



**SNAICC**  
Secretariat of National  
Aboriginal and Islander  
Child Care

**Submission in relation to General  
Assembly Resolution A/RES/66/141 on  
the Rights of Aboriginal and Torres Strait  
Islander Children in Australia  
30 April 2012**

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The Secretariat of National Aboriginal and Islander Child Care (**SNAICC**) is the national peak body in Australia representing the interests of Aboriginal and Torres Strait Islander children and families.<sup>i</sup> We welcome the opportunity to contribute to the Secretary General's Report for the General Assembly's consideration of the rights of the child, with specific focus on rights of Indigenous children.<sup>ii</sup> In Australia Indigenous children under 14 constitute over 5% of this population bracket, double the estimated 2.5% overall Indigenous population.<sup>iii</sup> This will continue to increase with a higher birth rate in Indigenous families.<sup>iv</sup>

### **Human rights of Indigenous children**

Indigenous children experience significant violations across the spectrum of economic, social, cultural, civil and political rights. This paper briefly outlines some of the most prevalent issues and attaches a list of references for further consideration in Annexure A. The persistent gaps in human rights for Indigenous children are striking in the context of the wealth and high living standard of Australia. Domestic and international reports highlight that change is reliant on systems, processes and resources invested in supporting Indigenous communities to exercise their right to self-determination and their right to participate in decision-making processes that affect their communities and children. As the Expert Mechanism on the Rights of Indigenous Peoples recently reinforced *"The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights."*<sup>v</sup> Full exercise of these firmly entrenched rights,<sup>vi</sup> is fundamental to sustainable advances to overcome poverty and exclusion. The Committee on the Rights of the Child highlights: *"as regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way."*<sup>vii</sup>

A human rights approach by Governments to redress major concerns impacting Indigenous children is critical to redress the underlying causes of human rights gaps, including the unequal power relationships which contribute to poverty and exclusion, and to support empowering strategies that build on community strengths. There are countless community driven strategies that are demonstrating potential for Indigenous children to lead a life that reflects their values, celebrates their role and fulfils their fundamental human rights. Resources and capacity support are necessary to strengthen and expand these locally driven initiatives. While the Australian Government has made significant resource investment in overcoming Indigenous disadvantage, further efforts are required to move beyond a top down approach, best reflected by the Government intervention into the Northern Territory through the Northern Territory Emergency Response in 2007, now being extended for a further 10 years by the Stronger Futures Proposal.<sup>viii</sup> This approach was justified as a response to a report on child sexual abuse in the Northern Territory,<sup>ix</sup> but fails to incorporate the holistic recommendations of the report itself. It directly and indirectly discriminates against Indigenous peoples and is a clear example of the absence of a human rights framework within the Government's approach. This approach erodes local governance and capacity and has received universal condemnation by the major relevant international human rights bodies<sup>x</sup> The Special Rapporteur on the Rights of Indigenous Peoples has in particular expressed concern about the *"increased centralization of governance institutions in several states and the Northern Territory, at the expense of local, indigenous-run governance institutions."* The Special Rapporteur details concerns for various other policies that revoke self-governance powers of Aboriginal people and calls on Australia to enhance efforts to strengthen Indigenous own governance structures, and increase the capacity of indigenous leadership at all levels.<sup>xi</sup> Recommendations of the Special Rapporteur are detailed in Annexure B. While Australia applauds the recent Government announcement of a national children's commissioner, establishment and proper resourcing of a national Indigenous children's commissioner is also fundamental to advocate for the rights and needs of Indigenous children, and develop holistic Indigenous owned strategies that facilitate the voice of Indigenous children.<sup>xii</sup>

### **General Measures of Implementation and Indigenous children**

Human rights are not incorporated effectively into policy and legislative frameworks to support and protect the rights of Indigenous children in Australia. There is no body tasked with ensuring voice for or advocating for the needs, interests and rights of Indigenous children. Reform is also required to enable identification and analysis of data collection and resources for Indigenous children in government budgets.<sup>xiii</sup> As the Committee on the Rights of the Child reinforces: The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes.<sup>xiv</sup>

Australian Governments have endorsed a series of strategies and targets to reduce Indigenous disadvantage.<sup>xv</sup> There remains significant concern however that inadequate Indigenous participation in the development,

implementation and review of policies impacting Indigenous children mean that they do not redress the underlying causes of disadvantage, do not have Indigenous buy-in, are not culturally appropriate and do not build on the strengths of Indigenous culture. The Special Rapporteur on the Rights of Indigenous Peoples reinforced recently that: *Aboriginal and Torres Strait Islander peoples should be fully consulted about all initiatives being developed to overcome indigenous disadvantage.... In particular, adequate options and alternatives for socio-economic development and violence prevention programmes should be developed in partnership with affected indigenous communities.*<sup>xvi</sup>

