoples have not been able to exercise the right to self-determination through a combination of cultural repression and imposed control stemming from colonisation.²⁸ Disempowerment is magnified when we adopt imposed classifications of identity and negative stereotypes. Rather than attack the system that is imposing its will upon us, our communities attack each other.

What is meant by self-determination?

Self-determination, when realised, creates a community-wide agency that stifles the toxicity of victimhood and powerlessness. Michael Wehmeyer poignantly states that:

[S]elf-determined people are causal agents; they make things happen in their lives. They are goal oriented and apply problem-solving and decision-making skills to guide their actions. They know what they do well and where they need assistance. Self-determined people are actors in their own lives instead of being acted upon by others.²⁹

To achieve this right Aboriginal and Torres Strait Islander peoples should be able to exercise control over:

- identifying community priorities
- how their communities operate
- how decisions about their community are made
- what processes are used to make decisions
- how disputes are resolved.³⁰

27 H Kok, 'Reducing Violence: Applying the Human Needs Theory to the Conflict in Chechnya' (2007) 3(11) *Review of International Law and Politics* 89, p 90.

28 See S J Anaya, *Why There Should Not Have to Be a Declaration on the Rights of Indigenous Peoples* (Speech delivered at the 52d Congress of Americanists, Seville, July 2006) in S J Anaya, *International Human Rights and Indigenous Peoples* (2009) 58.

29 M Wehmeyer, *Self-Determination and the Education of Students with Disabilities*, ERIC Clearinghouse on Disabilities and Gifted Education Digest No E632 (2002). At <http://www.hoagiesgifted.org/eric/e632.html> (viewed 23 September 2011).

30 See UNESCO, 'Conclusions and recommendations of the conferences' in M van Walt van Praag (ed) *The implementation of the right to self-determination as a contribution to conflict prevention* (1999), p 19; S J Anaya, *Indigenous Peoples in International Law* (2nd ed, 2004), Chapter 3.

Creating self-determining communities could have a significant impact on the wellbeing of our communities. The *Growing them strong, together: Promoting the Safety and Wellbeing of Northern Territory's Children*, the report of the Board of Inquiry into the Child Protection System in the Northern Territory argues:

The sense of having control over one's own life as an individual is a strong correlate of personal wellbeing. The significance of a people or ethnic group having control over their own collective lives is an extrapolation of this. There is powerful evidence in the international literature that both personal and political self-control correlate highly with health and wellbeing outcomes. Factors which are seen to mediate this include psychological stressors, socioeconomic status, freedom from racism, access to care, and so on.³¹

A sense of control is transformative. This is precisely why it improves wellbeing. It can transform an individual or a community from the passivity of victimhood into pride, action and responsibility. A participant at an Australian Institute of Aboriginal and Torres Strait Islander Studies workshop on identity suggested:

The challenge is, without white people in the equation, we have choices. We can choose to collude with victim status, or collude with 'blaming the victim'. Or we can choose to go 'beyond the victim and just reject the whole stereotype.'³²

As I have already highlighted rights incorporate responsibilities. This is particularly relevant for self-determination because it is not a right to 'selfish-determination'.³³ A clear example of this responsibility emerges from a discussion paper on Indigenous self-determination prepared for the Victorian Equal Opportunity and Human Rights Commission, which asked a range of Victorian Aboriginal people what self-determination means to them. One significant response recognised:

We need to demonstrate the maturity needed to be self-determining. Self-determination is not just warm and fuzzy and is not just about cultural revival, important as that is. It is about taking responsibility for the big challenges and engaging with the big issues.³⁴

A self-determining community not only exerts control but it also self-regulates. It decides how disputes are resolved, how decisions are made, what protocols for behaviour are acceptable, and it takes responsibility to ensure the well-being of the entire community.

The right to self-determination is accompanied by the responsibility to ensure that all people within the community are actively engaged. For instance, a community with unchecked family feuds that use decision-making processes as a platform for these feuds is not self-determining.

Solutions to lateral violence must be developed from within our communities and they must be owned by those communities. The role of governments is to foster the choice, participation and control of our communities. In other words it's all about empowerment. Government interventions that impose solutions to fix our internal relationships are inconsistent with self-determination.

31 M Bamblett, H Bath and R Roseby, *Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory's Children*, Report of the Board of Inquiry into the Child Protection System in the North Territory (2010), p 116. At http://www.childprotectioninquiry.nt.gov.au/report_of_the_board_of_inquiry (viewed 23 September 2011).

32 S Gorringe, J Ross and C Fforde, *'Will the Real Aborigine Please Stand Up!': Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 11. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 23 September 2011).

33 Indigenous Governance Awards, *Celebrating Indigenous Governance: Success stories of the Indigenous Governance Awards*, Reconciliation Australia and BHP Billiton (2006), p 4.

34 L Behrendt and A Vivian, *Indigenous Self-determination and the Charter of Human Rights and Responsibilities – A Framework for Discussion*, Occasional Paper prepared for Victorian Equal Opportunity & Human Rights Commission (2010), p 19. At http://www.humanrightscscommission.vic.gov.au/index.php?option=com_k2&view=item&task=download&id=502&Itemid=690 (viewed 23 September 2011).

Empowerment is important because historical and continuing disempowerment breeds lateral violence. Carmen Lawrence has argued that disempowerment breeds 'learned helplessness':

[W]hen people repeatedly experience unpleasant events over which they have no control, they will not only experience trauma, but will come to act as if they believe that it is not possible to exercise control over any situation and that whatever they do is largely futile. As a result, they will be passive even in the face of harmful or damaging circumstances which it is actually possible to change.

Coming to accept that others control your life, and that nothing you can do will really make much difference is already a crippling combination of attitudes. Add to it the well known effect of the 'self-fulfilling prophecy' and you have a recipe for the social disorder evident in varying degrees in many Indigenous communities.³⁵

Averting this 'recipe for social disorder' requires strengths-based models, underpinned by the belief that our communities have the resources and the ability to address the challenges, like lateral violence, that confront us.

We need to be empowered to become the agents of our own change. The Department of Finance's *Strategic Review of Indigenous Expenditure* informatively argued:

[E]vidence points to the benefits flowing from a genuine partnership with Indigenous communities, adopting a 'strengths based' approach, and building on the inherent leadership and wisdom within communities to create a new spirit for change and the embracing of essential reforms to personal behaviour.³⁶

Let me briefly recap, the solutions to lateral violence must come from within our own communities as they exercise their right to self-determination. The role of governments is to remove the obstacles that prevent us from taking control and also to build capacity within our communities so that we can take on these responsibilities.

(ii) Participation in decision-making and free, prior and informed consent

When a community is forced to live with an unequal power dynamic their internal processes for making decisions and resolving conflicts break down. When these community norms deteriorate lateral violence can flourish. Actively participating in decision-making can help restore and rebuild these positive community norms.

Internal participation in decision-making

Internal decision-making describes the processes that our communities or organisations use to make their decisions. Aboriginal and Torres Strait Islander peoples have the right to develop and maintain their own decision-making authorities and institutions – and this should be encouraged and respected by governments.³⁷ This includes being able to determine who within the community makes decisions and what protocols need to be followed to guide this decision-making.

Unfortunately, our internal decision-making processes have been undermined since colonisation. Text Box 3.2 outlines how this erosion is common place for Indigenous communities across the globe.

35 C Lawrence, *Us and Them: Breaking Down the Barriers* (Paper presented at Fulbright Conference: Healthy People Prosperous Country, 11 July 2008).

36 Department of Finance and Deregulation, *Strategic Review of Indigenous Expenditure* (2010), p 248. At http://www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf (viewed 23 September 2011).

37 Expert Mechanism on the Rights of Indigenous Peoples, *Progress Report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), para 3.

Text Box 3.2:

Expert Mechanism on the Rights of Indigenous Peoples – Study on the indigenous peoples and the right to participate in decision-making

Across the world, different Indigenous peoples have different decision-making structures and processes. However, for all of us these processes have been undermined since colonisation.

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has recently conducted a study on Indigenous peoples right to participate in decision-making. In this study EMRIP noted the continuing negative impact of colonisation on Indigenous peoples internal decision-making processes. The excerpt from EMRIP's report that is outlined below, refers to decision-making structures that do not necessarily accord with that of Aboriginal and Torres Strait Islander peoples, however the insight it provides is illustrative of what has occurred in Australia:

One key concern for traditional decision-making institutions is that the influence of contemporary structures has sometimes led to the council of elders falling into disuse. In such cases, village chiefs are the only recognized authority for administering matters that concern the community. Not only does this place a burden on the leadership of the community, it has also effectively eroded the democratic decision-making principles of indigenous communities. Under pressure to act as the spokesperson for governments, this arrangement has led, in many countries, to a decline in the village chief's objectivity and ability to support the interests of the community. This situation is made worse in some countries where traditional leaders are now appointed by the government to represent the community and, in some cases, by companies that have an interest in influencing the affairs of a particular community. Changes in traditional leadership and representation in this manner have a significant negative impact on the internal decision-making systems of indigenous peoples.

Where traditional leaders have been put in place by mainstream authorities, resources are often not made available to support these "new" traditional leaders. Moreover, not enough training and exposure is given to appointed community leaders to ensure that legal and administrative decision-making processes result in quality judgements and decisions. Consequently, many indigenous peoples have lost confidence in, or mistrust, their own decision-making institutions. Collective reflections by indigenous communities to revitalize and regain the respect of decision-making processes and institutions are also lacking. Such efforts would represent a major undertaking and require multiple levels of intervention, including promoting respect for capable indigenous institutions, asserting the right to internal decision-making, and advocating for recognition of indigenous customary institutions.³⁸

When our decision-making structures have broken down and rules, protocols and democratic principles are ignored or devalued, these circumstances become opportunities for lateral violence. Personal or family gain can be had at the expense of others within a community. This breakdown is magnified when identity issues are being played out in these decision-making environments.

Evidence suggests that mainstream dispute and conflict management services are under-utilised and often ineffective in Aboriginal and Torres Strait Islander communities.³⁹ This further compounds these caustic

38 Expert Mechanism on the Rights of Indigenous Peoples, *Progress Report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), paras 49–50.

39 National Alternative Dispute Resolution Advisory Council, *Indigenous Dispute Resolution and Conflict Management* (2006), p 1. At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_IndigenousDisputeResolutionandConflictManagement (viewed 23 September 2011).

environments. Without the necessary protocols and structures to ensure disputes are resolved respectfully, conflicts divide the community and the cycle of lateral violence is further entrenched.

The ability to effectively exercise internal decision-making rights remains an elusive challenge for many of our communities and organisations. It is something that must be nurtured. As noted in *Overcoming Indigenous Disadvantage 2011*:

Good governing institutions do not just spontaneously arise. They are the result of often lengthy processes of developing capacity and leadership, and ongoing training and development. Good governing institutions support 'board and staff training and development ... [and] compulsory governance training for board members'. The institutions of governance can be actively built, and building these institutions creates a strong internal governance culture, providing a strong foundation for sustained good governance.⁴⁰

I believe the success of our efforts to reinvigorate internal decision-making processes through strengthening our institutions of governance can advance efforts to confront lateral violence. The report of the National Alternative Dispute Resolution Advisory Council, *Solid Work you Mob are Doing* suggests:

The ability of Indigenous communities to deal with conflict in ways that reflect their local practice and reinforce local community authority not only help make communities safer and more enjoyable places to live, they also go some way to addressing the sources of dysfunctional and systemic conflict.⁴¹

The development of Aboriginal and Torres Strait Islander communities capacity to make decisions, and resolve conflicts and disputes are fundamental components of building the capacity of internal participation in decision-making. Effective internal decision-making processes are respectful, build group cohesion, have democratic legitimacy and inbuilt dispute resolution mechanisms.

External participation in decision-making

External parties (governments, NGOs or industry), have obligations to ensure that Aboriginal and Torres Strait Islander peoples actively participate in decisions and processes that affect their rights.⁴²

When engaging with us, conflict and disagreement within our communities' is not something that can simply be ignored in the hope it will go away. It won't. These conflicts are often ingrained and external engagement will become another avenue to play out these feuds. Similarly, community disputes should not be used by external parties as an excuse for saying 'it's all too hard'. The presence of community disputes does not absolve external parties of their obligations to ensure we actively participate in decision-making that affects us.

External consultation and engagement processes need to be adequately established so that our internal decision-making, and if necessary dispute resolution processes, can operate effectively without pressure. This might take time and require space for the resolution of difficult issues. Making decisions and resolving disputes should occur on our timetable, not that of an interested third party. It is also essential to identify who within the community has decision-making authority whilst also ensuring there is a mechanism for all community members to participate.

40 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 11.8. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 23 September 2011). Note: In text reference removed.

41 Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work you Mob are Doing: Case studies in Indigenous Dispute Resolution & Conflict Management in Australia*, Report to the National Alternative Dispute Resolution Advisory Council (2009), p 101. At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_SolidWorkyouMobaredoingReport (viewed 23 September 2011).

42 Expert Mechanism on the Rights of Indigenous Peoples, *Progress Report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), para 4.

External processes should build cohesion, not divide our communities. To achieve this they should strengthen our internal decision-making processes, this requires effective engagement.⁴³

Free, prior and informed consent

The principle of free, prior and informed consent can be used to develop decision-making processes that address lateral violence. It is one of the most important principles to protect the right to participate in decision-making and ensure it is expressed in a way that builds community cohesion.⁴⁴ Text Box 3.3 provides a brief overview of free, prior and informed consent.

Text Box 3.3:

Free, prior and informed consent

Free means no force, bullying or pressure.

Prior means that we have been consulted before the activity begins.

Informed means we are given all of the available information and informed when that information changes or when there is new information. If our peoples don't understand this information then we have not been informed. This information should include possible consequences, good and bad, of any decision or non-decision. An interpreter or other person might need to be provided to assist.

Consent requires that the people seeking consent allow Aboriginal and Torres Strait Islander communities to say yes or no to decisions affecting them according to the decision-making process of their choice.⁴⁵ To do this means we must be consulted and participate in an honest and open process of negotiation that ensures:

- all parties are equal, neither having more power or strength
- our group decision-making processes are allowed to operate
- our right to choose how we want to live is respected.

Importantly, the onus is on the organisation (government, corporate or our own representative bodies) who is seeking consent or a decision to be made to ensure that the decision that is made is free and informed.⁴⁶

43 For more details see: M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2010*, Australian Human Rights Commission (2011), Chapter 3, Appendix 3. At http://www.humanrights.gov.au/social_justice/nt_report/ntreport10/index.html (viewed 23 September 2011).

44 Expert Mechanism on the Rights of Indigenous Peoples, *Progress Report on the study on indigenous peoples and the right to participate in decision-making*, Report to the Human Rights Council, 15th session, UN Doc A/HRC/15/35 (2010), para 34.

45 C Hill, S Lillywhite and M Simon, *Guide to Free, Prior and Informed Consent*, Oxfam Australia (2010), p 9. At <http://www.oxfam.org.au/resources/filestore/originals/OAUs-GuideToFreePriorInformedConsent-0610.pdf> (viewed 11 October 2011).

46 See Australian Human Rights Commission, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples* (2010), p 25. At http://www.humanrights.gov.au/declaration_indigenous/declaration_full.html (viewed 23 September 2011); Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples*, UN Doc E/C.19/2005/3 (2005), paras 46–48.

The principle of free, prior and informed consent should guide both the internal and external culture of decision-making.

It should be used by Aboriginal and Torres Strait Islander peoples to improve their own internal decision-making processes so that they are representative, inclusive and conducted without using the weapons of lateral violence like coercion and pressure. Processes should not be used as an opportunity to play out family disputes or to exclude dissenting voices. Disputes and disagreements should be resolved in a neutral, negotiated and safe environment without external pressure.

Free, prior and informed consent should also be used by governments and other parties to guide their engagements with our communities and to inform subsequent monitoring and evaluation of these processes.

The informed component of free, prior and informed consent, places obligations on the organisation seeking consent to ensure that the people giving consent are fully informed. That is, we must be told the good, the bad and the ugly of any decision that we may be asked to make. This means that affected Aboriginal and Torres Strait Islander community are to be informed of all the relevant information. If information is provided to a community in an ad hoc manner, weapons of lateral violence like rumours and innuendo can fill the void.

To minimise power imbalances, consultations should be conducted in the nature of negotiations and on an equal playing field.

External processes that are guided by free, prior and informed consent will increase the capacity of governments to engage with Aboriginal and Torres Strait Islander communities and reduce the possibility for such processes to be hijacked by internal disputes.

(iii) Non-discrimination and equality

Discrimination and inequality impacts on lateral violence for three main reasons.

Firstly, racial discrimination reinforces negative stereotypes about Aboriginal and Torres Strait Islander peoples. Over time these stereotypes can become internalised and lead to lateral violence.

Secondly, as already noted lateral violence thrives in environments where human needs are not met. Whilst Aboriginal and Torres Strait Islander peoples continue to live in unequal conditions, our communities' human needs will not be met. For example, the *Solid Work you Mob are Doing* report highlighted that conflict within Aboriginal and Torres Strait Islander communities can be fuelled by overcrowded and inappropriate housing.⁴⁷

Finally, it is important to remember that equality requires an acknowledgement of cultural difference and recognition that historical discrimination has continuing negative impacts. Accommodating and accounting for this difference can create true equality. This is reflected in the second preambular paragraph of the Declaration which states:

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.

For me this means that when governments develop systems, be they education, health or any in other area, they have a duty to design such systems so that they accommodate difference, whether the people affected are Aboriginal or Torres Strait Islander, refugees, have a disability or are gender different. It should not be up to

47 Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work you Mob are Doing: Case studies in Indigenous Dispute Resolution & Conflict Management in Australia*, Report to the National Alternative Dispute Resolution Advisory Council (2009), p 100. At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_SolidWorkyouMobaredoingReport (viewed 8 September 2011).

people who are different to navigate their way through systems that does not take into account their particular needs and circumstances.

In order to achieve circumstances of equality the structures of society must be reoriented to account for Aboriginal and Torres Strait Islander peoples difference. Again, governments cannot simply say 'it's all too hard'. Rather than requiring Aboriginal and Torres Strait Islander peoples to fit in with mainstream services and institutions, the onus is placed on governments and other third parties to accommodate the priorities of Aboriginal and Torres Strait Islander peoples and incorporate their internal decision-making processes. This requires the development of cultural competency which will be discussed in Chapter 4.

(iv) Respect for and protection of culture

Our cultural identities are an important source of strength for Aboriginal and Torres Strait Islander peoples. Mick Dodson powerfully captures this:

Alongside the colonial discourses in Australia, we have always had our own Aboriginal discourses in which we have continued to create our own representations, and to re-create identities which escaped the policing of the authorised versions. They are Aboriginalities that arise from our experience of ourselves and our communities. They draw creatively from the past, including the experience of colonisation and false representation. But they are embedded in our entire history, a history which goes back a long time before colonisation was even an issue.

Those Aboriginalities have been, and continue to be, a private source of spiritual sustenance in the face of others' attempts to control us.⁴⁸

However when cultural identity is perverted by issues of authenticity it generates conflict and lateral violence.

Culture as resilience

Aboriginal and Torres Strait Islander peoples are the holders of the longest known surviving continuous culture. We also have many cultural warriors and heroes. This is a source of strength and should instil pride in our communities. It can be used as a shield against the negative stereotypes that bombard us.

International research indicates that strength of culture in Indigenous communities creates resilience.⁴⁹ For example a 2006 study in Canada found that the greater the cultural continuity in an Indigenous community the lower the rate of youth suicide.⁵⁰ Figure 3.1 provides a short overview of this research.

48 M Dodson, *Aboriginal and Torres Strait Islander Social Justice Commissioner, The End in the Beginning: Re(de)fining Aboriginality* (Speech delivered at Wentworth Lecture, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1994). At http://www.humanrights.gov.au/about/media/speeches/social_justice/end_in_the_beginning.html (viewed 8 September 2011).

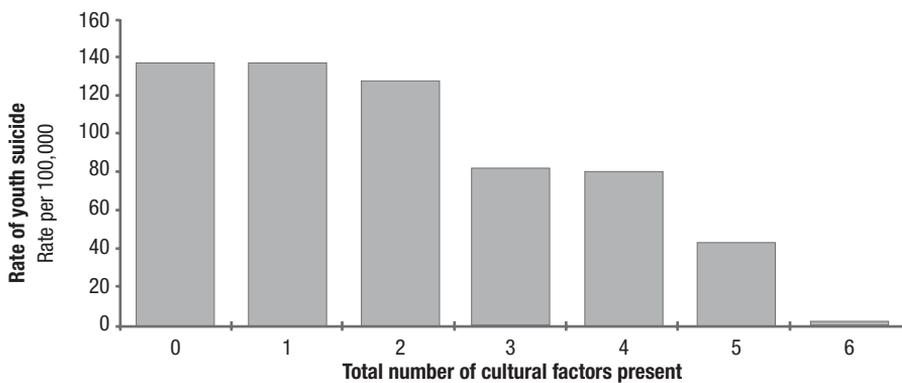
49 See R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), pp 29–30.

50 M Chandler and T Proulx, 'Changing selves in changing worlds: Youth suicide on the fault lines of colliding cultures' (2006) 10 *Archives of Suicide Research* 125.

Figure 3.1:
Cultural continuity creating resilience⁵¹

Example of community-level indicators and their relationship to a health outcome – First Nations Communities, British Columbia, Canada

An index of “cultural continuity” comprised of six marker variables: degrees to which each of B.C.’s individual bands have already secured 1) some measure of self government; some control over the delivery of 2) health, 3) education, 4) policing services, and 5) cultural resources; and 6) are otherwise at work litigating for Aboriginal title to traditional lands.



Suicide rates by number of factors present in the community (1987–1992). Taken from Chandler M and Proulx T. *Changing selves in changing worlds: youth suicide on the fault lines of colliding cultures*. Archives of Suicide Research 2006; 10: 125–140. 2006).

Lateral violence breeds unhealthy cultural norms – bullying, engrained violence and intimidation to name a few. It undermines the strength we can, as communities and individuals, draw from our cultural identities and turns them into weapons to use against each other on the battleground. This impedes on our rights to culture because it undermines our right to feel safe in our cultural environment and identities.

Culture is dynamic

Culture and identity are not static. The Declaration characterises culture as dynamic – that it can and does change over time. It also recognises that undertaking cultural activities and maintaining cultural institutions does not exclude us from also participating in mainstream society.⁵² It is of fundamental importance to the wellbeing of our communities that this point is grasped – Aboriginal and Torres Strait Islanders have the right to maintain a cultural identity whilst also participating in the mainstream. The two are not mutually exclusive. We call it walking in two worlds.

51 In R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 30.

52 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), articles 5, 11. At <http://www.un.org/esa/socdev/unpfii/en/drip.html> (viewed 23 September 2011).

In Chapter 2 I discussed the damage that issues relating to authenticity in identity are doing in our communities. Historical and contemporary government classifications and categorisations have been psychologically damaging, have undermined our cultural resilience and have acted as a trigger for lateral violence.

This categorisation of who is or is not authentically Indigenous based on location (urban/remote), language retention, cultural knowledge, educational status, kin-group and colour has led to conflict and social exclusion within Aboriginal and Torres Strait Islander communities.⁵³

For instance, an Aboriginal and Torres Strait Islander person who works in mainstream employment or in a government department does not hand in his or her identity as an Indigenous person upon employment. Yet we attack these people with derogatory language such as ‘coconuts’ to undermine their identity. This is also occurring at schools and within communities. It is lateral violence and it perverts cultural identity.⁵⁴ It has its roots in the classificatory systems imposed on us, measuring the extent to which we had become ‘civilised’ or remained ‘tribal’.⁵⁵ These historical characterisations now manifest in issues around who has an authentic Indigenous voice and false distinctions of who is ‘community’ or who is not. If we are to address lateral violence we must confront this within our communities.

Addressing the problems of authenticity does not only reside with us. Government processes can perpetuate conflict involving authenticity of identity. In the *Native Title Report 2011* I examine how this is being played out in the way the native title system currently operates.

An often forgotten aspect of the right to culture that can help guide our communities and governments in addressing these concerns is that it includes a right to revitalise it.⁵⁶ Our cultures are dynamic, where it has been significantly impacted it can be nurtured and where it is being undermined by lateral violence it can be revitalised and strengthened.

Difference and diversity

Any understanding of culture must recognise the diversity within Aboriginal and Torres Strait Islander communities. As it currently stands, much of the political and media landscape that impacts on Indigenous Australia fails to reflect this diversity. As discussed in Chapter 2, any difference in opinion, even with contentious and personal views like politics or ideology, is portrayed as dysfunction.⁵⁷ Meanwhile, difference in opinion is accepted as the norm for mainstream Australia. Michael Mansell reflects on this false homogeneity:

53 S Gorringe, J Ross and C Fforde, ‘Will the Real Aborigine Please Stand Up’: *Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 5. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 23 September 2011); Y Paradies, ‘Beyond the black and white essentialism, hybridity and indigeneity’ (2006) 38(4) *Journal of Sociology* 355.

54 S Gorringe, J Ross and C Fforde, ‘Will the Real Aborigine Please Stand Up’: *Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 7. At www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf (viewed 21 September 2011).

55 S Maddison, ‘Voice and Diversity in Indigenous Politics’ (2009) 7(11) *Indigenous Law Bulletin* 19. At <http://www.austlii.edu.au/au/journals/IndigLawB/2009/14.html> (viewed 23 September 2011); M Goot and T Rowse, *Divided Nation? Indigenous Affairs and the Imagined Public* (2007), p 31.

56 ‘Indigenous peoples have the right to... revitalize their cultural traditions and customs’: *United Nations Declaration on the Rights of Indigenous Peoples*, GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007), article 11. At <http://www.un.org/esa/socdev/unpfi/en/drip.html> (viewed 23 September 2011).

57 S Maddison, ‘Voice and Diversity in Indigenous Politics’ (2009) 7(11) *Indigenous Law Bulletin* 19, pp 19–20. At <http://www.austlii.edu.au/au/journals/IndigLawB/2009/14.html> (viewed 23 September 2011).

We are no different from any other people anywhere in the world. We have different lifestyles and different communities. We have different political attitudes and we have different aspirations. Even though there are many common threads which run throughout the Aboriginal [and Torres Strait Islander] communities in Australia, we tend to encourage the differences because they are healthy. The worst aspect of political life that can be imposed on Aboriginal people [and Torres Strait Islanders] is that we must all speak with one voice and say exactly the same thing.⁵⁸

This feeds into the ineffectual one-size-fits-all approach to Indigenous policy design and implementation.⁵⁹ This inhibits government engagements from being able to accommodate differences within Aboriginal and Torres Strait Islander communities.

Further when we are not afforded the ability to disagree, we cannot develop responses to disputes that arise within our communities and more broadly within the Indigenous sector. Recognition and respect for diversity within Aboriginal and Torres Strait Islander communities is an essential platform for developing effective dispute resolution processes.

(c) The Declaration to guide practical actions to address lateral violence

The insights into lateral violence provided by the Declaration offer clear guidance that can be transformed into practical actions. Responses to lateral violence need to be designed to:

- empower us to take control of our community and community aspirations
- promote and develop our community decision-making and dispute resolution protocols
- address discrimination and negative stereotypes by promoting equality that recognises difference
- build culture as a form of resilience and strength that promotes healthy cultural norms and recognises differences and diversity.

Table 3.1 demonstrates that actions based on this guidance would seek to remedy the historical and contemporary drivers of lateral violence.

58 M Mansell quoted in F Brennan, *One Land, One Nation: Mabo – Towards 2001* (1995), 73; S Maddison, 'Voice and Diversity in Indigenous Politics' (2009) 7(11) *Indigenous Law Bulletin* 19, pp 19–20. At <http://www.austlii.edu.au/au/journals/IndigLawB/2009/14.html> (viewed 23 September 2011).

59 See for example Northern Territory Emergency Response Review Board, *Report of the Northern Territory Review Board*, Attorney-General's Department (2008). At http://www.nterreview.gov.au/docs/report_nter_review/default.htm (viewed 23 September 2011).

