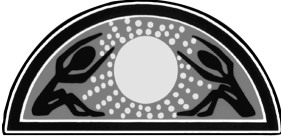




SNAICC
Secretariat of National
Aboriginal and Islander
Child Care

**Submission to the Attorney General's
Department: Australia's DRAFT
National Human Rights Action Plan
2012
March 2012**

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A strong voice for our children and families

SNAICC is the national non-government peak body
that advocates on behalf of Aboriginal and Torres
Strait Islander children and families.

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1. Introduction

SNAICC appreciates the opportunity to contribute to the Australian Government's Draft National Human Rights Action Plan for 2012 (**'Human Rights Action Plan'**) and supports the Government's efforts to develop a road map for improved respect, protection and fulfillment of human rights in Australia.

SNAICC was established as a non-governmental, not-for-profit organisation in 1981. It is the national peak body in Australia representing the interests of Aboriginal and Torres Strait Islander children and families.¹ SNAICC has been a persistent voice and advocate in support of the protection, wellbeing and development of Aboriginal and Torres Strait Islander children and families, conducting research, providing policy advice and developing resources on issues around child protection and child development for three decades. The full realisation of all human rights of Aboriginal and Torres Strait Islander children lies at the core of SNAICC's mandate. With a membership of Aboriginal and Torres Strait Islander community controlled children and family support services across Australia, SNAICC is well placed to both understand the complex issues impacting our children and families, and to propose targeted responses.

This SNAICC submission comments briefly on critical structural issues concerning the Human Rights Action Plan and then focuses on substantive recommendations to advance the human rights of Aboriginal and Torres Strait Islander children and families. SNAICC argues for concrete and practical measures that would provide better protection and support in areas of most need, with measurable indicators and outcomes by which to gauge progress. SNAICC also recommends important structural steps towards equality, non-discrimination and appropriate Aboriginal and Torres Strait Islander leadership to chart the way forward to enable the realisation of all human rights for all Aboriginal and Torres Strait Islander peoples.

SNAICC notes that priority in the Human Rights Action Plan to advancing the human rights of Aboriginal and Torres Strait Islander peoples is twofold:

¹ Further information on SNAICC is available online at www.snaicc.asn.au.

- (a) to reflect the unique rights that Aboriginal and Torres Strait Islander peoples have as First Peoples of Australia. These are laid out clearly in the *United Nations Declaration of the Rights of Indigenous Peoples (2007) ('UNDRIP')*, which Australia endorsed in 2009. This is directed in particular to enabling and ensuring Aboriginal and Torres Strait Islander peoples have the right to determine how their lives are governed and their development paths, to participate in decisions that affect their lives and to have control over their lives and future including their economic, social and cultural development;² and
- (b) to redress the endemic human rights concerns impacting Aboriginal and Torres Strait Islander people.³

SNAICC also notes that while the Aboriginal and Torres Strait Islander population accounts for around 2.5% of the Australian population, Aboriginal and Torres Strait Islander children under 14 actually comprise over 5% of this population bracket.⁴ This percentage will continue to increase in light of the higher birth rate in Indigenous families.⁵

SNAICC considers the Human Rights Action Plan an important opportunity to create a comprehensive national road map for sustainable change for impoverished Aboriginal and Torres Strait Islander children, youth and peoples. In order to play this role however, it must reflect current realities accurately, contain clear and focused strategies and actions that redress

² UNDRIP, article 3; The Australian Human Rights Commission, *Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, available at http://www.hreoc.gov.au/declaration_indigenous/declaration_full_4.html, 24-25.

³ James Anaya, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, 15th sess, UN Doc A/HRC/15/ (4 March 2010); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report*, Australian Human Rights Commission, 2007, 2008, 2009, 2010, 2011 (see http://www.hreoc.gov.au/social_justice/sj_report/index.html); Child Rights Taskforce (2011) *Listen to Children*, Child Rights NGO Report, Australia, section 4.1, available at <http://www.childrights.org.au/listen-to-children-reports>; The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) Shadow Report to the Committee on the Rights of the Child: Review of Australia (Available from: <http://vals.org.au/law-reform-and-policy-development/submissions/tag/human-rights/>).

⁴ In 2006, 38% of Aboriginal and Torres Strait Islander people were aged 14 years and under, compared with 19% of the non-Indigenous population: Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011, Overview*, 2011, Productivity Commission, 3.

⁵ 2.57 babies per woman in 2010 compared with 1.89 for all women in Australia: Australian Bureau of Statistics, *3301.0 - Births, Australia*, 2010, available at <http://www.abs.gov.au/ausstats/abs@.nsf/Products/F09A5314AEC72D83CA257933001676B7?opendocument>.

the current causes of poverty, injustice and exclusion, and include a comprehensive framework for measuring progress.

2. Structural Issues

(a) Requirements of a Human Rights Action Plan

The Human Rights Action Plan must aim to establish a framework that better protects human rights for everyone, in line with the Australia Government's international human rights obligations. The Human Rights Action Plan needs to be especially robust given the Government's disappointing decision not to implement a legal and enforceable Human Rights Act, despite it being the key recommendation of the National Human Rights Consultation Committee, and having support of over 87%⁶ of the respondents.

SNAICC is concerned that the current draft Plan simply lists a number of initiatives already in place. The serious implication of having no 'action' contained within the Human Rights Action Plan is that it ends up being merely rhetoric about the importance of rights without any substantive commitment to achieving human rights. To be effective, an action plan must set out specific targets and actions to implement, together with mechanisms for monitoring and review.

Recommendations

R1: In accordance with the guidance set out in the *Handbook on National Human Rights Plans of Action*⁷, the Australian Government should ensure that the Human Rights Action Plan:

- Gives practical effect to international obligations by reviewing commitments and proposing steps to ensure that they are effectively observed at the domestic level;⁸
- Gives all human rights equal attention, with civil and political rights and economic, social and cultural rights being treated as interdependent and indivisible;⁹

⁶ The majority of those attending community roundtables favoured a Human Rights Act, and 87.4 per cent of those who presented submissions to the Committee and expressed a view on the question supported such an Act—29 153 out of 33 356. The National Human Rights Consultation Committee (2009) *National Human Rights Consultation Report*. Canberra: Commonwealth of Australia, 362.

⁷ Office for the High commissioner for Human Rights (2002) *Handbook on National Human Rights Plans of Action*. New York and Geneva: United Nations.

⁸ *Ibid*, Part 3.3.

⁹ *Ibid*, Part 3.4.

- Is ‘action-oriented’ and does not seek merely to justify existing policies. It should identify gaps in human rights protection, specify action to be taken and provide for effective monitoring and evaluation of progress;¹⁰
- Is a public document that is widely disseminated and easily attainable, with education about human rights and access (such as translations) provided where necessary.¹¹

SNAICC supports two recommendations proposed by the Human Rights Law Resource Centre in *Making Rights Real: A National Human Rights Action Plan for Australia*,¹² namely:

R2: The Human Rights Action Plan should clearly identify the people and entities responsible for implementation, a timeframe and milestones for doing so and a system must be established so that human rights indicators can be properly recorded and measured over time.

R3: The Human Rights Action Plan Steering Committee membership should be expanded to include non-government representatives such as NGO peak bodies, other expert NGOs, Indigenous leaders, elders and community members, representatives of vulnerable groups, human rights educators and other community representatives.

(b) Attention on Aboriginal and Torres Strait Islander removal from homes and culture

SNAICC applauds the Government’s efforts to develop a strong evidence base to provide a baseline for the Human Rights Action Plan through the Baseline Study. SNAICC appreciates the opportunity the Government provided to civil society to contribute to the Baseline Study, but was unfortunately unable to provide a submission at the relevant time. SNAICC reinforces the importance of an accurate baseline for the Human Rights Action Plan and urges the Government to ensure that the contents of submissions made to the Baseline Study are included in the Study and urges the Government to include as a priority, based on a clear and strong evidence base, reduction of the high number of Aboriginal and Torres Strait Islander children and youth who are still removed from their homes, and removed from their family and culture.

¹⁰ *Ibid*, Part 3.5.

¹¹ *Ibid*, Part 3.6.

¹² HRLRC (2011) *Making Rights Real: A National Human Rights Action Plan for Australia*. Melbourne: HRLRC, 17-19.

By mid-2011, there were 12,358 Aboriginal and Torres Strait Islander children in out-of-home-care — an increase of 890 since June 2010.¹³ This means that Aboriginal and Torres Strait Islander children are 10 times more likely to be in out-of-home care than other children. Reasons for this overrepresentation are complex and include: "the legacy of past policies of forced removal, intergenerational effects of previous separations from family and culture, poor socio-economic status and perceptions arising from cultural differences in child-rearing practices."¹⁴

Aboriginal and Torres Strait Islander Child Placement Principle legislation is embedded in all state and territories, requiring state child protection decision makers to consider a hierarchy of placement options for Aboriginal and Torres Strait Islander children with a priority on placing a child with family members, followed by community and language groups and then other Aboriginal and Torres Strait Islander carers. However, definition of the Principle and compliance requirements need to be strengthened to ensure connection to family and culture. For example, a report last month by the Commission for Children and Young People and Child Guardian in Queensland revealed that a consideration of the hierarchy of placement options, as required in legislation, could only be shown in 26 per cent of cases.¹⁵

This devastating reality of the ongoing removal of Aboriginal and Torres Strait Islander children from their homes and from their culture, a matter significantly resulting from past Government policies, impoverishment and ongoing discrimination, demands specific upscaling of action under the focused section on Aboriginal and Torres Strait Islander peoples.

Recommendations

R3: The National Human Rights Action Plan include a further section under the human rights experience of Aboriginal and Torres Strait Islander peoples on children in the child protection system. Specific recommendations are included below, see R67 - R79.

¹³ The Australian Institute of Health and Welfare, *Child Protection Australia 2010 – 2011*, available at <http://www.aihw.gov.au/publication-detail/?id=10737421016&libID=10737421015&tab=2>, 35.

¹⁴ *Ibid*, 14, drawing on the seminal work of the Human Rights and Equal Opportunities Commission, 1997, *Bringing them Home, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia.