### **Survival and Development**

The extent of poverty experienced by Indigenous peoples ranges from between 40 to more than 50 percent across Australia, whether for remote or urban areas.<sup>xvii</sup> Indigenous peoples experience significant disadvantage across all economic and social development indicators, including being five times more likely to live in overcrowded households<sup>xviii</sup> and having a life expectancy of 10 and 11.5 years below non-Indigenous Australians for women and men respectively.<sup>xix</sup> Indigenous children are born into and struggle against this cycle of ongoing impoverishment and exclusion.

Human rights bodies have consistently called for priority redress of the unacceptably high level of disadvantage and social dislocation experienced by Aboriginal Australians, with particular focus on economic, social and cultural rights, allocation of adequate resources and implementation of strategies which conform to Australia's human rights obligations.<sup>xx</sup> The need for attention to ensure the cultural appropriateness of public service delivery and strategies that advance indigenous self-empowerment have in particular been reinforced.<sup>xxi</sup>

Mortality rates of Indigenous children up to the age of 4 in Australia are 1.6 to 3.8 times as high as those for non-Indigenous children, remaining largely consistent over the previous decade.<sup>xxii</sup> The proportion of five-year-old Indigenous children classified as 'at risk' or 'vulnerable' in the domain of language and cognitive skills is also estimated at 52%: 2.4 times greater than the proportion for non-Indigenous children. Vulnerability increases with remoteness 'from 43 per cent in major cities to 73 per cent in very remote areas.'<sup>xxiii</sup>

Disparities in health are of particular concern. Indigenous mothers are more than twice as likely to have low birthweight babies, which have a greater risk of dying in the first year of life, early health problems and later chronic diseases.<sup>xxiv</sup> There were over 5 times the number of births to Indigenous teenage women than non-Indigenous teenage women in Australia in 2009, with the Indigenous mother a teenager in 20% of births of Indigenous women.<sup>xxv</sup> Teenage births are associated with lower incomes and poorer educational attainment and employment prospects for the mother, which in turn influence outcomes for the child.

Rate of hearing problems was 2.8 times the prevalence for non-Indigenous children aged 0-14 years in 2008. Some estimates however of Aboriginal children of school age suffering from some hearing loss are 30% – 80%.<sup>xxvi</sup> Indigenous children living in remote communities have the highest internationally published prevalence rates for a middle ear infection. 74% of Indigenous children checked in the Northern Territory had at least one middle ear condition and 54% had some hearing loss.<sup>xxvii</sup> Deafness, which is primarily caused by infections to the middle ear untreated or inadequately treated, has serious consequences for education, employment, social success, as well as increasing the risk of exposure to abuse and problems with the criminal justice system.<sup>xxviii</sup>

Major structural barriers exist for Indigenous peoples to accessing preventative health measures such as primary health care, health promotion, early screening and diagnosis. Lack of access to effective health care is reflected in a rate of hospitalisation for potentially preventable diseases and injuries double that of non-Indigenous children.<sup>xxix</sup> Almost one in seven Aboriginal Australians also report being unable to see a doctor when needed.<sup>xxx</sup> Holistic Indigenous health services and services that engage families through an early childhood focus have had a significant influence on children and family well-being for decades. These services face major challenges and may well disappear, with systemic underfunding over decades,<sup>xxxi</sup> exclusion from new national reforms<sup>xxxii</sup> and resource focus on new mainstream service models.<sup>xxxiii</sup> As the UN Committee on Rights of the Child highlighted, sustainable progress lies in ensuring access to culturally accessible services, including social and health services and education.<sup>xxxiv</sup>

Despite the importance of education as a right in itself and as an enabler for other fundamental human rights, significant discrimination is still evident in access to education from school enrolment, school preparation, school performance to school outcomes. A substantially lower proportion of Indigenous students achieve the year three, five, seven, and nine national minimum standards for reading, writing, and numeracy.<sup>xxxv</sup> The rate of

20-24 year olds who complete highschool is half that of non-Indigenous youth. The proportion of Indigenous youth who received a year 12 certificate did increase from 20% in 2001 to 26% in 2008 however.<sup>xxxvi</sup>

