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15/9/08 Y. Grace.*

Essentials for Social Justice: Reform

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Essentials for Social Justice

Between December 2007 and April 2008 the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, will deliver a series of key speeches setting out an agenda for change in Indigenous affairs.

Essentials for Social Justice: Sorry

I begin by paying my respects to the Jagera and Turrubual peoples, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you, for your generous welcome to country for all of us.

Can I thank Monique Bond for the invitation to address the Queensland branch of ANTAR tonight. ANTAR has played a vital role in building community support for Indigenous issues and reconciliation, so it is always a pleasure to be able to support your efforts.

Importantly, you have also played a vital role in celebrating and help build upon the successes in Indigenous communities. This provides hope and recognition for our people and communities. We need this. Our peoples live in often difficult circumstances and face largely negative perceptions of them in the mainstream media. Passionate friends like you are a valuable thing.

This speech is the second in a series of six that I will be delivering nationally over the coming months outlining an agenda for change across all areas of Indigenous affairs. I have termed this series of speeches *Essentials for Social Justice*.

The first speech in this series was delivered in December last year and outlined an agenda for addressing the needs of the stolen generations and the delivery of a national apology.

Speeches in the coming months will address the Northern Territory intervention and child abuse issues; the importance of land and culture in creating economic development; as well as speeches outlining a positive vision for our communities such as by closing the gap in life expectancy and health status, and creating an equal life chance for Indigenous children.

Today's speech is simply titled: **Reform**.

There are a range of issues that I want to explore tonight about the ability of governments to effectively deliver services to Indigenous people and communities, and ultimately, their ability to contribute to improved outcomes in the life circumstances of Indigenous peoples.

For I believe that we have reached a crossroads in Indigenous policy and service delivery.

Issues of Indigenous disadvantage and dysfunction are before our eyes more frequently and more prominently than ever before.

Barely a day goes by without another chilling and heartbreaking story of abuse, violence or neglect; or of demonstrations of the impact of entrenched poverty and despair among our communities. This creates a momentum for change and for action.

Governments of all persuasions and at all levels have expressed a determined commitment to address these issues, particularly as they relate to family violence and child abuse, and to contribute to a better future for Indigenous people.

And yet the means by which they seek to achieve this have had, at best, limited success.

The capacity of government to deliver on its commitments is the proverbial 'elephant in the room'.

Ultimately, I believe that the true legacy of the previous federal government for Indigenous affairs lies not in the NT intervention experiment, as significant as that is, but in the system for administering Indigenous affairs that it created in the ashes of ATSIC.

That system is simply not working and has serious shortcomings that will limit the ability to implement any new agenda.

That is the lesson of successive *Social Justice Reports* to the federal Parliament, and that is the lesson of the Australian National Audit Office's audit of the whole of government arrangements for delivering services to Indigenous people.

There are two key issues at stake here. The first is the ability of the federal government to work on a whole of government basis, where the life circumstances of Indigenous people are not divided into smaller bureaucratic responsibilities that inevitably do not fit together or cover the whole.

And the second is the capacity of this system to respond to the circumstances of Indigenous people wherever they live – be it in an urban or a rural or remote setting. If you explored the current policy settings, you could be forgiven for mistakably believing that the majority of Indigenous people live in remote, discrete communities given the substantial emphasis on this by government and the lack of detailed effort on equally important tasks such as unlocking mainstream accessibility of programs for Indigenous peoples.

Already the new government has made some bold announcements for reforming Indigenous affairs. It has announced:

- - the establishment of a Working Group on Indigenous Reform at the level of the Council of Australian Governments;
- - the establishment of a Joint Policy Commission with the involvement of the Opposition to look at solutions for the housing situation faced by Indigenous peoples; and

- - explicit commitments to close the gap in life expectancy, maternal and child health, and literacy and numeracy.

These announcements do not deal explicitly with the problems of the federal model for service delivery that I have outlined. If modifying this existing system is not treated as an urgent priority for reform, then it will stymie any constructive efforts to advance Indigenous issues.

But before we discuss some specifics of what needs to change, let us consider how we got to where we are today.

Continual stories of failure and despair have left a deep scar across Indigenous communities. They breed hopelessness and despair. And among the broader Australian society they also breed intolerance and anger, usually directed towards Indigenous peoples.

Back when Mick Dodson was Social Justice Commissioner in the early 1990s he referred to what he called the 'industrial deafness' of the Australian community. By this he meant the phenomena whereby the Australian community had become so accustomed to stories of Indigenous disadvantage that they had become immune to it, and came to expect it.

Over the past decade, the community and government have come to believe that this situation is intractable, too difficult to shift and for some people, the fault of Indigenous peoples themselves.

And at some point, as a nation we stopped believing that equality of opportunity for Indigenous peoples was a realistic goal. And so we stopped trying to achieve it.

