AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE SECRETARIAT OF THE PERMANENT FORUM ON INDIGENOUS ISSUES

[8 February 2016]
# Table of Contents

1. **Introduction** ............................................................................................................................................. 3

2. Commission contribution to the achievement of the Declaration ......................................................... 3
   1.1 *Commission activities to promote and protect the rights of Indigenous peoples* ........................................ 3
       (a) National Inquiries ........................................................................................................................................ 3
       (b) Social Justice and Native Title Reports ...................................................................................................... 4
       (c) Other activities ........................................................................................................................................... 6
   1.2 *Specific policies and programmes on Indigenous peoples* ............................................................... 7
   1.3 *Regular or ad hoc capacity-building programmes on Indigenous peoples' rights for staff, or planned capacity-building activities in this area* ....................................................................................... 7
       (a) United Nations Declaration on the Rights of Indigenous Peoples .......................................................... 8
       (b) Constitutional Recognition of Aboriginal and Torres Strait Islander peoples ....................................... 8
       (c) Indigenous Property Rights and Economic Development ........................................................................ 9
       (d) Justice Reinvestment .................................................................................................................................. 10
       (e) Focal point on Indigenous peoples’ rights .................................................................................................. 10

2. Forced relocation of Indigenous communities ............................................................................................ 11

3. Issues related to conflict, peace and resolution for Indigenous peoples ............................................... 11

4. Participation in the Permanent Forum on Indigenous Issues .................................................................... 12
1 Introduction

1. This information is provided by the Australian Human Rights Commission to the Secretariat of the United Nations Permanent Forum on Indigenous Issues.

2. The Commission is an ‘A status’ national human rights institution established and operating in full compliance with the Paris Principles. Information about the Commission can be found at: www.humanrights.gov.au.

3. In preparing the information, the Commission has drawn principally upon the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner. Information on the responsibilities and advocacy of the Commissioner can be found at: https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice.

4. In 2010 the incumbent Social Justice Commissioner, Mr Mick Gooda, outlined his agenda for his five year term. In that report, he committed to being guided by the Declaration in the performance of his statutory functions.

2 Commission contribution to the achievement of the Declaration

5. The Commission considers the following principles underpin the articles of the United Nations Declaration on the Rights of Indigenous Peoples:

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

2.1 Commission activities to promote and protect the rights of Indigenous peoples

6. The following information details specific activities of the Commission with respect to the promotion and protection of the rights of Indigenous peoples:

(a) National Inquiries

7. The Australian Human Rights Commission Act 1986 (Cth) provides the Commission with the power to hold public inquiries into human rights issues of national importance and make recommendations to address discrimination and breaches of human rights.

8. A significant inquiry conducted prior to the adoption of the Declaration was the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their families (1997). The impact and outcomes of the Inquiry continue to influence law and public policy. The Inquiry found that ‘between one in three and one in ten Indigenous children were forcibly
removed from their families and communities between 1910 and 1970. The report includes a comprehensive account of the laws, practices and policies which resulted in the forced separation of Indigenous children from their families, the consequences of removal, detailed accounts on the experiences of those children removed, and the alarming issue of contemporary separation. 54 Recommendations were made which included consideration of grounds for reparation and services for those affected.

9. Following the Inquiry, national action to address the issue included:

- Establishment of State based family tracing and reunion services, known as Link-Up Services, to assist Indigenous Australians separated by their families as a result of past Government policies and practices
- The Apology to Australia’s Indigenous peoples (2008)
- The establishment of the Aboriginal and Torres Strait Islander Healing Foundation (2009) to address the grief and trauma associated with the harmful history of child removal and the intergenerational impacts of removal.

10. Further information on the Inquiry is available here:

(b) Social Justice and Native Title Reports

11. The Social Justice Commissioner reports annually to the Attorney-General on the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples, and recommends action that should be taken to ensure these rights are observed. Central to the structure of the Reports are the principles of self-determination, equality and non-discrimination, respect for culture, participation.