Discrimination in education is particularly apparent through policies on bilingual schooling, inequalities in Homeland Learning Centres which have no full-time qualified teachers, Government linking school attendance to social welfare payments, lack of Indigenous teachers, and lack of culturally appropriate curriculum and teaching methods. Only 5% of children in the Northern Territory have access to preschools, 27% of primary school children live more than 50kms from their school and there is virtually no school transport in most areas. 54% of children also have no access to a high school. Distance Learning has operated since the 1950's for white children on stations but operates to only a tiny few Aboriginal children using English as a medium.<sup>xxxvii</sup> The Northern Territory Government has a 2009 policy of compulsory English language instruction for the first four hours of each school day, which has seen the closure of successful 'bothways' and bilingual schools and curriculums, and exclusion of other interested schools from this approach. This policy undermines Indigenous languages and cultures, and is contrary to the right to education and the right to enjoy one's culture articulated in the various international human rights treaties, including the UN Convention on the Rights of the Child.

### **Protection**

All children have the right to grow up free from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation.<sup>xxxviii</sup> Indigenous children are however particularly exposed to risks of violence, neglect and abuse, in circumstances of inadequate state protection or support. The gap in the substantiation rate of child abuse and neglect for Aboriginal and Torres Strait Islander children continues to escalate, increasing from 7 times the rate for non-Indigenous children (rates of 37.1 and 5 per 1000 children respectively) in 2010 to almost 8 (rates of 34.6 and 4.5 per 1000 children respectively) in 2011. The most common type of substantiated abuse of Indigenous children is neglect (38% compared with 23% for non-Indigenous children) and the least common is sexual abuse (10%).<sup>xxxix</sup> At 30 June 2011 there were 12,358 Aboriginal and Torres Strait Islander children in out-of-home care, 10 times the rate of non-Indigenous children. The causes of overrepresentation are complex and include the legacy of past policies of forced removal, intergenerational effects of separations from family and culture, poor socio-economic status and perceptions arising from cultural differences in child-rearing practices.<sup>xl</sup>

Over-representation in the juvenile justice system has been deemed a national crisis in Australia<sup>xli</sup> with Indigenous children 26 times more likely than non-Indigenous children to be in detention.<sup>xlii</sup> The level of life stressors for young Indigenous Australians is overwhelming. Suicide is 6<sup>th</sup> leading cause of death among Indigenous peoples, occurring at a rate almost 3 times greater than the non-Indigenous population, increasing to 4.5 times greater for Indigenous youth under 25,<sup>xliii</sup> while still recognising that actual rates of Indigenous suicide are believed to be significantly higher than reported rates.<sup>xliv</sup> Strategies for redress however remain decades behind international best practice, which focus on Indigenous community based systems for the prevention of and intervention against child abuse and neglect.<sup>xlv</sup>

### **Culture and Identity**

Indigenous peoples collective rights to practice and preserve languages, culture and spirituality continue to be undermined, despite being firmly entrenched in international law.<sup>xlvi</sup> Only 20 of more than 250 languages spoken at the time of colonization in Australia were considered to be alive and strong in 2005.<sup>xlvii</sup> Numerous factors limit the right of Indigenous children to enjoy their right to culture in Australia, including in particular the failure to consider culture as a lens throughout all aspects of life. Factors which continue to assimilate Indigenous peoples and deprive them of their culture include: the level at which children are removed from their family and raised outside of their culture; the pressure to participate in mainstream education and in English; poor and restricted provision of community controlled services; and the consolidation of basic services in the Northern Territory into 20 major towns, thereby forcing Indigenous communities from their Homelands. The Government has heavily restricted funding to Indigenous Homelands, with no housing support, few services and no access to unemployment benefits. This policy position operates despite the fact *"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."*<sup>xlviii</sup> The best interests of the child principle in the CRC requires that Governments consider how any human right for Indigenous children relates to collective cultural rights.<sup>xlix</sup> Governments must be called on to apply this principle and enable Indigenous children and peoples to develop solutions to issues in a manner that reflects and supports culture and identity.