Table 3.1: The Declaration guiding responses to lateral violence

Historical and contemporary drivers of lateral violence	Declaration
<ul style="list-style-type: none"> • Colonisation, oppression and control of Aboriginal and Torres Strait Islander peoples. • Feelings of powerlessness. • Meeting human needs. 	<ul style="list-style-type: none"> • Empowering Aboriginal and Torres Strait Islander communities to take control of their communities and aspirations.
<ul style="list-style-type: none"> • Loss of land, traditional roles, structures and knowledge. • Addressing trauma. 	<ul style="list-style-type: none"> • Promoting and developing community decision-making and dispute resolution protocols.
<ul style="list-style-type: none"> • Internalisation of negative stereotypes. • Meeting human needs. 	<ul style="list-style-type: none"> • Addressing discrimination and negative stereotypes by promoting equality that recognises difference.
<ul style="list-style-type: none"> • Loss of land, traditional roles, structures and knowledge. • Identity conflict. • Internalisation of negative stereotypes. 	<ul style="list-style-type: none"> • Building culture as a form of resilience and strength that promotes healthy cultural norms and recognises differences and diversity.

In the next Chapter I explore the concepts of cultural safety and security as providing responses to lateral violence that are guided by the Declaration.

3.3 Conclusion

This Chapter has clearly shown the connections between lateral violence and human rights. On one hand, we can see that lateral violence is a violation of individual and/or community rights. On the other hand, we can also see how a human-rights based framework as captured in the Declaration, offers the practical strategies to remedy the injustices that have created lateral violence. Human rights also give us ways to improve relationships within our own communities and also between governments and other third parties and our communities.

However, this is still quite a high level discussion. In the next Chapter I will extend the human rights-based framework that I have outlined, to provide even more practical responses based on the creation of cultural safety and security. I will draw on some inspiring case studies of community and government action to tackle lateral violence.

Chapter 4: Cultural safety and security: Tools to address lateral violence

- 4.1 Introduction **122**
- 4.2 Defining cultural safety and cultural security **123**
- 4.3 Cultural safety in our communities **128**
- 4.4 Creating cultural competency **150**
- 4.5 Future directions in addressing lateral violence **165**
- 4.6 Conclusion and Recommendations **166**



4.1 Introduction

Lateral violence is a multilayered, complex problem and because of this our strategies also need to be pitched at different levels. In Chapter 3 I have looked at the big picture, with the human rights framework as our overarching response to lateral violence. In this Chapter I will be taking our strategies to an even more practical level, looking at how we can create environments of cultural safety and security to address lateral violence.

A culturally safe and secure environment is one where our people feel safe and draw strength in their identity, culture and community. Lateral violence on the other hand, undermines and attacks identity, culture and community. In this Chapter I will be looking at ways to establish an environment that ensures:

- cultural safety within Aboriginal and Torres Strait Islander communities and organisations
- cultural security by external parties such as governments, industry and non-government organisations (NGOs) who engage with Aboriginal and Torres Strait Islander communities and organisations.

The concepts of cultural safety and security are illustrated through a selection of case studies highlighting promising practices that are occurring both within our communities and in partnership with government. These case studies provide us with practical strategies, but just as importantly, they also remind us that our communities, with the right support, have the ability to solve their own problems. This gives me hope that we can begin to address the problems of lateral violence.

4.2 Defining cultural safety and cultural security

As we saw in defining lateral violence in Chapter 2, there are a variety of words that are used to describe lateral violence. Similarly, there is some debate in the literature around the differing concepts of cultural safety and security. I will explain this briefly below.

While I do not want to get bogged down in semantics, I think that the concepts of cultural safety and cultural security both add something to the way we think about addressing lateral violence. Cultural safety encapsulates the relationships that we need to foster in our communities, as well as the need for cultural renewal and revitalisation. The creation of cultural safety in our communities will be the focus of the case studies in the next part of this Chapter.

Cultural security on the other hand, speaks more to the obligations of those working with Aboriginal and Torres Strait Islander communities to ensure that there are policies and practices in place so that all interactions adequately meet cultural needs.

Whatever words you use, cultural safety and security requires the creation of:

- environments of cultural resilience within Aboriginal and Torres Strait Islander communities
- cultural competency by those who engage with Aboriginal and Torres Strait Islander communities.

In other words, we need to bullet proof our communities so they are protected from the weaponry of lateral violence. And governments and other third parties need to ensure that our group cohesion does not become collateral damage when they engage with our communities.

(a) Cultural safety

The concept of cultural safety is drawn from the work of Maori nurses in New Zealand and can be defined as:

[A]n environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience of learning, living and working together with dignity and truly listening.¹

For Aboriginal and Torres Strait Islander peoples a culturally safe environment is one where we feel safe and secure in our identity, culture and community. According to the Victorian Aboriginal Child Care Agency (VACCA) the concept of cultural safety:

[I]s used in the context of promoting mainstream environments which are culturally competent. But there is also a need to ensure that Aboriginal community environments are also culturally safe and promote the strengthening of culture.²

VACCA is a leader in advancing the concept of cultural safety. Their research into cultural safety and its relevance to Aboriginal and Torres Strait Islanders is considered in Text Box 4.1.

1 R Williams, 'Cultural Safety – what does it mean for our work practice?' (1999) 23(2) *Australian and New Zealand Journal of Public Health* 213, p 213.

2 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 12.

Text Box 4.1:

Exploring cultural safety

The VACCA undertook research through surveys and interviews with Victorians (predominately Indigenous) to unpack the concept of cultural safety. Some of the responses to questions exploring the concept included:

'Feeling safe in the knowledge that you're listened to, that your contribution to the community is important, just as much as anyone else's'. (Koorie worker).

'Feeling safe in who you are... in your identity. Knowing that you're a proud Indigenous person... taking strength in your culture through adversities'. (Koorie worker).

'I think it's being comfortable with yourself and being able to tell people that you're proud to be of that culture and not feeling that you're being discriminated against'. (Koorie parent).³

Some examples of cultural safety included:

'To find and then be looked in the eyes by my Elders and be told, 'You belong here''. (Koorie worker).

'Me giving myself permission to be an Aboriginal person. Not other people telling me who I should be or who I am'. (Koorie worker).

'Having the sense of refuge in the middle of a storm'. (Koorie worker).

'Feeling safe to be able to express yourself and being embraced by the rest of society'. (Koorie worker).⁴

When asked if non-Indigenous environments created safety some responses included:

'I become uneasy and nervous but I won't shy away. I won't get shame'. (Koorie young person).

'I don't feel as comfortable as I think a white person feels' (Koorie worker).

'I felt outcast and alone in all white environments'. (Koorie woman).⁵

When asked if a physical location where alcohol, drugs and fighting were banned but culture was celebrated would be beneficial responses included:

'I wouldn't have a job'. (Koorie health worker).

'If it's free from politics it would be safe but it's just going to get sucked into the same politics... We should be doing that in our organisations. Making them culturally safe. Rather than setting up something autonomous... So we should be saying that 'this is here for everyone' and that 'this is a peaceful place' and once you come on this land putting those cultural boundaries in that used to be [there]'. (Koorie worker).

'It would stand as a symbol of... community identity. And it would give community great pride'. (Koorie worker).

'It'd be a healing thing for the factions'. (Koorie worker).

3 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 63.

4 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 63.

5 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 65.

'[It would be] a place we can be seen as human'. Koorie worker.⁶

When asked about how a culturally safe place could help the community responses included:

'In so many ways. That's an enriched environment...so many other environments, including Koorie organisations are environments of poverty...cultural poverty, social poverty and in environments of enrichment people can grow and flourish'. (Clinical Psychologist).

'It affects the way I walk the land, having seen so much violence. It's everything. Emotional, spiritual, everything. A place like that would be a place of healing for the whole community. It'd bring everyone together. Give us a future. Common heroes that connect us'. (Koorie man).

'By having a centre-point of pride and identity for the community. Give opportunities for people to get to know each other. Foster connection and belonging. Togetherness'. (Koorie worker).

'Increased understanding, increased empathy, decreased apathy, decreased racism in the mainstream community'. (Koorie worker).⁷

The idea of cultural safety envisages a place or a process that enables a community to debate, to grapple and ultimately resolve the contemporary causes of lateral violence without fear or coercion.⁸

VACCA conceives of cultural safety as re-claiming cultural norms and creating environments where Aboriginal people transition; first from victimhood to survivors of oppression, through to seeing themselves and their communities as achievers and contributors.⁹ Through this transition Aboriginal and Torres Strait Islander peoples can reclaim their culture. Noel Pearson warns that without this reclamation:

Cultural and linguist decline between generations hollows out a people – like having one's viscera removed under local anaesthetic – leaving the people conscious that great riches are being lost and replaced with emptiness.¹⁰

Lateral violence fills the empty void. On the other hand, revitalising and renewing our culture and cultural norms within our communities brings resilience and can prevent lateral violence taking its place.

(b) Cultural security

Cultural security is subtly different from cultural safety and imposes a stronger obligation on those that work with Aboriginal and Torres Strait Islander peoples to move beyond 'cultural awareness' to actively ensuring that cultural needs are met for individuals. This means cultural needs are included in policies and practices

6 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 70.

7 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), pp 71–72.

8 The AIATSIS Workshop on identity identified creating safety to enable a place and process for robust discussion was crucial to changing the negative conversations about identity to focus on solutions: S Gorringer, J Ross and C Fforde, 'Will the Real Aborigine Please Stand Up': *Strategies for breaking the stereotypes and changing the conversation*, AIATSIS Research Discussion Paper 28 (2011), p 11. At <http://www.aiatsis.gov.au/research/documents/AIATSISDiscussionPaper28.pdf> (viewed 21 September 2011).

9 Victorian Aboriginal Child Care Agency, *This is Forever Business: Cultural Safety in Aboriginal Victoria PowerPoint Presentation* (2011).

10 N Pearson, 'Radical Hope: Education and Equality in Australia' (2009) 35 *Quarterly Essay* 1, p 55.

so that all Aboriginal and Torres Strait Islanders have access to this level of service, not just in pockets where there are particularly culturally competent workers.

The cultural security model developed by Juli Coffin is outlined in Text Box 4.2.

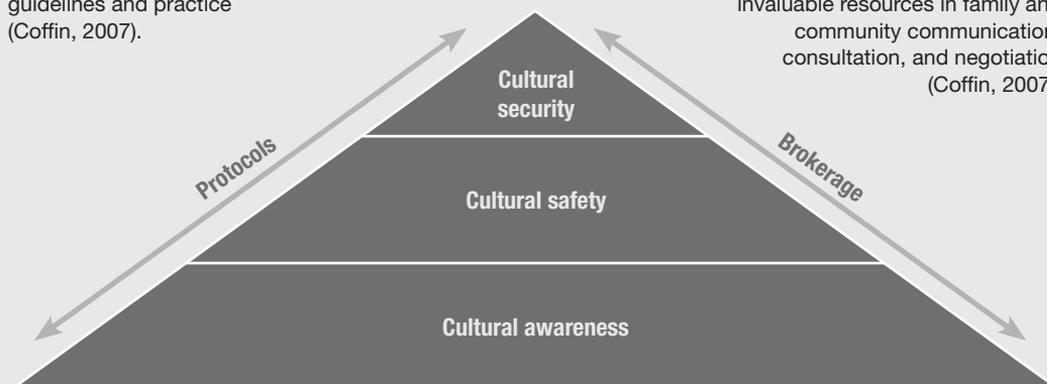
Text Box 4.2:
Cultural security model¹¹

Protocols

Knowledge of Aboriginal culture and customs is informed by local Aboriginal Elders and community members who become stakeholders in developing school bullying prevention and management guidelines and practice (Coffin, 2007).

Brokerage

Understanding of local Aboriginal culture and customs is applied to bullying prevention and management and strengthened by utilising local Aboriginal Elders and AIEOs who are considered invaluable resources in family and community communication, consultation, and negotiation (Coffin, 2007).



Application of Coffin's (2007) Cultural Security model to bullying prevention and management in an education setting (Paki, no date).

This model distinguishes between cultural awareness, cultural safety and cultural security which Coffin argues have been inappropriately interchanged. Under this conception an organisation cannot progress to cultural security without first addressing cultural safety and cultural awareness.

Coffin uses a practical example of the management of an 8 year old Aboriginal boy by a speech pathologist to define these three levels:

Awareness: *'I know that most Aboriginal people have very extended families.'*

Although the speech pathologist demonstrates a basic understanding of a relevant Cultural issue, it does not lead into action. There is no common or accepted practice and what actions are taken depends upon the individual and their knowledge of Aboriginal culture and cultural security.

11 See Solid Kids – Solid Schools – Solid Families, *What is?*, http://www.solidkids.net.au/index.php/what_is#three/ (viewed 23 September 2011).

Safety: *'I am going to make sure that I tell Johnny's Mum, Aunty and Nana about his appointment because sometimes he is not with his Mum.'*

Safety involves health providers working with individuals, organisations and sometimes, the community. More often though cultural safety consists of small actions and gestures, usually not standardised as policy and procedure.

Security: *'I am going to write a note to Johnny's family and ask the Aboriginal Health Worker (AHW) to deliver and explain it. I will check with the AHW if any issues were raised when explaining the procedure to the family and if transport is sorted out. I will ask to see if the AHW can be in attendance at the appointment.'*

Cultural security directly links understandings and actions. Policies and procedures create processes that are automatically applied from the time when Aboriginal people first seek health care.¹²

Farrelly and Lumby note how this model extends cultural competency well beyond simple cultural awareness into behavioural, attitudinal and structural change:

Cultural Security is built from the acknowledgement that theoretical 'awareness' of culturally appropriate service provision is not enough. It shifts the emphasis from attitudes to behaviour, focusing directly on practice, skills and efficacy. It is about incorporating cultural values into the design, delivery and evaluation of services. Cultural Security recognises that this is not an optional strategy, nor solely the responsibility of individuals, but rather involves society and system levels of involvement. Cultural Security is proposed to effect change in all elements of the health system workforce development, workforce reform, purchasing of health services, monitoring and accountability, and public engagement.¹³

A culturally secure environment cannot exist where external forces define and control cultural identities. The role for government and other third parties in creating cultural safety is ensuring that our voices are heard and respected in relation to our community challenges, aspirations and identities.¹⁴ In this way cultural security is about government and third parties working with us to create an environment for a community to 'exert ownership of ourselves'.¹⁵ Through this ownership we are empowered.

-
- 12 J Coffin, 'Rising to the Challenge in Aboriginal Health by Creating Cultural Security' (2007) 31 (3) *Aboriginal & Islander Health Worker Journal* 22, p 23.
- 13 T Farrelly and B Lumby, 'A Best Practice Approach to Cultural Competence Training' (2009) 33(5) *Aboriginal & Islander Health Worker Journal* 5, p 5.
- 14 M Dodson, *Aboriginal and Torres Strait Islander Social Justice Commissioner, The End in the Beginning: Re(de)fining Aboriginality* (Speech delivered at Wentworth Lecture, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1994). At http://www.humanrights.gov.au/about/media/speeches/social_justice/end_in_the_beginning.html (viewed 23 September 2011).
- 15 M Dodson, *Aboriginal and Torres Strait Islander Social Justice Commissioner, The End in the Beginning: Re(de)fining Aboriginality* (Speech delivered at Wentworth Lecture, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1994). At http://www.humanrights.gov.au/about/media/speeches/social_justice/end_in_the_beginning.html (viewed 23 September 2011).

4.3 Cultural security in our communities

The first part of this Chapter has looked at the concepts of cultural safety and security. In this part I will be looking to the community level to celebrate some of the approaches that are already making a difference in addressing lateral violence on the ground. This approach is deliberate; you have to understand the ‘why’, that is, have a big picture view of a problem and solutions, before you can go about the ‘how’ of implementing a response.

However, I also believe that communities inherently hold the best solutions to their own problems. This is the strengths-based approach that I am always advocating. This approach builds up our communities rather than constantly tearing them down. At its core is empowerment.

The wisdom, resilience and ingenuity of those working with our communities is always inspiring to me. This sentiment is shared by Lowitja O’Donoghue:

So many good things are happening in our communities. We are kicking goals, opening doors and breaking through the glass and brown ceilings. And, yet, the times when we wholeheartedly and unanimously celebrate these achievements are relatively few.¹⁶

These case studies are an opportunity to give some recognition to communities and organisations that are innovating in the field of lateral violence.

But it is also more than an exercise in celebration and recognition. In the absence of formal research and evaluation, these sorts of case studies provide the best available way to look at what is working and why, providing valuable lessons that can be relevant to other communities and contexts.

Again, like Chapter 2, this is not an exhaustive compilation of case studies but it does provide a flavour of the richness of responses to lateral violence that are already operating at the community level. Case studies will illustrate responses to lateral violence in the contexts of education and awareness, bullying, alternative dispute resolution and social and emotional wellbeing. What all of these case studies have in common is their strong focus on creating culturally safe places to confront and/or prevent lateral violence.

(a) Naming lateral violence

Naming lateral violence is the first step towards exerting control over it. It is also a way of exercising agency and responsibility for our communities. Naming lateral violence becomes an action of prevention.

As I have said in Chapter 2, we know that the conversation around lateral violence is not an easy one. It means confronting those in our communities who perpetrate lateral violence and holding them accountable for their actions. But facing up to tough issues is not new for Aboriginal and Torres Strait Islander communities. There are many instances of communities confronting problems like family violence or alcohol abuse with great courage.

Naming lateral violence is essentially a process of awareness-raising and education. It is about giving communities:

- the language to name laterally violent behaviour
- the space to discuss its impact
- the tools to start developing solutions.

16 L O’Donoghue, *Stepping Up To The Plate* (Speech delivered at the opening of the National Congress of Australia’s First Peoples, Homebush, 8 June 2011), p 3. At <http://nationalcongress.com.au/wp-content/uploads/2011/06/Lowitja-ODonoghue-Nat-Congress-080611.pdf> (viewed 23 September 2011).

The following case studies highlight some of the emerging work in this area. Again, it is not a definitive list but it highlights how different communities and organisations have begun working in this area.

(i) Partnership between Native Counselling Services of Alberta and the Cooperative Research Centre for Aboriginal Health

I was first exposed to the concept of lateral violence in my previous role at the Co-operative Research Centre for Aboriginal Health (CRAH). I attended the Healing Our Spirit Worldwide movement held in Canada in 2006. The gathering was hosted by the Native Counselling Services of Alberta (NCSA). At this gathering I saw how much the concept of lateral violence resonated with Indigenous peoples from around the world. I've seen first-hand how powerful these sorts of workshops on lateral violence can be.

Since 2006 Allen Benson and Patti La Boucane-Benson from the NCSA have delivered lateral violence workshops at numerous events, conferences and organisations in Australia including the Garma Festival, the National Indigenous Health Awards, Menzies School of Health Research, the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) and the Southern Cross University.

The CRAH developed a close relationship with NCSA and they have jointly presented on lateral violence on several occasions in Australia. To the best of my knowledge these workshops were the first time that the concept was introduced to Australia in a formal way and have kick started many conversations in our communities.

The CRAH made lateral violence a research priority. A lateral violence roundtable was convened by the CRAH and co-hosted by the Kullunga Research Network and NCSA in December 2008. The roundtable brought together 25 Aboriginal and Torres Strait Islander people with experience in lateral violence training to develop a consensus for a lateral violence strategy.

A two day lateral violence course was piloted in Adelaide in 2009. I was a facilitator of the program along with Yvonne Clark and Valerie Cooms. The training was completed by Aboriginal and Torres Strait Islander workers in the Department of Families, South Australia. This course has been the basis for many of the lateral violence workshops that have followed.

(ii) Victorian lateral violence community education project

The Koori Justice Unit in Department of Justice, Victoria (Vic DOJ), hosted a lateral violence workshop in April 2009 which was attended by 80 Koori community and government representatives. As a result of this workshop the Koori Justice Unit is now funding the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) to raise the profile of lateral violence through community education strategies.

In June 2009, the Vic DOJ funded VACCHO to produce a DVD on lateral violence. A Canadian DVD used in previous workshops was an excellent way to introduce lateral violence but it was felt that a similar production needed to capture the Aboriginal and Torres Strait Islander context and experience.

VACCHO asked Richard Frankland, one of the Australian experts in lateral violence, to produce the DVD. *The Silent Wars – Understanding Lateral Violence* DVD was completed in August 2010. The 30 minute DVD uses culturally-relevant hypothetical examples and features insight from respected Koori community members. It explores the meaning of lateral violence, its origins and impacts, and identifies strategies to reduce lateral violence. The 'not-for-profit' DVD has been distributed to VACCHO's member Aboriginal Health Organisations and other relevant stakeholders and will become a much used resource in raising awareness about lateral violence.

The Vic DOJ has partnered with the Commonwealth Department of Families Housing Community Services and Indigenous Affairs (FaHCSIA) to provide further funding to VACCHO, to utilise the DVD in a Lateral Violence Community Education Project. I will discuss this project in greater detail later in the Chapter, however, I do want to note the importance of this community education role being placed in community controlled organisations like VACCHO. As I say again and again, the conversations about and solutions to lateral violence must start in our communities, not government, although government certainly has a role to support these initiatives. Using Aboriginal and Torres Strait Islander staff from our own organisations will increase the cultural safety that is so important in naming lateral violence.

(iii) Narrative therapy lateral violence workshops

Naming lateral violence in our communities means sharing our stories about lateral violence. The practice of narrative therapy takes this one step further, using a culturally secure model of counselling and community work that empowers participants to deal with lateral violence.

Narrative therapy draws on a strengths-based framework. Narrative therapy is a respectful and empowering way of working with individuals, families and communities and sees 'people as the experts in their own lives and views problems as separate from people'.¹⁷

Viewing the problem as external from individuals is a very important shift in counselling and community work because many other therapeutic models have been based on western medical models that pathologise individuals, rather than look at their strengths and resilience. When we consider the amount of negative stereotypes that Aboriginal and Torres Strait Islanders face, this is a very important step in helping to break the hold of negativity and give people the confidence and tools to tackle problems like lateral violence.

Another implication of seeing the problem as separate from the person is that it opens up new ways of talking about issues. Narrative therapy calls this 'externalisation of the problem', allowing participants to see the impacts that problems have on their lives and possible solutions.

Barbara Wingard, a respected Aboriginal Health Worker and expert in narrative therapy, has led work in South Australia around narrative therapy with Aboriginal and Torres Strait Islander people. Barbara believes that narrative therapy offers:

[A] way for Aboriginal counsellors to develop practices that are culturally sensitive and appropriate. Many Aboriginal people have had put on them negative stories about who they are. With narrative [therapy], we can go through their journeys with them while they tell their stories, and acknowledged their strengths in a re-empowering way.¹⁸

Narrative therapy is also very interested in the historical, political, economic and cultural factors that shape the stories in our lives. Again, this helps to create context around problems like lateral violence.

Barbara Wingard, alongside colleagues Cheryl White and David Denborough from Dulwich Centre, have been facilitating workshops where lateral violence has been discussed. These workshops have taken place in Adelaide, Port Macquarie and Cairns and have been attended by Aboriginal and Torres Strait Islander and non-Indigenous health workers working in Indigenous health, mental health, drug and alcohol and youth services. These workshops have been based on a script for an externalising exercise created by Barbara

17 Dulwich Centre, *What is narrative therapy?*, www.dulwichcentre.com.au/what-is-narrative-therapy.html (viewed 23 September 2011).

18 M Brady, *The Grog Book: Strengthening Indigenous community action on alcohol*, Department of Health and Community Services (1998), p 87.

Wingard.¹⁹ The exercise is an 'interview' with lateral violence, with a person playing the personification of lateral violence. While this sounds a little bit different from the way we normally conduct workshops and training, Barbara Wingard has seen how using this process of externalisation really assists people to speak about confronting and difficult problems can also be a source of humour. Text Box 4.3 provides an excerpt of the interview script.

Text Box 4.3:

A conversation with lateral violence

Below is an extract from the interview devised by Barbara Wingard to be run in workshops and community education activities about lateral violence.

Good afternoon Lateral Violence. It is really good to meet you in person. You usually seem to be in the shadows, so we appreciate it that today we can talk to you face to face. Can I ask you some questions?

Yes, go ahead.

What do you like to do?

I do my best work destroying people. I like to divide people and break their spirits. I break communities and create nastiness between families because people don't know how to deal with me. I can create violence and big punch-ups sometimes, hurting people and stabbing people. But often I use words and stories more than physical violence to break spirits that way....

How long have you been trying to do this? How long have you been around?

I've been around quite a long time now. The thing is, Aboriginal people have to deal with racism, not being able to get housing or jobs. Many Aboriginal people have to deal with poverty, with alcohol. Many families were separated because of the Stolen Generations. Aboriginal people have faced so many injustices in this country for over two hundred years and all these things have made it much easier for me to do my work. I get into communities when they are facing racism, poverty and injustice.

Because I've been around a long time, sometimes now I get carried on through generations. I love this! I'm pretty sneaky because I make people think I'm part of Aboriginal culture. I tell these lies and people believe me. They now say this is Aboriginal way, our way. And this protects me. They think I'm their way of dealing with things and this makes me very happy.

What makes you powerful?

I reckon I'm doing my best work when I get families to fight against one another. Or when I break down families. It's fantastic when everybody wants to take sides. This creates a bigger divide or division...I'm very strong about culture. In some Aboriginal communities I try to get people of Aboriginal heritage to be suspicious and judge each other by asking 'who is Aboriginal and who is not really Aboriginal?'...

19 See B Wingard, 'A conversation with Lateral Violence' (2010) 1 *The International Journal of Narrative Therapy and Community Work* 13, pp 13–17.

What do you think about people knowing your name these days?

I kept my name secret for a very long time. It worked better for me when I was undercover...this First Nations group in Canada, they noticed that I was doing a lot of work in their community. So they started talking about me. They even made a video about me. At first I felt quite proud about this, I quite liked the idea of being a movie star.

But then they started to show this DVD in other places. They brought it here to Australia and now Aboriginal people here seem to be noticing me more often. They're even holding workshops about me now. People are starting to talk about how they confront nastiness but in nice ways...I think I was more powerful when I was invisible and had no name.²⁰

Following the interview, participants are invited to share their own stories of lateral violence. This workshop format shows that there are many different ways for us to start talking about lateral violence. The important thing is that they all take place in a space of cultural safety for participants.

(b) Confronting bullying

Chapter 2 highlighted the pervasive impact of bullying in many areas of life. Here I will focus on promising interventions in cyber bullying and the school context.

Like all approaches to dealing with lateral violence, the first step is naming the bullying and lateral violence in order to make it stop. However, we also learn from these case studies that it is necessary to forge strong partnerships with community and other organisations involved. In the case of the cyber bullying project in Yuendumu we have seen collaboration between the community groups, Police and the Department of Justice. In responding to bullying of young people in schools we have seen a strong alliance between schools, parents and children as part of the *Solid Kids, Solid Schools* project.

(i) Tackling cyber bullying in Yuendumu

The remote community of Yuendumu, which lies 293km north-west of Alice Springs on the edge of the Tanami Desert, has faced tough times in recent history. One of the largest remote communities in central Australia, the majority of residents living in Yuendumu are from the Warlpiri clan. Yuendumu is well known for its thriving artistic community and popular football team, the Yuendumu Magpies.

However, late last year Yuendumu drew media attention for different reasons when tensions within the Warlpiri people turned to violence after a 21-year-old man was killed in a fight in a town camp in Alice Springs. This tragic death brought the community to crisis, as members of the west camp sought traditional payback for the death, and the south camp fled to Adelaide to escape the violence that had erupted.

In the midst of this crisis mobile phones were used by young women to perpetrate lateral violence through Telstra BigPond's *Diva Chat*, with emotionally charged messages flying between the camps. The anonymous messages were a way of achieving 'cyber payback' by attacking and provoking family rivals. This cyber payback spilled over into physical violence, with men acting on the fights that happened online. At its worst,

20 B Wingard, 'A conversation with Lateral Violence' (2010) 1 *The International Journal of Narrative Therapy and Community Work* 13, pp 14–15.

messages with altered images of the deceased were sent through *Diva Chat*, an action which violated Warlpiri cultural customs and appalled the community.

Determined to take action, community members turned to the local police for help. But with no identifying information, the police struggled to hold perpetrators accountable. Sergeant Tanya Mace from Yuendumu police station describes that 'my hands were tied. In the eyes of the people, the police didn't care'.²¹ Desperate to stop the harassment, both camps even suggested shutting down the mobile network entirely, and were willing to sacrifice the use of their mobile phones.

Fortunately, with the help of Intelligence Officers in Katherine, Sergeant Mace was able to get in contact with Air-G, the Canadian company who operate *Diva Chat* and convince them to take action. This contact was able to identify the phone number associated with a user profile and once notified, could shut that profile down within 24 hours.