¹⁵ Commission for Children and Young People and Child Guardian (2012) *Indigenous Child Placement Principle audit report 2010/11*: Brisbane, 33-34.

3. Substantive Issues

SNAICC provides comments and recommendations to the following sections of the Human Rights Action Plan:

- Australia's international human rights commitments;
- the human rights experience of Aboriginal and Torres Strait Islander peoples; and
- the human rights experience of children and young people.

(a) Australia's International Human Rights Commitments and institutional developments

SNAICC is concerned that, in the absence of a national Human Rights Act, Australia's legal and institutional protection of human rights is inadequate, particularly for individuals and communities that are marginalised or disadvantaged. Australia has not incorporated its international human rights obligations comprehensively into domestic law and practice. With Australia's federal political structure, this leaves a fragmented and inconsistent approach and a lack of enforceable remedies for violation.¹⁶ Australia is also yet to become party to a number of important international instruments for human rights protection of Aboriginal and Torres Strait Islander peoples, and for the provision of effective remedies. SNAICC supports recommendations to strengthen human rights instruments and procedures as proposed by the Human Rights Law Resource Centre in *Making Rights Real: A National Human Rights Action Plan for Australia*.¹⁷

Recommendations

R4: The Australian Government work towards fully incorporating its international human rights obligations into domestic law by introducing a comprehensive, judicially enforceable Human Rights Act.¹⁸

¹⁶ Child Rights Taskforce (2011) *Listen to Children*, Child Rights NGO Report, Australia, 1.

¹⁷ Human Rights Law Resource Centre (HRLRC). 2011. *Making Rights Real: A National Human Rights Action Plan for Australia*. Melbourne: HRLRC, 17-19.

¹⁸ *Ibid*, 17.

R5: The Australian Government fully incorporates its obligations under the *United Nations Convention on the Rights of the Child 1989 ('CRC')* into domestic legislation and ensures that all federal, state and territory legislation is fully compatible with the CRC and that effective remedies are available in situations of violation of the rights of the child.¹⁹

R6: The Australian Government develops a plan, with identified actions, timelines and bodies responsible, to ratify the International Labour Organization Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries and to incorporate the provisions into domestic law and policy.²⁰

R7: The Australian Government ratifies the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, and *Optional Protocol 3 to the Convention on the Rights of the Child* (in particular), and incorporate them into domestic law and policy.

R8: The Australian Government implements the Recommendations of United Nations human rights mechanisms and incorporates them within domestic policy and law. In particular, the Government will outline a clear plan to articulate the current status of inclusion of the Articles of the *United Nations Declaration on the Rights of Indigenous Peoples 2007*, and a detailed plan for its full implementation in domestic law and policy. This is supported by a clear recommendation from multiple nations through the Universal Periodic Review of Australia in 2011.²¹

R9: The Australian Government give greater weight to recommendations of the Australian Human Rights Commission, expand its mandate to cover economic, social and cultural rights, and ensure adequate human and financial resources for proper fulfillment of its functions. The strength of this institution is vital in ensuring the monitoring, evaluation, transparency and accountability of this Action Plan, and of human rights in Australia more generally.²²

¹⁹ Child Rights Taskforce, 2011, *Listen to Children*, Child Rights NGO Report, Australia, 1.

²⁰ Consistent with Universal Periodic Review of Australia 2011 Recommendations 86.11 & 86.12, Office of the High Commission of Human Rights. 2011. Draft Report of the Working Group on the Universal Periodic Review on Australia. New York and Geneva, United Nations, 13.

²¹ Recommendation 86.106: *Ibid.*

²² HRLRC (2011) *Making Rights Real: A National Human Rights Action Plan for Australia*. Melbourne: HRLRC, 18.

R10: Draft Action 21 be strengthened to ensure that human rights education has a specific focus on shifting attitudes towards the most discriminated and excluded, and in particular Aboriginal and Torres Strait Islander peoples.

R11: Draft Action 22 is strongly supported by SNAICC, who congratulates the Government on this important action. In order to ensure that the human rights of Aboriginal and Torres Strait Islander peoples are adequately included in its scope, the Plan must also contain an action that the Australian Government will include the UN Declaration on the Rights of Indigenous Peoples, 2007, in the list of core UN human rights treaties that will form the basis of scrutiny for new legislation. Significant efforts will also now be required to ensure proper awareness of the legislation and its implications among law-makers, and proper implementation. The Human Rights Action Plan should also then clearly articulate these steps, with identified actors responsible and time lines for measuring progress.

R12: The Government adopts a human rights-based approach, in particular in relation to laws, policies and procedures to advance Aboriginal and Torres Strait Islander peoples.

(b) Self-determination and consultation

Northern Territory Emergency Response

Concerning Draft Action 65, SNAICC considers it highly inappropriate to include any reference to the Stronger Futures legislation as a demonstration of consultation with Aboriginal and Torres Strait Islander peoples and as a sustainable long term approach. The Stronger Futures Bills directly and indirectly discriminate against Aboriginal and Torres Strait Islander peoples and are a clear example of the absence of a human rights framework within the Government's approach. Its inclusion undermines the Human Rights Action Plan, as reinforced by the condemnation of the Northern Territory emergency Response and its amended versions, by the major relevant international human rights bodies.²³

²³ See positions of relevant human rights bodies in Human Rights Law Centre (2012) Submission to the Senate Community Affairs Legislation Committee, Inquiry into the Stronger Futures in the Northern Territory Bill, available at <http://www.hrlc.org.au/content/stronger-futures-in-the-northern-territory-bill-2011/>, para 5, 2.

In particular, SNAICC notes that the UN Committee on the Elimination of Racial Discrimination urged Australia in 2010 “to guarantee that all special measures in Australian law, in particular those regarding the NTER, are in accordance with the Committee's General Recommendation No. 32 (2009) on the meaning and scope of special measures.”²⁴ It also encouraged the Australian Government “to strengthen its efforts to implement the NTER Review Board recommendations, namely that: it continue to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory; that it reset the relationship with Aboriginal people based on genuine consultation, engagement and partnership; and that Government actions affecting the Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.”²⁵ This position was reinforced by the International Committee on Economic, Social and Cultural Rights in 2009, which among other things, called on the Government to address the human rights violations identified in the 2007 **Little Children are Sacred Report**.²⁶

Recommendations

R13: SNAICC recommends that the Human Rights Action Plan reflect these calls by including the development of a strategy that responds to the **Little Children are Sacred Report**. This plan would be in accordance with fundamental international human rights laws to which Australia is bound, which reflect values to which we are all committed, and based on evidence of effective strategies to resolve deep seated issues within impoverished and excluded communities. It would also then be subject to review by a new Parliamentary Joint Committee on Human Rights to ensure compliance with Australia’s international human rights obligations.²⁷ Of fundamental importance, this must be an empowering process that is led and driven by Aboriginal and Torres Strait Islander people for Aboriginal and Torres Strait Islander people.

²⁴ International Committee on the Elimination of Racial Discrimination (2010) Concluding Observations of the Committee on the Elimination of Racial Discrimination; Australia. New York and Geneva: United Nations, 5 (No. 16).

²⁵ *Ibid.*

²⁶ Ampe Akelyernemane Meke Mekarle ‘*Little Children are Sacred*’ (2007) The Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, available at <http://www.inquirysaac.nt.gov.au/>, (**‘Little Children are Sacred Report’**): International Committee on Economic, Social and Cultural Rights (ICESCR) (2009) Concluding Observations of the Committee on Economic, Social and Cultural Rights; Australia. New York and Geneva: United Nations, 3-4 (No.15).

²⁷ In accordance with the *Human Rights (Parliamentary Scrutiny) Act* 2011 (No.186).

Aboriginal leadership and governance

Aboriginal and Torres Strait Islander leadership is the foundation of the right to self-determination and integral to the realisation of all human rights of Aboriginal and Torres Strait Islander peoples, warranting specific focus in the Human Rights Action Plan.

Recommendations

R14: The Australian Government resource and entrust an Aboriginal and Torres Strait Islander Steering Group of community, state and national leaders to inform the development, planning, implementation and review of each 'Closing the Gap' target. This needs to include a specific group focused on child protection, development and well-being and would sit well within the National Framework Implementation Working Group.

R15: The Australian Government focus on enabling and harnessing the capacity of Aboriginal and Torres Strait Islander organisations and peak bodies for managing Aboriginal and Torres Strait Islander affairs, noting the particular need in the child and family sector.

R16: Given the large Aboriginal and Torres Strait Islander youth population and the importance of youth leadership in contributing to society both now and as our future leaders, the Government provide consistent and targeted support to the development and maintenance of Aboriginal and Torres Strait Islander youth leadership networks and services.

Strong community based and driven services for Aboriginal children and families

A major aspect of self-determination in day-to-day life for Aboriginal and Torres Strait Islander peoples is access to Aboriginal and Torres Strait Islander community driven and based basic services. Community control of early childhood services is a key factor in increasing community and family participation and engagement with services.²⁸ Evidence also indicates that it improves the quality and responsiveness of services,²⁹ and helps to overcome many of the identified barriers to Aboriginal and Torres Strait Islander families accessing services.³⁰

²⁸ Hutchins et al. (2007) "*Indigenous Early Learning and Care*". Australian Research Alliance for Children and Youth (ARACY), 25.

²⁹ Kitson, R. & Bowes, J (2010) 'Incorporating Indigenous ways of knowing in early education for Indigenous children'. *Australian Journal of Early Childhood*. Vol. 35 (4), 85.

³⁰ SNAICC (2011) 'Increasing Aboriginal and Torres Strait Islander access and engagement with child and family services'. FaHCSIA policy paper 3. Melbourne, 2.