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- <sup>i</sup> Further information on SNAICC is available online at [www.snaicc.asn.au](http://www.snaicc.asn.au).
- <sup>ii</sup> Resolution A/RES/66/141 <http://www2.ohchr.org/english/bodies/crc/CRCIndigenousChildren.htm>
- <sup>iii</sup> 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 (2011) *Overcoming Indigenous Disadvantage Key Indicators 2011*, Productivity Commission, Overview p.3 (Overcoming Indigenous Disadvantage Report 2011).
- <sup>iv</sup> 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.
- <sup>v</sup> Expert Mechanism on the Rights of Indigenous Peoples (2011) [Final Report of the study of indigenous peoples and the right to participate in decision-making](#), 17 August 2011, A/HRC/18/42, p.25.
- <sup>vi</sup> detailed for example in articles 3, 4, 18 and 19 and 23 of the UN Declaration on the Rights of Indigenous Peoples, 2007, articles 1 and 25 of the International Covenant on Civil and Political Rights, 1966, and article 12 of the Convention on the Rights of the Child, 1981.
- <sup>vii</sup> The UN Committee on the Rights of the Child, *General Comment No. 11*, Indigenous children and their rights under the Convention, 12 February 2009, CRC/C/GC/11, Paragraph 31.
- <sup>viii</sup> See [overview](#) of recent processes on the Stronger Futures Bills.
- <sup>ix</sup> *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, 2007.
- <sup>x</sup> 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); See positions of other 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](#), para 5, 2.
- <sup>xi</sup> Para 81.
- <sup>xii</sup> See for further information SNAICC, Submission on Australian Government Discussion Paper: [National Children's Commissioner - Submission December 2011](#)
- <sup>xiii</sup> Child Rights Taskforce (2011) Listen to Children, 2011 Child Rights NGO Report Australia, p.2, available at <http://www.childrights.org.au/> (Listen to Children Report).
- <sup>xiv</sup> The UN Committee on the Rights of the Child, *General Comment No. 11*, Indigenous children and their rights under the Convention, 12 February 2009, CRC/C/GC/11, Paragraph 26.
- <sup>xv</sup> See further Australian Government website <http://www.fahcsia.gov.au/sa/indigenous/progserv/ctg/Pages/default.aspx>
- <sup>xvi</sup> 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.
- <sup>xvii</sup> B. Hunter (2006) *Assessing the evidence on Indigenous socioeconomic outcomes: A focus on the 2002 NATSISS*, p.100.
- <sup>xviii</sup> Overcoming Indigenous Disadvantage Report 2011, p.49.
- <sup>xix</sup> Overcoming Indigenous Disadvantage Report 2011, Overview, p.13.
- <sup>xx</sup> 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): also echoed in ICERD findings in 2000 and 2005.
- <sup>xxi</sup> *Ibid.*
- <sup>xxii</sup> *Overcoming Indigenous Disadvantage Report*, p.4.14
- <sup>xxiii</sup> *Ibid*, pp. 5.45 - 5.47.
- <sup>xxiv</sup> *Ibid*, pp.5.28-5.31.
- <sup>xxv</sup> *Ibid*, pp.5.18-5.22.
- <sup>xxvi</sup> Samantha Burrow, Ann Galloway and Natalie Weissosfner 'Review of educational and other approaches to hearing loss among Indigenous people' (2009) 9(2) Indigenous Health Bulletin, p. 3 in Listen to Children Report, p.20. The Overcoming Indigenous Disadvantage Report 2011 however states that complete or partial deafness of Indigenous children decreased from 6.5% in 2001 to 2.7% in 2008: pp.5.52 - 5.55.
- <sup>xxvii</sup> *Ibid*, p.5.54.
- <sup>xxviii</sup> Listen to Children Report, p.20.
- <sup>xxix</sup> Overcoming Indigenous Disadvantage Report, pp.5.35 - 5.44
- <sup>xxx</sup> COAG Reform Council Council of Australian Governments, National Healthcare Agreement: Baseline performance report for 2008-09 (2010) xx in Listen to Children Report p.19