Equipped with this new power, the police and community were able to develop a reporting system that would help stop the lateral violence which continued to fracture the community. Meetings were held with the two camps which allowed them to establish their own laws for how the reporting system would work, and nominate 'Aunties and Elders' so that young people could have someone to go to and report offensive texts. The chosen representatives then began to meet regularly with the police to report the usernames, so that Sergeant Mace could contact Air-G in Canada and shut down the offending user profiles.

Although the culture of shared phone usage still made it difficult to identify specific individuals, the new system was successful in noticeably reducing the bullying messages. The community felt safer and more confident that the situation could be controlled. As Sergeant Mace explained, 'The women were happy because finally something was being done'.²²

When the exiled south clan returned to Yuendumu again in April, lateral violence reared its ugly head again, and threats of riots were being made through *Diva Chat*. Determined not to let the situation get out of hand, Eileen Deemal-Hall from the Northern Territory Department of Justice, Sergeant Mace and other community leaders held a meeting at the local police station with young women from both camps. This meeting allowed young women to share their experiences of lateral violence and explain how it affected them, and it allowed Elders to deliver clear messages about culturally appropriate behaviour. This behaviour was modelled through role plays, and young women were shown how to stop perpetuating the cycle of lateral violence by ignoring provocative messages.

Information about local programs and ways to get involved in the community were also provided so that the young women could focus their energies elsewhere. Nicki Davies, Co-ordinator of Mediation Services in Yuendumu, believes that this kind of diversion is the key to stop bored and isolated residents from causing trouble.

Whilst divisions still persist for some of the Warlpiri clan, most of the community are keen to get on with things. Getting men re-engaged in the sport which unites the community is one priority, '12 months ago all these families were playing football together' Nicki Davies says.²³ Nicki Davies also has plans to start a music group for Yuendumu's residents to be able to express their emotions about violence through songs.

Now the community turns to long term solutions to avoid the temptation of lateral violence. Central Land Council's 'women's business' meetings, and the recent government consultations on the Northern Territory Emergency Response have given women the opportunity to come together again and plan for Yuendumu's

21 T Mace, *Phone communication with Social Justice Commissioner's Office*, 14 July 2011.

22 T Mace, *Phone communication with Social Justice Commissioner's Office*, 14 July 2011.

23 N Davies, *Phone communication with Social Justice Commissioner's Office*, 27 July 2011.

future. Collaboration between the Northern Territory Department of Justice, police and community groups through the reporting system, meetings and workshops have built trust and confidence between the groups. They continue to work together co-operatively to ensure that young people experiencing and partaking in lateral violence can receive education and assistance in a culturally safe and secure environment.

Although it has faced big challenges in the past year, the talented and proactive families of Yuendumu are making progress, and the community continues to build on its strengths and promote the proud Warlpiri culture it is best known for. This is an excellent example, according to Eileen Deemal-Hall of 'what a community in crisis can achieve'.²⁴

(ii) Solid Kids, Solid Schools

Yamatji communities, families and schools have been developing innovative ways to prevent bullying amongst young people. Led by Associate Professor Juli Coffin from the Combined Universities Centre for Rural Health (CUCRH), the *Solid Kids, Solid Schools* project has built up strong evidence about the experience of bullying amongst Aboriginal children, as well as developing new tools to prevent bullying.

Yamatji country is in the mid-west region of Western Australia and takes in the area from Carnarvon in the north, to Meekatharra in the east and Jurien in the South. This region covers almost one fifth of Western Australia. Of the nearly 10 000 students in the mid-west education District, nearly 20% of the students are Yamatji children and young people.²⁵

The *Solid Kids, Solid Schools* project began in 2006. The project came out of the fact that while there is information on bullying of non-Aboriginal children, virtually nothing was known about the experience of bullying for Aboriginal children.

Solid Kids, Solid Schools is a joint project between the CUCRH, and Child Health Promotion Research Centre at Edith Cowan University. The project was funded by Healthway, an independent statutory body to the Western Australian Government that provides funding grants for health promotion activities. A further two years funding was also sourced from the Australian Research Council to help develop resources after the more formative work and research had been completed.

The *Solid Kids, Solid Schools* project became much more than just research. In consultation with the Yamatji communities, the *Solid Kids, Solid Schools* project had a strong brief to develop tools for addressing bullying, including a website, comic books and a DVD/teaching package based on the research undertaken.

Critical in developing this approach was the Aboriginal Steering Group made up of community leaders. The Aboriginal Steering Group was involved in each phase of the project and provided a link between the researchers and community which increased community ownership over the project. The *Solid Kids, Solid Schools* project is an example of best practice in conducting research with Aboriginal and Torres Strait Islander communities.²⁶ This also included the employment of several male and female Aboriginal research assistants to help make the interviews as culturally secure as possible.

During 2006 and 2007 around 260 people were involved in the *Solid Kids, Solid Schools* project through semi-structured interviews. Of these, 119 were primary school students, 21 were high school students, 40 were parents and caregivers, 18 were Elders and 60 were either Aboriginal teachers or Aboriginal and Islander

24 E Deemal-Hall, *E-mail communication with Social Justice Commissioner's Office*, 12 July 2011.

25 *Solid Kids – Solid Schools – Solid Families, Yamaji – People and Country*, www.solidkids.net.au/index.php/yamaji/ (viewed 23 September 2011).

26 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39 (1) *The Australian Journal of Indigenous Education* 77, p 79.

Education Officers (AIEOs).²⁷ The participants came from a variety of schools in the regional towns, rural and remote areas in the mid-west. In the most part, the remote schools had up to 99% Aboriginal enrolment while the regional towns and rural areas had lower levels of Aboriginal enrolment.²⁸ The research also included Karalundi Aboriginal Education Centre, an independent boarding school for Aboriginal children from Kindergarten to Year 10, about 60 kms from Meekatharra.

Some of the results of the *Solid Kids, Solid Schools* project are discussed in Chapter 2 of this Report. The research showed without a doubt that bullying, and primarily intra-racial bullying, was a pervasive problem for Yamatji children, with serious consequences for their education and community life. I applaud the researchers in developing robust evidence, as well as such sensitive ways of hearing the experiences of children, families and AIEOs.

The research phase of the *Solid Kids, Solid Schools* project was just the starting point. In 2008 the *Solid Kids, Solid Schools* project ran community focus groups to plan for sustainable school and community based bullying prevention programs. By 2009, the *Solid Kids, Solid Schools* project was able to incorporate all the feedback from the past three years to roll out the programs. The quality of community engagement and the creation of a culturally secure environment have meant that the voices of Yamatji children, young people, parents and AIEOs are reflected in the programs created through this process.

Solid Kids, Solid Schools website

The *Solid Kids, Solid Schools* website (www.solidkids.net.au) is a dynamic source of information about bullying, with pages tailored directly for children and young people ('Solid Kids'), parents and care givers ('Solid Families') and schools ('Solid Schools'). It incorporates artwork by Aboriginal artists, Jilalga Murry-Ranui and Allison Bellottie and promotes Yamatji culture.

The 'Solid Kids' web page has easy to read, age appropriate information including practical ways children and young people can get help with bullying. It also includes a game and a series of comics designed by a young Aboriginal woman, Fallon Gregory, which deal with issues around bullying.

As well as the comics, the website also provides a place for creative expressions on bullying. Text Box 4.4 is a poem, 'Diva Chat' by Nola Gregory, a well respected Aboriginal youth worker who offers education and support to children and young people in the Geraldton area.

27 J Coffin, A Larson and D Cross, 'Bullying in the Aboriginal Context' (2010) 39 (1) *The Australian Journal of Indigenous Education* 77, p 79.

28 Solid Kids – Solid Schools – Solid Families, *About the Project*, www.solidkids.net.au/index.php/about/ (viewed 26 September 2011).

Text Box 4.4:

Diva Chat by Nola Gregory

Snide remarks and innuendo
Running rampant in our town
They say it's in the name of fun
To run somebody down
But it's not that funny to those out there
Who constantly put up with the crap
To have to wear your unkind remarks
When you sink as low as that

That diva chat they say it's great
And it's really cheap as well
They get on there and go to town
their stories they love to tell
but do you people realize
your hurting someone out there
with your unkind words and trash talk
do you give a damn, do you care

I don't know if you know this
But to be on diva chat
You have to be 18 years old
Did any of you know that
All it starts is trouble

In the end the fights will start
So how about you stop and think
Before you play your part.²⁹

'Solid Families', provides practical advice about talking to children (4–12 years) and young people (13–20 years) about bullying, as well as ways of working with schools to address bullying. The information includes quotes from parents involved in the research and is empowering to parents.

'Solid Schools' includes information drawn from 'Sharing Days' held in Geraldton, Meekatharra, Shark Bay and Carnarvon in 2008, attended by AIEOs and Aboriginal teachers to discuss ways to support Yamatji children involved in bullying.³⁰ These 'Sharing Days' brought together great experience and wisdom about bullying and Aboriginal education more broadly and form the basis of the *Solid Kids*, *Solid Schools* approach to developing partnerships with Aboriginal families, schools and students.

As well as easy to read summary information and tips, the 'Solid Schools' section includes a comprehensive review of bullying and related issues. The review gets schools, including AIEOs and Aboriginal parents to

29 N Gregory, 'Diva Chat' in *Solid Kids – Solid Schools – Solid Families, Yarn Now! Comics*, www.solidkids.net.au/index.php/comic/ (viewed 20 September 2011).

30 *Solid Kids – Solid Schools – Solid Families, Solid Schools*, www.solidkids.net.au/index.php/what_is/ (viewed 20 September 2011).

critically and holistically look at whether or not the school is providing an environment where bullying is being addressed appropriately. The 10 areas of focus are:

1. solid school planning
2. solid school ethos
3. solid family links
4. solid understandings of cultural security
5. solid understandings about bullying
6. solid guidelines and agreements
7. solid management of bullying situations
8. solid classroom practice
9. solid peer support
10. solid school environment.

The review tools are not just specific to Yamatji children and could be used in any school community that includes Aboriginal and Torres Strait Islander children, particularly where there is evidence of bullying.

Educational DVD

A DVD, *We all Solid*, also helps to communicate the messages about bullying to Aboriginal children and young people. Again, the DVD is by and for the Yamatji children, youth and the wider community and reflects some of the main stories that were raised during the research. It is envisaged that the DVD will be widely distributed, making it a complementary education tool to the website.

Teaching package

A comprehensive teaching package aimed at middle to upper primary and high school ages up to year ten has also been developed to complement the DVD resource. It contains a mix of structured and semi-structured activities and workshop ideas for teachers, counsellors and youth workers for example in dealing with these issues.

Social marketing

The project has recently secured three years of funding from Healthway to develop social marketing tools for use with the wider community on the issues of bullying. This next phase involves developing some infomercials, print media and radio messages around the issues and implications of bullying.

The *Solid Kids, Solid Schools* project has been recognised for the contribution it has already made, winning the Outstanding Achievement Award for the Injury Control Council's Annual Community Safety Award in 2010. The project shows us what is possible when we hear what communities think about tough issues like bullying. Juli Coffin describes the impact of the project:

Although our research is still a work in progress, we are beginning to see more clearly the picture of life faced by our [Yamatji] children within schooling and community settings... This information is just the beginning and it was only possible with the strength and support of the Yamatji community, [who are] already leaders in making things better for their kids.³¹

31 Edith Cowan University, Child Health Promotion Research Centre: Faculty of Compingy, Health and Science, *Research Grants Awarded: Bullying and Aggression Prevention and Mental Health Promotion*, <http://www.chprc.ecu.edu.au/research/bullying/reducing-bullying-aboriginal-ruralwa.php> (viewed 30 September 2011).

(c) Dispute resolution

In Chapter 2, I discussed how the process of colonisation undermined our traditional ways of resolving conflicts based on our complex customary laws. When thinking about lateral violence, it is important to never lose sight of the fact that our people managed to coexist for over 70 000 years before the Europeans arrived. This fact makes me confident that we can once again enjoy a life where conflict is properly managed and lateral violence does not rule our communities.

However, we can't just wind back the clock to the time before colonisation. Not all of our traditional dispute resolution processes will fit in today's world. We live in a world bound by the western legal system. This impacts on how we can resolve our conflicts. As the National Dispute Resolution Advisory Council (NDRAC) notes:

In contemporary society, Indigenous people live in two overlapping worlds, the western and traditional, and neither is fully capable of dealing with disputes involving Indigenous people. Purely western models of dispute resolution are often incongruent with the culture of Indigenous people and fail to meet many of their needs. At the same time, European colonisation has weakened many traditional ways of resolving disputes between Indigenous people.³²

Similarly, we also now face problems like alcohol abuse and indeed, lateral violence that did not exist before colonisation. Again the NDRAC notes that:

[T]raditional structures may not be well equipped to deal with western problems, such as alcohol abuse. Weakened traditional processes are being confronted by new problems outside past experience.³³

Alternative Dispute Resolution (ADR) has been identified as a potential for dealing with community conflicts. Text Box 4.5 provides a definition of ADR.

Text Box 4.5:

What is Alternative Dispute Resolution?

The NDRAC defines ADR as:

Alternative Dispute Resolution or ADR is usually an umbrella term for processes, other than judicial determination, in which an impartial person (an ADR practitioner) assists those in a dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also mean assisted or appropriate dispute resolution. The main types of ADR are mediation, arbitration and conciliation...

ADR processes may be facilitative, advisory, determinative or, in some cases, a combination of these. The ADR practitioner in a facilitative process, such as mediation, uses a variety of methods to assist parties to identify the issues and reach an agreement about the dispute. Advisory processes, such as conciliation or expert appraisal, employ a practitioner to more actively advise the parties about the issues and range of possible outcomes. A process can be selected to best suit a particular dispute.

32 National Alternative Dispute Resolution Advisory Council, *Indigenous Dispute Resolution and Conflict Management* (2006), p 3. At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_IndigenousDisputeResolutionandConflictManagement (viewed 23 September 2011).

33 National Alternative Dispute Resolution Advisory Council, *Indigenous Dispute Resolution and Conflict Management* (2006), p 7. At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_IndigenousDisputeResolutionandConflictManagement (viewed 23 September 2011).

There is currently no comprehensive legislative framework for the operation of ADR in Australia. Many different laws govern the operation of ADR in the different Australian jurisdictions.³⁴

However, it is important to note that disputes or conflicts are never finally resolved, even with the best ADR processes in the world. In successful processes, conflict is transformed to something that both parties can live with, but it never truly goes away because individuals and communities have to live with the impact of the original conflict. Nonetheless, it is still important to put in place healthier ways of dealing with conflict through dialogue to prevent further impacts into the future.

ADR has been an area of research and program development with Aboriginal and Torres Strait Islander people since the 1990s. In particular, the *Solid Work You Mob Are Doing* report by the Federal Court studies a selection of promising ADR methods, including mediations in urban, rural and remote communities in a range of contexts including Community Justice Centres, Community Justice Groups and community controlled organisations.³⁵ They found that successful programs managed to bridge the divide between Western law and our cultural ways.

Dispute resolution has also been a focus of research in the native title system. More information about the dispute resolution developments and their connection to lateral violence can be found in the *Native Title Report 2011*.

The case studies that I will highlight here, the Mornington Island Restorative Justice Project and the Victorian Community Mediators, chart new ways forward in this complex intersection between Western law and customary law. While these projects come from very different places, they both create culturally safe places for conflict to be resolved. This is the 'pointy end' of lateral violence intervention. If we can start to resolve some of the feuds that have spanned generations, we can break the cycle of lateral violence. Importantly, these sorts of projects also prevent lateral violence through the creation of cultural safety and the reestablishment of our positive cultural norms.

(i) Mornington Island Restorative Justice Project

The Mornington Island Restorative Justice (MIRJ) Project is one of only a handful of ADR projects working specifically with Aboriginal and Torres Strait Islanders. The project tells the story of a remote community taking back control of how they handle conflict and progressively creating culturally safe places to address the consequences of lateral violence.

Mornington Island

Mornington Island is the largest Island in the Wellesley Island group, located in the lower Gulf of Carpentaria. The surrounding waters supports the ongoing hunting tradition and is an important component of family life and household economy. It is an extremely remote community, approximately 125km north-west of Burketown, 200km west of Karumba and 444km north of Mt Isa. Mornington Island is home to around 1 100 people.

34 The National Alternative Dispute Resolution Advisory Council, *What is ADR?*, http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/What_is_ADR (viewed 23 September 2011).

35 Federal Court of Australia's Indigenous Dispute Resolution & Conflict Management Case Study Project, *Solid Work you Mob are Doing: Case studies in Indigenous Dispute Resolution & Conflict Management in Australia*, Report to the National Alternative Dispute Resolution Advisory Council (2009). At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_SolidWorkyouMobaredoingReport (viewed 23 September 2011).

The traditional owners of Mornington Island are the Lardil people. The Lardil people had limited contact with the outside world until the 1900s when a Uniting Church Mission was established on Mornington Island. As we have seen in the case study on Palm Island in Chapter 2, the creation of missions under the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* (Qld) saw other Aboriginal groups forcibly removed from their land and relocated to these mission and reserves. Consequently, Mornington Island is now also home to the Yangkaal, Kaiadilt and Gangalidda people.

Establishing cultural safety in the MIRJ

The MIRJ project was established in 2008. Initially funded by the Commonwealth Attorney-General's Department under the Indigenous Justice Program, it is managed by the Dispute Resolution Branch in the Queensland Department of Justice and Attorney General. Since July 2009 the Commonwealth and Queensland governments have funded the project jointly. It is still a pilot project and is yet to secure long term funding.

The MIRJ project is a mediation or peacemaking service that recognises and respects kinship and culture while still meeting the requirements of the criminal justice system. The objectives of the project are to:

- enhance the capacity of the community to deal with and manage its own disputes without violence by providing training, support, supervision and remuneration for mediators
- reduce Indigenous peoples' contact with the formal criminal justice system
- encourage community ownership of the program
- improve the justice system's responsiveness to the needs of the community
- increase the satisfaction with the justice system for victims, offenders, their families and the broader community.³⁶

The development of the process is an important beginning in the story of the MIRJ project. The project only became operational in September 2009, following lengthy consultation and negotiation processes between 2008–2009. Around 200 community members, representing all the major groups on Mornington Island, actively participated, as well as the other government and criminal justice stakeholders. The Project Manager, Phil Venables, sees the fact that an appropriate amount of time was allowed as crucial in building the trust and partnership with the community.³⁷

As result of consultations, 28 Elders signed a document agreeing to the practice and procedures for the MIRJ project. Text Box 4.6 is from the document signed by Elders and explains what peacemaking is and what sorts of conflicts go to peacemaking.

36 M Browning, *Interim Evaluation of the Mornington Island Restorative Justice Pilot Project*, Queensland Government (2011), p 1.

37 P Venables and R Kelly, *The Mornington Island Restorative Justice Project – A partnership in peacemaking* (Paper for the Symposium on Indigenous Sentencing, Punishment and Healing, Cairns, 6 July 2011).

Text Box 4.6: Peacemaking

Below is an extract from the process for mediation prepared with the Elders:

Mornington Island Peacemaking will be run by respected Elders in partnership with the Mediation Coordinator for Mornington Island, Dispute Resolution Branch of the Department of Justice and Attorney General (Justice Department).

It will be run according to the rules of mediation established by the Elders and the cultural protocols of the families who live on Mornington Island.

If a mediator from the Justice Department is running the meeting with Elders it has the protection of a law called the Dispute Resolution Centres Act. This law allows the Justice Department to run mediations in Queensland.

What is Peacemaking?

Peacemaking is a meeting between two people or two families in conflict. Elders and the right family members help them to talk respectfully to each other to sort it out between themselves.

It is not a community court where people are found innocent or guilty or get punished. It is where conflict is put right by agreement, where hurt is healed and relationships are restored.

What conflicts can go to peacemaking?

Most people sort out their own conflicts and don't need help. Peacemaking is for two people or two families who are in conflict and need help to sort it out.

Most conflicts can go to peacemaking if both families are willing to sort out their conflict and put it right. However, when people are charged with serious offences or there is domestic violence, the Elders and Police agree that these are best dealt with by the courts and not by peacemaking.

However, people who want to make their relationships better may agree to go for peacemaking to sort out other problems but violence in a relationship must be dealt with by the court.

Peacemaking or mediation can help sort out disputes or fights over money, when property has been damaged, when people have been assaulted (but not seriously) [and excluding most family violence] or when there is jealousy and harmful talk being spread.

Steps for Peacemaking

- Step 1. Elders or the mediation coordinator are asked to sort out a conflict
- Step 2. The right Elders go with the mediation coordinator consult with both families
- Step 3. Decide to go ahead or call off the peacemaking meeting
- Step 4. Help families get ready for peacemaking
- Step 5. Set up the peacemaking meeting
- Step 6. Conduct the peacemaking meeting
- Step 7. Learning from the experience
- Step 8. Keeping to the agreement.³⁸

38 M Browning, *Interim Evaluation of the Mornington Island Restorative Justice Pilot Project*, Queensland Government (2011), Appendices pp 25–31.

Establishing the rules was seen by the Elders as a way of connecting back with traditional ways of doing things. Ashley Gavenor, a prominent community member stated:

You need rules (for peacemaking) just like the rules for sharing a turtle. Everyone knows what they are. The way back to those rules for peacemaking is by doing it every day. Then talk about it and get better at it. You just do it and do it and people will get used to it.³⁹

It is also an attempt to reconcile western and tradition laws with one Elder describing the process:

We will get our rules [for peacemaking] and show you what they are and you tell us your rules...then we can mix them up and make them strong together.⁴⁰

Cultural safety has been the consistent theme during the MIRJ project, starting with the formative involvement of Elders and then the recruitment of four male and four female Elders as Mediation Support Officers. They are paid at the same level as all mediators in the Department of Justice. They are not required to have formal accreditation as mediators, recognising that their skill in mediation comes from their cultural background and ability to provide a culturally safe process for participants.

The MIRJ project draws significantly on cultural and kinship traditions. Nearly all mediations involve extended family. Project staff aim to give participants control over who are the appropriate people to attend. For example, the uncle known as Gagu (mother's eldest brother in Lardil language) has a traditional disciplinarian role. Their attendance at the mediation signals the importance of the meeting.

Mediations do not just take place in the MIRJ office. A community member, Delma Loogatha describes some of the different locations:

Some [mediations] are real traditional, where you go to the festival grounds traditional site for square up] or for safety, out front of the police station. Sometimes it is better for a quiet mediation at home.⁴¹

Successes of the MIRJ Project

The MIRJ project has now successfully dealt with 63 major conflicts. Of these, 28 related to family conflict, 20 were court referred victim-offender mediations and 15 dealt with conflict in other ways (not necessarily through a formal mediation).

Critical to the community support for the MIRJ project were early successes in resolving large and significant inter-family disputes. These mediation meetings involved 70 participants in one mediation meeting and 100 in another. This sort of crisis intervention helped to defuse the tension before it got further out of hand. Similarly, the fact that more than half of the referrals are being made by community members tells the story of the community acceptance and cultural safety created by the project.

Another measure of the confidence in MIRJ project is the willingness of courts to refer matters, including more serious assaults. In three recent cases where the prosecution had submitted for a custodial sentence, the Magistrate ordered a non-custodial sentence citing the defendant's successful participation in mediation as a reason for the decision. Similarly, of the 16 successfully fulfilled court ordered mediations, eight had

39 Dispute Resolution Branch, Project Overview – Mornington Island Restorative Justice Project, Department of Justice and Attorney General, *Information supplied to the Social Justice Commissioner's office*, 8 August 2011.

40 Dispute Resolution Branch, Project Overview – Mornington Island Restorative Justice Project, Department of Justice and Attorney General, *Information supplied to the Social Justice Commissioner's office*, 8 August 2011.

41 M Browning, *Interim Evaluation of the Mornington Island Restorative Justice Pilot Project*, Queensland Government (2011), p 8.

their charges withdrawn by the prosecutor and eight received a reduced penalty because of their successful participation in mediation.⁴²

Although the number of court ordered mediations is currently comparatively low, it is still an important step in creating diversion opportunities from the criminal justice system. Furthermore, it also makes offenders accountable to their victims and community and is focused on resolution of the issues, not just locking people up. The Elders have also expressed their appreciation that they have been able to have input in prosecution decisions to withdraw charges following successful completion of mediated agreements. This is seen as tangible support for the Elders efforts to strengthen their leadership in the community.

The MIRJ project is still only a pilot program and is yet to secure long term funding. Given the successes and amount of time and goodwill that both the community and Department of Justice and the Commonwealth Attorney-General's Department have invested so far, it is crucial that this project continues as a way of addressing lateral violence.

The project is working in partnership with the community based Junkuri Laka Justice Association over the coming year to take over the coordination of mediation and provide more community ownership and sustainability. Work is continuing in relation to ongoing funding.

The MIRJ project shows us what communities, with assistance from government, can do to resolve conflicts. It also speaks to the inherent strengths of our people. Phil Venables, the project manager, reflects, 'much is made of grudges and payback but not much is made of people's capacity for forgiveness'.⁴³ We should never lose sight of the strength of forgiveness in addressing lateral violence.

(ii) Koori Mediation Model: The Loddon-Mallee pilot

Since the 1990s ADR programs for Aboriginal and Torres Strait Islander communities have been developed in a number of locations.⁴⁴ Although the Koori Mediation Model is not operational until October 2011, it is the first program of its kind to specifically address lateral violence.

Development of the Koori Mediation Model

The Koori Justice Unit, within the Vic DOJ's Community Operations and Strategy Branch, is primarily responsible for coordinating the development and delivery of Victoria's Aboriginal and Torres Strait Islander justice policies and programs across the Victorian Government and justice system, primarily the *Victorian Aboriginal Justice Agreement*. In April 2009, the Koori Justice Unit hosted a two-day seminar on lateral violence, as discussed earlier in this Chapter.

One of the specific outcomes of the April 2009 seminar, was the development of a Koori Mediation Model by the Courts and Tribunals, in conjunction with the Koori Justice Unit and Koori Caucus members. This was subsequently endorsed at the Aboriginal Justice Forum in May 2009. Koori mediation was identified as an

42 Dispute Resolution Branch, Project Overview – Mornington Island Restorative Justice Project, Department of Justice and Attorney General, *Information supplied to the Social Justice Commissioner's office*, 8 August 2011.

43 P Venables and R Kelly, *The Mornington Island Restorative Justice Project – A partnership in peacemaking* (Paper for the Symposium on Indigenous Sentencing, Punishment and Healing, Cairns, 6 July 2011).

44 In Western Australia, a specialised Aboriginal Alternative Dispute Resolution Service was established in the early 1990s to focus on family feuds; Aboriginal and Torres Strait Islander dispute resolution services have also been established under the auspices of community mediation programs including the Indigenous mediation program in Queensland Dispute Resolution Centres and the Aboriginal Mediators Network in the NSW Community Justice Centres. See National Alternative Dispute Resolution Advisory Council, *Indigenous Dispute Resolution and Conflict Management* (2006), p 3. At http://www.nadrac.gov.au/www/nadrac/nadrac.nsf/Page/Publications_PublicationsbyDate_IndigenousDisputeResolutionandConflictManagement (viewed 23 September 2011).

important gap in existing services and a potentially effective response to lateral violence when it occurs in the community.

The next step was a workshop that was held on 13 August 2009. Jointly hosted by the Koori Justice Unit and the Alternative Dispute Resolution Directorate (ADRD), it provided an opportunity for members of the Koori Caucus to begin discussion on a Koori Mediation Model. The objectives of the meeting were to conceptualise what a Koori model of mediation might be, and to set a future direction.

On the strength of that work a pilot program was developed and funded for the Loddon-Mallee region.

The Loddon-Mallee pilot

The Loddon-Mallee area, in the north-west corner of Victoria, takes in the major rural centres of Mildura, Robinvale, Swan Hill, Echuca and Bendigo. The area has the second highest regional population of Aboriginal people in Victoria, making up 15% of Victoria's total Aboriginal and Torres Strait Islander population. The traditional owners of the Loddon-Mallee area are the Wamba-Wamba people.

The Loddon-Mallee area was chosen for the pilot due to the reported problems caused by lateral violence and receptiveness of local community organisations to the concept.