Community control in the context of a service to a community means: an incorporated Aboriginal organisation:

- Initiated by a local Aboriginal community;
- Based in a local Aboriginal community;
- Governed by an Aboriginal body which is elected by the local Aboriginal community; and
- Delivering a holistic and culturally appropriate service to the Community which controls it.”³¹

The United Nations Special Rapporteur on the Rights of Indigenous Peoples recently recognised the importance of Indigenous governance for Indigenous focused services following his visit to Australia, stating that: “Relevant government agencies should facilitate greater decision-making power by indigenous people over the design and delivery of government services in their communities.”³²

This was also reinforced by the NSW Ombudsman to the NSW Parliament in a Report *Addressing indigenous disadvantage: the need to do things differently*, October 2011, where he rallied against chronic staffing shortages in high-need locations, a disjointed and poorly targeted approach by government agencies, the rollout of ‘piecemeal’ initiatives combined with weak accountability structures, and the lack of robust community governance and meaningful Aboriginal community participation as major contributors to past failures of Aboriginal policy. The Ombudsman stressed that Aboriginal communities have become frustrated with the imposition upon them of “a multitude of ‘off the shelf’ programs and services, combined with inadequate consideration of how service delivery can be integrated ‘on the ground’.”³³ The Ombudsman highlighted that enhancing the capability of the Aboriginal service sector is an essential component of delivering services which are tailored to the specific needs of Aboriginal communities. The importance of the expansion of alternative models of service delivery for Indigenous focused Early Childhood Education and Care (**‘ECEC’**) services and the development

³¹ National Aboriginal Community Controlled Health Organisation (NACCHO) definition accessible at <http://www.naccho.org.au/definitions/communitycont.html>.

³² Recommendation 93 of United Nations Special Rapporteur on the Rights of Indigenous Peoples. 2010. *The Situation of Indigenous Peoples in Australia*. New York and Geneva: United Nations.

³³ NSW Ombudsman (2011) *Addressing Indigenous Disadvantage: the need to do things differently*. Sydney, NSW Ombudsman, 4.

of new models based on community drive and engagement was also recognised recently by the Productivity Commission.³⁴

Indigenous focused ECEC services have suffered significant barriers to effective service delivery and even operational survival for many years, ranging from infrastructure and workforce development to resources. Significant difficulties services faced in 2000³⁵ were exacerbated during the following decade. This was highlighted by the Australian National Audit Office Report in 2010 which found that budget-based funding levels have remained much the same despite an increase in the number of Aboriginal and Torres Strait Islander children and demand for Indigenous childcare services over the last 20 years.³⁶ In particular, the report stated:

“between 1986 and 2006, ABS Census data indicates that the number of Indigenous children aged four and under increased from 31852 to 55566.³⁷ In remote and very remote areas the number of Indigenous children aged four and under increased by 24 per cent between 1986 and 2006 to around 16,500 children. Over this same period the number and allocation of MACS and crèches has remained largely unchanged, with the exception of additional crèches funded as part of the Northern Territory Emergency Response (NTER).”³⁸

The current establishment of 38 integrated Children and Family Centres³⁹ across Australia offers a prime opportunity to respond to these issues, build on evidence of what works and support community based and driven services for Aboriginal and Torres Strait Islander children and families. While the foundations are there however, there has been increasing uncertainty

³⁴ Productivity Commission (2011) Early Childhood Development Workforce Draft Research Report. Melbourne: Commonwealth of Australia, accessible at <http://www.pc.gov.au/projects/study/education-workforce/early-childhood/draft>, see in particular Finding 14.3 and Chapter 14.

³⁵ See Debbie Bond, *Multifunctional Aboriginal Children's Services National Report* (2000) Secretariat of National Aboriginal and Islander Child Care, 146 – 156 and Secretariat of National Aboriginal and Islander Child Care, *One Time – NAJAC Justice Summit National Community Controlled Organisations* (Briefing Paper, 2003) available online at http://www.snaicc.asn.au/policy/default_news_resources.cfm?loadref=64 at 28 July 2009, 14.

³⁶ Australian National Audit Office 2010, 18 & 44.

³⁷ Australian Bureau of Statistics, Census, 1986 and 2006.

³⁸ Australian National Audit Office 2010, 18.

³⁹ Being developed as part of the Council of Australian Governments reforms to close the gap in Indigenous disadvantage. They are the major initiative under the National Partnership Agreement on Indigenous Early Childhood Development to contribute to important outcomes for early childhood, namely that Indigenous children are born and remain healthy; that Indigenous children have the same health outcomes as non-Indigenous children; that Indigenous children acquire the basic skills for life and learning; and that Indigenous families have ready access to suitable and culturally inclusive early childhood and family support services.

around the extent to which these Centres will be set up to be community controlled, to work with existing Aboriginal services and to have the capacity to respond to the different needs of communities.

Recommendations

R17: The Australian Government ensure choice for families between adequate, accessible, available and adaptable Aboriginal and Torres Strait Islander services and mainstream services.

R18: The Australian and State Governments provide a 30% increase to Aboriginal and Torres Strait Islander budget-based funded early childhood education and care services.

R19: The Australian Government transition all budget based funded early childhood education and care services from a single year funding model to a more flexible and multiple year funding model, in line with recommendations by the Australian National Audit Office⁴⁰ and the Productivity Commission.⁴¹ This will allow services to more adequately plan for the future and better respond to localised needs.

R20: The Australian Government returns the new federally established Children and Family Centres to their original mandate to serve and respond to the needs of particularly vulnerable Aboriginal and Torres Strait Islander families. This would require specification that the Centres are required to be Aboriginal and Torres Strait Islander community controlled.

R21: The Australian Government commits to support the Children and Family Centres for at least the next 10 years on the basis of a sustainable funding model for vulnerable Aboriginal and Torres Strait Islander families.

R22: The Government support innovative community driven, place based service models to respond to needs of impoverished children and families.

⁴⁰ Australian National Audit Office (2010) *Multifunctional Aboriginal Children's Services (MACS) and Creches*. ANOA Audit Report No.8. Attorney-General's Department, Commonwealth of Australia, 42.

⁴¹ Productivity Commission (2011). Early Childhood Development Workforce Draft Research Report, Commonwealth of Australia, Melbourne, accessible at <http://www.pc.gov.au/projects/study/education-workforce/early-childhood/draft>, 371.

See also: Recommendations 32 - 33 on workforce development issues below.

Support for partnerships in service development and delivery

Australian Government policy frameworks recognise that strong partnerships are required to promote access to services and positive outcomes for Aboriginal and Torres Strait Islander children and families. The *National Framework for Protecting Australia's Children 2009-2020* asserts that 'to provide culturally appropriate responses, strategies under the National Framework must be based on partnerships between Indigenous families and communities, and between Indigenous agencies, mainstream service providers and governments.'⁴² A genuine partnership approach can enable the right to self-determination by developing the capacity of Aboriginal and Torres Strait Islander agencies to lead the design and delivery of services, while increasing the choice of culturally-appropriate services available to families.

While broad level policies have supported partnership approaches, there has been limited government action to implement practical measures to support and enable genuine partnerships between Aboriginal and Torres Strait Islander agencies, mainstream service providers and Government for service delivery. The implementation of partnership frameworks that support respectful relationships, and include a focus on capacity development for Aboriginal and Torres Strait Islander agencies and cultural competence development for mainstream service providers is needed. SNAICC has developed a framework for genuine partnership development that could inform this approach.⁴³

Recommendations

R23: The Australian Government will integrate a partnership framework⁴⁴ into all Government service contracts and tenders to require a genuine partnership with an appropriate Aboriginal and Torres Strait Islander service for any service provision targeted at Aboriginal and Torres Strait Islander peoples.

⁴² Council of Australian Governments (2009) *Protecting Children is Everyone's Business: National framework for protecting Australia's children 2009-2020*. Canberra: Commonwealth of Australia, 28.

⁴³ SNAICC (2012) *Opening Doors through Partnerships: Practical approaches to developing genuine partnerships that address Aboriginal and Torres Strait Islander Community Needs*, forthcoming.

⁴⁴ *Ibid.*

R24: The Australian Government will undertake a nationwide audit of child and family service provision by Aboriginal and Torres Strait Islander agencies, identifying resource, organisational, geographical and sector capacity gaps. Strategies will be developed to build the capacity of Aboriginal and Torres Strait Islander organisations to address gaps, including through innovative partnership-based approaches.⁴⁵

A National Aboriginal and Torres Strait Islander Deputy Children’s Commissioner

See Recommendation 80 below.

(c) Provision of Basic Services

SNAICC refers to serious repeated concerns expressed by the UN Committee on the Elimination of Racial Discrimination about the “extent of the continuing discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights.”⁴⁶ In 2005 the Committee called on the Government to “intensify its efforts to achieve equality in the enjoyment of rights and allocate adequate resources to programmes aimed at the eradication of disparities. It recommends in particular that decisive steps be taken to ensure that a sufficient number of health professionals provide services to indigenous peoples, and that the State party set up benchmarks for monitoring progress in key areas of indigenous disadvantage.”⁴⁷ It reiterated this recommendation in 2010, where it also recommended that all initiatives and programmes in this regard ensure the cultural appropriateness of public service delivery and seek to reduce indigenous socio-economic disadvantage while advancing indigenous self-empowerment.⁴⁸

The UN Committee on the Convention on the Rights of the Child has also stressed the need for further prioritising of budgetary allocations so as to ensure considerable improvement in the standard of living, health and education in particular of disadvantaged groups, such as

⁴⁵ Particular reference is suggested to the approach taken by the Aboriginal Child, Family and Community Care Secretariat and the Association of Children’s Welfare Agencies in New South Wales, supported by the New South Wales Department of Families and Community Services, to build the capacity of Aboriginal out-of-home care services through facilitated partnerships between mainstream service providers and Aboriginal communities and organisations.

⁴⁶ International Committee on the Elimination of Racial Discrimination (ICERD) (2010) Concluding observations of the Committee on the Elimination of Racial Discrimination; Australia. New York and Geneva: United Nations, also echoed in ICERD findings in 2000 and 2005.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

indigenous children, “to the maximum extent of... available resources.”⁴⁹ As the Committee highlighted, sustainable progress lies in ensuring access to adequate, quality, culturally accessible services, including social and health services and education.⁵⁰

Australia’s international human rights obligations require essentially that services provided are accessible, available, acceptable and adaptable.⁵¹

- Availability requires a system for the provision of services and the provision of a sufficient number of functioning services (with adequate infrastructure, teachers and materials, programmes etc).
- Accessibility of services requires services which are accessible to everyone, without discrimination. The Government must take positive steps to include the most marginalised, ensuring affordability, physical reach of services, information about services and overcoming other obstacles in practice which inhibit access to services by the most vulnerable groups such as Aboriginal and Torres Strait Islander children.
- Acceptability requires that programmes are relevant, culturally appropriate and of good quality. This includes curricula and teaching methods in education.
- Adaptability requires that services are responsive to the local community, adapted locally to suit the specific context.