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- xxxvi 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 pp. 18 & 44; Debbie Bond, *Multifunctional Aboriginal Children's Services National Report* (2000) Secretariat of National Aboriginal and Islander Child Care, pp.146 – 156 and Secretariat of National Aboriginal and Islander Child Care, *One Time – NAJAC Justice Summit National Community Controlled Organisations* (Briefing Paper, 2003), p.14.
- xxxvii The Early Development Steering Committee (2009) *National Quality Standards for Early Childhood Education and Care and School Age Care*, Council of Australian Governments. A Government report has confirmed this exclusion will only exacerbate the gap with non-Indigenous services: Productivity Commission (2011) *Early Childhood Development Workforce Research Report*. Commonwealth of Australia, pp.345 & 364.
- xxxviii For example the current establishment of 38 integrated Children and Family Centres across Australia, National Partnership Agreement on Early Childhood Development.
- xxxix Committee on the Rights of the Child (2005) Concluding observations: Australia. UN Doc CRC/C/15/Add.268, 39.
- xl Overcoming Indigenous Disadvantage Report 2011, p.4.37
- xli Ibid p.4.49.
- xlii Combined Aboriginal Organisations of the Northern Territory (2007), 'Submission to the Inquiry into the Northern Territory National Emergency response Bill 2007 and Related Bills,' p. 18.
- xliiii *UN Convention on the Rights of the Child*, article 19.
- xliiii Australian Institute of Health and Welfare, Child Protection Australia 2009 – 2010. [Australian Institute of Health and Social Welfare, Child Protection Australia, 2010-11.](#)
- xliv Australian Institute of Health and Social Welfare, Child Protection Australia, 2010-11.
- xlv House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011), p.2.4.
- xlvi Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009), p.113.
- xlvii Silburn, Glaskin, Henry & Drew, preventing Suicide among Indigenous Australians, in Purdie, Dudgeon & Walker (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Well-being Principles and Practice*, chapter 7, pp.91-104 at p.92; *Overcoming Indigenous Disadvantage Report* (2011) Figure 7.8.2, p.7.65 drawn from data from those jurisdictions with data available on suicide death (NSW, Queensland, WA, SA and NT).
- xlviii Elliot-Farrelly (2004) Australian Aboriginal Suicide: The need for an Aboriginal suicidology? *Australian e-journal of Mental Health*, 3(3), 1-8, in Silburn, Glaskin, Henry & Drew, preventing Suicide among Indigenous Australians, in Purdie, Dudgeon & Walker (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Well-being Principles and Practice*, chapter 7, pp.91-104 at p.92.
- xlix See Libesman & Bell (2005) [Aboriginal and Torres Strait Islander Child Protection Outcomes Report](#), Secretariat of National Aboriginal and Islander Child Care.
- l The Articles 11, 12 and 13 of the United Nations Declaration on the Rights of Indigenous Peoples; Article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights.
- li Australian Institute of Aboriginal and Torres Strait Islander Studies and The Federation of Aboriginal & Torres Strait Islander Languages & Culture (2005) *National Indigenous Languages Survey Report*, Commonwealth of Australia.
- lii Menzies School of Health Research in Concerned Australians (2011) *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.
- liii The UN Committee on the Rights of the Child, *General Comment No. 11*, Indigenous children and their rights under the Convention, 12 February 2009, CRC/C/GC/11, Paragraph 30.

## Annexure A

### Recent reports on the human rights situation of Indigenous children in Australia

#### *Child rights*

- Child Rights Taskforce (2011) [Listen to Children](#), Child Rights NGO Report, Australia
- The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) [Shadow Report to the Committee on the Rights of the Child](#): Review of Australia
- Concerned Australians (2011) [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

#### *Child Protection*

- [Report of the Protecting Victoria's Vulnerable Children Inquiry](#), 2012
- Own Motion Investigation into Child Protection – Out of Home Care, Victorian Ombudsman, May 2010, Victoria
- *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (Northern Territory Government, 2007)
- *The Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010* (Northern Territory Government 2010).
- *Report of the Special Commission of Inquiry into Child Protection Services in NSW* November, 2008
- *Addressing Aboriginal Disadvantage: the need to do things differently*, NSW Ombudsman, 2011, especially Chapter 4: *Improving the capacity to respond to vulnerable Aboriginal children and adolescents*.
- *Commission of Inquiry: Children in State Care* Hon. E.P. Mullighan QC (Mullighan 2008a)
- *Children on APY Lands Commission of Inquiry* Hon. E.P. Mullighan QC (Mullighan 2008b)
- *Our best investment: a state plan to protect and advance the interests of children* (Layton 2003)—South Australia
- *Report of the Commission of inquiry into the abuse of children in Queensland institutions* (Commission of Inquiry into Abuse of Children in Queensland 1999) and *Protecting children: an inquiry into the abuse of children in foster care* (Crime and Misconduct Commission 2004)—Queensland
- *Putting the picture together: inquiry into response by government agencies to complaints of family violence and child abuse in Aboriginal communities* (Gordon et al. 2002)—Western Australia
- *Review of the Department for Community Development* (Ford 2007)—Western Australia
- *The Territory as a parent: a review of the safety of children in care in the ACT and of ACT child protection management* (a Commissioner for Public Administration 2004a) and *The Territory's children: ensuring safety and quality care for children and young people. Report on the audit and case review* (Commissioner for Public Administration 2004b)—Australian Capital Territory
- Parliament of Tasmania (2011) *Select Committee on Child Protection: Final Report* <http://www.parliament.tas.gov.au/ctee/House/childprotection.htm>
- Annual report of the Office of the Children's Commissioner NT on the implementation of recommendations from the *Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010*
- [Together keeping our children safe and well Plan 2011](#) and *Blueprint for Implementation Strategy 2011*, Queensland Department of Communities
- Libesman, 2011, *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*, SNAICC.
- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011) [Doing Time – Time for Doing](#).