The pilot Koori Mediation Model in Loddon-Mallee is being driven by ADRD. It funds two full time Dispute Assessment Officer positions, based in Bendigo and Mildura (Identified Positions) and a Regional Manager.

It is envisaged that the holder of these positions will coordinate five local Lateral Violence community workshops/forums to raise awareness on lateral violence and to help identify local community members who may be interested in being trained in Koori mediation and conflict resolution. The workshops will be facilitated by Richard Frankland, who has had a leading role in running prior workshops, developing relevant resource materials and undertaking research in the area of lateral violence. The workshops will be run in the five main centres of the Loddon-Mallee region: Mildura, Robinvale, Swan Hill, Echuca and Bendigo.

When interested community people have been identified as potential Koori mediators, training will be provided in two models of response to lateral violence: (i) conflict resolution, and (ii) mediation. The conflict resolution approach is less formal and may enable situations to be defused without being taken further. The mediation approach is more structured, and is suitable for those needing a more formal process, or for situations where conflict resolution has not been sufficient.

Once trained, these people will function as a 'pool' of Koori mediators for the Loddon-Mallee region. The Dispute Assessment Officers will coordinate and support the mediators, and match them with the referrals that are received. A particular strength of this model is that due to the geographic spread of communities from which the mediator pool will be drawn, there should always be an independent mediator available, ie one who is not connected by kin, proximity or circumstance to the lateral violence incidents that will be referred to the service. It is also envisaged that the Dispute Assessment Officers will coordinate opportunities for peer support between the mediators.

An expanded Koori Mediation Model: The vision for Victoria

If funds can be secured for a state-wide roll-out of the Koori Mediation Program, the ideal structure has been identified as follows:

- Several Dispute Assessment Officers in each region, at least one being a *dedicated position* to support the Koori Mediation Model.

- Capacity to provide *regular* lateral violence workshops in all locations, (rather than localised “one-offs” to get the program started). This would create a permanent community awareness-raising mechanism and enable new Koori mediators to be continuously identified to replace those who move on.
- Capacity to provide *ongoing* training and wraparound support to all mediators. This remains one of the most vital determinants of the quality of the program, because the value of the Koori Mediation Model to the community will depend upon the skill and sensitivity of the mediators themselves.

Now that the Dispute Assessment Officer positions have been filled, it is hoped that the Loddon-Mallee Koori Mediation Program pilot will commence in October 2011, and demonstrate how a community-driven response to lateral violence can improve the wellbeing and safety of Koori communities in Victoria.

(d) Healing and social and emotional wellbeing

Chapter 2 has discussed some of the ways the social and emotional wellbeing impacts of lateral violence are felt. At its most tragic extreme is the high level of suicide and suicide attempts in our communities, compared to the non-Indigenous population. The case study below, of the Family Empowerment Project in Yarrabah, was developed as a direct response to this increased risk.

Lateral violence requires healing approaches. The *Social Justice Report 2008* provides a detailed selection of case studies of community initiatives creating culturally safe healing spaces.⁴⁵ Many of these sorts of programs can help in healing the harm caused by lateral violence. Healing approaches also challenge negative stereotypes, making our culture strong and safe enough to prevent lateral violence.

The Family Empowerment Program in Yarrabah is a great example of a community generated program that focuses on the healing needs of participants. Although it was not set up to explicitly address lateral violence, by building conflict resolution skills, dealing with trauma, grief and loss and promoting strong culture, it attacks lateral violence on a number of fronts.

(i) The Family Wellbeing Program

The Family Wellbeing Program is a community led initiative implemented in Yarrabah responding to a spate of suicides and suicide attempts in the mid-1990s.⁴⁶ It empowers individuals and families to try and prevent suicide and increase social and emotional wellbeing. This can also help address lateral violence.

Yarrabah is a coastal community located approximately 50km south of Cairns. The Gunggandji and Yidinji people are the traditional owners of the lands around Yarrabah.⁴⁷ Yarrabah has a population of approximately 3 000 residents.

45 T Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008* (2009) Australian Human Rights Commission, pp 167–176. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport08/index.html (viewed 23 September 2011).

46 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p. 4. At www.lowitja.org.au/files/craah_docs/DP7_FINAL.pdf, (viewed 30 September 2011).

47 K McKay, K Kolves, H Klieve and D De Leo, *Building Bridges: Learning from the Experts – Building bridges to implement successful life promotion and suicide prevention expertise across Aboriginal communities*, Centre for Rural and Remote Mental Health (2009), p. 12. At <http://www.crrmhq.com.au/media/EvaluationReport-FINAL.pdf> (viewed 30 September 2011).

In 1892 a mission was established in Yarrabah leading to the forcible removal of many Aboriginal and Torres Strait Islander people from surrounding areas.⁴⁸ This has had long lasting consequences for the community of Yarrabah. For instance, the lack of adequate housing in Yarrabah has meant that that ‘enemies often found that they had each other as neighbours’.⁴⁹

Forcible removal of children from their families has also had a big impact on the community of Yarrabah with up to 80% of the population either members of Stolen Generations or descended from Stolen Generations members.⁵⁰

Yarrabah has struggled with many of the same issues facing our communities, including family violence, alcohol abuse and unemployment but they have also courageously decided to tackle suicide and family wellbeing, despite the difficult circumstances.

Description of the Family Wellbeing Program

The Family Wellbeing Program was first established in Adelaide by Aboriginal and Torres Strait Islander leaders who wanted to help our people deal with the transgenerational grief, loss and despair being experienced a result of colonisation.⁵¹ Due to its success the program was adapted into other communities including Yarrabah.

The Family Wellbeing Program in Yarrabah grew out of consultation with Yarrabah community leaders who wanted to establish a program where they could pass on life skills and values in ‘overcoming adversity and maintaining a strong sense of family in the face of hostile dominant culture’⁵² as a means of suicide prevention. The Family Wellbeing Program in Yarrabah is run by the Gurriny Yealamucka Health Services.⁵³

The Program uses empowerment, capacity building, and conflict resolution to achieve better social and emotional wellbeing.⁵⁴ The Family Wellbeing Program focuses on:

- empowering participants
- life and relationship skills
- communication

48 E Hunter, J Reser, M Baird and P Reser, *An analysis of suicide in Indigenous communities of north Queensland: the historical and symbolic landscape* (2001), p. 48. At <http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pubs-a-indigsui> (viewed 30 September 2011).

49 E Hunter, J Reser, M Baird and P Reser, *An analysis of suicide in Indigenous communities of north Queensland: the historical and symbolic landscape* (2001), p. 47. At <http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pubs-a-indigsui> (viewed 30 September 2011).

50 K McKay, K Kolves, H Klieve and D De Leo, *Building Bridges: Learning from the Experts – Building bridges to implement successful life promotion and suicide prevention expertise across Aboriginal communities*, Centre for Rural and Remote Mental Health (2009), p 12. At <http://www.crrmhq.com.au/media/EvaluationReport-FINAL.pdf> (viewed 30 September 2011).

51 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, ‘Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research’ (2010) 18(2) *Health and Social Care in the Community* 169, p 170–171.

52 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Discussion Paper, No. 7, (2009), p. 15. At www.lowitja.org.au/files/crahd_docs/DP7_FINAL.pdf (viewed 30 September 2011).

53 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p 4. At www.lowitja.org.au/files/crahd_docs/DP7_FINAL.pdf (viewed 30 September 2011).

54 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, ‘Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research’ (2010) 18(2) *Health and Social Care in the Community* 169, p 170–172.

- conflict resolution skills
- problem solving skills
- understanding and gaining control over conditions affecting participants lives
- social and emotional wellbeing.⁵⁵

The Family Wellbeing Program in Yarrabah also has a strong focus on leadership skills that can be applied in community and family contexts.⁵⁶

It employs activities such as walking groups, healing art camps, men's groups and recently a one-day men's forum on justice issues, as part of its holistic approach to addressing the emotional and social wellbeing of its participants as well as lateral violence.⁵⁷

The Family Wellbeing program also looks at grief, loss and trauma and ways of dealing with these issues.⁵⁸ The development of anger management skills, coping strategies, problem solving and conflict resolution skills, provides opportunities for individuals to become increasingly connected and minimise the divisions that colonisation has created within Aboriginal and Torres Strait Islander communities.⁵⁹

The Program provides participants with a culturally safe environment to discuss their experiences and reflect on their feelings, emotions and relationships. Darren Miller, co-ordinator of the Family Wellbeing Program in Yarrabah, states that participants have drawn on their own life experiences in sharing possible solutions in dealing with some of the issues around lateral violence. This process of healing, self-reflection and understanding is a powerful tool in combating lateral violence as it empowers participants to deal with life's challenges, manage family conflict⁶⁰ and identify the strength and resourcefulness they have as individuals and as a community.⁶¹

Men in the Yarrabah community have used the skills they have gained in the program to lead and facilitate community events such as NAIDOC Week. They have assumed responsibility and become role models to Yarrabah's young people, passing on their knowledge, values, culture and traditions. As a result, young people in Yarrabah have become increasingly engaged in traditional and cultural activities such as camps, hunting and fishing. Young people in Yarrabah have also utilised the skills they have learnt in areas such as art and assisting in the design of programs.⁶² These sorts of activities create cultural safety and cultural revitalisation in communities. The Family Wellbeing Program is showing that strong culture is a powerful way of preventing lateral violence.

55 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p 4. At www.lowitja.org.au/files/crcah_docs/DP7_FINAL.pdf (viewed 30 September 2011).

56 D Baird and D Miller, *Phone communication with the Social Justice Commissioner's Office*, 20 September 2011.

57 D Baird and D Miller, *Phone communication with the Social Justice Commissioner's Office*, 20 September 2011.

58 K Tsey, M Whiteside, A Deemal and T Gibson, 'Social determinants of health, the 'control factor' and the Family Wellbeing program' (2003) 11(1) *Australian Psychiatry* 34, p. 37.

59 M Whiteside, K Tsey, J McCalman, Y Cadet James and AWilson, 'Empowerment as a Framework for Indigenous Workforce Development and Organisational Change', (2006) 59(4) *Australian Social Work* 422, p. 425.

60 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p 7. At www.lowitja.org.au/files/crcah_docs/DP7_FINAL.pdf (viewed 30 September 2011).

61 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p 12. At www.lowitja.org.au/files/crcah_docs/DP7_FINAL.pdf (viewed 30 September 2011).

62 D Baird and D Miller, *Phone communication with the Social Justice Commissioner's Office*, 20 September 2011.

Success of the Family Wellbeing Program

A number of studies have favourably evaluated the effectiveness of Family Wellbeing Program in increasing capacity and empowerment, improving social and emotional wellbeing and reducing violence in Aboriginal and Torres Strait Islander communities. The reported success of the Family Wellbeing Program in addressing these issues has made it one of the most sought-after and recognised Indigenous empowerment and skill development programs.⁶³

David Baird, Chief Executive Officer, Gurriny Yealamucka Health Services Aboriginal Corporation, states that there is anecdotal evidence that the Family Wellbeing Program is helping participants change their lives. He reports participants giving up drinking, and smoking, staying out of jail and the criminal justice system and a reduction in family violence as evidence of the positive impact the Family Wellbeing Program is having on those that take part in it.⁶⁴

Research studies have shown that participants in the program have reported an improvement in family relationships, increased connectedness with children and community, healthier lifestyles and being more at peace⁶⁵.

The resulting connectedness and empowerment has increased participants respect for self and others, self-reflection and awareness, hope and vision for a better future, self-care and healing, enhanced parenting, and capacity to deal with substance abuse and violence.⁶⁶

Identity and spirituality were seen by many to be central in dealing with contemporary issues, such as lateral violence, facing Aboriginal and Torres Strait Islander communities.⁶⁷ One participant stated:

Because all of our culture was taken away from us, there was no way of really keeping a clear picture of our spirituality. There are all different beliefs as well with the stolen generation (male participant, Yarrabah, 2005 data).⁶⁸

The program has helped participants to identify their strengths and in particular, the resourcefulness of the Stolen Generation in overcoming hardships.⁶⁹ This has enabled participants to take 'the necessary steps towards reasserting their identity'.⁷⁰

-
- 63 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, 'Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research' (2010) 18(2) *Health and Social Care in the Community* 169, p 170.
- 64 David Baird and Darren Miller, *Phone communication with the Social Justice Commissioner's Office*, 20 September 2011.
- 65 Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research, pp 174–175.
- 66 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, 'Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research' (2010) 18(2) *Health and Social Care in the Community* 169, p 176.
- 67 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p 8. At www.lowitja.org.au/files/crcch_docs/DP7_FINAL.pdf (viewed 30 September 2011).
- 68 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, 'Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research' (2010) 18(2) *Health and Social Care in the Community* 169, p 174.
- 69 A McEwan, K Tsey and the Empowerment Research Team, *The Role of Spirituality in Social and Emotional Wellbeing Initiatives: The Family Wellbeing Program at Yarrabah*, Cooperative Research Centre for Aboriginal Health Discussion Paper No 7 (2009), p 7. At www.lowitja.org.au/files/crcch_docs/DP7_FINAL.pdf (viewed 30 September 2011).
- 70 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, 'Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research' (2010) 18(2) *Health and Social Care in the Community* 169, p 174.

The skills and healing gained from the Family Wellbeing Program has led some participants to be more active in the community.⁷¹ Some participants have gone on to form networks that have addressed issues around health, school attendance, family violence, alcohol and drug misuse, and over representation of Aboriginal and Torres Strait Islander men in the criminal justice system.⁷² This is where we see the ripple effects of healing and empowerment, with individuals taking responsibility to be part of the solution to some of the issues facing the community.

While the Family Wellbeing Program has made positive impacts in the lives of participants, it can't solve all the problems facing the community of Yarrabah. Issues around funding and structural disadvantage such as overcrowding and unemployment have to be addressed. Darren Miller adds that the program would reach its full potential with the introduction of complementary activities and programs.⁷³

Nonetheless, the Family Wellbeing Program shows us how communities can confront complex problems by drawing on holistic healing methods which blends cultural renewal and spirituality with conflict resolution and other problem solving skills. Most importantly, it empowers participants because it is culturally safe, taking a zero tolerance approach to lateral violence.

71 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, 'Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research' (2010) 18(2) *Health and Social Care in the Community* 169, pp 174–175.

72 K Tsey, M Whiteside, M Haswell-Elkins, R Bainbridge, Y Cadet-James and A Wilson, 'Empowerment and Indigenous Australian Health: a synthesis of findings from Family Wellbeing formative research' (2010) 18(2) *Health and Social Care in the Community* 169, p 176.

73 D Baird and D Miller, *Phone communication with the Social Justice Commissioner's Office*, 20 September 2011.

4.4 Creating cultural competency

Having looked at some approaches that are addressing lateral violence at the community level, I will now look at the role of governments, NGOs and industry who work in our communities. This is necessary because nothing occurs in a vacuum. The way our communities operate will always be shaped and informed by external influences. These influences can either empower and support our communities or undermine them.

Given that this Report's purpose is to start a conversation, again this section is not exhaustive and requires further empirical research. However, the case studies and analysis, promote good practices that are occurring and identify key challenges to be addressed.

Governments, NGOs and industry cannot 'fix' lateral violence through intervention; this will only exacerbate the issue. Aboriginal and Torres Strait Islander relationships must be fixed ourselves, from within our communities. However, this does not absolve these external stakeholders of responsibilities to:

- remove the road blocks that inhibit Aboriginal and Torres Strait islander peoples from taking control
- refrain from actions and processes that divide us
- create environments where our cultural difference is respected and nurtured
- remove the structural impediments to healthy relationships in our communities.

To meet these responsibilities governments, NGOs and industry must be sufficiently culturally competent to act in accordance with Juli Coffin's model of cultural security that I outlined earlier in the Chapter. Under this model, cultural competency extends beyond individual awareness to incorporate systems-level change. The definition outlined in Text Box 4.7 encapsulates this breadth.

Text Box 4.7: Cultural competence

The National Health and Medical Research Council define cultural competence as:

Cultural competence is a set of congruent behaviours, attitudes, and policies that come together in a system, agency or among professionals and enable that system, agency or those professions to work effectively in cross-cultural situations. Cultural competence is much more than awareness of cultural differences, as it focuses on the capacity of the health system to improve health and wellbeing by integrating culture into the delivery of health services.

To become more culturally competent, a system needs to:

- value diversity
- have the capacity for cultural self-assessment
- be conscious of the dynamics that occur when cultures interact
- institutionalise cultural knowledge
- adapt service delivery so that it reflects an understanding of the diversity between and within cultures.⁷⁴

74 National Health and Medical Research Council. *Cultural Competency in Health: A guide for policy, partnerships and participation* (2006), p 7. At <http://www.nhmrc.gov.au/guidelines/publications/hp19-hp26> (viewed 12 September 2009). In text references excluded.

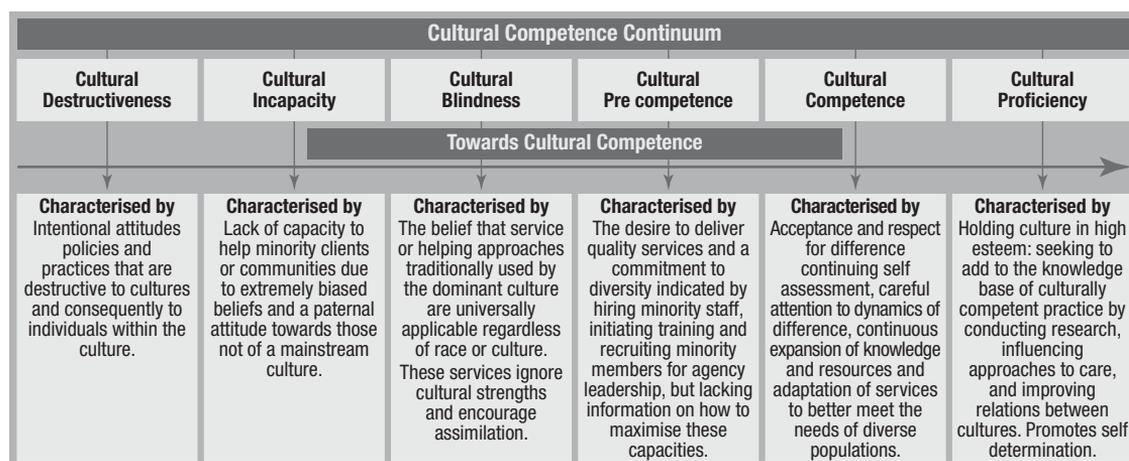
A broad conception of cultural competency akin with Juli Coffin's model of cultural security does not occur just in the parts of an organisation responsible for Aboriginal and Torres Strait Islander policy and service delivery. Creating true cultural competency is an organisation-wide process. In regard to government service delivery, this requires building the capacity of all those involved in policy formation and implementation: from the Minister, through to policy makers right down to the on-the-ground staff who implement the policy.

(a) Moving towards cultural competency

The health services sector has produced a burgeoning body of research on the concept of cultural competency. Terry Cross' research in the United States has led to the development of a cultural continuum for mental health practitioners to increase their competence in working with minority populations.⁷⁵

Tracey Westerman's research focusing on service providers working with Aboriginal youths at risk has validated this continuum in the Aboriginal and Torres Strait Islander context.⁷⁶ VACCA's *Aboriginal Cultural Competency Framework* which guides mainstream child and family services towards cultural competency also incorporates a continuum which is outlined below in Figure 4.1.⁷⁷

Figure 4.1:
Cultural competence continuum⁷⁸



75 See T Westerman, Guest Editorial 'Engagement of Indigenous clients in mental health services: What role do cultural differences play?' (2004) 3(3) *Australian e-Journal for the Advancement of Mental Health* 1, p 2.

76 T Westerman, Guest Editorial 'Engagement of Indigenous clients in mental health services: What role do cultural differences play?' (2004) 3(3) *Australian e-Journal for the Advancement of Mental Health* 1, p 2.

77 The Victorian Aboriginal Child Care Agency, *Aboriginal Cultural Competency Framework*, Produced for the Victorian Government Department of Human Services (2008). At <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/children,-youth-and-family-services/aboriginal-cultural-competence-framework-2008> (viewed 9 September 2011).

78 The Victorian Aboriginal Child Care Agency, *Aboriginal Cultural Competency Framework*, Produced for the Victorian Government Department of Human Services (2008), p 24. At <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/children,-youth-and-family-services/aboriginal-cultural-competence-framework-2008> (viewed 9 September 2011).

Similarly, Juli Coffin's model of cultural security also recognises that cultural competency is on a continuum. She argues that awareness and safety mechanisms need to be supported by brokerage and protocols to progress to cultural security.

Brokerage involves two-way communication where both parties are fully informed about the subject matter in discussion – this is consistent with the principle of free, prior and informed consent. Brokerage is about creating community networks between service providers and community members. Aboriginal and Torres Strait Islander staff employed by the service provider can play a crucial role as brokers to develop these networks. Text Box 4.8 provides an example from the *Solid Kids, Solid Schools* program of how AIEOs can broker networks.

Text Box 4.8:

Aboriginal and Islander Education Officers as brokers

The *Solid Kids, Solid Schools* program outlines how AIEOs play an important role in developing relationships of trust between the Aboriginal members of the school community and the school, which is necessary to addressing bullying within schools.

AIEOs can be utilised as 'brokers' by:

- meeting with parents and carers at their home
- organising school events that celebrate Aboriginal culture (e.g. NAIDOC week activities)
- co-ordinating inter-sectoral collaboration (e.g. with local police)
- creating a friendly and welcoming area on the school grounds for Aboriginal students and parents and carers
- supporting Aboriginal students attending the school
- attending all meetings involving Aboriginal students and/or family members with school staff (acting as a mediator when necessary).⁷⁹

Networks and relationship building must be supported by protocols. Protocols are the strategies to formalise the fact that service delivery must be developed in consultation with the particular community.⁸⁰ Protocols include agreement on culturally informed practices that set rules for engagement with a particular community in relation to the delivery of services. Text Box 4.9 provides a practical example of a protocol.

79 Solid Kids – Solid Schools – Solid Families, *Solid Aboriginal staff*, http://www.solidkids.net.au/index.php/solid_schools/solid_school_staff/solid_aboriginal_staff/ (30 September 2011).

80 J Coffin, *Rising to the Challenge in Aboriginal Health by Creating Cultural Security* (2007) 31(3) *Aboriginal & Islander Health Worker Journal* 22, p 23.

Text Box 4.9:

Protocols shaping service delivery

The example below, drawn from Juli's Coffin's work, is a protocol between midwives and an Aboriginal community. It indicates how protocols establish patterns of behaviour that meet the specific communities needs and internal processes for making decisions.

After talking with the Aboriginal health worker, midwives discovered that the older ladies were the ones to speak to in relation to the young pregnant women. Now whenever anything with the young Mums arises there is an established point of contact to the older women first – thus an assurance is created for cultural security. Community leaders are made aware of the situation and involved. Community participation can then be progressed beyond just 'involvement'. Communities become partners in an equitable, culturally secure provision of service, This is the pathway to cultural security.⁸¹

In developing the cultural competency of an agency or organisation VACCA argues it is essential to remember that cultural competency:

- needs to be developed over time
- requires a whole-of-agency approach and be driven by strong leadership within the agency
- relies on respectful partnerships with Aboriginal and Torres Strait Islander organisations
- requires personal and organisational reflection
- is an ongoing journey and partnership with Aboriginal and Torres Strait Islander communities.⁸²

The key lesson that can be drawn from this body of literature is that creating cultural security through cultural competency is not something that an agency or organisation can simply purchase off a shelf. Cultural competency must be built over time through a deliberate process that seeks to build the capacity of the entire organisation, and this must be done in partnership with Aboriginal and Torres Strait Islander communities.

Next I further explore how cultural competency can create engagements that strengthen and empower Aboriginal and Torres Strait Islander communities.

(b) Hearing Aboriginal and Torres Strait Islander voices

In Chapter 2 I have already discussed how poor engagement processes can contribute to conditions that lead to lateral violence. In this section I will look at how governments, NGOs and industry can undertake their work with Aboriginal and Torres Strait Islander communities in a culturally secure manner to prevent lateral violence. First and foremost, they must ensure that they hear our voices. This is consistent with Juli Coffin's concepts of brokerage and protocols and requires effective engagement.

81 J Coffin, 'Rising to the Challenge in Aboriginal Health by Creating Cultural Security' (2007) 31(3) *Aboriginal & Islander Health Worker Journal* 22, p 23.

82 The Victorian Aboriginal Child Care Agency, *Aboriginal Cultural Competency Framework*, Produced for the Victorian Government Department of Human Services (2008), p 54. At <http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/children,-youth-and-family-services/aboriginal-cultural-competence-framework-2008> (viewed 9 September 2011).

(i) The commitment to engage

There is a clear policy commitment across all governments in Australia to engage with Aboriginal and Torres Strait Islander peoples. The Council of Australian Governments' (COAG) *National Indigenous Reform Agreement* is the benchmark agreement for Indigenous policy activity in Australia and includes an Indigenous Engagement Principle.⁸³ This principle is outlined in Text Box 4.10.

Text Box 4.10: Indigenous Engagement Principle

The Indigenous Engagement Principle guides COAG in the design and delivery of Indigenous specific and mainstream services provided to Aboriginal and Torres Strait Islander people and in the development of national level agreements and reform proposals.

Indigenous engagement principle: Engagement with Indigenous men, women and children and communities should be central to the design and delivery of programs and services. In particular, attention is to be given to:

- (a) recognising that strong relationships/partnerships between government, community and service providers increase the capacity to achieve identified outcomes and work towards building these relationships
- (b) engaging and empowering Indigenous people who use Government services, and the broader Indigenous community in the design and delivery of programs and services as appropriate
- (c) recognising local circumstances
- (d) ensuring Indigenous representation is appropriate, having regard to local representation as required
- (e) being transparent regarding the role and level of Indigenous engagement along a continuum from information sharing to decision-making
- (f) recognising Indigenous culture, language and identity.⁸⁴

In addition, the Australian Government⁸⁵ has developed a framework for engagement with Aboriginal and Torres Strait Islander Australians, *Engaging Today, Building Tomorrow*.⁸⁶ More than 2 000 copies of this framework were distributed across Australian Public Service agencies since its release in National Reconciliation Week 2011.⁸⁷

83 Council of Australian Governments, *National Indigenous Reform Agreement*, http://www.federalfinancialrelations.gov.au/content/national_agreements/downloads/IGA_FFR_ScheduleF_National_Indigenous_Reform_Agreement_Feb_2011.doc (viewed 9 September 2011).

84 Council of Australian Governments, *National Indigenous Reform Agreement*, Schedule D, http://www.federalfinancialrelations.gov.au/content/national_agreements/downloads/IGA_FFR_ScheduleF_National_Indigenous_Reform_Agreement_Feb_2011.doc (viewed 9 September 2011).

85 The Australian Government has further displayed its commitment to engagement with Aboriginal and Torres Strait Islander peoples through the establishment of the representative body, the National Congress of Australia's First Peoples.

86 Australian Government, *Engaging Today, Building Tomorrow: A framework for engaging with Aboriginal and Torres Strait Islander Australians* (2011).

87 Department of Families, Housing, Community Services and Indigenous Affairs staff, *Email correspondence to Social Justice Commissioner's Office*, 14 September 2011.

It is pleasing that the Australian Government has set their intention in this way and I will continue to monitor the performance of this engagement framework. However I am concerned about the implementation of these commitments. Words in a policy document aren't enough. Below I will look at how they can bring these good intentions to life and hear our voices in ways that don't further divide us.