12. The Aboriginal and Torres Strait Islander Social Justice Reports have considered matters of relevance to the following articles:

- Article 13 Language, cultural and spiritual identity: Social Justice Report 2009, Chapter 3 highlights the challenges to preserve and revitalise Indigenous languages in Australia. The report included details on the Commonwealth, State and Territory government policies, which impact on Indigenous languages as well as Australian and international approaches aimed at protecting and promoting Indigenous languages.
- Articles 14 and 15 Education, Information and Employment: Social Justice Report 1999, Chapter 4 describes the importance of bilingual education in maintaining culture, language and identity. Social Justice Report 2008, Chapter 3 reviews the provision of education services in remote Australia with focus on availability and accessibility of education services for Indigenous preschool, primary and secondary school students.
- Article 24(2) Participation, Development and Economic and Social Rights: Social Justice Report 2005, Chapter 2 sets out a human rights approach to achieve Aboriginal and Torres Strait Islander health equality within a generation. The report findings highlighted the significant
inequalities in the health status of Indigenous Australians compared to non-Indigenous Australians. In particular, it found that the life expectancy gap between Indigenous Australians and non-Indigenous Australians was 17 years.\textsuperscript{19}

13. The Social Justice Reports have influenced Australian public policy in a number of ways. For example, as a result of the Social Justice Report 2005 findings and recommendations, the following national action occurred:

- In 2007, the \textit{Close the Gap Campaign} to achieve Indigenous health equality was launched. The Campaign is Co-chaired by the Social Justice Commissioner. The Campaign Steering Committee members represent some of Australia’s peak Aboriginal and Torres Strait Islander and non-Indigenous health bodies, health professional bodies and human rights organisations. To date, over 200,000 Australians have formally pledged their support to the campaign.\textsuperscript{20}
- In 2008, the Australian Government agreed to six ambitious targets to address the disadvantage faced by Indigenous Australians in life expectancy, child mortality, education and employment.\textsuperscript{21} Unprecedented government investment to Closing the Gap in Indigenous disadvantage was also achieved.
- Since 2009, Australia has celebrated an annual National Close the Gap Day. In 2015, over 850 community events involving more than 150,000 Australians were held on the day.\textsuperscript{22}


15. The Aboriginal and Torres Strait Islander Native Title Reports have considered matters of relevance to the following articles:

- Articles 25-32 Rights to Country, Resources and Knowledge: Native Title Report 2013, Chapter 2 looks back on 20 years of native title and the role of the Social Justice Commissioner. The Report provides a snapshot of developments and contributions of previous Social Justice Commissioners in the key areas of native title over the last 20 years including:
  - The Mabo decision\textsuperscript{23}
  - Negotiating the Native Title Act
  - The objectives of the Native Title Act
  - Key themes in the Native Title Reports
  - Unfinished business: a Social Justice Package.\textsuperscript{24}

- Article 34 Self-Governance: Native Title Report 2012, Chapter 2 considers how governance provides a foundation that enables Aboriginal and Torres Strait Islander peoples to realise their social, cultural and economic development aspirations. The report examines how effective, culturally relevant and legitimate Indigenous governance over lands, territories and resources needs to incorporate the human rights set out in the Declaration.\textsuperscript{25}

(c) Other activities

17. The Commission also carries out other activities which give effect to articles of the Declaration. The following provides a selection of these activities:


- Under the *Australian Human Rights Commission Act 1986* (Cth), the Commission has a statutory function to investigate and conciliate complaints made under federal human rights and discrimination law which relates to article 40 of the Declaration. Complaints made by Aboriginal and Torres Strait Islander people often concern individual and systemic forms of discrimination. In 2014/2015 the Commission received 198 complaints made by Aboriginal and Torres Strait Islander people. The majority of those complaints were about racial discrimination.