#### *Indigenous rights – as pertaining to children*

- Submissions made to the [National Human rights Act Consultations](#)
- [National Aboriginal and Torres Strait Islander Legal Services Submission](#) to the National Human Rights Action Baseline Study
- Aboriginal and Torres Strait Islander Social Justice Commissioner, [Social Justice Report](#), Australian Human Rights Commission, 2007, 2008, 2009, 2010, 2011
- 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)

*Positive strategies advancing Indigenous children's rights in Australia*

- SNAICC (2011) [\*Growing Up Our Way: Aboriginal and Torres Strait Islander child-rearing practices matrix\*](#)
- SNAICC (2012) [\*Improved Outcomes for Aboriginal and Torres Strait Islander Children and Families in Early Childhood Education and Care Services: Learning from Good Practice\*](#)
- ANTAR (2010) [\*A Better Way: Success Stories in Aboriginal Community Control in the Northern Territory\*](#)
- Phillips, Franklin & Viswanathan (2011) [\*A Better Way: Building healthy, safe and sustainable communities in the Northern Territory through a community development approach\*](#), ANTAR
- The Ministerial Advisory Group on Transition of Out-of-Home Care (OOHC) Service Provision in NSW to the Non-Government Sector (2011) [\*OOHC Transition Plan: Stage 1 – The 'Who' and the 'When'\*](#), NSW Department of Family and Community Services
- [\*Strelley/Warralong School and Community Education and Partnership Agreement\*](#), Strelley Community School
- [\*The School Community Partnership\*](#), Purunuloo Aboriginal Independent Community School, Wurreranginy Community, 2008,



## Annexure B

### **Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum, Situation of indigenous peoples in Australia, A/HRC/15/37/Add.4, 1 June 2010**

#### **Excerpt from pages 18 – 23 & 35-36**

72. Despite the Government's attention to indigenous issues, there is a continued need to develop new initiatives and reform existing ones, in consultation and in real partnership with indigenous peoples, to conform to international standards requiring genuine respect for cultural integrity and self-determination. Ownership and control of their lands and territories continues to be denied to many indigenous communities in Australia. Indigenous institutions and community governance structures also are subject to high levels of control by the State, and are often devoid of genuine opportunity to generate social, cultural and economic development. Accusations of past shortcomings of indigenous self-governance unfairly assign blame to indigenous peoples and at the same time ignore Government failures in this regard.

73. The Special Rapporteur is concerned about ongoing effects of historical patterns of racism within Australian society and that their negative consequences continue to severely undermine the dignity of Aboriginal and Torres Strait Islander peoples and individuals. Additional efforts, beyond the recent laudable efforts of the Government to advance reconciliation and reset the relationship with indigenous peoples is needed to address negative perceptions within society and to generate greater confidence and self-respect amongst the indigenous population, to create a healthy environment conducive to the enjoyment of rights and freedoms.

#### Legal and policy framework

74. The Commonwealth and state governments should review all legislation, policies, and programmes that affect Aboriginal and Torres Strait Islanders, in light of the Declaration on the Rights of Indigenous Peoples.

75. The Government should pursue constitutional or other effective legal recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples in a manner providing long-term security for these rights.

76. In consultation with the Aboriginal and Torres Strait Islander peoples, the Government should look to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169).

77. The Commonwealth Government should ensure that state, territory and local governments are aware of their obligations to promote and protect the human rights of indigenous peoples. The Government should promote a consistent approach to these rights across all levels of government authority.

78. The Special Rapporteur considers the position of Aboriginal and Torres Strait Islander Social Justice Commissioner within the Australian Human Rights Commission to be an exceptional model for advancing the recognition and protection of rights of indigenous peoples. The Commissioner's reports should be given greater attention in government administration to promote a higher level of accountability and sensitivity to human rights commitments.

79. All efforts should be made to increase the number of indigenous peoples' representatives in legislative, executive, and judicial institutions at all levels. The Special Rapporteur welcomes the Government's support in establishing a national indigenous representative body and emphasizes the importance of indigenous participation in the ongoing design, development and functioning of this mechanism.

80. The Council of Australian Governments should look to integrate the proposed national representative indigenous body into its structure for decision-making and design of strategic initiatives,

for the purpose of coordinating policies and strategies relating to Aboriginal and Torres Strait Islander peoples.