(ii) Building the capacity to engage

Effective engagement is one of the key areas where governments must develop their competency if they are to work with us as enablers to address lateral violence. This challenge of effective engagement is not a new one. The inability of government to engage effectively with Aboriginal and Torres Strait Islander peoples has been subject to significant international scrutiny.⁸⁸ Toni Bauman has noted her continued concern with the way in which governments engage with Aboriginal and Torres Strait Islander peoples:

The incapacity of governments to engage with Indigenous communities and arrive at meaningful, sustainable and owned outcomes through highly specialised skilled facilitation and participatory community development processes has troubled me for many years. The modus operandi of 'consultation' has mostly been one-way communication in 'meetings' in which talking heads drone on, poorly explaining complex information and concluding by asking: 'Everyone agree?'. The response: hands raised half-heartedly and barely perceptible nods. Outside the meeting, participants typically have little or no understanding of what they have agreed to, the possible repercussions of agreement, or the short-, medium and long-term resources available for implementation requirements.⁸⁹

This type of engagement is not culturally secure. Echoing Coffin's research, Bauman continues to suggest that merely being aware of 'issues' that impact on Indigenous communities does not necessarily translate into 'skills of engagement and communication'.⁹⁰

There is clearly a need for government to be 'up-skilled' in how it engages with Aboriginal and Torres Strait Islander communities. One way forward, as suggested by the Indigenous Facilitation and Mediation Project in the Native Title Research Unit at the Australian Institute of Aboriginal and Torres Strait Islander Studies is the use of procedural experts who:

[C]ould assist government, other stakeholders and Indigenous communities in:

- ensuring informed decision-making processes and greater co-ordination of a whole-of-government approach including native title agreement-making;
- negotiating ways in which Indigenous people prefer to do business that match their local needs and in which they can secure equal partnerships with government representatives and other parties; and
- ensuring that parties have what is required to enable them to negotiate effectively.⁹¹

88 See for example: Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/14 (2005), para 16. At <http://www2.ohchr.org/english/bodies/cerd/cerds66.htm> (viewed 5 September 2011); Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia*, UN Doc CERD/C/AUS/CO/15-17 (2010), paras 16, 18. At <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm> (viewed 5 September 2011).

89 T Bauman, "You Mob All Agree?" The Chronic Emergency of Culturally Competent Engaged Indigenous Problem Solving' (2007) 6(29) *Indigenous Law Bulletin* 13, p 13.

90 T Bauman, "You Mob All Agree?" The Chronic Emergency of Culturally Competent Engaged Indigenous Problem Solving' (2007) 6(29) *Indigenous Law Bulletin* 13, p 14.

91 T Bauman, *Final Report of the Indigenous Facilitation and Mediation Project July 2003-June 2006: research findings, recommendations and implementation*, AIATISIS (2006), p iv. At <http://www.aiatsis.gov.au/ntru/docs/researchthemes/negmedfac/ifamp/lfampReport.pdf> (viewed 9 September 2011).

These experts act as cultural brokers. In recognition of this need to increase cultural competency, the Indigenous Facilitation and Mediation Project recommended the development of a national network of highly trained process or engagement practitioners.⁹² This is an idea that could be applied to other areas of policy and program development, in addition to native title.

I agree with Bauman and the Indigenous Facilitation and Mediation Project, effective engagement requires developing skills such as communication, facilitation and negotiation that extends well beyond cultural awareness. In other words governments need to develop culturally competent procedural experts who can act as brokers to develop networks between an agency or organisation and the community.

Engagement also needs to be everyone's business. Cultural security cannot be created if effective engagement is restricted to expert brokers. The role of the broker is to assist in developing relationships, but all those who work with Aboriginal and Torres Strait Islander communities must be able to provide cultural security. These experts should help develop the competency within an agency, not simply shoulder the engagement burden.

(iii) Flexible and creative engagement

Governments must also be more flexible in the way they engage with Aboriginal and Torres Strait Islander communities. Culturally secure engagements are designed to recognise and respect Indigenous authority structures. This requires innovation and flexibility.

Text Box 4.11 highlights a unique governance model, the Fitzroy Futures Forum which I examined in detail in the *Social Justice Report 2010*.

Text Box 4.11: The Fitzroy Futures Forum

The Fitzroy Futures Forum is a governance body that has restructured the relationship between the Aboriginal people of the Fitzroy Valley in northern Western Australia, the broader non-Aboriginal residents and the three tiers of government. I would like to highlight three key strengths of the Fitzroy Futures Forum that are particularly pertinent:

- It enhances the local Aboriginal leadership by drawing a representative from each of the four main Aboriginal language groups in the Valley as a member of the Governing Committee.
- The Aboriginal members of the Governing Committee operate as an interface between governments and service providers and the Aboriginal communities in the Fitzroy Valley. From a policy and service delivery perspective the Fitzroy Futures Forum is the 'entry point'.
- It provides a platform for all members of the Fitzroy Valley to raise their concerns, aspirations and have their voices heard through soapbox sessions at quarterly community forums.⁹³

92 T Bauman, *Final Report of the Indigenous Facilitation and Mediation Project July 2003–June 2006: research findings, recommendations and implementation*, AIATISIS (2006), p 42. At <http://www.aiatsis.gov.au/ntru/docs/researchthemes/negmedfac/ifamp/lfampReport.pdf> (viewed 9 September 2011); T Bauman, "You Mob All Agree?" The Chronic Emergency of Culturally Competent Engaged Indigenous Problem Solving' (2007) 6(29) *Indigenous Law Bulletin* 13, p 14.

93 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010*, Australian Human Rights Commission (2011), Chapter 3. At http://www.humanrights.gov.au/social_justice/sj_report/sjreport10/index.html (viewed 11 August 2011).

Creative mechanisms for engagement are important if governments are to implement their policy commitments and build the cultural competency required for effective engagement. These processes must not only respect Aboriginal and Torres Strait Islander authority structures but also engage with the entire community to ensure they are not hijacked and used to inflame group divisions and tensions.

Effective engagement provides Aboriginal and Torres Strait Islander peoples with the opportunity to have real influence over decisions that impact on their community. Just as poor engagement creates a cycle of powerlessness, effective engagement creates a cycle of empowerment.

(iv) Raising awareness of lateral violence

In the previous section I've looked at what communities can do to raise the awareness of lateral violence. But there is also a role for government and other third parties to critically think about how they might contribute to lateral violence, albeit often unintentionally. This is an essential step to facilitate culturally secure environments and ways of working.

Text Box 4.12 explains how the Vic DOJ has supplemented their community awareness-raising of lateral violence with activities that have increased its profile within the bureaucracy.

Text Box 4.12:

Department of Justice, Victoria

The Koori Justice Unit of the Vic DOJ first became aware of lateral violence in 2008. Since that time it has undertaken a range of activities in relation to lateral violence. Some of these have been designed to increase the awareness of lateral violence within the bureaucracy, including:

- A judicial cultural awareness training session on lateral and Indigenous family violence for the Judicial College of Victoria.
- Presentations on lateral violence have been made to the Vic DOJ Koori Staff Network which comprises all self-identified Aboriginal and/or Torres Strait Islander employees of the Vic DOJ.⁹⁴

I commend Vic DOJ on these initial efforts and urge all other governments to start raising the profile of lateral violence within their departments and agencies. I would also encourage governments to review the ways in which government processes, engagements and policies might exacerbate lateral violence in Aboriginal and Torres Strait Islander communities.

Raising awareness of lateral violence within an organisation should not be confined to the Aboriginal and Torres Strait Islander employees. Chapter 2 clearly demonstrated that lateral violence is not just an Aboriginal and Torres Strait Islander problem. Government, and other external party, processes can and do contribute to conditions where lateral violence flourishes. It is important that non-Indigenous staff are receiving the same, if not more intense awareness-raising programs about lateral violence and training about effective engagement than Aboriginal and Torres Strait Islander employees. Governments and other external parties need to be aware of the way their processes can contribute to conditions that can lead to lateral violence. Without this, they will not be able to reform processes so that they help build cohesion in our communities.

94 A Sculthorpe, *E-mail correspondence to Social Justice Commissioner's Office*, 17 August 2011.

What is required is a change in the organisational culture of governments, NGOs and industry. All staff must be self-reflective and check their behaviours as they work with our communities. This must occur at the senior management level of an organisation and flow down throughout it. This is essential to build a 360 degree view in our responses to lateral violence. If responses to lateral violence only focus on Aboriginal and Torres Strait Islander peoples we only get half, 180 degrees, of the picture. This will lead to limiting the success of these responses to lateral violence.

(v) Increasing an Indigenous presence within the government

In Chapter 3 I stressed that an Aboriginal or Torres Strait Islander person does not become any less Indigenous simply because they work in mainstream employment or a government department. The idea that they do is nonsensical. However, increasing the presence of Aboriginal and Torres Strait Islanders within an organisation can increase its cultural competency, providing that they are given the right support and the organisation is structured to work in partnership with our communities.

A strong Aboriginal and Torres Strait Islander presence where policy is being developed is important to help develop culturally attuned programs. Similarly our people must also have a strong presence where services are being delivered if cultural security is to be achieved in the implementation of services and programs. This was illustrated above in Text Box 4.8 that showed the important role of AIEOs to broker relationships between a school and an Aboriginal community in addressing bullying.

Increased Aboriginal and Torres Strait Islander presence within an agency or organisation can help it be more capable of effective and culturally secure engagements. It is common sense that our people when working for an agency or organisation will have a greater understanding of the nuances required, and the internal politics at play, to ensure engagements build cohesion rather than bring division. They will also be able to help promote trust between a community and an agency or organisation.

Increasing the presence of Aboriginal and Torres Strait Islander employment is one way in which governments can ensure they hear more of our voices in developing and implementing policies. However, this will only be the case if Indigenous employment is used to improve the partnership between communities and government and to facilitate the realisation of community outcomes and aspirations. If our employees are only used to implement imposed policy objectives that do not have the buy-in of the affected Aboriginal and Torres Strait Islander communities, they will be compromised and the cycle of lateral violence will start over again.

I am not saying for a second that increasing Aboriginal and Torres Strait Islander employment is the silver bullet to resolve all government and third party capacity issues in relation to the way they engage with us.

If an organisation stops at recruitment, Aboriginal and Torres Strait Islander employees will be responsible for dealing with all things 'Indigenous' for that organisation. This will not help build cultural competency across the organisation and it will only serve to marginalise the Aboriginal and Torres Strait Islander employees and can contribute to staff burn out.

Without organisational change and capacity building, cultural competency is not achievable. However, increasing the numbers of Aboriginal and Torres Strait Islanders employed in agencies and organisations that work with us is a necessary step to progress towards this goal.

I am pleased that government agencies and private corporations across Australia through Reconciliation Action Plans and employment strategies are making concerted efforts to increase the number of Aboriginal and Torres Strait Islanders they employ.

The *Overcoming Indigenous Disadvantage Report 2011* highlighted some key success stories in improving Aboriginal and Torres Strait Islander employment. This is detailed in Text Box 4.13.

Text Box 4.13:

‘Things that work’ – Improving Indigenous employment

The *Overcoming Indigenous Disadvantage Report 2011* examined some programs that have been successful in improving Indigenous employment outcomes:

Rio Tinto Indigenous employment programs have helped increase the proportion of Indigenous employees in Rio Tinto’s Australian workforce from 0.5 per cent in 1996 to the current level of 6 per cent. In partnership with community stakeholders, Rio Tinto’s employment programs provide education, training and individual support programs such as mentoring, to help Indigenous employees overcome educational barriers.

Rio Tinto has tailored recruitment practices, including one and a half day assessment programs that provide applicants with feedback on their skill levels and guidance on the training they require to be employed. Rio Tinto has also been involved in Australian Government initiatives such as the National Indigenous Cadetship Project (NICP), and the Corporate leaders for Indigenous Employment program.

The Dean Rioli Aboriginal Employment program (Vic) is jointly funded by the Australian and Victorian governments. The program is based on partnership with the Indigenous community, industry, trade unions and governments, and aims to place 100 Indigenous young people in employment by 2012. The project currently has 129 registered participants, of whom 100 have been placed in full time employment. As of the December 2010 quarter, 57 participants had been engaged in 16 weeks continuous employment.

Gunbalanya Station and Meats (NT) is a pastoral business and meatworks being developed by the Indigenous Land Corporation (ILC) through a 15-year agreement with Gunbalanya Meat Supply Ptd Ltd, the Arnhem Land Aboriginal Land Trust and the Northern Land Council. Gunbalanya receives cattle from ILC properties in the NT for the meatworks and finished cattle for live export. The meatworks also improve food security and health and wellbeing in the region through access to affordable fresh meat.

The business is currently in the establishment phase, and during 2009–10, 20 Indigenous people were employed in the pastoral and meatworks operations; 8 Indigenous staff participated in Certificate II in Agriculture, 9 in Certificate II in meat processing, 7 in saddle making school, 10 in horsemanship and knife sharpening courses and 20 in first aid.⁹⁵

These case studies indicate that successful employment programs involve holistic strategies that build partnerships between the community and the employer.

Success stories are occurring within government departments and agencies as well. The work of Vic DOJ in creating an environment where sustainable increases in Koori employment have been achieved is particularly promising. In 2000, prior to the establishment of the Koori Recruitment and Career Development Strategy, Vic DOJ employed just four Aboriginal and Torres Strait Islanders. By the beginning of 2011 it employed 108 Aboriginal and Torres Strait Islanders. On numbers alone this is a fantastic outcome. I examine the efforts of Vic DOJ below in Text Box 4.14.

95 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011) p 8.5. At <http://www.pc.gov.au/gsp/reports/indigenous/key-indicators-2011> (viewed 19 September 2011). Note: In text reference removed.

Text Box 4.14:

Department of Justice, Victoria Koori Employment Strategy⁹⁶

Vic DOJ is recognised as a leader in Aboriginal and Torres Strait Islander employment across the Victorian Public Service. This is the result of an ongoing and holistic process developed over time to create a culturally safe employment environment for Aboriginal and Torres Strait Islanders.

Koori Recruitment and Career Development Strategy

In 2000 the Koori Recruitment and Career Development Strategy (KRCDS) was established within Vic DOJ with the aim to achieve:

- a long term increase in the number of qualified Aboriginal and Torres Strait Islanders employed across all areas and at all levels of the justice portfolio
- similar increase of employment and qualifications of Aboriginal and Torres Strait Islanders in the funded sector of the justice system
- career development frameworks for Aboriginal and Torres Strait Islanders to undertake training and further education.

The KRCDS has been incredibly successful. Before it was established Vic DOJ employed only four Aboriginal and Torres Strait Islanders, by January 2011 this figure had risen to 108.

Koori Employment Strategy 2011–2015

Kareeta Yirramboi, the Victorian Public Sector Employment & Career Development Action Plan 2010–2015 sets a 1% target for Aboriginal and Torres Strait Islander employment across the Victorian Public Sector by 2015. In response to this Action Plan Vic DOJ developed the *Koori Employment Strategy 2011–2015* which sets a higher target of 2.5% Aboriginal and Torres Strait Islander employment by 2015 (as of January 2011 it stands at 1.2%).

Vic DOJ recognises that the way in which the Department's stakeholders, systems and processes engage with Aboriginal and Torres Strait Islanders both internal and external to the Department will be integral to the strategy's success. Two key support teams endeavour to ensure this success; the Koori Employment Team (KET) and the Koori Justice Unit.

Koori Employment Team

KET has been established within People and Culture (P&C) as the central oversight mechanism for the coordination, monitoring and successful implementation of the *Koori Employment Strategy 2011–2015*. The core focus of KET is:

- build overall capacity of P&C to support *Kareeta Yirramboi*
- develop strong partnerships and synergies across all arms of P&C
- central coordination of achieving the 2.5% employment target set by the Secretary
- development of a communication strategy
- mandate and strengthen cultural competency across the department against the Victorian Government's Aboriginal Cultural Inclusion Framework

96 Department of Justice, Victoria, *Koori Employment Strategy 2011–2015* (2011).

- work closely with business units, executive reporting lines and regional offices in achieving their employment targets
- provide support to Employment Programs in the implementation of recruitment programs
- provide support to Employee Relations, Employee Investigations and Workplace Relations to address any grievances that Aboriginal and Torres Strait Islander employees may experience in the workplace
- work with the Learning & Development Unit to increase the uptake of training programs undertaken by Aboriginal and Torres Strait Islander staff.

Koori Justice Unit

The Koori Justice Unit is primarily responsible for coordinating the development and delivery of Victoria's Koori justice policies and programs across the Victorian Government and justice system, primarily the Victorian Aboriginal Justice Agreement.

The Koori Justice Unit promotes the partnerships between the Koori community and government, by facilitating community engagement initiatives to build strong networks and enable wide participation in the delivery of Koori justice-related policies, programs and initiatives.⁹⁷

Koori Pathways into Vic DOJ

Vic DOJ recognises that increasing Aboriginal and Torres Strait Islander employment is only sustainable when the work environment is 'Koori friendly'. There are a number of employment pathways and initiatives in the department, which will increase Aboriginal and Torres Strait Islander employment and Koori friendliness.

Identified and designated positions

The use of identified⁹⁸ and designated⁹⁹ positions reflects a strategic objective to identify and respond effectively to the needs of the Koori community through the development and delivery of culturally appropriate programs and services.

These positions within Vic DOJ require specific skills, with the occupant being required to have demonstrated knowledge and understanding of the Victorian Koori community, both society and culture and the issues impacting on it, and a demonstrated ability to communicate sensitively and effectively with members of the Victorian Koori community.

These positions provide an important source of recruitment of Aboriginal and Torres Strait Islander employees, who have the appropriate skills and knowledge to enable more effective development of the policy and delivery of programs and services to the Koori community.

Although identified and designated positions are useful in creating pathways for Aboriginal and Torres Strait Islander into Vic DOJ, the strategy identifies the need to broaden employment opportunities for Aboriginal and Torres Strait Islander employees beyond Koori program areas.

97 Department of Justice Victoria, *Koori Justice Unit*, <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/About+Us/Our+Organisation/Business+Area+Profiles/JUSTICE+--+Koori+Justice+Unit> (viewed 30 September 2011).

98 Roles in which many or all of the duties involved the development and/or delivery of policy, programs and services which impact on the Victorian Koori community or involve interaction with the Victorian Koori community or their representatives: Department of Justice, Victoria, *Koori Employment Strategy 2011–2015* (2011).

99 Roles in which all of the duties involved the development and/or delivery of policy, programs and services which impact on the Victorian Koori community or involve interaction with the Victorian Koori community or their representatives: Department of Justice, Victoria, *Koori Employment Strategy 2011–2015* (2011).

Koori Friendly Vic DOJ

A workplace that values and respects the Koori community and culture is more attractive to Aboriginal and Torres Strait Islander job seekers. Improving cultural competency and making the department more culturally inclusive is critical.

Traditional government recruitment and selection processes can be daunting and unfamiliar, therefore Vic DOJ has implemented strategies to ensure recruitment and selection processes are more culturally appropriate in addition to encouraging and supporting Aboriginal and Torres Strait Islander applicants through each stage of the process. This will include:

- Tailored attraction campaigns – advertising through Koori media, a dedicated web page and at Koori community events.
- Selection practices – Koori friendly interview processes including the requirement of at least one Koori panel member on the selection panel.
- Communication with potential employees and the Koori community – KET with the support of Koori Justice Unit will work to strengthen linkages between Vic DOJ and the Victorian Koori community.
- Communication with existing employees – Aboriginal and Torres Strait Islander staff networks provide critical support networks and an important link between Vic DOJ and the Koori community.

Koori Employment Action Plan

Vic DOJ has developed an action plan to implement its commitments in the *Koori Employment Strategy 2011–2015* it includes proposed timeframes, responsibilities and measures of success.

The achievements of the Vic DOJ reveal that the greater the cultural competency of an agency, the more inclined Aboriginal and Torres Strait Islanders will be to seek employment within that agency. This reveals the mutually reinforcing character of Indigenous employment and cultural competency and cultural security.

(c) Empowerment: Using a strengths-based approach

Adopting a strengths-based approach to working with our communities, is an effective way of reorienting government processes to ensure that they empower our communities.

(i) Building capacity through partnerships

Undertaking partnerships with Aboriginal and Torres Strait Islander communities and organisations can negate the tendency of governments to impose deficit-based approaches in policy and program delivery.

Evidence indicates that empowering partnerships lead to better outcomes. For example the Closing the Gap Clearinghouse suggests that a true partnership approach is the key to learning ‘what works’ in the Indigenous policy space.¹⁰⁰ Importantly the Clearinghouse also finds that external authorities imposing change is a key factor in what ‘doesn’t work’.

100 Closing the Gap Clearinghouse, *What works to overcome Indigenous disadvantage: Key learnings and gaps in evidence*, Australian Institute of Health and Welfare, Australian Institute of Family Studies (2011), p 2. At http://www.aihw.gov.au/closingthegap/documents/annual_papers/what_works_to_overcome_disadvantage.rtf (viewed 6 September 2011).

In the previous section I have discussed how the Vic DOJ has developed a partnership with Koori organisations in Victoria to undertake work on lateral violence, initially running workshops and producing an educational DVD. Text Box 4.15 looks at the further partnership between Vic DOJ, FaHCSIA and VACCHO for a longer term community education project.

Text Box 4.15:
Community Education Project

Vic DOJ has now partnered with FaHCSIA and entered into a further agreement with VACCHO, to utilise the DVD in a Lateral Violence Community Education Project.

This Lateral Violence Community Education Project is in its early stages (funding agreement commenced June 2011) however will provide:

- a full time project officer at VACCHO
- development of a Lateral Violence Education Workshop (centred on the lateral violence DVD)
- delivery of 84 half-day Lateral Violence Education Workshops to Koori community organisations by July 2012
- development and delivery of 'train-the-trainer' training to approximately 30 community representatives (to allow the delivery of the workshops on an ongoing basis).

VACCHO, as the peak Koori health body, will deliver these workshops in partnership with its member Aboriginal Health Organisations located throughout Victoria. These organisations contain social and emotional wellbeing counsellors who can provide additional community support post-workshops and have a strong infrastructure and service-delivery environment to enhance the workshops.

The approach adopted by Vic DOJ is very encouraging. The Vic DOJ's role has been to enable the Koori community to undertake projects designed to address a community identified concern in lateral violence.

It is pleasing to see the Vic DOJ and FaHCSIA invest in projects and resources to allow the Koori community to address lateral violence. This partnership model will help counteract government processes that can exacerbate lateral violence. In this way it is both the content (lateral violence projects) and the process (partnership-based) that can help address lateral violence.

The other positive benefit of an effective partnership model is that it negates a deficit approach, as there is no external intervention imposing the lateral violence onto the community. The partnership approach should put the Koori community in the driving seat to address lateral violence and the programs are led and delivered by Koori organisations.

(ii) The school curriculum

There is another promising development at the moment that will promote strengths-based approaches. This is the drafting of a national school curriculum that is being undertaken by the Australian Curriculum, Assessment and Reporting Authority (ACARA).¹⁰¹

It offers an opportunity to ensure all young Australians learn both about human rights and the unique and valuable place that Aboriginal and Torres Strait Islander peoples have in the nation.¹⁰² Aboriginal and Torres Strait Islander children could learn positive stories about our culture and history, and to learn of the deeds of heroes like Jandamarra, William Cooper and Jack Patten. Incorporating these stories into the school curriculum will help build pride in our communities and cultures which can combat the negative stereotypes that reinforce powerlessness which in turn feeds lateral violence.

Embedding Aboriginal and Torres Strait Islander peoples' cultures, histories and heroes into the education system will promote our strengths both to our children and to the broader community. This can promote cultural safety and security. VACCA note that on the one hand it can enhance the resilience of our communities:

[L]earning about culture and history of our resistance fighters and all the rest of it...gives you knowledge of your background. I mean a lot of our community's lost because they don't have all this information but a lot of people don't have a foundation so I think language and history and that creates a foundation to build on.¹⁰³

On the other hand they also suggest it will help confront negative stereotypes and racism within the broader community, the same stereotypes which we eventually turn in on ourselves:

I think that one of the most destructive myths in Australia today is the idea that Aboriginal people have contributed nothing to this country. And I think it's this idea that festers in our national identity...feeding the national mistrust, racism and bitterness existing toward Aboriginal people today and is never spoken of or even acknowledged. Teaching our kids the actual contribution of Aboriginal people in this country today, past and present, would go a long way to rectifying this and would, I truly believe, foster real reconciliation.¹⁰⁴

One of the pleasing aspects in ACARA's development of the national curriculum is that Aboriginal and Torres Strait Islander histories and cultures has been designated as one of the three cross-curriculum priorities that is to be integrated into each learning area.

It will be important to ensure that this priority is meaningfully integrated into all learning areas of the Curriculum from the very early years of schooling to ensure our community and the wider Australian community learn about positive representations of Aboriginal and Torres Strait Islander peoples and culture, as well as the facts about the impact of colonisation on our community, from a very early age.

Embedding our cultures and histories across each area of the curriculum is a great stride forward and I am excited about the positive impacts that this will have within Aboriginal and Torres Strait Islander communities as well as the broader Australian public.

101 The Australian Human Rights Commission has been actively involved in the public consultations on the draft curriculum. In particular it has recommended ways in which the human rights content of the curriculum can be strengthened: See Australian Human Rights Commission, *Human Rights Education in the national school Curriculum: Position Paper of the Australian Human Rights Commission* (2011). At <http://www.humanrights.gov.au/education/positionpaper/index.html> (viewed 7 September 2011).

102 See Australian Human Rights Commission, *National school curriculum and human rights education*, http://www.humanrights.gov.au/education/community_engagement.html (viewed 7 September 2011).

103 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 70.

104 R Frankland, M Bamblett, P Lewis and R Trotter, *This is 'Forever Business: A Framework for Maintaining and Restoring Cultural Safety in Aboriginal Victoria*, Victorian Aboriginal Child Care Agency (2010), p 69.

4.5 Future directions in addressing lateral violence

I have stressed throughout this Report that lateral violence is an emerging concept. The issues, concerns and conclusions that have been raised are preliminary only. There is a real need to build on the theoretical underpinnings of lateral violence and the supporting anecdotal evidence with action research.

With this need in mind, my office has partnered with the University of Sydney to undertake a research project into lateral violence. This project will build on the initial research and analysis that I have conducted as preparation for this year's Social Justice and Native Title Reports.

This research project will be led by Aboriginal and Torres Strait Islander scholars. I am excited that it includes a scholarship (the Campbell Weston Perry Scholarship) for a PhD for a suitably qualified and experienced Aboriginal and Torres Strait Islander person. I think it is a fantastic opportunity for one of our students to undertake research in this important and burgeoning area of the Indigenous policy space.

I will use my future Social Justice and Native Title Reports to report on the progress of this research and the emerging body of evidence that will be developed around lateral violence.

4.6 Conclusion and Recommendations

This chapter, in conjunction with Chapter 3, starts to shift the conversation from looking at the problem of lateral violence, to starting to talk about ways that we can develop solutions. I believe that if we all play our part, be it as individuals, families, organisations or governments or other third parties, we can start to turn the tide against lateral violence. The first step is simply saying 'enough is enough' and declaring a zero tolerance for this sort of abuse.

While this first step might seem simple enough we know that lateral violence is an entrenched and formidable foe. That is why I draw on the concepts of cultural safety and security to shape how we tackle lateral violence.

Cultural safety and security help create the positive, empowered environments where the problems of lateral violence can be solved. The case studies in this Chapter are in no way exhaustive but nonetheless show some of the different ways communities and government are already addressing lateral violence across a range of sectors. Given that we have only just started tackling this problem in earnest, it is very encouraging to see the achievements that these pioneering efforts have made. I am hopeful that we will see more resolve, creativity and action as the conversation about lateral violence continues.

This Chapter has also laid the ground work for the future research project on lateral violence between the University of Sydney and the Commission. I look forward to seeing some of the brightest Indigenous scholars develop an evidence base that will further shape our responses to lateral violence. I will be reporting on this research in subsequent Social Justice Reports.

Again, given that this is the beginning of our conversations around lateral violence, my recommendations reflect the need for greater research in this area. However, they also draw strongly on the implementation of the Declaration and the creation of cultural safety and security. I look forward to working with governments on these issues and will continue to monitor the implementation of these recommendations.

Recommendations

9. That further research is undertaken to develop the evidence base and tools to address lateral violence in Aboriginal and Torres Strait Islander communities. This research should be supported by the Australian Government.
10. That all governments ensure that their engagement, policies and programs are implemented in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*. In particular, this should occur with respect to the right to self-determination, the right to participate in decision-making guided by the principle of free, prior and informed consent, non-discrimination and respect for and protection of culture.
11. That all governments, working with Aboriginal and Torres Strait Islander peoples, conduct an audit of cultural safety and security in relation to their policies and programs that impact on Aboriginal and Torres Strait Islander communities.
12. That all governments, working with Aboriginal and Torres Strait Islander peoples, based on the audit of cultural safety and security, develop action plans to increase cultural competence across their government.
13. That all governments, working with Aboriginal and Torres Strait Islander peoples, conduct education and awareness-raising sessions on lateral violence for both Aboriginal and Torres Strait Islander and non-Indigenous staff.