- As a National Human Rights Institution (NHRI), the Commission has an obligation pursuant to Article 42 of the Declaration to promote respect for and full application of the provisions of the Declaration and to follow up on the effectiveness of the Declaration. Activities related to this obligation include the assistance provided by the Commission to the Asia Pacific Forum of National Human Rights Institutions and the Office of the United Nations High Commissioner for Human Rights, to develop a manual for NHRIs on the Declaration. Following the development of the manual, a blended learning course (online and face-to-face) was developed. The four-week online course examines the key provisions in the Declaration as well as the principles of self-determination; participation in decision-making; respect for and protection of culture; and equality and non-discrimination. Information on the course is available here: [http://www.asiapacificforum.net/support/training/indigenous-peoples/](http://www.asiapacificforum.net/support/training/indigenous-peoples/).

- Also related to the obligation contained in article 42 is the *Declaration Dialogue Series*. In 2013-2015, the Social Justice Commissioner worked in partnership with the National Congress of Australia’s First Peoples to develop and deliver a *National Strategy on the Implementation of the United Nations Declaration on the Rights of Indigenous Peoples*.

The project aimed to operationalise the Declaration through the development of a National Implementation Strategy negotiated between Aboriginal and Torres Strait Islander Peoples, the Australian
Government, and other interested stakeholders. The project also aimed to deliver increases in:

i. Knowledge about the Declaration, particularly the four key principles
ii. Confidence to use the Declaration as a tool in daily discussions and negotiations both internally within Aboriginal and Torres Strait Islander communities and their organisations, and externally, with private and public sector stakeholders
iii. Knowledge of human rights in general.


2.2 Specific policies and programmes on Indigenous peoples

18. The Commission does not have any service delivery functions other than the Investigation and Conciliation Service. The ICS investigates and resolves complaints about unlawful sex, race, disability and age discrimination. Information about ICS is available here: https://www.humanrights.gov.au/complaint-information

2.3 Regular or ad hoc capacity-building programmes on Indigenous peoples’ rights for staff, or planned capacity-building activities in this area.

19. The Commission has a Reconciliation Action Plan (RAP), endorsed by Reconciliation Australia. RAPs provide a framework for organisations to develop, promote and realise their vision for reconciliation. The RAP is aligned to the Commission’s strategic goals and is managed by the internal Diversity Committee.

20. The Commission’s RAP sets organisational wide actions to build sustainable relationships based on mutual respect with Indigenous Australians. It also sets specific actions to create sustainable opportunities for Indigenous Australian’s such as through employment, career development and supplier diversity.29

21. The Commission developed an internal Aboriginal and Torres Strait Islander Engagement Toolkit to assist staff in engaging with Aboriginal and Torres Strait Islander peoples and communities.30
2.4 Conferences and other meetings: 2016-17

22. In 2016-17 the Social Justice Commissioner will support and hold meetings on a number of priority projects including:

- United Nations Declaration on the Rights of Indigenous Peoples
- Constitutional Recognition of Aboriginal and Torres Strait Islander people
- Indigenous Property Rights and Economic Development
- Justice Reinvestment

(a) United Nations Declaration on the Rights of Indigenous Peoples

23. The Commission will continue to promote greater use of the Declaration. This will include:

- Advocacy for meaningful dialogue and engagement with the Australian Government to design and develop national strategies to give full effect to the Declaration.


The PJCHR has been undertaking a review of the measures directed towards Aboriginal communities in the Northern Territory introduced by the *Stronger Futures in the Northern Territory Act 2012* (Cth). The PJCHR is considering the evidence and testing the continued necessity for the measures. The Report of the inquiry will be tabled in Parliament in the near future.31

24. During the 2015 Universal Periodic Review (UPR) of Australia’s record on human rights, 290 recommendations were received from Country participants. Forty-five (15%) recommendations concerned the rights of Aboriginal and Torres Strait Islander peoples.32

25. The Australian Government’s commitment to the UPR process provides a promising opportunity to give effect to the Declaration through the monitoring and tracking of commitments on the rights of Aboriginal and Torres Strait Islander peoples.

(b) Constitutional Recognition of Aboriginal and Torres Strait Islander peoples

26. In 2007, both major political parties of the Australian Government committed to a national referendum to recognise Aboriginal and Torres Strait Islander people in Australia’s Constitution. The Referendum may be held in 2017. The Commission will be working closely with the Australian government and Indigenous peoples, communities and stakeholders to provide expertise and
guidance to support a human rights based approach to the Constitutional recognition of Australia’s First Peoples.