In my view, this lack of aspiration is reflected in the way the previous federal government placed emphasis on the 'record levels of expenditure' annually on Indigenous issues.

There are many things that could be said about this approach – the creative accounting involved, and the queries about whether the money ever hit the ground, yet alone benefited Indigenous communities. The general lack of scrutiny of the "record expenditure" by the mainstream media, except the SMH, also beggars belief.

But to me the main issue is, since when did the size of the input become more important than the intended outcomes?

What exactly was the point of the record expenditure?

I can guarantee you that if you keep on the current path, there will be record levels of expenditure every year for the next decade. This is because there is a sharply growing Indigenous population. More people living in poverty and requiring additional services.

As best as I can ascertain it, the point of highlighting the record level of expenditure was a gentle hope that things would improve incrementally over time.

And on some measures they have – albeit slightly. But on others they have not. And very little of it is by design.

So while I firmly believe that these stories of disadvantage and dysfunction should be told, I also believe that they should not be told *just for the sake of it*.

They should be told to hold governments accountable for their actions; to build support and determination among the broader community to create positive change; and to challenge Indigenous people and communities to face the demons in our own backyards.

These stories should be told in order to fuel change, and to kick start action.

But what type of action?

This is the crossroads that we now face.

I want to place before you some quotes. Each is worth reflecting on. In a different way, each relates to the challenges that lie before us.

First, let me quote to you the recently retired Secretary of the Department of Prime Minister and Cabinet, Dr Peter Shergold. Recently he said:

Sometimes when people say it must be tough being head of PM&C, or it must have been tough when you were working in DEWR during the waterfront dispute, I disagree. I always think that if you've done three and a half years trying to administer aboriginal affairs, you can take anything – it is a genuinely difficult area. You know that people's lives depend upon it ... It's a very emotionally fraught area.^[1]

In his final interviews as Secretary of PM & C he also expressed his regret at the slow progress on Indigenous issues, describing it as an area that is 'intractable'. In his valedictory lecture he stated:

Often I despair at the abject failure of well-intentioned policies to make a substantive difference to the appalling conditions in which too many indigenous Australians live.
[2]

Next, let me quote to you former Minister Mal Brough on introducing the NT intervention legislation to Parliament. He stated:

When confronted with a failed society where basic standards of law and order and behaviour have broken down and where women and children are unsafe, how should we respond? Do we respond with more of what we have done in the past? Or do we radically change direction with an intervention strategy matched to the magnitude of the problem?^[3]

Third, let me quote to you from the apology speech by Prime Minister Rudd last Wednesday. He stated:

The truth is: a business as usual approach towards Indigenous Australians is not working. Most old approaches are not working. We need a new beginning.^[4]

So what can we take from these quotes?

Well first, for some time there has been a growing despair and a growing sense of urgency for governments to get it right when it comes to Indigenous affairs. This is particularly in relation to dealing with the hardest and most damaging issues in our communities - child abuse and family violence.

Second, this has become a clear clarion call for change – a determination to do things differently. As Mal Brough puts it, 'do we respond with more of what we have done in the past?' And as Prime Minister Rudd puts it: 'a business as usual approach towards Indigenous Australians is not working. We need a new beginning'.

When you combine this sense of despair, the growing sense of urgency with a determination to

do things differently, you can see how something as radical, as intensive and as divisive as the NT intervention emerges as the basis for new policy approaches.

Regardless of your views on the appropriateness of the approach adopted in the Northern Territory, it has blown out of the water once and for all the *status quo* in Indigenous policy making.

This *status quo* is the **fallacy** that if governments continue on their existing path, eventually the substantial issues facing our Indigenous communities will be resolved. It is the fallacy that governments have been doing everything within their power and resources to address the gross disparities experienced by Indigenous peoples across all areas of life.

And it is the fallacy that government efforts are sufficiently targeted to achieve their desired outcomes – namely, addressing these life disparities experienced by Indigenous peoples. This fallacy has been perpetuated by successive governments at the federal and the state and territory level. Its most regular manifestation is the usual government trick of seeking to address one area of need by taking resources from another area of the indigenous budget – shuffling resources rather than adding to the quantum available.

Through their actions in introducing the NT intervention, the former government admitted three key things.

First, that governments were not providing Indigenous peoples with basic services that other Australians take for granted – policing and law and order; health and education services; and adequate infrastructure to name but three areas.

Second, it admitted to the fact that the *scale* of investment in our Indigenous communities to date has not been sufficient to enable real change – sustainable, long term gains that can turn communities and peoples lives around.

And third, it admitted that the change needed is not going to be achieved quickly and will require long term investments.

So what do we learn from these admissions? Down what path do they lead us?

It has to be said that these admissions reveal how simplistic it is to draw a line under all past efforts as failed and to strive for newness. In many ways, past approaches didn't work because they never had a chance to work.