SNAICC will focus recommendations on its area of focus for these services, early childhood education and care (**‘ECEC’**).

National Quality Standards

The National Quality Framework (**‘NQF’**), jointly developed by the Australian Government, states and territories through COAG, forms part of a broader agenda to reform education, skills and early childhood development in Australia. It commenced in a staggered approach to some

⁴⁹ ICERD, 2005. Concluding observations of the Committee on the Elimination of Racial Discrimination; Australia. New York and Geneva: United Nations, CRC/C/15/Add.268.

⁵⁰ *Ibid.*

⁵¹ See for example Right to Health, Article 12 International Covenant on Economic, Social and Cultural Rights, 1966; Article 24(1) Convention on the Rights of the Child; Article 24 UN Declaration on the Rights of Indigenous Peoples: *The Committee on Economic, Social and Cultural Rights, The right to the highest attainable standard of health*, General Comment No. 14 (2000), E/C.12/2000/4, 11 August 2000; *The UN Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Art.13)* (E/C.12/1999/10), 8 December 1999.

early childhood education and care services in January 2012, aiming to ‘build a high quality, integrated quality system including accreditation, for early learning and care that takes account of setting, diversity of service delivery, and the age and stage of development of children’.⁵² The NQF will introduce new National Quality Standards (**‘NQS’**) and a new ratings system with which services will need to comply. The NQS will not apply to the Aboriginal and Torres Strait Islander services, a fact which the Productivity Commission has warned is only likely to exacerbate the gap between the quality of mainstream services and Aboriginal and Torres Strait Islander services.⁵³

Recommendations

R25: The Australian Government develop a plan with time specific targets for the inclusion of Aboriginal and Torres Strait Islander early childhood education and care services within the National Quality Framework prior to the 2014 review, including additional funding for capacity building to ensure they can meet the quality standards under the National Quality Framework. As stated by the Productivity Commission, this requires a structured plan with agreed targets and additional funding to ensure the necessary support to enable their compliance.⁵⁴

Support for access to Aboriginal and Torres Strait Islander ECEC services

Recommendations

In addition to Recommendations 17-24 above,

R26: The Australian Government supports programs for community buses with capacitated outreach workers to enable vulnerable children to regularly attend ECEC services, to collect children from families experiencing difficulties and to build relationships with families.

Cultural competence

Significant research identifies cultural proficiency as one of the key areas for increasing service engagement for Aboriginal and Torres Strait Islander children and families.⁵⁵ Barriers that

⁵² Early Development Steering Committee (2009) *National Quality Standards for Early Childhood Education and Care and School Age Care*, Council of Australian Governments (COAG).

⁵³ Productivity Commission (2011) *Early Childhood Development Workforce Report*, Commonwealth of Australia, 345.

⁵⁴ *Ibid*, 364.

⁵⁵ Flaxman et al (2009) *Indigenous families and children: coordination and provision of services: Stronger Families and Communities Strategy 2004-2009*, National Evaluation Consortium, Social Policy Research

prevent families from accessing children and family services include: a lack of transport; prohibitive fees; burdensome or inappropriate administrative requirements; inflexibility in service provision; perceived cultural inappropriateness of the service; fear of Aboriginal culture being undermined; being judged negatively; a sense of shame; fear of racism towards families or their children; lack of Aboriginal and Torres Strait Islander staff or other service users; and negative associations with institutions and government services, including that their children might be removed from them.⁵⁶

A culturally competent or proficient service responds to the majority of these barriers. Cultural competence is 'a set of congruent behaviours, attitudes, and policies that come together in a system, agency or among professionals to work effectively in a cross-cultural situation.'⁵⁷ It represents an ongoing process, or scale of attitudes, behaviours and policies that range from what is described as culturally destructive through to culturally proficient.⁵⁸

A wealth of anecdotal evidence demonstrates that a culturally safe service that supports and nurtures cultural identity and language can potentially increase access to and engagement with services, leading to improved education, health and wellbeing outcomes for Aboriginal and Torres Strait Islander children.⁵⁹

Recommendations

R27: The Government includes, consistent with recent recommendations of the Productivity Commission, a strong and measurable definition of cultural competence in the National Quality

Centre, University of New South Wales and the Australian Institute of Families Studies, 10; Trigwell J, *Child Care Models and Options in Rural and Remote Indigenous Communities*, 2000, Western Australian Council of Social Service, Department of Family and Community Services, 7.

⁵⁶ *Ibid*; Trudgett, M. & Grace, R. (2011). 'Engaging with early childhood education and care services: The perspectives of Indigenous Australian mothers and their young children'. *Kulumun Indigenous Online Journal*. Vol. 1, 17.

⁵⁷ Tong C. and Cross T. (1991) *Cross Cultural Partnerships for Child Abuse Prevention with Native American Communities*. Northwest Indian Child Welfare Institute. Portland, Oregon, 12

⁵⁸ Victorian Aboriginal Child Care Agency (VACCA) (2010). *Building Respectful Partnerships: The commitment to Aboriginal cultural competence in child and family services*. Melbourne: VACCA, 23.

⁵⁹ Kitson, R. & Bowes, J. (2010) 'Incorporating Indigenous ways of knowing in early education for Indigenous children'. *Australian Journal of Early Childhood*. Vol. 35 (4), 82; Sims. (2011). Early childhood and education services for Indigenous children prior to starting school'. Closing the Gap Clearinghouse, Australian Government. Resource sheet no. 7.

Standards for ECEC services and the accompanying service assessment tools to ensure that all services that serve Aboriginal and Torres Strait Islander children are culturally competent.⁶⁰

R28: The Australian Government mandates the inclusion of cultural competence standards within service contracts, tenders, training and regulatory requirements (state level) for all child and family service providers, again to ensure that all services that serve Aboriginal and Torres Strait Islander children are culturally competent.

R29: The Australian Government ensures that regulatory bodies have strong cultural competence and provide proper assessment and monitoring of cultural competence of ECEC services, and child and family service providers.

R30: The Australian Government conducts a thorough review of all relevant policies to ensure culturally appropriate service development and delivery for Aboriginal and Torres Strait Islander children and families.

R31: The Australian Government conducts cultural awareness training for all government staff managing service contracts where funded services are provided to Aboriginal and Torres Strait Islander children and families. This should form part of broader departmental and government-wide approaches to developing cultural competence.

R32: In accordance with the recent Productivity Commission Report (2011),⁶¹ The Australian Government will work with states and territories to develop and resource a workforce development plan which aims to ensure the cultural competence of all staff in mainstream support service providers which service Aboriginal and Torres Strait Islander children and families within each state and territory. SNAICC recommends inclusion of staff and service cultural competence within the National Analysis of workforce trends and approaches impacting on Australia's child protection workforce project that FaHCSIA is currently undertaking as a first step to this process.

⁶⁰ Productivity Commission (2011) *Early Childhood Development Workforce*, Research Report, Melbourne, Recommendation 14.2, 369.

⁶¹ *Ibid*, Recommendation 14.8.

R33: The Australian Government incorporate the recommendations of the Productivity Commission Report on Early Childhood Workforce Development in relation to increasing the Aboriginal and Torres Strait Islander workforce, and better supporting their retention. This includes Recommendations 14.4 – 14.6, detailed below.⁶²

- As part of the broader Early Years Development Workforce Development Strategy agreed by COAG, governments should work together to develop a coordinated workforce strategy that builds on workforce plans in each jurisdiction, so that priority is given to placing suitably qualified staff in Indigenous-focused services. This should include a specific plan to build the Indigenous ECEC workforce.
- ECEC services should consider offering more flexible employment arrangements such as access to additional leave with adjusted pay arrangements for legitimate absences, to attract and retain Indigenous staff.
- VET and higher education institutions should apply student-centred design principles to the design and delivery of courses for Indigenous students. Sufficient resources must be provided to ensure Indigenous students are suitably supported through their training.

(d) Closing the Gap

The Closing the Gap initiative provides significant attention to redressing disadvantage by Aboriginal and Torres Strait Islander peoples. SNAICC is concerned however that the *process* to reach each target does not give sufficient weight and attention to ensure sustainable long term solutions which redress the causes of disadvantage. SNAICC highlights the pertinent position of the Special Rapporteur on the Rights of Indigenous Peoples in 2010 that:

Aboriginal and Torres Strait Islander peoples should be fully consulted about all initiatives being developed to overcome indigenous disadvantage, including the national partnership agreements, at the earliest stages of the design of those initiatives. In particular, adequate options and alternatives for socio-economic development and violence prevention programmes should be developed in partnership with affected indigenous communities.⁶³

⁶² Ibid, pp. liv – lv, and 356 – 363, and 373 – 375.

⁶³ Recommendation 92 of United Nations Special Rapporteur on the Rights of Indigenous Peoples. 2010. The Situation of Indigenous Peoples in Australia. New York and Geneva: United Nations.

Particularly within the SNAICC mandate is the 'Closing the Gap' target that all Aboriginal and Torres Strait Islander 4 year olds in remote communities have access to quality early childhood education by 2013. SNAICC has serious concern that the body tasked with measuring progress towards 'Closing the Gap' targets reported on 2011 that there is no comprehensive source of data on Indigenous preschool participation and thus it is difficult to draw conclusions about participation rates.⁶⁴ SNAICC also notes with concern that this body also confirmed in the Key Indicators Report 2011 that "despite ongoing improvements in data collections, for one third of the indicators in this edition adequate data were not available to measure changes over time."⁶⁵

Recommendations

R34: The Australian Government resource and entrust an Aboriginal and Torres Strait Islander Steering Group of community, state and national leaders to inform the development, planning, implementation and review of each 'Closing the Gap' target. This needs to include a specific group focused on child protection, development and well-being and sits well within the National Framework Implementation Working Group.

R35: The Government reviews and adapts the strategies for obtaining each 'Closing the Gap' target to apply a human rights based approach to implementation and commits adequate funds to achieve the set targets.