27. The Commission has been, and will continue to be, closely involved in the steps leading to the referendum. These steps include:

- Commission submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander people.  

- Social Justice Commissioners have reported on Constitutional Recognition to the Australian government in the Social Justice Reports.  

- The appointment of the Social Justice Commissioner to the Australian Government Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples (the Expert Panel) in 2010. The Expert Panel was comprised of various Indigenous and community leaders, constitutional experts and parliamentary members. After extensive consultation, the Expert Panel provided their final report in 2012 recommending a number of options for constitutional change.  

- The appointment of the Social Justice Commissioner to the Australian Government Referendum Council in 2015. The Council was established to develop the model and wording of recognition of Australia’s First Peoples within the Australian Constitution.  

- The Referendum Council has committed in 2016 to deliver Indigenous led national conferences to provide an opportunity for Aboriginal and Torres Strait Islander people to consider options for recognition.

(c) Indigenous Property Rights and Economic Development

28. A number of key challenges face Indigenous Australians, particularly when it comes to the full realization of rights under various land rights and native title legislation.

29. In 2015, the Social Justice Commissioner and the Human Rights Commissioner, convened an Indigenous Leaders Roundtable on Economic Development and Property Rights in Broome, Western Australia. The aim of the meeting was to identify options for addressing the challenges Aboriginal and Torres Strait Islander peoples experience in creating economic development opportunities. These challenges include barriers that prevent the leveraging of property rights, be they communal, inalienable rights under native title or through land rights schemes.  

30. Future work will aim to create a framework to advance a renewed dialogue between the Australian Government and Aboriginal and Torres Islander peoples about their traditional lands, culture and options for economic development.

31. Information about the Indigenous Leaders Roundtable can be found here: https://www.humanrights.gov.au/our-work/rights-and-
(d) **Justice Reinvestment**

32. Aboriginal and Torres Strait Islander adults are 15 times more likely to be imprisoned than non-Indigenous Australians.\(^3\) The number of Aboriginal and Torres Strait Islander people in prison has increased by nearly 84% over the last decade.\(^4\)

34. The overrepresentation of Aboriginal and Torres Strait Islander peoples as both victims and offenders in the criminal justice system remains one of the most glaring disparities between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians.

35. The Commission has advocated that the solution to this issue lies in focusing on creating safer communities where violence is not tolerated, where victims have access to the entire spectrum of support services and where the emphasis is on the prevention of crime and violence occurring in the first place.

36. To achieve this, the Commission has identified as urgent priorities adopting justice reinvestment programs. Justice reinvestment has been proposed as a mechanism to address the disproportionate incarceration of Aboriginal and Torres Strait Islander peoples as it looks beyond offenders, to the needs of victims and communities.\(^5\) Justice reinvestment diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities, such as parenting programs, early education and care, youth mentoring, numeracy and literacy programs, training and employment pathways.

(e) **Focal point on Indigenous peoples’ rights.**

33. The current Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda is a descendent of the Gangulu people of central Queensland. He is now in his sixth year in this position having commenced in February 2010. Mick has worked in Aboriginal and Torres Strait Islander affairs for over 30 years having worked in remote, rural and urban environments throughout Australia at the community, regional, state and national levels. As Commissioner, Mick builds on this experience to advocate for the human rights of Aboriginal and Torres Strait Islander peoples in Australia and to promote respect and understanding of these rights among the broader Australian Community.

34. To contact the Social Justice Commissioner, email Robynne Quiggin, Senior Adviser to the Social Justice Commissioner at Robynne.Quiggin@humanrights.gov.au
3  Forced relocation of Indigenous communities.

35. At the May 2011 Session of the Permanent Forum, the Social Justice Commissioner delivered an intervention which included reference to past legislation that enabled the forced removal of Aboriginal and Torres Strait Islander peoples from across Australia to missions and reserves. The forced relocation served to disempower Aboriginal and Torres Strait Islander people and control every aspect of their lives. It disrupted their ability to govern and organise themselves and denied them the right to make decisions about their lives. The consequences of this removal are still being experienced and addressed by Aboriginal and Torres Strait Islander peoples today.