81. The Commonwealth and state governments should, in cooperation with the indigenous peoples concerned, enhance efforts to strengthen Aboriginal and Torres Strait Islander peoples' own governance structures, and increase the capacity of indigenous leadership at all levels.

82. Any government decision that has the effect of limiting or removing indigenous decision-making authority should be reconsidered and evaluated in light of Australia's human rights obligations.

83. The Government should collaborate with the Australian Human Rights Commission to ensure that adequate remedies, including compensation, are provided as a matter of urgency to the Stolen Generation victims.

#### Lands, territories and resources

84. The Special Rapporteur recognizes the efforts of the Commonwealth and state governments in recent decades to advance the rights of Aboriginal and Torres Strait Islander peoples to their lands, territories and resources. Continued efforts should be made to uphold the rights of indigenous peoples over their lands and resources and guarantee for these peoples a sustainable basis for economic, social and cultural development.

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

86. Legislative and administrative mechanisms that allow for the extraction of natural resources from indigenous territories should conform to relevant international standards, including those requiring adequate consultations with the affected indigenous communities, mitigation measures, compensation and benefitsharing.

87. The Government should increase the availability and effectiveness of technical and financial resources to support indigenous representation and participation in the procedures to identify and protect indigenous peoples' native title.

88. The Commonwealth and state governments should revise existing legislation that vests ultimate decision-making authority over Aboriginal and Torres Strait Islander heritage sites or objects in government entities, to ensure indigenous participation in decision-making and full respect for indigenous rights in relation to cultural heritage. In this connection, the Special Rapporteur welcomes information from the Government that it has proposed national reforms to improve indigenous participation in decision-making over traditional sites and objects.

89. The Queensland state government should review and revise as necessary the Wild Rivers Act of 2005 to ensure its conformity with international standards concerning the rights of the traditional owners to control and manage their lands, territories and resources. The review of the legislation should engage the traditional owners to achieve an agreed arrangement.

90. The Commonwealth Government and state governments should embrace a long-term vision for social and economic development of homeland communities, especially bearing in mind the practical, social and cultural benefits that the homelands provide to Aboriginal and Torres Strait Islander peoples, as well as to the society at large.

#### Overcoming indigenous disadvantage

91. The Government should be commended for efforts to address the socioeconomic disadvantage of Aboriginal and Torres Strait Islander peoples. As part of this process, the Government should seek to include in its initiatives the goal of advancing indigenous self-determination, in particular by encouraging indigenous self-governance at the local level, ensuring indigenous participation in the

design, delivery and monitoring of programmes and developing culturally appropriate programmes that incorporate or build on indigenous peoples' own initiatives.

92. The 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.

93. Relevant government agencies should facilitate greater decision-making power by indigenous peoples over the design and delivery of government services in their communities. The Government should support, both logistically and financially, indigenous programmes already in place that have demonstrated success and should also support the development of new indigenous service-delivery programmes. In this regard, the Government should look to establish a national focal point for skills training for the purpose of increasing the capacity of indigenous individuals and communities to be self-sufficient and to manage their own affairs, including their social and economic development.

#### Health

94. While the Government has taken important steps to improve indigenous health, it should strengthen efforts to ensure that indigenous Australians have equal access to primary health care and that the basic health needs of indigenous communities are met, especially in remote areas. Every effort should be made to enhance indigenous peoples' participation in the formation of health policy and delivery of services. The Government should ensure and strengthen support for health-care initiatives by indigenous communities and organizations as a matter of priority. All medical professionals should be provided with comprehensive, culturally appropriate medical training, and health services in the language of the community should always be available.

#### Education

95. The Special Rapporteur recognizes the efforts of the Government to close the gap of indigenous disadvantage in the area of education. However, indigenous systems of teaching, cross-cultural curricula and bilingual programming should be further incorporated into the education of indigenous children and youth. In addition, indigenous communities and their authorities should have greater participation in educational programming.

96. Equal educational opportunities should be provided in remote areas, including Aboriginal homelands, in accordance with the recommendations contained in the 2008 Social Justice Report.

97. The Northern Territory government should reform its policy that school activities be conducted in English only for the first four hours of each school day and provide bilingual and culturally appropriate education to Aboriginal children.

98. In recent years, the Government has taken noteworthy steps to promote economic development and employment opportunities for indigenous peoples. As part of this process, the Government should work with Aboriginal and Torres Strait Islanders and their organizations to determine goals and priorities for economic development and should build the capacity of indigenous peoples to take control over their own economic development.