R36: The Australian Government continues and enhances efforts to obtain accurate data to measure the status and progress on all 'Closing the Gap' targets.

R37: The Australian Government increases its support for and enables Aboriginal and Torres Strait Islander community controlled pre-school services.

R38: The Closing the Gap targets on early childhood education focus on attendance and outcomes rather than just enrolment, which can be misleading.

⁶⁴ Gary Banks, Chairman, p. iii, Steering Committee for the Review of Government Service Provision, 2011, Report and Overview, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Commonwealth of Australia, Melbourne. Available at http://www.pc.gov.au/data/assets/pdf_file/0010/111610/key-indicators-2011-overview-booklet.pdf, 18.

⁶⁵ *Ibid*, Gary Banks, Chairman, p. iii.

See also: Recommendations 32 – 33 above on workforce development.

(e) Education

Transition to school

Transition to school is an early critical point at which inclusion/exclusion is experienced which tends to govern experience of school throughout youth. Evidence indicates that ensuring that children transition well has significant impact on opportunities and development in life. The Productivity Commission in this regard recently found, for example, that “Ongoing support for Indigenous children is necessary as they make the transition to formal schooling to ensure the benefits they gain from ECEC are maintained as they advance through the education system.”⁶⁶ Inadequate investment in transition to school support has the potential to have far-reaching impact on education for Aboriginal and Torres Strait Islander children.

Recommendations

R39: The Australian Government promoting cultural competence in schools through the inclusion of strong compulsory components on Aboriginal and Torres Strait Islander cultural competence in tertiary teaching education curriculum. A tender for the development of the curriculum would need to involve at least a partnership with an Aboriginal and Torres Strait Islander organisation.

R40: The Australian Government supports a new, specific transition to school program for Aboriginal and Torres Strait Islander early childhood education and care services, and other services with a high number of Aboriginal and Torres Strait Islander children. Such a program should be based on current best practice in supporting transition to school for Aboriginal and Torres Strait Islander children,⁶⁷ and be based on a three-pronged approach of:

- preparing children for school;
- preparing schools for children; and
- supporting family and communities before, during and after the transition.

⁶⁶ *Ibid*, Finding 14.4, 371.

⁶⁷ See for example Dockett et al. (2010) *School readiness: what does it mean for Indigenous children, families, schools and communities?*. Issues paper no. 2. Closing the Gap Clearinghouse. Australian Government; Sims (2011) *Early childhood and education services for Indigenous children prior to starting school*. Closing the Gap Clearinghouse, Australian Government. Resource sheet no. 7.

Primary and secondary education

The National Human Rights Consultation Committee “recommends that education be the highest priority for improving and promoting human rights in Australia,”⁶⁸ and yet just one action within the Plan is devoted specifically to the education of Aboriginal and Torres Strait Islander peoples in Australia. *Draft Action 74* provides that Governments will implement the *Aboriginal and Torres Strait Islander Education Action Plan 2010 – 2014 (‘ATSIEAP’)*, which is not a new action to address the realisation of the right to educational for Aboriginal and Torres Strait Islander peoples, but a Plan in place for two years, with room for improvement.

In its stated attempt to improve outcomes in six priority domains: readiness for school; engagement and connections; attendance; literacy and numeracy; leadership, quality teaching and workforce development; and pathways and real post-school options,⁶⁹ the ATSIEAP focuses on changing the child to fit the school. Following on from the recommendations by the Western Australian Aboriginal Education and Training Council (**‘WAAETC’**) for the ATSIEAP,⁷⁰ SNAICC supports the proposal to add the following priorities which align with and compliment the current priorities:

- schools’ readiness for Aboriginal and Torres Strait Islander Students;
- schools engaging and connecting with Aboriginal and Torres Strait Islander communities;
- culturally safe learning environments;
- Affirming Aboriginal and Torres Strait Islander Identities (Literacy in Aboriginal languages, cultures and histories);
- Aboriginal leadership in communities and a quality Aboriginal workforce;
- Aboriginal cultural competencies; and
- mentoring and personal capacity building of Aboriginal and Torres Strait Islander students.

⁶⁸ The National Human Rights Consultation Committee. 2009. National Human Rights Consultation Report. Canberra: Commonwealth of Australia, Recommendation 1, xxix.

⁶⁹ Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA). 2009. Aboriginal and Torres Strait Islander Education Action Plan 2010-2014. Melbourne: MCEECDYA, 5.

⁷⁰ Western Australian Aboriginal Education and Training Council (WAAETC) (2010) Submission to the Indigenous Education Action Plan. Western Australia: WAAETC.

SNAICC commends the ATSIEAP in its recognition of the necessity for culturally appropriate and inclusive curriculum and workforce, the inclusion of Aboriginal and Torres Strait Islander people in all levels of decision making and the value of Aboriginal and Torres Strait Islander people working at all levels throughout the education system. SNAICC also welcomes the realisation expressed within the ATSIEAP that *“a sense of cultural and linguistic identity, and the active recognition and validation of Aboriginal and Torres Strait Islander cultures and languages by schools, is critical to student wellbeing and success at school.”*⁷¹ Although these recognitions and the desired outcomes stated within the ATSIEAP are encouraging, the ATSIEAP fails to specify exactly how they will be achieved.

This critical link within the ATSIEAP between cultural and linguistic identity and Aboriginal and Torres Strait Islander student success and well-being is in direct opposition to many policies and actions taking place ‘on-the-ground’ across Australia. Specifically, this includes:

- the deliberate ‘scaling back’ of Aboriginal Homelands through the concentration of services in and funding to promote the growth of ‘hub’ towns;
- the Northern Territory Government’s ‘Compulsory teaching in English for the first four hours of each school day’ policy (2009); and
- the linking of funding to the abidance to this policy leading to the eradication of many successful ‘Both-ways’ and bilingual schools and curriculums.

Mandawuy Yunupingu, an influential Yolngu pedagogue who has had much input into the successful ‘Both-ways’ curriculum and philosophy, notes that successful bicultural education is about investing in students a “double-power” to be literate in both the dominant Western culture and their own knowledge system.

The Department of Regional Australia, Local Government, Arts and Sport’s *National Indigenous Languages Policy* expresses the Government’s commitment to addressing the serious problem of language loss in Indigenous communities. It also recognises “the centrality of language to stong Indigenous culture, and the broader social benefits of functional and resilient families and

⁷¹ Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA). 2009. *Aboriginal and Torres Strait Islander Education Action Plan 2010-2014*. Melbourne: MCEECDYA; 6.

communities (and its benefits) to the overall well-being of Indigenous communities.”⁷² This commitment needs to be reflected and incorporated within the national education policy and effectively implemented in each state and territory. Research by Orhan Agirdag warns that “when students have to leave their primary language at the school gates, they also leave a part of their cultural identity behind.”⁷³ Cummins also notes: “To reject a child’s language in the school is to reject the child.”⁷⁴ Therefore, educators must try to close the gap between language learners’ identities, which are intrinsically tied to language, and the school culture and in turn will have great affect on attendance, engagement and outcomes.

The identification of ‘focus schools’ with the EAP that will be targeted for “monitoring and taking action” in order for Ministers to “be assured that the benefits of national reforms are reaching Aboriginal and Torres Strait Islander students”⁷⁵ is worrying. It creates a risk that other schools, in particular Homeland Learning Centers, and in turn their Aboriginal and Torres Strait Islander students, will be overlooked. A major concern of the Human Rights Action Plan is the absence of any attempt to address the right to education of Aboriginal and Torres Strait Children living in Homelands. It is now widely accepted *“that Aboriginal people living their traditional lives in Homelands tend to have better physical health than those living in towns. There are significantly lower incidences of diabetes, heart disease and chronic kidney failure. Additionally, general overall well-being is believed to be appreciably better.”*⁷⁶

Recommendations

R41: The Australian Government addresses the need for education to be available, accessible, acceptable and adaptable for all Aboriginal and Torres Strait Islander children, together with the input and participation of their community and under instruction and control of quality Aboriginal and Torres Strait Islander educators and leadership.

⁷² Department of Regional Australia, Local Government, Arts and Sport (2010) National Indigenous Languages Policy. Canberra: Commonwealth of Australia.

⁷³ Agirdag (2009) All Languages Welcomed Here, *Educational leadership*: 66 (7), 21.

⁷⁴ Cummins (2001) Language, Power and Pedagogy: Bilingual children in the crossfire. Artarmon: Multilingual Matters Ltd, 19.

⁷⁵ Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA). 2009. Aboriginal and Torres Strait Islander Education Action Plan 2010-2014. Melbourne: MCEECDYA, 6.

⁷⁶ Menzies School of Health Research in Concerned Australians. 2001. Children of the Intervention: Aboriginal Children Living in the Northern Territory of Australia, A Submission to the UN Committee on the Rights of the Child. Concerned Australians.

R42: The Australian Government develops clear ways to produce accurate national data on Aboriginal and Torres Strait Islander school-age children in remote areas to assess whether the existing education infrastructure and services meet the needs of Aboriginal and Torres Strait Islander peoples living in remote areas. Wherever the school provision does not meet the populations' needs, the Government develop an adequate national plan to improve the educational system for Aboriginal and Torres Strait Islander peoples, *including in remote areas*.⁷⁷

R43: The Australian Government ensure equal educational opportunities in remote areas – not just in the 'focus schools', and including Aboriginal homelands, in accordance with recommendations contained in the 2008 Social Justice Report.⁷⁸

R44: The Australian Government develop a plan to include Aboriginal and Torres Strait Islander perspectives as a strong voice within the *National Curriculum*, ensuring that all young Australians have the opportunity to learn about, acknowledge and respect the language and culture of Aboriginal people and Torres Strait Islanders. This curriculum must be written in partnership with respected Indigenous Educators and leaders in conjunction with independent, Aboriginal and Torres Strait Islander controlled organisations.

R45: The Australian Government ensure the availability of quality, well supported, and well funded bilingual and Both-ways education as an option for Aboriginal and Torres Strait Islander families and children throughout Australia through adequate resourcing, infrastructure and programmes.