36. The Social Justice Commissioner reported in his 2015 Social Justice and Native Title Report 2015 on the West Australian Government’s announcement of its intention to close up to 150 remote Indigenous communities in Western Australia. The rationale for closure was that the state of Western Australia could not provide the essential services required to address the social and health problems in these remote communities.

37. The decision for closure, made without proper engagement with Aboriginal and Torres Strait Islander peoples, dismissed the culture and history of the community members, trivialised their futures and caused a great deal of anxiety.

38. The Commission has raised concerns with the Australian Government on this issue. To date no community closures have taken place. The Commission will continue to advocate for meaningful engagement with Indigenous peoples. This engagement would support the sustainability of Indigenous remote and homeland communities, by promoting positive approaches to community development, governance and self-determination.

4  Issues related to conflict, peace and resolution for Indigenous peoples

39. There remains significant unfinished business in the national healing and reconciliation process in Australia.

40. The Social Justice Commissioner has noted that the practice of dispossession and assimilation of Aboriginal and Torres Strait Islander peoples has created many ongoing problems. There is an undeniable and urgent need for healing in Indigenous communities broken by the removal of Indigenous children, separation of families, family violence, custody, suicide, alcohol and drug abuse.

41. Recent statistics in Australia show that Aboriginal and Torres Strait Islander women in particular are hospitalised for family violence related assault at 31 times the rate of non-Indigenous women. The most common offence for which Aboriginal and Torres Strait Islander prisoners are held in custody are from ‘acts intended to cause injury’. The Commission has reported to the UN on violence against Aboriginal and Torres Strait Islander women, and to Commonwealth Inquiries. The Commission recommended to the UPR
Working Group that the National Plan to Reduce Violence Against Women and their Children reflect the diversity of women, and include sustained funding, and independent monitoring and evaluation.\textsuperscript{47} Several of the recommendations made to Australia at the recent UPR review concerned violence against women and their children and in particular Aboriginal and Torres Strait Islander women and children.\textsuperscript{48} As discussed above (paragraph 25), the UPR process provides a promising opportunity to give effect to the Declaration through the monitoring and tracking of commitments on the rights of Aboriginal and Torres Strait Islander peoples.

42. The Social Justice Commissioner has also reported to the Australian Government on matters addressing issues of family violence,\textsuperscript{49} and lateral violence.\textsuperscript{50} The 2003 and 2007 Social Justice Reports also include the experiences of Indigenous women incorporated within family violence.

43. While promising practices and learnings in holistic approaches to healing are emerging in Australia, there are lessons to be learned from over a decade of healing work in other nation States, in particular Canada.

44. The Social Justice Commissioner will continue to engage with the Australian Government, Indigenous Communities and the international community to promote positive practices in healing and promote safe dialogue to address acts of violence.

5 Participation in the Permanent Forum on Indigenous Issues

45. The Commission has participated in Permanent Forum on Indigenous Issues every year since its first session in 2002.

46. The Commission intends to continue to participate in the Permanent Forum and to share information, promote good practice and advocate for the rights of Aboriginal and Torres Strait Islander peoples.

---

\textsuperscript{8} 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). Also known as the Brining them Home Report.
10 Australian Institute of Aboriginal and Torres Strait Islander Studies, Link Up Services http://aiatsis.gov.au/research/finding-your-family/link-services (viewed 3 February 2016)
13 Australian Human Rights Commission Act 1986 (Cth) s 46C(1)(a); Native Title Act 1993 (Cth) s 209.
42 Many remote Aboriginal communities within Australia are traditional homelands for community members. Homelands provide social, spiritual, cultural, health and economic benefits to residents. They are a unique component of the Indigenous social and cultural landscape, enabling residents to live on their ancestral lands. Homelands are governed through traditional kinship structures which provide leadership and local governance. See Tom Calma, Social Justice Report 2009, Australian Human Rights Commission (2009) 107. for more detail.