Appendices

- Appendix 1: Acknowledgments **170**
- Appendix 2: Chronology of events relating to the administration of Indigenous affairs, 1 July 2010 – 30 June 2011 **171**
- Appendix 3: Membership of the Expert Panel on Indigenous Constitutional Recognition **198**
- Appendix 4: Expert Panel Terms of Reference **199**
- Appendix 5: Position paper on achieving Aboriginal and Torres Strait Islander health equality within a generation **200**
- Appendix 6: Further data on victimisation and offending **205**



Appendix 1

Acknowledgments

The Aboriginal and Torres Strait Islander Social Justice Commissioner thanks the following people and organisations for their assistance in preparing the *Social Justice Report 2011*.

Richard Frankland

Professor Muriel Bamblett

Chief Executive Officer
Victorian Aboriginal Child Care Agency

Dr Peter Lewis

Manager – Policy, Research and Communication
Victorian Aboriginal Child Care Agency

Professor Shane Houston

Deputy Vice-Chancellor (Indigenous Strategy and Services)
University of Sydney

Juli Coffin

Associate Professor Aboriginal Health
Combined Universities Centre for Rural Health

Laura Beacroft

Research Manager
Australian Institute of Criminology

Tracey Cussen

Research Analyst
Australian Institute of Criminology

Victorian Department of Justice

Phil Venables

Project Manager
Mornington Island Restorative Justice Program
Dispute Resolution Branch Department of Justice and Attorney-General

David Baird

Chief Executive Officer
Gurriny Yealamucka Health Services Aboriginal Corporation

Darren Miller

Coordinator – Family Wellbeing Program
Gurriny Yealamucka Health Services
Aboriginal Corporation

Barbara Wingard

Dulwich Centre

David Denborough

Dulwich Centre

Nicki Davies

Coordinator Mediation Services, Yuendumu

Ruth Bignell

Counsellor, Mt Theo Program

Sergeant Tanya Mace

Yuendumu Police Station

Eileen Deemal-Hall

Department of Justice, Northern Territory

Appendix 2

Chronology of events relating to the administration of Indigenous affairs, 1 July 2010 – 30 June 2011

Date	Event and summary of issue
2 July 2010	<p>Torres Strait Islander sea rights recognised by Federal Court</p> <p>The Federal Court recognised the Torres Strait Regional Sea Claim Group's native title rights over about 37 800sq. km of sea between Cape York Peninsula and Papua New Guinea.¹</p> <p>The decision is important because the non-exclusive native title rights include the right to access marine resources for any purpose, including commercial purposes.²</p>
2 July 2010	<p>Central Australian ranger program received funding</p> <p>The Central Land Council received \$5.1 million to expand an Aboriginal ranger program in seven remote locations across Central Australia. This was one of eight land and sea management projects to receive grants from the Aboriginals Benefit Account (ABA).³</p>
3 July 2010	<p>Government releases native title discussion paper</p> <p>The discussion paper 'Leading Practice Agreements: Maximising Outcomes from Native Title Benefits' called for public consultation on reforms to promote leading practice in native title agreements and governance of native title payments. It also considered streamlining the future acts processes and clarifying the meaning of 'in good faith' under the right to negotiate provisions.⁴</p>
4 July 2010	<p>Ancestral remains in Washington, handed back to Traditional Owners in Arnhem Land</p> <p>Nine ancestral remains were returned to Arnhem Land Traditional Owners from Groote Eylandt, Gunbalanya and Milingimbi at a ceremony in Washington, United States of America (USA).</p> <p>The remains were removed during the 1948 American-Australian Scientific Expedition to Arnhem Land and were housed at the Smithsonian Institute's Museum of Natural History. Since 1990 more than 1 150 Aboriginal and Torres Strait Islander ancestral remains have been returned from six countries, but over 1 000 are still held in museums worldwide.⁵</p>

- 1 See National Native Title Tribunal, *Torres Strait Islanders' sea rights recognised*, www.nntt.gov.au/News-and-Communications/Newsletters/Talking-Native-Title/Pages/TorresStraitIslanderssearightsrecognised.aspx (viewed 11 April 2011).
- 2 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Successful Torres Strait regional sea claim cause for celebration' (Media Release, 2 July 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/65_10.html (viewed 12 May 2011).
- 3 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and The Hon W Snowdon MP, Minister for Indigenous Health, 'Central Australian Aboriginal ranger program receives \$5.1 million boost' (Media Release, 2 July 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/central_oz_5mboost_2july2010.aspx (viewed 14 April 2011).
- 4 Department of Families, Housing, Community Services and Indigenous Affairs, *Native Title Discussion Paper*, http://www.fahcsia.gov.au/sa/indigenous/progserv/land/Pages/native_title_discussion_paper.aspx (viewed 15 April 2011).
- 5 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Indigenous traditional owners to bring home remains from the United States' (Media Release, 4 July 2010). At www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/indigenous_traditional_owners_to_bring_home_remains_from_the_united_states.aspx (viewed 15 April 2011).

Date	Event and summary of issue
4–11 July 2010	<p>NAIDOC Week</p> <p>NAIDOC Week is a celebration of Aboriginal and Torres Strait Islander culture and the contributions of individuals in various fields.</p> <p>The 2010 NAIDOC Week theme was <i>Unsung Heroes – Closing the Gap by Leading Their Way</i>. Among the ten National NAIDOC Award Winners, Dennis Eggington was awarded Person of the year and recognition for Lifetime Achievement went to Vince Coulthard.⁶</p>
9 July 2010	<p>ABA grant to the Traditional Credit Union (TCU)</p> <p>Eleven remote Northern Territory (NT) communities will have improved access to financial services and financial literacy through a \$14 million ABA grant to the TCU. The TCU was established by Aboriginal people to provide financial services to residents in Arnhem Land communities who were disadvantaged by the lack of banking and financial services.⁷</p>
9 July 2010	<p>NAIDOC Day</p> <p>Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda and the Co-Chairs of the National Congress of Australians First Peoples (the National Congress) highlight constitutional reform as the next major step in reconciliation and to achieving the full recognition of Aboriginal and Torres Strait Islander rights.⁸</p>
12 July 2010	<p>Australian and Northern Territory (NT) Governments partner to deliver new family support services</p> <p>The Australian Government committed to providing \$5.3 million over three years, with the NT Government contributing \$7.2 million over two years to establish and run new parenting support and playgroup services in the NT. Local Aboriginal and Torres Strait Islander people will receive employment and training to deliver the services.⁹</p>

6 NAIDOC, *Winners profile*, <http://www.naidoc.org.au/naidoc-awards/winners-profiles/> (viewed 5 September 2011).

7 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous and The Hon W Snowdon MP, Minister for Indigenous Health, '\$14 million for banking services in remote NT communities' (Media Release, 9 July 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_14mill_9july2010.aspx (viewed 14 April 2011).

8 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Calls for Constitutional recognition on National Aboriginal and Islanders Day' (Media Release, 9 July 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/72_10.html (viewed 7 July 2011).

9 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Supporting children and families in the remote Northern territory communities' (Media Release, 12 July 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/children_nt_12july2010.aspx (viewed 11 July 2011).

Date	Event and summary of issue
15 July 2010	<p data-bbox="373 462 1220 485">Progress on National Partnership Agreement (NPA) on Remote Indigenous Housing (RIH)</p> <p data-bbox="373 510 1146 592">The Australian Government released results under the NPA RIH which was renegotiated in December last year when it became clear that progress was insufficient to meet the targets.</p> <p data-bbox="373 614 1237 694">The states and the NT have delivered 316 new houses and 828 refurbishments in remote Aboriginal communities across Australia in 2009–10. The 2009–10 targets for RIH were 320 new houses and 587 refurbishments.¹⁰</p>
17 July 2010	<p data-bbox="373 734 1013 757">Marulu: The Liliwan Project into Foetal Alcohol Spectrum Disorder</p> <p data-bbox="373 782 1237 891">The first Australian study into the prevalence and impact of Foetal Alcohol Spectrum Disorder on Aboriginal and Torres Strait Islander children was initiated by the Fitzroy Valley community in Western Australia (WA), with the support of a \$1 million Australian Government grant.¹¹</p>
6–10 August 2010	<p data-bbox="373 931 637 953">12th annual Garma Festival</p> <p data-bbox="373 978 1247 1087">The Garma Festival, held at Gulkula (40 kms from Nhulunbuy), is one of Australia's most significant Aboriginal and Torres Strait Islander cultural events. The festival sees an annual pilgrimage of Aboriginal and Torres Strait Islander peoples throughout Arnhem Land, the NT and the rest of Australia.</p> <p data-bbox="373 1110 1214 1191">The festival aims to promote and preserve Yolngu culture through song, dance, art and ceremony.¹² The key theme of Garma 2010 was 'Indigenous Education and Training'.¹³</p>
8 August 2010	<p data-bbox="373 1231 861 1254">International Day of the World's Indigenous People</p> <p data-bbox="373 1279 1224 1388">Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda, called on Australian legislators and policy makers to mark International Day of the World's Indigenous Peoples by making a commitment to fully implement the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> (the Declaration).¹⁴</p>

10 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Remote Indigenous housing progress' (Media Release, 15 July 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/remote_indig_housing_progress_15jul10.aspx (viewed 11 July 2011).

11 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Foetal Alcohol Spectrum Disorder study' (Media Release, 17 July 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/foetal_alcohol_study_17jul10.aspx (viewed 9 May 2011).

12 Garma Festival, *Garma Festival* 6–10 August 2010, www.garmafestival.com.au/EOL_intro.html (viewed 11 May 2011).

13 Garma Festival, *Garma Festival* 6–10 August 2010, www.garmafestival.com.au/EOL_intro.html (viewed 5 September 2011).

14 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Recognition and participation must be priority for Australia's Indigenous people' (Media Release, 7 July 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/81_10.html (viewed 7 July 2011).

Date	Event and summary of issue
7 September 2010	<p>Federal Court case filed against Andrew Bolt</p> <p>The Federal Court case filed against Herald Sun columnist Andrew Bolt included racial vilification charges following articles he wrote on the racial identity of Aboriginal people in 2009.¹⁵</p>
13 September 2010	<p>Third anniversary of the Declaration</p> <p>The Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda announced the future release of community education materials on the Declaration. Since Australia's support for the Declaration, it has become used increasingly in the legal and political landscape.¹⁶</p>
14 September 2010	<p>Prime Minister Gillard reinstated Snowdon as Minister for Indigenous Health</p> <p>Prime Minister Julia Gillard did not include Warren Snowdon as Indigenous Health Minister when reshuffling her frontbench on the 11th September.¹⁷</p> <p>Mr Snowdon was reinstated as the Indigenous Health Minister after reservations from peak Aboriginal organisations that the Indigenous health portfolio had been overlooked.¹⁸</p>
20 September 2010	<p>United Nations (UN) Special Rapporteur on the rights of indigenous peoples (Special Rapporteur) reports on Australia to the Human Rights Council</p> <p>The country report resulting from the visit to Australia by Special Rapporteur, James Anaya in 2009, recommended that programs aimed at reducing the disadvantage of Aboriginal and Torres Strait Islander people should be better devised to advance cultural integrity and self-determination. It was also noted the despite recent amendments to the NT Emergency Response (NTER) to meet human rights obligations, the legislation still remains a subject of concern.¹⁹</p>

15 Commonwealth Courts, *Applications*, www.comcourts.gov.au/file/Federal/P/VID770/2010/actions (viewed 5 September 2011)

16 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'United Nations Indigenous Rights Declaration worth celebrating, but now is the time for action' (Media Release, 10 September 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/89_10.html (viewed 11 September 2011).

17 N Scullion, Shadow Minister for Indigenous Affairs, 'Aboriginal leaders dismayed by decision to retain Macklin' (Media Release, 13 September 2010). At <http://www.nigelscullion.com/media-hub/indigenous-affairs/aboriginal-leaders-dismayed-decision-retain-macklin>

18 Australian Indigenous Health Info Net, 'The Hon Warren Snowdon MP re-appointed as Minister for Indigenous Health' (2010) 10 (3) *Australian Indigenous Health Bulletin*. At <http://healthbulletin.org.au/articles/the-hon-warren-snowdon-mp-re-appointed-as-minister-for-indigenous-health/> (viewed 26 July 2011).

19 S J Anaya, *Report of 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).

Date	Event and summary of issue
20 September 2010	<p>Australia's response to the Special Rapporteur</p> <p>In response to the Special Rapporteur the Australian Government highlighted its commitment to close the gap in social and economic outcomes through the Council of Australian Governments (COAG) and noted the need to work towards full enjoyment of human rights for Aboriginal and Torres Strait Islander people.</p> <p>The Government confirmed that while it will maintain the core measure of the NTER, it will be redesigned in an attempt to comply with the <i>Racial Discrimination Act 1975</i> (Cth) (RDA).²⁰</p>
22 September 2010	<p>Regional Partnership Agreement for New England Region</p> <p>The Australian and New South Wales (NSW) Governments and the 14 local Aboriginal land councils in the NSW Aboriginal Land Council's Northern Region Forum, made a long-term commitment to sustainable social and economic outcomes for Aboriginal people in the New England region. This was the Australian Government's 11th regional partnership agreement.²¹</p>
27 September 2010	<p>The 16th annual Deadly Awards</p> <p>Twenty-eight Aboriginal and Torres Strait Islander people and organisations received awards at the 16th annual Deadly Awards. The Deadlys showcase the depth of talent and achievements of Aboriginal and Torres Strait Islanders across the fields of sport, the arts, education, health, employment, cultural advancement and leadership.</p> <p>Among the winners, Bran Nue Dae won film of the year, Colleen Carwood from the Prince of Wales Hospital was named Indigenous Health Worker of the Year and Dan Sultan won Male Artist of the Year.²²</p>
28 September 2010	<p>Human remains handed back to the Torres Strait Islanders</p> <p>Representatives from the Torres Strait Islands travelled to the World Museum in Liverpool to collect the remains of a young child that was removed from Erub (Darnley Island) 161 years ago.²³</p>

20 Australian Permanent Mission and Consulate-General, *Statement 134*, www.geneva.mission.gov.au/gene/statement134.html (viewed 6 September 2011).

21 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Regional Partnership Agreement for New England region' (Media Release, 22 September 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/reginal_partner_agr_22092010.aspx (viewed 9 May 2011).

22 Vibe Australia, *Deadlys History*, www.vibe.com.au/events/deadly/deadlys-history/4670-2010-deadlys-winners.html (viewed 11 May 2011)

23 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'UK museum returns Torres Strait ancestral remains' (Media Release, 28 September 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_uk_remains_28september2010.aspx (viewed 11 May 2011)

Date	Event and summary of issue
28 September 2010	<p>Ken Wyatt the first Aboriginal member of the House of Representatives</p> <p>Ken Wyatt is the first Aboriginal or Torres Strait Islander member to be elected to the House of Representatives, as the Member for Hasluck in WA. Mr Wyatt is a former teacher and public servant and is of Noongar, Yamatji and Wongi heritage.²⁴</p>
30 September 2010	<p>House of Representatives Economics Committee to examine Wild Rivers</p> <p>The Government announced that it will refer the issues of the <i>Wild Rivers Act 2005</i> (Qld) to the House of Representatives Economics Committee for inquiry. The inquiry will look into a range of issues affecting Aboriginal and Torres Strait Islander economic development in Queensland (Qld), the operation of environmental and industry regulation and the native title system. The Economics Committee is to report in March 2011.²⁵</p>
5 October 2010	<p>Coordinator General for Remote Indigenous Services released his second 6-month report</p> <p>The second report from Brian Gleeson, Coordinator General for Remote Indigenous Services, detailed improvements in delivering essential services to people living in 29 priority locations across Australia.</p> <p>The recommendations focus on addressing issues in future Local Implementation Plans, some include:</p> <ul style="list-style-type: none"> • Using baseline mapping more effectively to inform joint planning. • Support for community level efforts responding to Early Childhood education and care issues. • Increasing education and attendance focus. • Addressing identified infrastructure deficits. <p>Recommendations also focus on addressing systemic issues, including:</p> <ul style="list-style-type: none"> • Review and revision of agencies' program funding arrangements to ensure they are responsive and flexible and applying place-based approaches. • Any review of COAG National Partnerships should assess contribution to Closing the Gap. • Support by agencies for the complex and difficult work undertaken in Regional Operations Centres.²⁶

24 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Commissioner congratulates Ken Wyatt as first Indigenous member of the House of Representatives' (Media Release, 28 September 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/91_10.html (viewed 12 May 2011).

25 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'House of representatives economic Committee to examine Wild Rivers' (Media Release, 30 September 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/wild_rivers_30sept.aspx (viewed 11 May 2011).

26 B Gleeson, Coordinator General for Remote Indigenous Services, *Second CRGRIS Six Monthly Report* (2010). At <http://cgris.gov.au/site/report2010.asp> (viewed 6 September 2011).

Date	Event and summary of issue
6 October 2010	<p data-bbox="373 462 1026 487">Housing and refurbishment works for the Alice Springs town camps</p> <p data-bbox="373 510 1224 677">The package of housing and refurbishment works for Alice Springs town camps was announced. The Australian and NT Governments will build 85 new houses, 101 rebuilds and 33 refurbishments in an attempt to resolve acute overcrowding and sub-standard housing which has prevented town camp residents from having the most basic human rights. Only 18 new houses and 19 rebuilds have already been completed or are underway.²⁷</p>
8 October 2010	<p data-bbox="373 719 1244 773">Evaluation released on trial of child protection and voluntary income management in Perth and the Kimberley</p> <p data-bbox="373 795 1210 877">An independent evaluation of the Australian Government's trial of child protection and voluntary income management in Perth and the Kimberley was conducted by Orima Research.</p> <p data-bbox="373 900 1231 953">The evaluation suggested program improvements and recommendations to improve compulsory income management and voluntary income management programs.²⁸</p>
8 October 2010	<p data-bbox="373 995 1053 1020">Government introduces child protection income management in the NT</p> <p data-bbox="373 1043 1231 1115">As part of the Australian Government's attempt to roll out a non-discriminatory income management across the NT, child protection income management has been introduced.</p> <p data-bbox="373 1138 1231 1281">NT Government child protection workers can now refer parents to Centrelink for compulsory income management when children are seen as neglected or are at risk of neglect. Under child protection income management, seventy per cent of parents' welfare payments are quarantined and restricted to necessities such as food and clothing.²⁹</p>

27 K Hampton, Minister for Central Australia, 'Transforming the Alice Springs Town Camps' (Media Release, 6 October 2010). At <http://www.newsroom.nt.gov.au/index.cfm?fuseaction=printRelease&ID=7430> (viewed at 27 July 2011).

28 Department of Families, Housing, Community services and Indigenous Affairs, *Evaluation of the Child Protection Scheme of Income Management*, www.fahcsia.gov.au/sa/families/pubs/cpsim_vim_wa/Pages/default.aspx (viewed 11 May 2011).

29 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Rolling out income management in the Northern Territory' (Media Release, 8 October 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/income_management_NT_8oct10.aspx (viewed 14 April 2010).

Date	Event and summary of issue
18 October 2010	<p>‘Growing them strong, together’ report released</p> <p>The <i>Growing them strong, together</i> report reviewed the child protection system in the NT. The Report by the Board of Inquiry found the system consistently failed children and recommended focusing on prevention, collaboration, strengthening families and greater Aboriginal control and involvement of service delivery.</p> <p>The Inquiry’s three co-chairs, Professor Muriel Bamblett, Dr Howard Bath and Dr Rob Roseby, recommended immediate action to deal with an overburdened system, preventative measures to deal with upstream problems and a dual response system to helping vulnerable families that doesn’t depend on statutory interventions.³⁰</p>
22 October 2010	<p>The Gunaikurnai Native Title determination by the Federal Court</p> <p>The Federal Court recognised the Gunaikurnai people’s native title rights in the Gippsland region of Victoria. The consent determination was the first settlement under the new Victorian native title settlement framework, <i>Traditional Owner Settlement Act 2010 (Vic)</i> (the Act). This new legislation recognises the special relationship Aboriginal people in Victoria have with their land and the rights they hold. This legislation is specifically designed to provide statutory authority ‘Framework agreements’.</p> <p>Significantly, it will see the return of land to the Gunaikurnai people through grants of Aboriginal Title over ten national parks in Gippsland. Aboriginal Title is a new form of Victorian land tenure which has been created under the Act. This settlement creates a partnership approach in the joint management of public lands in Gippsland.³¹</p>
27 October 2010	<p>Cape York welfare reform trial reports</p> <p>The Cape York Family Responsibilities Commission’s <i>Annual Report 2009–10</i> and its <i>8th Quarterly Report April–June 2010</i> were tabled in Qld Parliament. The Reports show more people are being referred to services and income management, which places more pressure on services.³²</p>

30 M Bamblett, H Bath and R Roseby, *Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territory’s Children*, Report of the Board of Inquiry into the Child Protection System in the North Territory (2010), p 116. At http://www.childprotectioninquiry.nt.gov.au/report_of_the_board_of_inquiry (viewed 23 September 2011).

31 Australian Institute of Aboriginal and Torres Strait Islander Studies, *Native Title Newsletter*, No 5 (2010), p. 2. At <http://www.aiatsis.gov.au/ntru/newsletter.html> (viewed 5 September 2011).

32 The Hon D Boyle, Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships, ‘Cape York Welfare Reform trial reports tabled in Parliament’ (Media Release, 27 October 2010). At <http://www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=72271> (viewed 5 September 2011).

Date	Event and summary of issue
3 November 2010	<p>National Press Club address</p> <p>Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda, spoke about the priorities of his term, to develop stronger and deeper relationships between Aboriginal and Torres Strait Islander peoples and the rest of Australia, all levels of government and between Aboriginal and Torres Strait Islander peoples.³³</p>
4 November 2010	<p>Healing Foundation announced new community healing projects</p> <p>The Aboriginal and Torres Strait Islander Healing Foundation announced \$2 million for 20 community-led healing projects. These projects focus on overcoming the traumatic legacy of colonisation, forced removals and other past government policies.³⁴</p>
8 November 2010	<p>Prime Minister Gillard announced the establishment of an Expert Panel on constitutional reform</p> <p>The Federal Government announced that it will create an Expert Panel on Constitutional Recognition of Indigenous Australians (Panel) to lead a broad national consultation and community engagement program to seek a wide spectrum of views and advise government on recognising Aboriginal and Torres Strait Islander people in the Constitution.³⁵</p>
8 November 2010	<p>Low aromatic Opal fuel available in Kakadu National Park</p> <p>The Australian Government committed \$83.8 million to tackle petrol sniffing, which included introducing Opal fuel to 39 new retail sites across the NT, WA and Qld. Opal is already available in 106 sites around Australia.³⁶</p>

33 M Gooda, Aboriginal and Torres Strait Islander Social Justice commissioner, 'Unleashing the potential of Indigenous Australia' (Media Release, 3 November 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/108_10.html (viewed 7 July 2010).

34 Aboriginal and Torres Strait Islander Healing Foundation, *Grants and Applications*, www.healingfoundation.org.au/?page_id=238 (viewed 5 September 2011).

35 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Commitment to constitutional recognition applauded' (Media Release, 8 November 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/110_10.html (viewed 7 July 2011).

36 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and The Hon W Snowdon MP, Minister for Indigenous Health, 'Continuing the Fights Against Petrol Sniffing' (Media Release, 8 November 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/Pages/jm_m_petrolsniffing_8november2010_.doc.aspx (viewed 6 September 2011).

Date	Event and summary of issue
10 November 2010	<p>Gunbalanya Community Local Reference Group sign Local Implementation Plan</p> <p>The remote Arnhem Land community of Gunbalanya was the first NT town to sign a Local Implementation Plan outlining priority actions in early childhood education, schooling, housing and community safety. The plan was signed by the Australian and NT Governments, the West Arnhem Shire Council and the local Reference Group of Gunbalanya.³⁷</p>
11 November 2010	<p>Indigenous Opportunities Policy (IOP)</p> <p>Under the revised IOP policy that applies to Australian Government projects greater than \$5 million, businesses dealing in regions with significant Aboriginal and Torres Strait Islander populations will be required to employ and train local Aboriginal and Torres Strait Islander people and local Aboriginal and Torres Strait Islander suppliers beginning from July 2011.³⁸</p>
12 November 2010	<p>Canada officially endorsed the Declaration</p> <p>When the UN General Assembly adopted the Declaration in September 2007, Australia, New Zealand, The USA and Canada were the only countries to vote against it. Australia reversed its position and endorsed the Declaration in April 2009, New Zealand followed in April 2010 and Canada in November 2010.³⁹</p>
25 November 2010	<p>NSW Australian of the Year</p> <p>Professor Larissa Behrendt was named NSW Australian of the year, in recognition of her advocacy for the rights of Aboriginal and Torres Strait Islander people.⁴⁰</p>
25 November 2010	<p>Native Title Amendments passed</p> <p>The <i>Native Title Amendment Act (No 1) 2010</i> (Cth) makes it easier for public housing and infrastructure to be built on land where native title may exist.⁴¹</p>

37 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Planning for the future in Gunbalanya' (Media Release, 10 November 2010). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/pages/gunbalanya_10112010.aspx (viewed 6 September 2011).

38 The Hon M Arbib MP, Minister for Indigenous Employment and Economic development, Minister for Social Housing and Homelessness, Minister for Sport and The Hon P Wong, Minister for Finance and Deregulation, 'Government sets start date for Indigenous Opportunities Policy' (Media Release, 11 November 2011). At http://www.deewr.gov.au/Ministers/Arbib/Media/Releases/Pages/Article_101111_150514.aspx (viewed 28 April 2011).

39 UN News Centre, 'Chair of UN forum welcomes Canada's endorsement of indigenous rights treaty' (Media Release, 12 November 2010). At <http://www.un.org/apps/news/story.asp?NewsID=36751> (viewed 5 September 2011).

40 Australian of the Year Awards, 'NSW Australian of the Year Award recipients announced' (Media Release, 25 November 2010). At <http://www.australianoftheyear.org.au/media/?view=news&id=742> (viewed 7 July 2011).

41 The Hon R McClelland MP, Attorney General and The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Native Title Amendments passed' (Media Release, 25 November 2010). At http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_FourthQuarter_25November2010-NativeTitleAmendmentpassed (viewed 23 June 2011).

Date	Event and summary of issue
26 November 2010	<p data-bbox="373 462 962 487">Independent evaluation of Cape York welfare reform released</p> <p data-bbox="373 510 1189 649">An independent evaluation of the Indigenous welfare reform program in Cape York was released by consulting firm KPMG. The report focuses on the Family Responsibilities Commission (FRC) and highlights recommendations to improve the Commission's processes and communication with partners and community members.</p> <p data-bbox="373 672 666 696">Recommendations included:</p> <ul data-bbox="427 715 1173 847" style="list-style-type: none"> <li data-bbox="427 715 942 740">• Appointing one or more deputy commissioners. <li data-bbox="427 757 904 782">• Streamlining FRC administration processes. <li data-bbox="427 799 1173 847">• Providing training and development support for emerging and existing leaders in the four communities.⁴²
2 December 2010	<p data-bbox="373 887 919 912">AFL SportsReady reached it's 1 000th Indigenous trainee</p> <p data-bbox="373 934 1243 1016">Through AFL SportsReady, Aboriginal and Torres Strait Islander trainees from around Australia receive full-time or school-based employment placements in the sports and leisure industry and training for Certificate II or above.⁴³</p>
3 December 2010	<p data-bbox="373 1056 1224 1111">Sub-regional consultation on 'The operationalization of the UN Declaration on the Rights of Indigenous Peoples by National Human rights Institutions'</p> <p data-bbox="373 1134 1224 1302">Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda attended a meeting of representatives from National Human Rights Institutions (NHRI). Indigenous People's Organisations also attended from 15 countries in the Asia Pacific Region to discuss their role in the implementation of the Declaration. A resolution was adopted recognising the Declaration as a comprehensive statement of rights and responsibilities.⁴⁴</p>

42 The Hon D Boyle MP, Minister for Local Government and Aboriginal and Torres Strait Islander Partnerships, 'Independent evaluation of Cape York welfare reform finds signs of change' (Media Release, 26 November 2010). At <http://www.cabinet.qld.gov.au/mms/StatementDisplaySingle.aspx?id=72748> (viewed 5 September 2011).

43 The Hon W Snowdon MP, Minister for Indigenous Health, 'Celebrating Success in Indigenous Traineeships' (Media Release, 2 December 2010). At <http://www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr10-ws-ws081.htm> (viewed 11 November 2011).