99. The Government should ensure that adequate and, at a minimum, equivalent funding and employment opportunities are in place before reforming or abolishing existing welfare and social security programmes for Aboriginal and Torres Strait Islander communities. Any reforms to welfare and social security programmes should be carried out in consultation with indigenous peoples and their organizations.

#### Housing

100. The Special Rapporteur welcomes the Government's long-term funding commitments on housing and essential infrastructure. However, Government initiatives to address the housing needs of indigenous peoples should avoid imposing or promoting housing arrangements that would undermine indigenous peoples' control over their lands. Housing programmes for the benefit of indigenous communities, especially within indigenous territories, should be administered by indigenous

community-controlled institutions.

#### Women, children, and families

101. The Special Rapporteur commends the Government for attaching urgency and priority to the issue of protecting vulnerable groups and abating violence against women and children. However, efforts should be made to intensify consultations with indigenous women at the community level to amplify and adapt services and solutions to violence and other problems in their own communities. Special emphasis should be placed on providing access to culturally appropriate, community-based legal and support services to victims of domestic violence in remote areas.

#### Administration of justice

102. The Government should take immediate and concrete steps to address the fact that there are a disproportionate number of Aboriginal and Torres Strait Islanders, especially juveniles and women in custody.

103. The Government should take further action, in addition to action already taken, to ensure the recommendations of the Royal Commission into Aboriginal Deaths in Custody are being fully implemented.

104. Additional funds should be immediately provided to community-controlled legal services to achieve, at a minimum, parity with mainstream legal aid services. In particular, culturally appropriate legal services should be available to all Aboriginal and Torres Strait Islander peoples, including those living in remote areas, and interpreters should be guaranteed in criminal proceedings and, where necessary, for a fair hearing in civil matters.

105. Greater effort should be made to reform the civil and criminal justice system to incorporate Aboriginal and Torres Strait Islander customary law and other juridical systems, including community dispute resolution mechanisms.

#### Northern Territory Emergency Response

106. The legislative and administrative measures that relate to the Northern Territory Emergency Response should be revised so that those measures are in conformity with Australia's international human rights obligations, and the Special Rapporteur acknowledges the initiatives of the Government in this regard. Specific observations and recommendations of the Special Rapporteur concerning the initiative are contained in appendix B to this report.

#### To Aboriginal and Torres Strait Islander peoples and their organizations

107. Indigenous peoples should endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with government authorities at all levels, and should make every effort to address any issues of social dysfunction within their communities, including with respect to women and children.

### **Appendix B Observations on the Northern Territory Emergency Response in Australia: Conclusions and Recommendations**

36. The Government should continue its commitment to address problems faced by Aboriginal people in the Northern Territory, in particular concerning the well-being of Aboriginal women and children. However, any measures should involve a holistic approach, which recognizes the interdependent character of human rights, and must be devised and carried out with due regard of the rights of indigenous peoples to self-determination and to be free from racial discrimination and indignity.

37. Aspects of the NTER as currently configured are racially discriminatory and incompatible with Australia's international human rights obligations. These include aspects related to compulsory income management, compulsory acquisition of Aboriginal land, the assertion of extensive powers by the Commonwealth Government over Aboriginal communities, and alcohol and pornography restrictions in prescribed areas, as well as the other provisions of the NTER listed in paragraph 13, supra.

38. The Government and Parliament should reinstate the Racial Discrimination Act, as the Government has committed to do, and should enact appropriate reforms to the NTER in light of all of Australia's

international human rights obligations. Further, such reforms should be developed on the basis of full and adequate consultations with the affected indigenous peoples.

39. Any discriminatory measures or limitations to the human rights and fundamental freedoms of indigenous peoples that remain part of the NTER programme must be narrowly tailored, proportional, and strictly necessary to achieve the legitimate objectives being pursued.

40. Additionally, such limitations on rights should exist only on the basis of the free, prior and informed consent of the indigenous peoples concerned. Where this is not possible because of exigent circumstances, due regard should be given to the full range of applicable human rights norms. In any case, any measure that accords differential treatment to indigenous peoples or that limits their human rights and fundamental freedoms should fulfil the requirements of “special measures” under applicable human rights standards, including the Convention to Eliminate Discrimination.

41. Efforts should be made to reach agreements in accordance with the organizational patterns and leadership structures of the diverse indigenous communities of the Northern Territory regarding the terms of the NTER and any similar programmes affecting these communities. This could lead to arrangements that, pursuant to such agreements, vary from one community to another for measures such as income management, alcohol regulation, and delivery of services.