R46: The Australian Government adequately reflect the emphasis on Aboriginal and Torres Strait Islander languages preservation in adequate funding and inclusion in national and state and territory education policies for the teaching of, and in, Aboriginal and Torres Strait Islander languages.

⁷⁷ UN Committee on Economic, Social and Cultural Rights (CESCR) (2009) Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant. New York and Geneva: CESCR.

⁷⁸ Human Rights and Equal Opportunity Commission (HREOC) (2000) Education Access: National Enquiry into Rural and Remote Education. Sydney: Australian Human Rights Commission, 60.

R47: The Northern Territory government reform its policy that schools be conducted in English only for the first four hours of each school day.

R48: The Australian Government, in partnership with state and territory Governments, develop a workforce development plan to expand and strengthen the Aboriginal and Torres Islander education workforce, as required based on a needs assessment of requirements under the proposed policy, with clear targets and indicators. The plan also needs to redress cultural competence, knowledge and skills of the non-Indigenous education workforce.

R49: the Australian Government ensure adequate resources for quality Aboriginal and Torres Strait Islander community controlled schools (for example Yirrkala Community School and it's Homeland Learning Centers) to further their programs and promote them as best practice in the establishment of other community controlled schools.

(f) Housing

As detailed in the Baseline Study, lack of adequate housing and prevalent homelessness continue to be major problems that exacerbate the serious human rights issues impacting Aboriginal and Torres Strait Islander peoples. In 2008, overcrowding rates for Aboriginal and Torres Strait Islander peoples (27.5%) were almost 5 times those for non-Indigenous peoples (5.7%).⁷⁹

The impact of overcrowding, poor housing and homelessness for children and youth have been well-documented in recent years, but endemic concerns remain. As clearly articulated in the Little Children are Sacred Report:

The shortage of Indigenous housing in remote, regional and urban parts of the Territory is nothing short of disastrous and desperate. The present level of overcrowding in houses has a direct impact on family and sexual violence, substance abuse and chronic illness, and results in devastating outcomes in terms of education and employment. It is estimated that the Territory

⁷⁹ Steering Committee for the Review of Government Service Provision (2011) *Overcoming Indigenous Disadvantage. Key Indicators 2011. Report*. Available at http://www.pc.gov.au/data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf, section 9.1/9.4.

needs a further 4000 dwellings to adequately house its present population. Into the future, more than 400 houses will be needed each year for 20 years to keep pace with the demand.

The UN Special Rapporteur on Adequate Housing reported following his visit to Australia in 2006:

The Indigenous communities in both urban and rural areas in all States visited, are facing a severe housing crisis. This is occurring with respect to the unaffordability, the lack of appropriate support services, the significant levels of poverty and the underlying discrimination. Most disturbing is the absence of adequate and comprehensive participation processes for Indigenous communities in decision-making forums, resulting in some cases in culturally inadequate solutions.⁸⁰

Improvement in issues around the protection, wellbeing and development of Aboriginal and Torres Strait Islander children is certainly dependent on adequate, available, appropriate housing, particularly in remote areas. The issue is not upscaling resources necessarily, but a human rights approach to how resources are spent.

Recommendations

R50: Draft Action 73 concerns the Australian Government's commitment to address the significant level of housing need in remote Indigenous communities. SNAICC recommends that this Action explicitly set out the actions to be undertaken under the National Partnership Agreement on Remote Indigenous Housing and the Implementation Plan it refers to, specifying how the \$478.971 million for 2012-2013 has been allocated, who will be responsible for expenditure, and the performance indicators against which progress is being measured, as set out in the Agreement. A human rights-based framework should be used to develop the strategies, process and specific actions in the Implementation Plan.

R51: The Australian Government engages a human rights based approach to housing needs and supports localised community development programs with Aboriginal and Torres Strait Islander communities developing and implementing strategies to improve housing in targeted communities.

⁸⁰ United Nations Special Rapporteur on adequate housing Mission to Australia, 2006 – Preliminary observations, 7 in *Ibid*, 195.

(g) Disability

The invisibility of human rights issues impacting Aboriginal and Torres Strait Islander peoples with a disability remains a major concern. As reported by the Aboriginal Disability Network of NSW:

The high prevalence of disability, approximately twice that of the non-indigenous population [when excluding mental disability],⁸¹ occurs in Aboriginal and Torres Strait Islander communities for a range of social reasons, including poor health care, poor nutrition, exposure to violence and psychological trauma (e.g. arising from removal from family and community) and substance abuse, as well as the breakdown of traditional community structures in some areas. Aboriginal people with disability are significantly over-represented on a population group basis among homeless people, in the criminal and juvenile justice systems⁸², and in the care and protection system (both as parents and children).^{83 84}

While recent efforts have been made to strengthen attention to issues affecting people with a disability, Aboriginal and Torres Strait Islander peoples face multiple layers of discrimination. Limiting the response to a health perspective has rendered invisible the social aspects of Aboriginal disability and left barriers that discriminate against Aboriginal people with disability firmly entrenched.⁸⁵ The barriers discussed above concerning mainstream service accessibility are particularly pronounced here, yet there still remain very few Indigenous specific disability services, or non-Indigenous disability services with Aboriginal staff.

⁸¹ Commonwealth Steering Committee for the Review of Government Service Provision *Overcoming Indigenous Disadvantage Key Indicators 2005 Report*. Page 3.6.

⁸² Aboriginal people are 11 times more likely to be imprisoned than other Australians. Source: *Overcoming Indigenous Disadvantage Key Indicators 2005; Steering Committee for the Review of Government Service Provision*. There is no empirical evidence to quantify the number of Aboriginal people with disability in particular with intellectual disability and mental illness in the criminal justice system. The prevalence of intellectual disability for instance in the prison population is often contested with wide variation in percentages. However a report by the Law Reform Commission published in 1996 entitled *People with an Intellectual Disability and the Criminal Justice System* noted that 12-13% of the prison population were people with an intellectual disability.

⁸³ *Overcoming Indigenous Disadvantage Key Indicators 2005; Steering Committee for the Review of Government Service Provision* states 'The rate of children on care and protection orders (for a combination of all states and territories except NSW) was five times higher for indigenous children (20 per 1000 children in the population aged 0 – 17 years) than for non-indigenous children (4 per 1000 children). Pg 9.5.

⁸⁴ Aboriginal Disability Network of NSW, *Telling it Like It is: A report on community consultations with Aboriginal people with disability and their associates throughout NSW, 2004-2005, 2007*, Aboriginal Disability Network of New South Wales Incorporated, 1.

⁸⁵ *Ibid*, 2.

Recommendations

R52: The Australian Government develops, in close consultation with Aboriginal and Torres Strait Islander and Disability peak organisations, separate, clear and focused indicators for Aboriginal and Torres Strait Islander peoples who are experiencing a disability in the National Disability Strategy implementation plan for 2011 - 2014.

R53: The Australian government establish an adequately resourced program for early intervention programs for Aboriginal and Torres Strait Islander early childhood education and care services or services with high numbers of Aboriginal and Torres Strait Islander children, to raise awareness, assist diagnosis and ensure supports for Aboriginal and Torres Strait Islander children who are experiencing a disability and their families.

R54: The Australian Government resource an Aboriginal and Torres Strait Islander organisation to develop culturally appropriate resources and training for services to respond to priority needs of Aboriginal and Torres Strait Islander children experiencing a disability.

R55: The Government increase support for in-home support services to support families that are supporting a person with a disability.

(h) The Stolen Generations and stolen wages

SNAICC continues to advocate for a National Compensation Tribunal, as recommended in the *Bringing Them Home* report. SNAICC notes the concern expressed by various International human rights bodies about the failure of the Australian Government to provide proper compensation to children unfairly removed from their families and the parents of those children.⁸⁶

SNAICC supports the establishment of the Healing Foundation and the critical work it is tasked with. However, SNAICC notes that to be forward looking, the Human Rights Action Plan should

⁸⁶ The Report of the UN Committee on the Elimination of Racial Discrimination on its review of Australia in 2000, A/55/18 (or CERD/C/304/Add.101; Committee on Human Rights in its report on Australia, 2000 and 2009; Recommendation 86.97, Universal Periodic Review of Australia 2011, Office of the High Commission of Human Rights (2011) Draft Report of the Working Group on the Universal Periodic Review on Australia. New York and Geneva, United Nations, 13.

provide for the sustainability and adequate resourcing of the Healing Foundation to enable it to fulfil its functions.

Recommendations

R56: The Australian Government commit to adequate long term resourcing of the Healing Foundation to enable it to fulfil its functions.

R57: The Australian Government appoint a taskforce with a majority of Aboriginal and Torres Strait Islander members to identify possible models for compensation for the Stolen Generations.

(i) Freedom from discrimination

Northern Territory Emergency Response

Recommendations

R58: Draft Action 81: SNAICC recommends the inclusion of the elements of special measures here, based on the UN Committee on the Elimination of Racial Discrimination's General Recommendation No. 32 (2009), which determine whether they are exempt from the Racial Discrimination Act 1975 (Cth).

R59: In relation to Draft Action 82, SNAICC calls on the Government, with the imperative of advancing human rights of and resetting a future relationship with Aboriginal and Torres Strait Islander peoples, not to proceed with a proposal which is opposed by a majority of Aboriginal Elders and other leaders in the Northern Territory. SNAICC appeals to the Government to develop a long term sustainable proposal to redress the major persistent concerns for children in the Northern Territory, as outlined in the Little Children are Sacred Report, that is consistent with Australia's international Human Rights obligations and fundamental human rights norms. This is imperative if the Government is serious about a desire for the situation to be improved in the next decades.

(j) Community safety and the justice system

Access to justice

SNAICC supports the recommendations of the National Aboriginal and Torres Strait Islander Legal Services ('NATSILS') in relation to the over-representation of Aboriginal and Torres Strait

Islander peoples in the criminal justice system, Indigenous deaths in custody and access to justice as detailed in the NATSILS submission on the Human Rights Action Plan (**'NATSILS Submission'**).⁸⁷

R60: Action Point 83 be redrafted as detailed on pages 22 – 24 of the NATSILS Submission.

R61: Action Point 85 be redrafted in relation to Aboriginal and Torres Strait Islander deaths in custody in accordance with the recommendation of the NATSILS, as detailed under Action Point 40 at pages 16 – 17 (and 24) of the NATSILS Submission.