44 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Implementing the Declarations will strengthen participation of Indigenous peoples' (Media Release, 3 December 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/120_10.html (viewed 11 November 2011).

Date	Event and summary of issue
9 December 2010	<p>Indigenous Chronic Disease Package Annual Progress Report 2009–2010 released</p> <p>The first government report detailing the achievements and progress of the Australian Government’s <i>Indigenous Chronic Disease Package</i> was released.</p> <p>The report highlights that one of the key barriers to improving health care outcomes for Aboriginal and Torres Strait Islander peoples is poor access to primary health care services. The Package attempts to address issues such as cost, location or transport problems, and the provision of culturally sensitive services.⁴⁵</p>
10 December 2010	<p>Australian Human Rights Commission (AHRC) Awards</p> <p>The Human Rights Medal recognises outstanding contributions to advance human rights in Australia. Thérèse Rein was awarded the Human Rights Medal for 2010. Jack Maning-Bancroft from the Australian Indigenous Mentoring Experience was awarded the Human Rights Young People’s Medal.⁴⁶</p>
16 December 2010	<p>First Aboriginal and Torres Strait Islander Rhodes Scholar</p> <p>An Adelaide University student has become Australia’s first Aboriginal and Torres Strait Islander Rhodes Scholar. Anthropology student Rebecca Richards will study a Masters of Philosophy when she enrolls at Oxford University next September.⁴⁷</p>

45 Australian Government Department of Health and Ageing, *Tackling Chronic Disease*, www.health.gov.au/tackling-chronic-disease (viewed 6 September 2011).

46 Australian Human Rights Commission, 'Lifetime of dedication delivers Human Rights Medal to Thérèse Rein' (Media Release, 10 December 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/123_10.html (viewed 5 September 2011).

47 ABC News, *Australia’s first Indigenous Rhodes Scholar named*, www.abc.net.au/news/2010-12-16/australias-first-indigenous-rhodes-scholar-named/2376622 (viewed 5 September 2011).

Date	Event and summary of issue
16 December 2010	<p data-bbox="373 462 686 487">The USA support the Declaration</p> <p data-bbox="373 510 1143 592">The USA endorsed the Declaration, being the final State to vote against the Declaration in 2007 to reverse its position. This is a major breakthrough for Indigenous peoples around the world.</p> <p data-bbox="373 614 1170 668">There is now international consensus on Indigenous rights and support for the survival, dignity and wellbeing of indigenous peoples.⁴⁸</p>
23 December 2010	<p data-bbox="373 706 1197 759">Government appoints the Panel on constitutional recognition of Aboriginal and Torres Strait Islander People</p> <p data-bbox="373 782 1220 891">The Australian Government announced the membership of the Panel, consisting of a range of individuals. Including, Aboriginal and Torres Strait Islander community leaders, constitutional experts and parliamentary members. The Panel will be co-chaired by Professor Patrick Dodson and Mr Mark Leibler AC.⁴⁹</p>
31 December 2010	<p data-bbox="373 929 744 953">RDA Reinstated in relation to the NTER</p> <p data-bbox="373 976 1224 1058">The <i>Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010</i> (Cth) was passed by the Australian Parliament on 21 June 2010 and came in to force on 31 December 2010.</p> <p data-bbox="373 1081 1231 1190">Legislative amendments formally lifted the suspension of the RDA in relation to the NTER legislation. This means that s 9 of the RDA will apply to decisions and actions under or for the purposes of the NTER legislation. Section 10 of the RDA will also apply in relation to the NTER legislation itself.</p> <p data-bbox="373 1212 1237 1500">However, the amendments did not expressly state that the RDA would prevail even if contrary to the NTER legislation. The amendments also included retrospective application provisions. The result of this is that if the NTER legislation cannot be read so as to be consistent with the RDA, the NTER legislation, being the later legislation, will prevail. In other words, if there is a conflict, the NTER legislation will override the RDA. Any remaining discriminatory measures under the NTER, such as the compulsory acquisition of five-year leases, cannot be challenged under the RDA. Furthermore, measures the Government considers to be ‘special measures’ under the RDA, may not in fact be compliant with the requirements of a special measure under the RDA.⁵⁰</p>

48 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘US Support for the Declarations brings international consensus on Indigenous rights’ (Media Release, 17 December 2010). At http://www.humanrights.gov.au/about/media/media_releases/2010/127_10.html (viewed 12 May 2011).

49 You Me Unity, *Expert-Panel*, www.youmeunity.org.au/about/expert-panel (viewed 5 September 2011).

50 Australian Human Rights Commission, *Information concerning Australia and the International Convention on the Elimination of All Forms of Racial Discrimination* (8 July 2010), paras 61–64. At http://www.humanrights.gov.au/legal/submissions/united_nations/ICERD2010.html (viewed 30 August 2011).

Date	Event and summary of issue
3 January 2011	<p>The NT Strategic Indigenous Housing and Infrastructure Program (SIHIP)</p> <p>The SIHIP exceeded its 2010 targets of 150 new houses and 1 000 rebuilds and refurbishments, with 174 new houses built and 1 023 rebuilds and refurbishments completed.⁵¹</p> <p>However these targets do not reflect issues highlighted in the <i>Strategic Indigenous Housing Infrastructure Program: Post Review Assessment – 2010</i>, concerned with the long term sustainability of outcomes such as:</p> <ul style="list-style-type: none"> • the ability to ‘normalise’ remote housing • population growth in remote communities • the future of funding and program management resources when the NPA RIH ceases in 2018.⁵²
19 January 2011	<p>Charges laid in Mr Ward case</p> <p>In 2008 Mr Ward died after being transported across the Goldfields in the back of a prison van. Four charges have been laid under the <i>Occupational Safety and Health Act 1984 (WA)</i>. WorkSafe will prosecute the State of WA (Department of Corrective Services), government contractor G4S Custodial Services Pty Ltd (formerly GSL Custodial Services Pty Ltd) and the two drivers involved in the death of Mr Ward in January 2008.⁵³</p>
26 January 2011	<p>AFL representatives at the UN</p> <p>Andrew McLeod, Michael Long and Andrew Demetriou presented at the ‘Combating Racism Through Sport’ Forum in Geneva using AFL as a leading example of addressing racism in sport.⁵⁴ Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda also participated on the panel.⁵⁵</p>

51 The Hon J Macklin MP, Minister for Families, Housing, Community Service and Indigenous Affairs, ‘Northern Territory remote Indigenous housing targets exceeded’ (Media Release, 3 January 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/pages/nt_indig_house_target_03012011.aspx (viewed 6 September 2011).

52 Department of Families, Housing, Community Services and Indigenous Affairs, *Strategic Indigenous Housing Infrastructure Program (SIHIP): Post Review Assessment (PRA) (2010)*, chapter 5. At http://www.fahcsia.gov.au/sa/indigenous/pubs/housing/sihip_pra/Pages/p5.aspx (viewed 6 September 2011).

53 The Government of Western Australia, Department of Commerce ‘WorkSafe lays charges in Mr Ward case’ (Media Release, 19 January 2011). At http://www.commerce.wa.gov.au/Corporate/Media/statements/2011/January/WorkSafe_lays_charges_in_Mr_Wa.html (viewed 26 July 2011).

54 AFL, *McLeod to address UN council*, www.afl.com.au/news/newsarticle/tabid/208/newsid/106870/default.aspx (viewed 5 September 2011).

55 Australian Human Rights Commission, *News*, http://www.humanrights.gov.au/about/media/news/2011/1_11.html (viewed 13 October 2011).

Date	Event and summary of issue
27 January 2011	<p>Australia attends the UN Universal Periodic Review (UPR)</p> <p>During the UPR in Geneva, nearly 50 countries questioned the Australian Government on its human rights record, making 145 recommendations.⁵⁶</p> <p>A number of key recommendations addressed the ongoing disparity of rights for Aboriginal and Torres Strait Islander people including, full reinstatement of the RDA, implementation of the Declaration in Australian law, native title reform, Aboriginal and Torres Strait Islander incarceration rates and a compensation tribunal for the Stolen Generations.⁵⁷</p>
28 January 2011	<p>Roundtable for overrepresentation of Aboriginal and Torres Strait Islander youth in the criminal justice system</p> <p>The Standing Committee on Aboriginal and Torres Strait Islander Affairs conducted a roundtable with representatives from around the nation to discuss the justice system and how it could better meet the needs of Aboriginal and Torres Strait Islander youth before finalising its report into the high level of involvement of Aboriginal and Torres Strait Islander juveniles and young adults in the criminal justice system.⁵⁸</p>
1 February 2011	<p>UPR report adopted in Geneva</p> <p>Australia has until June 2011 to formally respond to the recommendations made by the international community in the Report of the Working Group on the UPR. The Australian Government has agreed to use the outcomes of UPR to inform the development of Australia's National Human Rights Action Plan. The Australian Government committed to table the concluding observations from treaty bodies and UPR recommendations in Parliament.⁵⁹</p>

56 Attorney-General's Department, *Australia's Universal Periodic Review*, www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationInternational_Human_Rights (viewed 27 July 2011).

57 R Siewert, Senator for Western Australia, 'Government disappoints with response to UN findings on Aboriginal and Torres Strait Islander rights' (Media Release, 1 February 2011). At <http://rachel-siewert.greensmps.org.au/content/media-release/government-disappoints-response-un-findings-aboriginal-and-torres-strait-islan> (viewed 27 July 2011).

58 House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, 'National response to Indigenous youth crime rates' (Media Release, 28 January 2011). At www.aph.gov.au/house/committee/atsia/sentencing/media/media15.pdf (viewed 1 July 2011).

59 Australian Human Rights Commission, 'Australia commits to follow up on human rights recommendations' (Media Release, 2 February 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/6_11.html (viewed 27 July 2011).

Date	Event and summary of issue
1 February 2011	<p>Australian Government released the framework for independent evaluation of new income management measures</p> <p>The Australian Government released the framework for the independent evaluation of a new model of non-discriminatory income management that was applied across the NT and in parts of WA.</p> <p>The two-stage evaluation will run until 2014, delivering a series of annual reports and the results will inform further implementation across Australia.</p> <p>The new model of income management replaces the model of income management introduced as part of the NTER that was inconsistent with the RDA.⁶⁰</p>
8 February 2011	<p>Australian Institute of Health and Welfare report shows Aboriginal and Torres Strait Islander smoking rate in decline</p> <p>The Australian Institute of Health and Welfare released a report showing a decrease in Aboriginal and Torres Strait Islander people smoking from 53% in 2002 to 50% in 2008. The rate was still much higher than the non-Indigenous rate of 17%. Smoking is the number one cause of chronic conditions such as cancer and cardiovascular disease for Aboriginal and Torres Strait Islander people.</p> <p>The study also found that the amount of Aboriginal and Torres Strait Islander people who completely abstain from alcohol is twice that of the non-Indigenous population.⁶¹</p>
8 February 2011	<p>'Statement on Aboriginal rights by leading Australians'</p> <p>The former chief justice of the Family Court in Australia, Alastair Nicholson, and the former Prime Minister, Malcolm Fraser met with Aboriginal and Torres Strait Islander elders and other Australians in Melbourne to sign a document calling for changes to the NTER. Larissa Behrendt, Julian Burnside QC, Phil Lynch and Patrick Dodson were also signatories.</p> <p>The document, called the 'Statement on Aboriginal Rights', raises concerns that the Intervention remains discriminatory with inadequate consultation and is failing to address housing, health and education.⁶²</p>

60 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous, 'Release of income management evaluation framework' (Media Release, 1 February 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/income_mgt_01feb11.aspx (viewed 14 April 2011).

61 Australian Institute of Health and Welfare, 'Slight reduction in Indigenous smoking, but binge drinking a worry' (Media Release, 8 February 2011). At <http://www.aihw.gov.au/media-release-detail/?id=10737418259> (viewed 5 September 2011).

62 Statement by Leading Australians, www.concernedaustralians.com.au/media/Statement-by-Eminent-Australians.doc (viewed 6 September 2011).

Date	Event and summary of issue
9 February 2011	<p data-bbox="373 462 1159 515">Prime Minister Julia Gillard delivered the 3rd annual Closing the Gap statement to Parliament</p> <p data-bbox="373 538 1233 592">In the Closing the Gap statement, the Prime Minister set targets in health, education and employment for Aboriginal and Torres Strait Islander people, this included:</p> <ul data-bbox="427 611 995 786" style="list-style-type: none"> • decreasing the mortality rate • increasing life expectancy • providing better access to early childhood education • improving reading, writing and numeracy skills • increasing year 12 retention rates • increasing employment outcomes. <p data-bbox="373 805 1233 862">The Prime Minister also highlighted that recognising Aboriginal and Torres Strait Islander Australians in the constitution would be a day of great national pride.⁶³</p>
9 February 2011	<p data-bbox="373 900 911 925">Partnership with the National Congress to Close the Gap</p> <p data-bbox="373 944 1206 1058">Thirteen national Aboriginal and Torres Strait Islander health peak bodies and stakeholders from around the country met with the Prime Minister to discuss how government can work in real partnership to close the gap in Aboriginal and Torres Strait Islander health inequality.</p> <p data-bbox="373 1077 1241 1191">Prime Minister Julia Gillard announced that she will work with the Congress and the Close the Gap Steering Committee. Minister Warren Snowdon and Minister Nicola Roxon agreed to develop a long term national plan to close the gap in Aboriginal and Torres Strait Islander life expectancy by 2030.⁶⁴</p>
11 February 2011	<p data-bbox="373 1229 932 1254">Launch of the 2010 Native Title and Social Justice Reports</p> <p data-bbox="373 1273 1220 1420">Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda officially launched the first reports of his five year term. The reports are focused on building positive relationships between Aboriginal and Torres Strait Islander people and governments, the wider population and within Aboriginal and Torres Strait Islander communities.</p> <p data-bbox="373 1439 1220 1525">Significance was placed on discussing the history-making opportunity the nation faces as it considers recognising Aboriginal and Torres Strait Islander people in the Australian Constitution.⁶⁵</p>

63 The Hon J Gillard MP, Prime Minister of Australia, 'This work will go one, Speech to the House of Representatives' (Speech delivered to the House of Representatives, Parliament House, 9 February 2011). At <http://www.pm.gov.au/press-office/work-will-go-speech-house-representatives> (viewed 6 September 2011).

64 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Progress on Indigenous health equality planning and partnership welcomed' (Media Release, 9 February 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/7_11.html (viewed 7 July 2011).

65 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'First Social Justice and Native Title reports lay groundwork for year of change' (Media Release, 11 February 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/8_11.html (viewed 7 July 2011).

Date	Event and summary of issue
12 February 2011	<p>NSW high school students retraced the Freedom Rides</p> <p>Thirty Aboriginal and Torres Strait Islander and non-Indigenous students departed from Sydney University to retrace the 2300km 'Freedom Rides' through 21 NSW country towns led by Charles Perkins in 1965.</p> <p>The students carried a message stick to present to the Australian Government supporting Aboriginal and Torres Strait Islander recognition in the Australian Constitution.⁶⁶</p>
13 February 2011	<p>The 3rd anniversary of the National Apology</p> <p>Community groups across Australia marked the third anniversary of the Apology to Australia's Aboriginal and Torres Strait Islander peoples on the Stolen Generations with a series of local events.⁶⁷</p>
14 February 2011	<p>Reconciliation Australia released the 2010 Reconciliation Barometer findings</p> <p>The study revealed that relationships between Aboriginal and Torres Strait Islander and non-Indigenous Australians are improving and that most Australians believe the relationship is important. It also revealed there is still a low level of trust between the two groups, low levels of cultural understanding and high levels of prejudice.⁶⁸</p>
23 February 2011	<p>University of Western Sydney released 'Challenging Racism' research</p> <p>The University of Western Sydney released the findings of the 'Challenging Racism Project' research for which the AHRC was a partner. After twelve years of in-depth study and comprehensive surveys of more than 12 500 Australians, the Challenging Racism Project produced findings about Australian attitudes towards people of different races, ethnicities and cultures, and their experiences of racism and prejudice.⁶⁹</p> <p>Over 90% of Aboriginal and Torres Strait Islander and non-Indigenous Australians believed there was racial prejudice in Australia but less than 15% of both groups admitted they were racially prejudiced against other cultures.⁷⁰</p>

66 The University of Sydney, 'The Freedom Rides Again' (Media Release, 11 February 2011). At <http://sydney.edu.au/news/84.html?newsstoryid=6369> (viewed 6 September 2011).

67 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Events to mark the third anniversary of the Apology to Australia's Indigenous Peoples' (Media Release, 13 February 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/event_third_anniversary_apology_13022011.aspx (viewed 13 April 2011).

68 Reconciliation Australia, 'New Race Relations Barometer released: Where Is the Love' (Media Release, 14 February 2011). At [http://www.reconciliation.org.au/extras/file.php?id=78&file=110214 Australian Reconciliation Barometer 2010 - release.pdf](http://www.reconciliation.org.au/extras/file.php?id=78&file=110214%20Australian%20Reconciliation%20Barometer%202010%20-%20release.pdf) (viewed 13 April 2011).

69 Australian Human Rights Commission, *News – National racism research released*, www.humanrights.gov.au/about/media/news/2011/15_11.html (viewed 13 April 2011)

70 University of Western Sydney, *Challenging Racism – Findings*. At http://www.uws.edu.au/__data/assets/pdf_file/0007/173635/NationalLevelFindingsV1.pdf (viewed 13 April 2011)

Date	Event and summary of issue
24 February 2011	<p>Kevin Spratt acquitted of charges in the WA Supreme Court</p> <p>An Aboriginal man, Mr Kevin Spratt, tasered 14 times at a Perth watch-house successfully appealed his conviction for obstructing police. The WA Supreme Court acquitted the charges after Justice Stephen Hall ruled there had been a miscarriage of justice. Justice Hall said Mr Spratt's guilty plea had been induced by false allegations that were made by the police prosecution.⁷¹</p>
25 February 2011	<p>Taking Action to Tackle Suicide package fast tracked</p> <p>Department of Health confirmed that some of the \$274 million Taking Action to Tackle Suicide package would be fast tracked to address urgent needs in the Kimberley region. Funding is to assist communities being affected by suicides among young Aboriginal people in the Kimberley.⁷²</p>
28 February 2011	<p>The Productivity Commission released the first Indigenous Expenditure Report</p> <p>The report forms part of the COAG commitment to reporting transparency on expenditure on services for Aboriginal and Torres Strait Islander Australians.⁷³</p> <p>Key points of the report included:</p> <ul style="list-style-type: none"> • Significant gaps in outcomes between Aboriginal and Torres Strait Islander People and non-Indigenous Australians. • Limited information available on expenditure relating to Aboriginal and Torres Strait Islander people. • Data quality and methodological challenges remain to be resolved in future. • Expenditure on services related to Aboriginal and Torres Strait Islander people is expected to be greater than non-Indigenous Australians, given significant relative disadvantage and factors such as providing mainstream services in remote areas.⁷⁴

71 *Spratt v Fowler* (2011) WASC 52. At <http://decisions.justice.wa.gov.au/supreme/supdcns.nsf/PDFJudgments-WebVw/2011WASC0052/> (viewed 6 September 2011).

72 R Siewert, Senator for Western Australia, 'Greens commend fast-tracking of aid for Kimberley suicide crisis' (Media Release, 25 February 2011). At <http://greensmps.org.au/content/media-release/greens-commend-fast-tracking-aid-kimberley-suicide-crisis> (viewed 11 April 2011)

73 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Indigenous Expenditure Report released' (Media Release, 28 February 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/pages/indig_expenditure_rpt_28022011.aspx (viewed 11 April 2011)

74 Indigenous Expenditure Report Steering Committee, *2010 Indigenous Expenditure Report*, www.pc.gov.au/__data/assets/pdf_file/0008/105983/ier-2010.pdf (viewed 7 September 2011).

Date	Event and summary of issue
4 March 2011	<p>Legal action against 'Action for Alice' advertisements</p> <p>Alice Spring residents represented by human rights lawyer George Newhouse took legal action against advertisements being run on the Imparja television network by business owner group 'Action for Alice'. Advertisements were said to be racist and vilify Aboriginal people.⁷⁵</p>
9 March 2011	<p>Adelaide City Council issues notice to vacate Yeundumu community group</p> <p>Following a number of conflicts since September due to a dispute between families in the NT community of Yeundumu, a group from the community sought refuge in South Australia (SA). Adelaide City Council issued a notice to the group to cease camping and to vacate by the end of the week.⁷⁶</p>
10 March 2011	<p>5th anniversary of Close the Gap National Press Club, Canberra</p> <p>Close the Gap co-chairs, Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda and Tom Calma spoke at the National Press Club marking five years since the Close the Gap campaign began.</p> <p>The Close the Gap Campaign for Indigenous Health Equality has been the mobilising force behind efforts to improve the health of Aboriginal and Torres Strait Islander peoples. More than 20 peak Aboriginal and Torres Strait Islander and non-Indigenous health, and health professional, peak bodies drive the campaign.⁷⁷</p>
10 March 2011	<p>Return of remains from the United Kingdom's Natural History Museum</p> <p>The United Kingdom's Natural History Museum will return 138 ancestral remains belonging to the Torres Strait Islander community.</p> <p>This is the single largest return of Torres Strait Islander ancestral remains from an overseas collection.⁷⁸</p>

75 ABC Online, *TV Ad Complaint*, <http://www.abc.net.au/local/stories/2011/03/03/3153973.htm> (viewed 11 April).

76 Adelaide City Council, 'Campers in South Parklands' (Media Release, 9 March 2011). At http://www.adelaidecitycouncil.com/action/MEDIA?svMLL_ID=151949,svBC=MR,pc=COUNCIL (viewed 13 April 2011).

77 Dr T Calma, National Coordinator Tacking Indigenous Smoking and M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, *People power is a force in this country: Celebrating the 5th anniversary of the Close the Gap Campaign for Aboriginal and Torres Strait Islander Health Equality* (Speech delivered at National Press Club, Canberra, 10 March 2011). At http://www.humanrights.gov.au/about/media/speeches/social_justice/2011/20110310_close_gap.html (viewed 11 April 2011).

78 The Hon S Crean MP, Minister for Regional Australia, Regional Development and Local Government Minister for the Arts & The Hon J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Single largest return of Torres Strait Islander remains' (Media Release, 10 March). At http://www.minister.regional.gov.au/sc/releases/2011/march/sc029_2011.aspx (viewed 14 April 2011).

Date	Event and summary of issue
11 March 2011	<p>Alice Springs Transformation Plan</p> <p>The Federal Minister for Indigenous Affairs, Jenny Macklin, and the NT Chief Minister, Paul Henderson, announced a \$4.1 million package of initiatives to support the community of Alice Springs as part of the Alice Springs Transformation Plan.⁷⁹</p>
15 March 2011	<p>Investigating police officers into death in custody on Palm Island</p> <p>Qld Police Service (QPS) fails to take disciplinary action against police officers involved in investigation around the death in custody of Mulrunji Doomadgee on Palm Island.</p> <p>The Crime and Misconduct commission will seek legislative change to install independent review of QPS disciplinary decisions.⁸⁰</p>
21 March 2011	<p>The Australian Greens Table Native Title Amendment (Reform) Bill 2011</p> <p>The Private Senators Bill includes amendments to native title law, removing some of the barriers to effective outcomes. Reforms in this bill address the barriers claimants face in making the case to demonstrate their pre-existing native title rights and interests.⁸¹</p>
24 March 2011	<p>National Close the Gap Day</p> <p>More than 850 National Close the Gap Day events were run in schools, workplaces and other community venues across all states and territories in an unprecedented show of support for the campaign.⁸²</p>
25 March 2011	<p>Day release reinstated for Mr Noble in WA</p> <p>Mr Noble has spent over a decade in jail without being convicted.⁸³ In March 2003, Mr Noble was deemed mentally unfit to stand trial and detained until the Mentally Impaired Accused Review Board could examine his situation.</p>

79 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Supporting the Community in Alice Springs' (Media Release, 11 March 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/support_community_Alic_springs_11032011.aspx (viewed 11 April).

80 Crime and Misconduct Commission Queensland, 'QPS takes no disciplinary action against Palm Island Officers' (Media Release, 15 March 2011). At <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10814&cid=5201&id=1324> (viewed 28 April 2011).

81 R Siewert, Senator Western Australia, 'Greens launch Native Title reforms' (Media Release, 21 March 2011). At <http://rachel-siewert.greensmps.org.au/nativetitle> (viewed 28 April 2011).

82 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Growing number of support National Close the Gap Day this year' (Media Release, 23 March 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/22_11.html (viewed 7 July 2010).

83 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Aboriginal man with intellectual disability languishes in WA prison for a decade' (Media Release, 18 March 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/19_11.html (viewed 14 April 2011).

Date	Event and summary of issue
	<p>This highlights a lack of mental health facilities and inflexible policies and procedures of the Mentally Impaired Accused Review Board which has kept him in prison for 10 years.⁸⁴</p>
<p>28 March 2011</p>	<p>Foreign Minister Kevin Rudd commits to reflect the Declaration</p> <p>Mr Rudd addressed the UN Human Rights Council. In his speech he stated that the Australian Government has sought to reflect the principles of the Declaration in relation to their laws and policies that affect Aboriginal and Torres Strait Islander peoples. Mr Rudd also highlighted the government’s commitment to the ‘Closing the Gap’ program, while acknowledging there is still much more to do.⁸⁵</p>
<p>28 March 2011</p>	<p>Establishment of the Australian Centre for Indigenous Knowledge and Education</p> <p>Charles Darwin University and the Batchelor Institute of Indigenous Tertiary Education will partner to establish the Australian Centre for Indigenous Knowledge and Education to jointly deliver qualifications in areas of significant relevance to Aboriginal and Torres Strait Islander communities including health, education and Indigenous knowledge.</p> <p>The Centre plans to use mobile learning units to service remote areas to ensure that the services will be available to as many people as possible.⁸⁶</p>
<p>31 March 2011</p>	<p>500th Indigenous Land Use Agreement (ILUA)</p> <p>The 500th ILUA was registered with the National Native Title Tribunal.⁸⁷ ILUAs were introduced as a result of the <i>Native Title Amendment Act 1998</i> (Cth).⁸⁸</p>

84 Y Henderson, Western Australia Equal Opportunity Commissioner, ‘An intellectual disability is not a criminal offence’ (Media Release, 18 March 2011). At <http://www.eoc.wa.gov.au/community/news.aspx?NewsItem=3cff351e-7f26-416c-a8d2-a8600cccd0f0> (viewed 14 April 2011).

85 The Hon K Rudd MP, Australian Minister for Foreign Affairs, *Address to the High Level Segment of the United Nations Human Rights Council* (Speech delivered at Geneva, 28 February 2011). At http://www.foreignminister.gov.au/speeches/2011/kr_sp_110228.html (viewed 11 April 2011).

86 M Gooda, Aboriginal and Torres Strait Islander Social Justice commissioner, ‘Centre for Indigenous knowledge and education could be life-changing’ (Media Release, 28 March 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/24_11.html (viewed 7 July 2011).

87 National Native Title Tribunal, *Milestone for native title agreements*, www.nntt.gov.au/News-and-Communications/Media-Releases/Pages/Milestone_for_native_title_agreements.aspx (viewed 11 April 2011).

88 National Native Title Tribunal, *About Indigenous Land Use Agreements*, www.nntt.gov.au/Indigenous-Land-Use-Agreements/Pages/About_iluas.aspx (viewed 17 October 2011).

Date	Event and summary of issue
4 April 2011	<p>Report into remote Indigenous service delivery</p> <p>The third six monthly report from the Coordinator General for Remote Indigenous Services, Brian Gleeson, provides a community by community assessment of progress, particularly in relation to the Government and Community agreed Local Implementation Plans in each community.⁸⁹</p>
5 April 2011	<p>Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda visits Alice Springs</p> <p>After a three day trip to Alice Springs Commissioner Gooda highlighted that access to essential services for Town Campers and continuation of long-term investment in Alice Springs is needed to move forward.</p> <p>The Alice Springs community needs a coordinated approach to finding solutions and racism and relationship tensions also need to be resolved. The Commissioner also called for legislation to introduce a floor price on alcohol.⁹⁰</p>
12 April 2011	<p>Twenty year anniversary of Royal Commission into Aboriginal Deaths in Custody (RCIADIC)</p> <p>Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda addressed a forum in Redfern marking 20 years since the release of one of the country's landmark reports into Indigenous affairs. There are more Aboriginal and Torres Strait Islander people in prison now than when the RCIADIC reported in 1991. Commissioner Gooda highlighted the need to focus on evidence based alternatives like justice reinvestment, a criminal justice approach that diverts a portion of funds spent on imprisonment to local communities where there is a high concentration of offenders.⁹¹</p> <p>A Joint Call to Action was also released endorsed by a range of Aboriginal and community legal services and human rights organisations aimed at dramatically reducing the over-representation of Aboriginal and Torres Strait Islander people in our jails.⁹²</p>

89 The Hon J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Third report into Remote Indigenous Service Delivery' (Media Release, 4 April 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/third_report_remot_indig_04042011.aspx (viewed 23 June 2011).