R62: Action Point 87 should respond to well-recognised issues affecting Aboriginal and Torres Strait Islander legal assistance services, such as ATSILS, FVPLS and Aboriginal and Torres Strait Islander interpreter services, by incorporating or including in a separate action point in as proposed by the NATSILS at pages 12 – 13 of the NATSILS Submission.

Northern Territory Emergency Response

SNAICC appreciates the efforts the Government has made to strengthen services for community safety within the actions taken under the Northern Territory Emergency Response. The Stronger Futures Bills however are silent on the future of resources and support for strong and coordinated support services for children, families and communities, which must form the bedrock of any effective response. The future of Support programs like the Family Support Package for example, which aimed to provide 2 Safe Places in identified communities, Mobile Child Protection Teams, and Remote Aboriginal Community and Family Workers in 13 remote communities, remain unclear. A coordinated, integrated suite of support services, which are equipped and enabled to fulfill their objectives, is required to regenerate and rebuild wounded communities. Provision must not only be made for punitive measures where the prerequisite conditions for fulfillment are not present.

⁸⁷ NATSILS Submission on the National Human Rights Action Plan Exposure Draft, National Aboriginal and Torres Strait Islander Legal Services (**'NATSILS'**), March 2012, to be made available at <http://www.humanrightSACTIONPLAN.org.au/nhrap/submissions> (**'NATSILS Submission'**).

Recommendations

R63: The Australian Government appoint and entrust a taskforce, including Aboriginal and Torres Strait Islander Elders from the Northern Territory, Government representatives and other relevant professionals, to review evaluations of existing services and community needs, and to develop a comprehensive plan for a coordinated, integrated suite of support services in the Northern Territory, including the provision of adequate resources.

Indigenous Family Safety Agenda

SNAICC supports the Commonwealth's priority in addressing the issues of violence and family safety within Aboriginal and Torres Strait Islander communities throughout Australia through the Indigenous Family Safety Agenda, with the accompanying commitment of \$64.4 million over four years.⁸⁸

SNAICC supports the Agenda's plans to address prevention, treatment and rehabilitation of alcohol abuse in Aboriginal and Torres Strait Islander communities, more effective and innovative policing, linking local police with service providers, new community approaches to "change social norms" in an attempt to prevent family violence, and the commitment to better care and support to people, families and communities that experience family violence. SNAICC notes in particular the potential for real change through the commitment to include Aboriginal and Torres Strait Islander communities and leaders in this process and the recognition that "leadership at all levels is critical including change at a grassroots level."⁸⁹

However, SNAICC is concerned that there is little detail in the strategy or in the Human Rights Action Plan on how the Agenda aims will be achieved.

Recommendations

R64: The Human Rights Action Plan should set out the specific actions and projects for achieving the aims of the Indigenous Family Safety Agenda, as well as the specific funding allocation, implementation and consultation schedules, and measurable outcome focused targets for each action proposed to achieve the Agenda.

⁸⁸ Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). 2010. Indigenous Family Safety Agenda. Canberra: FaHCSIA, 2.

⁸⁹ FaHCSIA (2010) Indigenous Family Safety Agenda. Canberra: FaHCSIA, 10.

R65: It is vital that this issue is addressed from a human rights perspective and that Aboriginal and Torres Strait Islander peoples are able to fully participate in the development, planning and implementation of the policies and programs under the Agenda. Any initiatives need to be culturally accessible, place-based, and tailored to the needs of Aboriginal and Torres Strait islander families.

R66: In particular SNAICC also notes its support for the proposed research within the Agenda, *Marulu: The Lililwan Project*,⁹⁰ aimed at tackling Foetal Alcohol Spectrum Disorder in Aboriginal and Torres Strait Islander Communities. SNAICC recommends that practical and measurable actions with Aboriginal and Torres Strait Islander families and communities based on the outcomes of this research be included in the Human Rights Action Plan.

(k) Child protection and development

As discussed in the section 2(b) above, SNAICC considers that there is a major gap in the current structure of the Human Rights Action Plan in that the section on the human rights of Aboriginal and Torres Strait Islander peoples is silent on the protection and development of Aboriginal and Torres Strait Islander children. This issue should be reflected in both the section on issues impacting children and that on issues impacting Aboriginal and Torres Strait Islander peoples.

To respect the human rights of Aboriginal and Torres Strait Islander children, SNAICC recognises the need for focus on the whole out-of-home care 'journey', which includes:

- time when pressures are building within a family that may lead to abuse or neglect;
- time during which child protection concerns have been notified to the statutory authorities and removal is being considered;
- time spent in foster care, kinship care or other out-of-home care; and
- transition from out-of-home care to independent living.

SNAICC operates on the basis of evidence that community controlled services are best placed to support struggling families and respond to service needs.

⁹⁰ FaHCSIA (2010) Indigenous Family Safety Agenda. Canberra: FaHCSIA, 4.

While the Aboriginal and Torres Strait Islander Child Placement Principle, discussed in section 2(b) above, is embedded in legislation and policy, it remains poorly implemented. There are weak and inconsistent definitions of the Principle across different jurisdictions. There also remains poor understanding and misconceptions of the Principle within Government and the broader society. The reasons underpinning this are complex and multifaceted, and similarly any response must also address different layers. The need for full implementation of the Principle was an issue stressed by the UN Committee on the Rights of the Child in its last report to Australia, as was the need for the Australian Government to “intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.”⁹¹

Areas requiring attention include: strengthening legislation on the Principle; awareness raising; monitoring implementation of the Principle; strengthening the capacity and influence of the community controlled support services; and redressing the underlying causes behind child protection issues within Aboriginal and Torres Strait Islander families.

Building capacity of Aboriginal and Torres Strait Islander services in child protection and out-of-home care is vital. Libesman identifies that functions that require the involvement and leadership of Aboriginal agencies because of their unique knowledge of and connection to community and culture include: cultural care planning; identification of family members to assist placement and ongoing connection to family for children in care; family support to enable reunification; recruitment of Aboriginal and Torres Strait Islander carers; and supporting and retaining Aboriginal and Torres Strait Islander carers.⁹² Currently Aboriginal and Torres Strait Islander agencies have the capacity to support only a small percentage of Aboriginal and Torres Strait Islander children in care.⁹³

⁹¹ Committee on the Rights of the Child (2005) Concluding observations: Australia. UN Doc CRC/C/15/Add.268, 39.

⁹² Libesman, T (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*. Retrieved 22 February 20112 from http://www.snaicc.asn.au/_uploads/rsfil/02727.pdf, 11-19, 21-22, 33-34, and 35-37 respectively.

⁹³ Libesman, T (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*. Retrieved 22 February 20112 from http://www.snaicc.asn.au/_uploads/rsfil/02727.pdf, 44.

The UN Committee on the Rights of the Child expressed great concern about this issue in 2005 and recommended that the Australian Government maximize its efforts, within a set time period, to reduce the significant number of Indigenous children placed in out-of-home care, inter alia by strengthening its support for indigenous families.⁹⁴ It also raised issues of concern about the separation of Aboriginal and Torres Strait Islander children from their families and culture, and recommended that the Australian Government strengthen supervision of foster care and establish regular review of this kind of placement with a view to reuniting the child with his/her natural family, as well as promote and facilitate the maintenance of contact of the child in foster care with his/her natural family.⁹⁵

Recommendations

R67: The Australian Government facilitates the development of a National Partnership Agreement in relation to progressing the Closing the Gap plan for Aboriginal and Torres Strait Islander children and their families in the context of the National Framework for the Protection of Australia's Children 2009 – 2020.

R68: The Australian Government develops a national strategy for the full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, consistent with recommendations from the UN Committee on the Rights of the Child.⁹⁶ The Federal Government could initiate this, inter alia, as a means to give effect to key aspects of standard 3 of the national out-of-home care standards, with the assistance of an advisory report by the Productivity Commission.

R69: The Australian Government includes more detailed data on compliance with the Aboriginal and Torres Strait Islander Child Placement Principle in child protection data collected and reported through the Australian Institute of Health and Welfare, including the development of mechanisms to support collection and reporting of detailed compliance data within each jurisdiction.

⁹⁴ Committee on the Rights of the Child (2005) Concluding observations: Australia. UN Doc CRC/C/15/Add.268, 39.

⁹⁵ *Ibid*, 37-38.

⁹⁶ *Ibid*, 39.

R70: The Australian Government reviews the status of implementation of the recommendations from the seminal *Bringing them Home* Report to determine “where are we 15 years on?”⁹⁷

R71: The Australian Government establishes and resources a comprehensive training system to train different levels of decision-makers in the child protection system, including magistrates and government departments, on cultural awareness, cultural competence and the Aboriginal and Torres Strait Islander Child Placement Principle.

R72: The Australian Government develops culturally appropriate model standards for regulatory requirements for foster and kinship carers and review the current standards across each jurisdiction on the basis of the culturally appropriate model.

R73: The Australian Government supports Aboriginal Child Specialist Advice Services in each jurisdiction, properly capacitated and resourced to fulfill their functions. Increased accountability of Government Departments to the advice of these services should also be included in the national management strategy for the full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.

R74: The Australian Government ensures legislative reform processes within each jurisdiction as required to ensure that cultural support plans for Aboriginal and Torres Strait Islander children in care are mandated by law nationally as a means to implement key aspects of standard 10 of the national out-of-home care standards.⁹⁸

R75: The Australian Government provides funding to appropriate Aboriginal and Torres Strait Islander agencies to support cultural care planning for all Aboriginal and Torres Strait Islander children in care.⁹⁹

⁹⁷ Consistent with UN Committee on the Rights of the Child recommendation to continue and strengthen as much as possible its activities for the full implementation of the recommendations of the 1997 HREOC report, "Bringing Them Home", and to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships.

⁹⁸ Libesman, T. (2011). *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*, Available at http://www.snaicc.asn.au/_uploads/rsfil/02727.pdf, p.86.

⁹⁹ *Ibid*, p.86.

R76: The Australian Government includes the completion and implementation of cultural support plans for Aboriginal and Torres Strait Islander children in care in child protection data collected and reported through the Australian Institute of Health and Welfare.¹⁰⁰

R77: The Australian Government launches a major child abuse prevention initiative with funding to develop, promote and deliver culturally-based protective behaviours programs for Aboriginal and Torres Strait Islander children, young people, families and community leaders across Australia. This initiative should provide long-term funding for protective behaviours programs that address sexualised behaviour in children and provide children and young people with the tools, language and strategies to safely speak up when they are at risk. Funding should support evidence-informed Aboriginal and Torres Strait Islander protective behaviours programs that incorporate the following elements: peer support and education, whole of community protective behaviours education, community education on impacts of abuse and neglect and an understanding of Aboriginal and Torres Strait Islander approaches to child rearing.

R78: The Australian Government conducts an awareness campaign on the nationally consistent approach to out-of-home care, with relevant Departments, children and family support services, and the public.

R79: The Australian Government supports a program for the development and trial of innovative models and approaches to respond to the needs of Aboriginal and Torres Strait Islander youth transitioning from out-of-home care into independence. This includes a focus on identifying and profiling existing good practice, such as Aboriginal-led tenant programs.

(I) Children and young People

SNAICC notes the recent development of the Child Rights Taskforce Report, Listen to Children,¹⁰¹ and supports the recommendations to the Australian Government, and territory and state Governments contained in the Report.

¹⁰⁰ *Ibid*, p.86.

¹⁰¹ 2011 Child Rights NGO Report Australia, available at <http://www.childrights.org.au/listen-to-children-reports>.

A National Aboriginal and Torres Strait Islander Children's Deputy Commissioner

SNAICC supports the Government's initiative to explore options for the establishment of a National Children's Commissioner, which SNAICC considers to be critical to improve human rights outcomes for children and young people in Australia, including Aboriginal and Torres Strait Islander children and young people.¹⁰² SNAICC believes that the appropriate and necessary way to reflect the needs and rights of Aboriginal and Torres Strait Islander children and young people is to create a Deputy Commissioner within the body of the National Children's Commissioner. This would redress a significant gap in the structural protection of the human rights of children and Aboriginal and Torres Strait Islander children and young people.

SNAICC argues that a Deputy Commissioner is the optimal option for Government on the basis of the following:

- (a) The unique rights and status of Aboriginal and Torres Strait Islander children and young people as the First Peoples of Australia require a separate mandate and focus;
- (b) Aboriginal and Torres Strait Islander children and youth continue to experience systemic and structural discrimination, and disadvantage;
- (c) While huge energy and resources are being invested in responding to disadvantage experienced by Aboriginal and Torres Strait Islander children, such as Closing the Gap, attention is required to ensure these initiatives are redressing the causes behind the issues and that they are implemented in a manner that enables results;
- (d) Aboriginal leadership is critical to a strengths based approach of advocacy and support for Aboriginal and Torres Strait Islander children and young people;
- (e) Evidence demonstrates that participation of the Aboriginal and Torres Strait Islander community is integral to advance issues impacting Aboriginal and Torres Strait Islander children, families and communities;

¹⁰² This is consistent with the Universal Periodic Review of Australia 2011 Recommendation 86.28 that Australia establish a National Children's Commissioner to monitor compliance with the CRC and Recommendation 86.29 that Australian Government consider establishing an independent commissioner for child rights: see Universal Periodic Review of Australia 2011, Office of the High Commission of Human Rights (2011) Draft Report of the Working Group on the Universal Periodic Review on Australia. New York and Geneva, United Nations.

- (f) State experience with Children’s Commissioners highlights a need for a specific mandate contained within the enabling legislation for Aboriginal and Torres Strait Islander children and young people; and
- (g) There is support for recognition of specific focus on Indigenous children in recent international experience.

Ultimately SNAICC considers that this is a critical moment to demonstrate the importance of building partnerships with Aboriginal and Torres Strait Islander peoples. SNAICC explores this issue in further detail in the SNAICC Submission to the Government Discussion Paper on a National Children’s Commissioner, December 2011.¹⁰³

R80: The Australian Government creates a Deputy Commissioner role, within the body of the National Children’s Commissioner, with a focus on the unique rights and status of Aboriginal and Torres Strait Islander children and young people.

Juvenile Justice

SNAICC strongly supports the position of the NATSILS that the Human Rights Action Plan must identify the over-representation of Aboriginal and Torres Strait Islander young people in the juvenile justice system as a specific and serious human rights issue in Australia. As the NATSIL Submission states, “Such over-representation has been identified as a “national crisis”¹⁰⁴ and it is therefore seriously concerning that it has been left without mention...”¹⁰⁵

Recommendations

R81: SNAICC supports the recommendation of the NATSILS to include the Action detailed on pages 30 – 32 of the NATSILS Submission into the Human Rights Action Plan.

Children of imprisoned parents

The experience of children of incarcerated parents is an issue of priority concern for Aboriginal and Torres Strait Islander children. Estimates of the number of children (under 16 years old) in 2001 in NSW, for example, having experienced parental incarceration were at 4.3% of all

¹⁰³ Australian Bureau of Statistics (unpublished), available at <http://www.snaicc.asn.au/policy-advocacy/dsp-default-e.cfm?loadref=117&txnid=1211&txncstype=resource&txncstype=document>.

¹⁰⁴ Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 7, 7.

¹⁰⁵ NATSILS Submission, 29.

children, and 5 times that number, 20.1%, of all Aboriginal and Torres Strait Islander children.¹⁰⁶ Further, “Ten per cent of Indigenous children aged 0–14 years were reported to have experienced the stressor of a parent or other family member being in goal (in the 12 months prior to the survey) in 2008.”¹⁰⁷

The implications of parental incarceration for Aboriginal and Torres Strait islander children are particularly complex, and connected to the Stolen Generations and the breakdown of Aboriginal culture and family life since European settlement. They include increased risk of emotional and behavioural problems, homelessness, drug and alcohol abuse and involvement with the juvenile justice system.¹⁰⁸

The UN Committee on the Rights of the Child expressed concern in 2005 about this issue and the significant over-representation of Aboriginal and Torres Strait Islander children in this group. The Committee recommended that, “the State party continue and strengthen its measures to provide these children with adequate support, including counseling, and to facilitate contacts with their parents in prison, whenever this is not contrary to the child's best interest.”¹⁰⁹

Recommendations

R82: The Australian Government, consistent with recommendations of prior inquiries into the issue, establishes a program to ensure that all options for court diversion and non-custodial penalties are thoroughly exhausted before incarceration of Aboriginal and Torres Strait Islander offenders is considered. Particular attention should be paid to offenders who are primary carers

¹⁰⁶ Quilty, S., Levy, M.H., Howard, K., Barratt, A. and Butler, T (2004) Children of prisoners: a growing public health problem. *Australian and New Zealand Journal of Public Health*. 28 (4), 339-343, 342.

¹⁰⁷ Steering Committee for the Review of Government Service Provision (2011) *Overcoming Indigenous Disadvantage. Key Indicators 2011. Report*. Available at http://www.pc.gov.au/_data/assets/pdf_file/0018/111609/key-indicators-2011-report.pdf, section 4.131.

¹⁰⁸ Standing Committee on Social Issues, Parliament of New South Wales Legislative Council. (1997). *A Report Into Children of Imprisoned Parents*. Report Number 12, July. Available from [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/3615e3074398f1bfca25775900154d2a/\\$FILE/Compiled%20report.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/3615e3074398f1bfca25775900154d2a/$FILE/Compiled%20report.pdf), 44.

¹⁰⁹ Committee on the Rights of the Child. (2005). Concluding observations: Australia. UN Doc CRC/C/15/Add.268, 41.

of children.¹¹⁰

R83: The Australian Government increases support for dedicated family workers, including Aboriginal and Torres Strait Islander workers in areas targeting Aboriginal and Torres Strait Islander families, to facilitate effective referrals and access to a range of services that may assist the family to cope with any additional demands that have resulted from incarceration of a family member.¹¹¹

R84: The Australian Government ensures specific support plans are put in place for Aboriginal and Torres Strait Islander offenders with dependent children, including consideration of prison placement, social visits, family friendly activities, cultural practices and enhanced access to phone calls.¹¹²

R85: Ensure Aboriginal and Torres Strait Islander offenders with dependent children are provided with culturally appropriate family focused programs, including parenting, family violence, relationships, and healing. These programs should be led by Aboriginal and Torres Strait Islander organisations and/or workers.¹¹³

Substance abuse

The Committee on the Rights of the Child highlighted this issue in its Concluding Observations in 2005, encouraging the Australian Government “to continuously monitor the issue of substance abuse, with a special focus on raising awareness among Indigenous children and children living in remote areas. The State party is also encouraged to develop free and easily accessible drug abuse treatment and social reintegration services for children who are drug and substance abusers.”¹¹⁴

¹¹⁰ Standing Committee on Social Issues, Parliament of New South Wales Legislative Council. (1997). *A Report Into Children of Imprisoned Parents*. Report Number 12, July. Available from [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/3615e3074398f1bfca25775900154d2a/\\$FILE/Compiled%20report.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/3615e3074398f1bfca25775900154d2a/$FILE/Compiled%20report.pdf), 45.

¹¹¹ M.A. Robinson, (undated) *Next Generation on the Outside: Better Outcomes for Vulnerable Families in Contact with Australian Criminal Justice Systems*, VACRO, 17.

¹¹² *Ibid*, 19.

¹¹³ *Ibid*, 19.

¹¹⁴ Committee on the Rights of the Child (2005) Concluding observations: Australia. UN Doc CRC/C/15/Add.268, 71.

Recommendations

R86: The Australian Government, together with the state and territory governments, maintain and act on their commitment to the eight points contained in the Petrol Sniffing Prevention Program and the recommendations contained in the senate Standing Committee's 2009 Report.¹¹⁵

R87: The Australian Government, together with the state and territory governments, work in close consultation with Aboriginal communities to address the underlying social, educational and economic disadvantage and generational trauma that leads to substance abuse in regional and remote Aboriginal communities.

Children in Out of Home Care

See recommendations R67-R79 above.

¹¹⁵ Child Rights Taskforce (2011) *Listen to Children*, Child Rights NGO Report, Australia, 34.