90 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Efforts in Alice Springs should continue for communities to thrive' (Media Release, 5 April 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/27_11.html (viewed 22 June 2011).

91 M Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Twenty years on but Aboriginal and Torres Strait Islanders continue to die in custody' (Media release, 12 April 2011). At http://www.humanrights.gov.au/about/media/media_releases/2011/29_11.html (viewed 13 October 2011).

92 ANTAR, 'Broad Support for Call to Action to reduce Indigenous imprisonment' (Media Release, 15 April 2011). At http://www.antar.org.au/broad_support_for_call_to_action_to_reduce_indigenous_imprisonment (viewed 6 September 2011).

Date	Event and summary of issue
19 April 2011	<p>The National Congress Co-Chairs elected</p> <p>Jody Broun and Les Malezer were elected as Co-Chairs of the National Congress.⁹³ The elected Co-Chairs will work to expand the National Congress as a voice for Aboriginal and Torres Strait Islander people of Australia.⁹⁴</p>
5 May 2011	<p>WA Government pleads guilty in death of Mr Ward</p> <p>The Department of Corrective Services pleaded guilty to failing to ensure Mr Ward was not exposed to hazards.⁹⁵</p>
11 May 2011	<p>Antakirinja Matu-Yankunytjatjara native title determination</p> <p>Federal Court's recognised the native title rights in the Antakirinja Matu-Yankunytjatjara claim around Coober Pedy in SA.</p> <p>The consent determination covers approximately 75 991 sq. km, and is the first SA native title settlement to which the Australian Government has been a party.⁹⁶</p>
16–27 May 2011	<p>Aboriginal and Torres Strait Islander voice at the UN</p> <p>Aboriginal and Torres Strait Islander delegates attended the Tenth Session of the UN Permanent Forum on Indigenous Issues in New York. The Australian delegation, numbering around 40, was co-chaired by Janine Gertz and Brian Wyatt. During the forum the Aboriginal and Torres Strait Islander Delegation focused on the importance of implementing the Declaration.⁹⁷</p>
3 June 2011	<p>Major native title agreement for the Pilbara region</p> <p>Yamatji Marlpa Aboriginal Corporation represented the Niyiyaparli, Puutu Kuntj Kurrama and Pinikura, Kuruma and Marthudunera and Ngarlawangga traditional owners in negotiations.</p>

93 Australian Human Rights Commission, *News – Newly elected Co-Chairs have a big responsibility*, www.humanrights.gov.au/about/media/news/2011/31_11.html (viewed 6 September 2011).

94 The National Congress of Australia's First People, 'New era for self-determination as leaders elected to national body' (Media Release, 19 April 2011). At <http://nationalcongress.com.au/wp-content/uploads/2011/04/110419-CONGRESS-COCHAIRS-ELECT-ANNOUNCED-2.pdf> (viewed 13 October 2011).

95 ABC Online, *WA Government pleads guilty in Mr Ward death*, www.abc.net.au/news/2011-05-05/wa-government-pleads-guilty-in-mr-ward-death/2706240 (viewed 26 July 2011).

96 The Hon R McClelland MP, Attorney General, 'Antakirinja Matu-Yankunytjatjara native title recognition' (Media Release, 11 May 2011). At http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2011_SecondQuarter_11May2011-AntakirinjaMatu-Yankunytjatjaranativetiterecognition (23 June 2011).

97 Indigenous Peoples Organisation Network Australia, 'An Aboriginal and Torres Strait Islander Voice at the UN' (Media Release, 18 May 2011). At <http://vals.org.au/news/post/an-aboriginal-and-torres-strait-islander-voice-at-the-united-nations-united-nations-permanent-forum-on-indigenous-issues-2011/> (viewed 26 July 2011).

Date	Event and summary of issue
	<p>The agreements, which provide for land access and cooperation across more than 71 000 sq. km in relation to Rio Tinto's iron ore business, are amongst the largest and most comprehensive native title agreements ever made.</p> <p>These unique agreements provide an option for traditional owners to enter an additional Regional Agreement through a Regional Aboriginal Corporation and recognises the inclusion of a 'Future Fund' as a way to provide intergenerational benefits for traditional owners.⁹⁸</p>
7–9 June 2011	<p>Inaugural National Congress meeting</p> <p>The first meeting of the National Congress was attended by the 120 Delegates from which the first board was elected. The meeting focused on future policy areas and the future engagement of the National Congress with its members.⁹⁹</p>
8 June 2011	<p>Rio Tinto Alcan Gove Traditional Owners Agreement</p> <p>This is the first negotiated agreement with traditional owners in relation to the Gove mining operations since exploration began in the 1960s without consent. The Agreement has been designed so payments from mining will be principally managed through two traditional owner entities, the Gumatj Future Fund and the Rirratjingu Aboriginal Corporation.¹⁰⁰</p>
21 June 2011	<p>Report on over-incarceration of Aboriginal and Torres Strait Islander youth</p> <p>Twenty years after the RICADIC, the Standing Committee on Aboriginal and Torres Strait Islander Affairs has tabled a report into the high representation of Aboriginal and Torres Strait Islander juveniles and young adults in the criminal justice system.</p> <p>The report focuses on justice targets, justice reinvestment, prevention and early intervention strategies to reduce the alarming detention and incarceration rates for Aboriginal and Torres Strait Islander people.¹⁰¹</p>

98 The Hon R McClelland MP, Attorney General and The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Native Title agreement for the Pilbara region' (Media Release, 3 June 2011). At http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2011_SecondQuarter_3June2011-Majornativetitlea_greementforthePilbararegion (viewed 23 June 2011).

99 The National Congress of Australia's First People, 'First Congress Meeting – Beacon for the Future' (Media Release, 10 June 2011). At http://nationalcongress.com.au/wp-content/uploads/2011/06/110610-Congress_Meeting_Statement.pdf (viewed 10 September 2011).

100 The Hon J Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Historic Gove Agreement to deliver Long Term Benefits for North-East Arnhem land' (Media Release, 8 June 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/jm_m_goveagree_8june2011.aspx (viewed 23 June 2011).

101 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 'Doing Time – Time for Nothing' (Media Release, 20 June 2011). At <http://www.aph.gov.au/house/committee/atsia/sentencing/media/media16.pdf> (viewed 21 June 2011).

Date	Event and summary of issue
22 June 2011	<p data-bbox="323 462 753 491">Discussion paper Stronger Futures in the NT</p> <p data-bbox="323 508 1197 594">The Australian Government’s new discussion paper, <i>Stronger Futures in the Northern Territory</i>, will form the basis of conversations as the NTER comes to an end. The discussion paper proposed areas for future action, including:</p> <ul data-bbox="377 611 908 929" style="list-style-type: none"> • school attendance and educational achievement • economic development and employment • tackling alcohol abuse • community safety • health • food security • housing • governance.¹⁰² <p data-bbox="323 948 1177 1005">The discussion paper also provided a timeframe for consultations on the proposals from late June to mid August 2011.</p>
29 June 2011	<p data-bbox="323 1043 628 1071">40 Year leases signed in the NT</p> <p data-bbox="323 1089 1170 1174">The NT communities of Hermannsburg and Lajamanu signed 40 year leases under the NPA RIH in order for governments to begin work on building essential new houses.¹⁰³</p>
29 June 2011	<p data-bbox="323 1214 583 1243">Review of remote services</p> <p data-bbox="323 1260 1193 1372">A review of remote employment services was announced, along with establishing a Remote Participation and Employment Services Engagement Panel, the government will release a discussion paper and a DVD on remote employment servicing in a variety of traditional languages.¹⁰⁴</p>

102 Department for Families, Housing, Community Services and Indigenous Affairs, *Stronger Futures in the Northern Territory Discussion Paper June 2011* (2011). At http://www.indigenous.gov.au/wp-content/uploads/2011/06/s_futures_discussion_paper.pdf (viewed 24 June 2011).

103 The Hon J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, ‘Leases signed for Hermannsburg and Lajamanu’ (Media Release, 29 June 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/leases_sign_hermannsburg_29062011.aspx (viewed 1 July 2011).

104 The Hon J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, The Hon K Ellis MP, Minister for Employment Participation, Child Care and Status of Women and Senator M Arbib, Minister for Indigenous Employment and Economic Development, ‘Government reviews remote employment services’ (Media Release, 29 June 2011). At http://www.jennymacklin.fahcsia.gov.au/mediareleases/2011/Pages/govt_review_remote_service_29062011.aspx (viewed 1 July 2011).

Date	Event and summary of issue
29 June 2011	<p data-bbox="373 462 680 487">End of longest land rights claim</p> <p data-bbox="373 510 1190 563">The Kenbi Land Claim, lodged in 1979, is one of the longest running land claims under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> (Cth).</p> <p data-bbox="373 586 1201 668">On 14 December 2000, Justice Gray ruled that 600 sq. km of the Cox Peninsular, adjacent to Darwin Harbour, be granted to the Larrakia. Despite this, no land was granted by the Commonwealth government until 2011.¹⁰⁵</p> <p data-bbox="373 691 1220 858">Most of this land will be transferred, as NT freehold land, for development by the Larrakia Development Corporation. Other land in the northern portion of the claim area will be transferred to an Aboriginal land trust to be established under NT legislation. However, a section of land requiring significant remediation will continue to be held by the Australian Government pending assessment and further consultations.¹⁰⁶</p>

105 Larrakia Development Corporation, '10 years after Kenbi the Larrakia are still waiting' (Media Release, 14 December 2010). At <http://www.larrakia.com.au/component/content/article/42-larrakia-media-release/60-10-years-after-kenbi> (viewed 1 July 2011).

106 The Hon J Gillard MP, Prime Minister of Australia, 'Historic heads of agreement signed for Kenbi land right claim (Media Release, 29 June 2011). At <http://www.pm.gov.au/press-office/historic-heads-agreement-signed-kenbi-land-claim> (viewed 1 July 2011).

Appendix 3

Membership of the Expert Panel on Indigenous Constitutional Recognition¹

Co-Chairs

Professor Patrick Dodson

Mr Mark Leibler AC

Panel Members

Mr Graham Bradley AM

Mr Timmy 'Djawa' Burarrwanga

Mr Henry Burmester AO, QC

Mr Fred Chaney AO

Associate Professor Megan Davis

Mr Glenn Ferguson

Ms Lauren Ganley

Professor Marcia Langton

Mr Bill Lawson AM

Ms Alison Page

Mr Noel Pearson

Parliamentary Members

Mr Rob Oakeshott MP

Ms Janelle Saffin MP

Senator Rachel Siewert

Mr Ken Wyatt MP

Ex-Officio Members

Aboriginal and Torres Strait Islander Social Justice Commissioner (Mr Mick Gooda)

The National Congress Co-Chairs (Mr Les Malezer, Ms Jody Broun, Mr Sam Jeffries and Ms Josephine Bourne)

¹ Department of Families, Housing, Community Services and Indigenous Affairs, *Membership of the Expert Panel*, http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/Pages/membership_expert_panel.aspx (viewed 17 October 2011).

Appendix 4

Expert Panel Terms of Reference¹

The Government has committed to pursue recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

This process requires:

- the building of a general community consensus
- the central involvement of Indigenous and non-Indigenous people and
- collaboration with Parliamentarians from across the political spectrum.

The Government has established an expert panel in order to ensure appropriate public discussion and debate about the proposed changes and to provide an opportunity for people to express their views.

The Expert Panel will report to the Government on possible options for constitutional change to give effect to Indigenous constitutional recognition, including advice as to the level of support from Indigenous people and the broader community for each option by December 2011.

In performing this role, the Expert Panel will:

- lead a broad national consultation and community engagement program to seek the views of a wide spectrum of the community, including from those who live in rural and regional areas;
- work closely with organisations, such as the Australian Human Rights Commission, the National Congress of Australia's First Peoples and Reconciliation Australia who have existing expertise and engagement in relation to the issue and
- raise awareness about the importance of Indigenous constitutional recognition including by identifying and supporting ambassadors who will generate broad public awareness and discussion.

In performing this role, the Expert Panel will have regard to:

- key issues raised by the community in relation to Indigenous constitutional recognition
- the form of constitutional change and approach to a referendum likely to obtain widespread support
- the implications of any proposed changes to the Constitution and
- advice from constitutional law experts.

¹ Department of Families, Housing, Community Services and Indigenous Affairs, *Expert panel Terms of Reference*, <http://www.fahcsia.gov.au/sa/indigenous/proserv/engagement/Pages/ExpertPanel.aspx> (viewed 17 October 2011).

Appendix 5

Position paper on achieving Aboriginal and Torres Strait Islander health equality within a generation

Articles 24(2) and 23 of the *United Nations Declaration on the Rights of Indigenous Peoples* state:

Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous 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.

In relation to the achievement of Aboriginal and Torres Strait Islander health equality within a generation, this position paper is an expression of these rights by the following national Aboriginal and Torres Strait Islander health peak bodies and key stakeholders:

- Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission;
- Australian Indigenous Doctors' Association;
- Australian Indigenous Psychologists' Association;
- Congress of Aboriginal and Torres Strait Islander Nurses;
- Indigenous Allied Health Australia Inc.;
- Indigenous Dentists' Association of Australia;
- Lowitja Institute;
- National Aboriginal and Torres Strait Islander Healing Foundation;
- National Aboriginal and Torres Strait Islander Health Workers' Association;
- National Aboriginal Community Controlled Health Organisation;
- National Congress of Australia's First Peoples;
- National Coordinator, Tackling Indigenous Smoking; and
- National Indigenous Drug and Alcohol Committee.

These positions also reflect those agreed by the following national workshops, hosted by the Close the Gap Campaign for Indigenous Health Equality and attended by representatives from across the Aboriginal and Torres Strait Islander health sector and Australian governments:

- Close the Gap – National Indigenous Health Equality Summit, Canberra, March 2008;
- Close the Gap – Partnership in Action Workshop, Sydney, November 2008; and
- Close the Gap – Making it Happen Workshop, Canberra, June 2010.

1. Principles to underpin a national effort to achieve Aboriginal and Torres Strait Islander health equality

- Achieving Aboriginal and Torres Strait Islander health equality within a generation (health equality) is a national priority.
- The *Close the Gap Statement of Intent* is a foundational document, guiding efforts to meet this aim of health equality for Aboriginal and Torres Strait Islander peoples.
- The Statement of Intent commitments comprise an interdependent and coherent framework for achieving health equality and are not to be selectively interpreted or implemented. Therefore, the social and cultural determinants of Aboriginal and Torres Strait Islander health inequality must be addressed as a part of a national effort to achieve health equality, and within a national health equality plan.
- By meeting the commitments in the Statement of Intent, Australian governments will:
 - adopt ‘best practice’ policy, targets and guidelines for achieving health equality, as supported by research findings and the evidence base;
 - adopt the most efficient way of achieving health equality. Partnership, in particular, should be considered as an efficiency measure: helping to maximise the health outcomes from the resources available; and
 - align their efforts with the human rights of Aboriginal and Torres Strait Islander peoples, including those set out in the *United Nations Declaration on the Rights of Indigenous Peoples*.
- To drive this national commitment, the Prime Minister should lead the effort for achieving health equality through COAG and partnership with Aboriginal and Torres Strait Islander peoples through their representative organisations. This collective leadership should enable and be accountable for achieving the:
 - vital intergovernmental and intersectoral cooperation needed to achieve health equality;
 - public sector to work in partnership with Aboriginal and Torres Strait Islander peoples and their representatives, particularly when developing and implementing a health equality plan; and
 - national effort for health equality to be enhanced and be integral to the roll out of the National Health and Hospital Network (NHHN) and future reforms.
- Reflecting this, the Prime Minister should continue to report to the Parliament and the nation on efforts to ‘close the gap’ (including in relation to health outcomes) on the opening day or the first session of federal Parliament each year.

2. A partnership between Aboriginal and Torres Strait Islander peoples, their representatives and Australian governments

- A partnership between Aboriginal and Torres Strait Islander peoples, their representatives and Australian governments (partnership) must underpin the national effort to achieve health equality.
- The mechanism to achieve a sustainable partnership will be through;
 - the thirteen signatories (including the National Congress of Australia’s First Peoples) creating a single community partnership interface. The signatory bodies pledge to work together and engage with Australian governments as equal partners at the national level to progress health equality.
 - Australian governments creating a single government partnership interface that should include:
 - the Minister for Health and Ageing and the Minister for Indigenous Health;
 - the Minister for Indigenous Affairs; and
 - State and Territory Governments.
 - The support of all Opposition parties, minor parties and Independents for the partnership arrangements set out in this paper should be secured to ensure continuing political support for the achievement of health equality until 2030.
- The partnership should be formalised through a framework agreement that clearly articulates the *rules of engagement* between all parties, based on the *United Nations Declaration on the Rights of Indigenous Peoples*, paying particular attention to:
 - **The Second Preambular paragraph**
Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.
 - **Article 3**
 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
 - **Article 18**
 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
 - **Article 19**
 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.
- Genuine sharing of decision-making power is essential to this partnership. This should be reflected in:
 - co-chairing arrangements between Aboriginal and Torres Strait Islander peoples and their representatives and Australian governments in all partnership fora;
 - the agreement of quorums in partnership fora that ensure an agreed minimum level of Aboriginal and Torres Strait Islander representation at times of decision-making;

- acknowledgement of Aboriginal and Torres Strait Islander leadership, experience and knowledge at all stages of the national effort to achieve health equality, including in relation to the development and implementation of a health equality plan; and
- adequate resource allocations and flexibility in funding arrangements to the Aboriginal and Torres Strait Islander partnership organisations to enable them to participate effectively in the partnership.
- For specific issues within the domains of the peak bodies and stakeholders, engagement with those peak bodies and stakeholders would continue to occur.
- The National Indigenous Health Equality Council will continue to advise the Minister for Indigenous Health and the Minister for Health and Ageing.
- State and territory-level Aboriginal and Torres Strait Islander health forums would continue as before, with the affiliates of the National Aboriginal Community Controlled Health Organisation (NACCHO) who are parties connecting to the national level process through NACCHO's participation in the national forum.

3. The development of a health equality plan

- Several dimensions of health-related planning are needed in a national effort to achieve health equality: to address both health inequality itself, and its social and cultural determinants. The negative impact of racism, intergenerational trauma and disempowerment, in particular, must be addressed.
- A health equality plan development process should be efficient and not absorb unnecessary time or resources. The *National Aboriginal Health Strategy* (1989) and the *National Strategic Framework for Aboriginal and Torres Strait Islander Health* (2003 – 2013) provide a starting point.
- A health equality plan must be 'owned' by both Aboriginal and Torres Strait Islander peoples and their representatives and Australian governments. This reinforces the need for partnership as the basis for developing and implementing a health equality plan.
- Empowerment will be a vital contributor to health equality. Any policy or program under a health equality plan should be assessed as to how it will increase the ability of Aboriginal and Torres Strait Islander individuals, families and communities to take control of their own lives.
- The commitment to achieve Aboriginal and Torres Strait Islander health equality within a generation, and the approach to this set out in the *Close the Gap Statement of Intent*, must be embedded in all current and future health reform processes.

Content of a health equality plan

- The *Close the Gap National Indigenous Health Equality Targets, Overcoming Indigenous Disadvantage Framework* indicators and the *Aboriginal and Torres Strait Islander Health Performance Framework* provide a starting point for the agreement of the targets and sub-targets. The former has been developed by peak bodies and experts in the field of Aboriginal and Torres Strait Islander health.
- The plan should:
 - invest in and build Aboriginal and Torres Strait Islander leadership at all levels of the health system;
 - build the capacity and enhance the leadership of the Aboriginal and Torres Strait Islander Community Controlled Health Sector;

- address the mental health and social and emotional well-being of Aboriginal and Torres Strait Islander peoples, including problematic alcohol and drug use;
 - address the social and cultural determinants of health; and
 - ensure data collections and other measures are in place to enable the effective monitoring of progress towards health equality, and an evaluation of the quality of the plan, over time.
- The Statement of Intent commitments to achieve Aboriginal and Torres Strait Islander health equality within a generation must be embedded in the NHHN reforms.
 - A strong national Aboriginal and Torres Strait Islander leadership should oversee those parts of the national effort for health equality that will be delivered through the NHHN.



Mr Mick Gooda

Co-chair of the Close the Gap Campaign for
Indigenous Health Equality and Aboriginal and Torres
Strait Islander Social Justice Commissioner



Dr Tom Calma

Co-chair of the Close the Gap Campaign
for Indigenous Health Equality and
National Coordinator – Tackling Indigenous Smoking



Associate Professor Peter O'Mara

President Australian Indigenous
Doctors' Association



Ms Florence Onus

Chair National Aboriginal and Torres Strait Islander
Healing Foundation



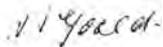
Adjunct Professor Pat Dudgeon

Chair Australian Indigenous
Psychologists' Association



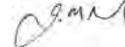
Mrs Jennifer Poelina

Chairperson National Aboriginal and Torres Strait Islander Health
Workers' Association



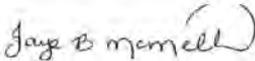
Dr Sally Goold OAM

Chair Congress of Aboriginal and Torres Strait
Islander Nurses



Mr Justin Mohamed

Chair National Aboriginal Community Controlled
Health Organisation



Ms Faye McMillan

President Indigenous Allied Health Australia Inc.



Mr Sam Jeffries and Ms Josephine Bourne

Co-chairs National Congress of Australia's First Peoples



Dr Chris Bourke

President Indigenous Dentists' Association of Australia



Associate Professor Edward Wilkes

Chair National Indigenous Drug and Alcohol Committee



Dr Kerry Arabena

Chief Executive, Lowitja Institute

Appendix 6

Further data on victimisation and offending

Police Records

Only NSW, Queensland, South Australia and the Northern Territory data records Aboriginal and Torres Strait Islander status of sufficient coverage or quality to publish.

In NSW:

- Aboriginal and Torres Strait Islander people were murdered at 4.5 times the rate; sexually assaulted at 3.7 times the rate; and assaulted at 3.3 times the rate of non-Indigenous people.
- The offender was known to 93% of Aboriginal and Torres Strait Islander female assault victims, compared to 78% of non-Indigenous female assault victims. The offender was known to 76% of Aboriginal and Torres Strait Islander male assault victims, while almost 50% of non-Indigenous men were assaulted by strangers.¹

In Queensland:

- Aboriginal and Torres Strait Islander people were assaulted at 4.3 times the rate; and sexually assaulted at 4.1 times the rate of non-Indigenous people.
- The offender was known to 85% of Aboriginal and Torres Strait Islander female assault victims, compared to 62% of non-Indigenous female assault victims. The offender was known to almost 72% of Aboriginal and Torres Strait Islander assault victims, while 58% of non-Indigenous men were assaulted by strangers.²

In South Australia:

- Aboriginal and Torres Strait Islander people were assaulted at 6.6 times the rate; the victim of attempted murder 4.8 times the rate; and sexually assaulted 3.7 times the rate of non-Indigenous people.
- The offender was known to 92% of Aboriginal and Torres Strait Islander female assault victims, compared to 77% of non-Indigenous female assault victims. The offender was known to 71% of Aboriginal and Torres Strait Islander male assault victims, while 55% of non-Indigenous men were assaulted by strangers.³

In the Northern Territory:

- Aboriginal and Torres Strait Islander people were assaulted at 5.2 times the rate; and sexually assaulted 2.5 times the rate of non-Indigenous people.
- The offender was known to 88% of Aboriginal and Torres Strait Islander female assault victims, compared to 64% of non-Indigenous female assault victims. The offender was known to 66% of Aboriginal and Torres Strait Islander male assault victims, while 55% of non-Indigenous men were assaulted by strangers.⁴

1 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 4.127.

2 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 4.127.

3 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 4.128.

4 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Productivity Commission (2011), p 4.128.

Table 1 provides a comparison of Aboriginal and Torres Strait Islander and non-Indigenous homicides between 1999–2009, prepared by the Australian Institute of Criminology for this report.

Table 1: Comparison of Aboriginal and Torres Strait Islander and non-Indigenous Homicides – 1999–2009⁵

Circumstances and characteristics	Indigenous on Indigenous homicides (n=335)		Non-Indigenous on Non-Indigenous homicides (n=2,019)	
	%	(n)	%	(n)
Course of other crime				
Yes	7.2	24	13.5	272
No	92.8	309	86.5	1 737
Single versus multiple victims and offenders				
Single victim – single offender	90.8	304	80.6	1 628
Single victim – multiple offenders	7.8	26	13.7	276
Multiple victims – single offender	1.5	5	4.8	96
Multiple victims – multiple offenders	0.0	0	0.9	19
Gender (a)				
Male offender on male victim	36.7	123	54.4	1 098
Male offender on female victim	37.3	125	32.8	663
Female offender on female victim	5.7	19	3.9	79
Female offender on male victim	20.3	68	8.9	179
Motive of the killing (a)				
Domestic altercation (jealously, desertion)	49.4	161	32.1	609
Alcohol-related argument	26.1	85	10.8	205
Other argument (eg: money, drugs, etc)	14.7	48	44.7	848
No apparent motive/unknown	9.8	32	12.4	236
Alcohol involvement				
Both victim and offender drinking	71.4	227	24.7	426
Victim drinking but not offender	3.1	10	8.2	142
Offender drinking but not victim	9.1	29	9.5	163
Neither victim nor offender drinking	16.4	52	57.6	994
Victim-offender relationship (a)				
Intimate partners	46.0	154	26.0	525
Other family	24.8	83	18.9	382
Friends and acquaintances	26.3	88	37.9	766
Strangers	2.1	7	15.2	307
Other relationship	0.9	3	1.9	39

⁵ Australian Institute of Criminology, Information provided to Office of the Social Justice Commissioner, 14 June 2011.

Note: Terminology

The Aboriginal and Torres Strait Islander Social Justice Commissioner recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is not one cultural model that fits all Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

The word '**peoples**' recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their lives. This is affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*.¹

There is a growing debate about the appropriate terminology to be used when referring to Aboriginal and Torres Strait Islander peoples. The Social Justice Commissioner recognises that there is strong support for the use of the terminology 'Aboriginal and Torres Strait Islander peoples', 'First Nations' and 'First Peoples'.² Accordingly, the terminology 'Aboriginal and Torres Strait Islander peoples' is used throughout this Report.

Sources quoted in this Report use various terms including 'Indigenous Australians', 'Aboriginal and Torres Strait Islanders', 'Aboriginal and Torres Strait Islander people(s)' and 'Indigenous people(s)'. International documents frequently use the term 'indigenous peoples' when referring to the Indigenous peoples of the world. To ensure consistency, these usages are preserved in quotations, extracts and in the names of documents.

1 GA Resolution 61/295 (Annex), UN Doc A/RES/61/295 (2007). At www.un.org/esa/socdev/unpfii/en/drip.html (viewed 5 November 2010).

2 See Steering Committee for the creation of a new National Representative Body, *Our future in our hands: Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples*, Australian Human Rights Commission (2009), pp 15, 43. At www.humanrights.gov.au/social_justice/repbody/report2009/index.html (viewed 5 November 2010).

Further Information

Australian Human Rights Commission

Level 3, 175 Pitt Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001

Telephone: (02) 9284 9600
Complaints Infoline: 1300 656 419
General enquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Website: www.humanrights.gov.au

For detailed and up to date information about the Australian Human Rights Commission visit our website at: www.humanrights.gov.au. To order more publications from the Australian Human Rights Commission download a Publication Order Form at: www.humanrights.gov.au/about/publications/ or call: (02) 9284 9600, fax: (02) 9284 9611 or email: publications@humanrights.gov.au