Indigenous affairs have been treated as if they are immune from good policy development. Lofty aspirations, repeated often, without a snowball's chance in hell of ever being realised because of the stubborn refusal (or possibly even the convenient blind eye being turned) to the fact that there is a clear lack of capacity to deliver -both in human terms and in terms of the financial inputs.

The NT intervention is, therefore, emblematic of the challenges that we face more broadly in Indigenous policy.

The NT intervention represents the appeal and seductive charm of embracing new approaches and breaking from the past. But it also represents the danger of such change without looking back over your shoulder and considering where you have been, what has worked, and what has been the source of the problems faced to date.

Ultimately, the commitment of the previous government to make a real difference cannot be questioned. But in the context of tonight's discussion, I think that the previous government got it wrong on two fronts.

First, they didn't seek to learn from their past, and even from their very recent efforts. The NT Intervention bears little resemblance to the so-called 'bold experiment' of the post-ATSIC new arrangements – such as the COAG trials, SRAs and whole of government coordination.

These were largely implemented from 2004, so they were hardly the distant past. There are lessons from these arrangements that will affect the workability of the NT intervention and go to the capacity of government to deliver.

And second, they didn't appreciate the importance of undertaking action in partnership with Indigenous communities. In fact, since the abolition of ATSIC they had moved further and further away from the systemic involvement of Indigenous peoples in policy making processes. In the intervention, this is reflected in processes that are prescriptive and compulsory in nature rather than applied voluntarily and in partnership; or put different, that treat Indigenous peoples as passive recipients of policy rather than active agents for change; and it is reflected in processes that are enormously, and I would say excessively, costly. And all from a government committed to cutting the 'red tape' of bureaucracy for Indigenous service delivery!

And this leads me to the essential components for reform.

To me, the essential challenges for Indigenous policy reform are as follows.

First, there is a pressing need to ensure the full participation of Indigenous peoples in policy making processes.

This is essential and it is currently lacking.

There is currently a disconnect between policy making at the national level and its implementation at the local and regional level, with a consequence that there are insufficient provisions that enable Indigenous participation in the policy process.

Much of the failure of service delivery to Indigenous people and communities, and the lack of sustainable outcomes, is a direct result of the failure to engage appropriately with Indigenous people and of the failure to support and build the capacity of indigenous communities. It is the result of a failure to develop priorities and programs in full participation with Indigenous communities.

Put simply, governments risk failure if they develop and implement policies about indigenous issues without engaging with the intended recipients of those services. Bureaucrats and governments can have the best intentions in the world, but if their ideas have not been subject to the "reality test" of the life experience of the local Indigenous peoples who are intended to benefit from this, then government efforts will fail.

More importantly, if bureaucrats or governments believe that their ideas are more important or more relevant than those of local indigenous peoples, or that they can replicate policies that have worked in different contexts – such as functional or urbanised communities, or communities which have the necessary infrastructure and support mechanisms in place, then again, they will fail.

These are fairly basic points. But they are of such fundamental importance. And so often they are overlooked.

There is also a challenge to build into policy a longer term vision for the well-being of Indigenous communities. Policy development and program implementation can benefit from understanding community development principles. Creating change in communities is a long term process that will ultimately only be achieved by empowering and supporting communities, often small step at a time, so that they are capable of taking control of their circumstances. This takes time and

consistency of effort.

This need for participation exists at the local, regional and national levels. Processes are needed to ensure Indigenous input in a systemic manner at the regional level, and linked up to the state and national levels.

With the recent demise of the National Indigenous Council, the need at the national level is particularly pressing. The NIC was not intended to be a representative organisation, and it did not adopt a consultative approach to its work during its existence.

But now that it is gone there is no systemic structure in place for Indigenous input into government decision making.

Ultimately, there is a need for a new national representative body to ensure such input and engagement.

To this end, my Office has recently commissioned research to assist in the conversation with Indigenous peoples as to the core aspects of such a representative body. Our research will answer the following three questions:

- (1) What lessons can be learnt from mechanisms for representing Aboriginal and Torres Strait Islander peoples at the national level that have previously existed?
- (2) What options are there for ensuring that a national Indigenous representative body is sustainable? and
- (3) What lessons can be learned from mechanisms for representing Indigenous peoples that have been established in other countries?

This information should provide a solid basis for informed debate among Indigenous peoples as to the different aspects of models for representation that is most suitable to meet their needs.

This will take time. And so in the interim, there remains a challenge to ensure Indigenous voices can be heard in the policy arena.

To this end, I have proposed to government that they convene a series of meetings of Indigenous peak bodies. This would include land councils, affiliations of health organisations, Aboriginal child care agencies, educational bodies and other peaks operating at the state, territory or national level.

Most of such organisations are elected by Indigenous peoples and they are representative of their sectors.

Such a process would provide an interim approach to ensure that Indigenous peoples are at the table as vital decisions about their lives are made by the government. Such a voice should not be denied for the year or more that it is estimated that it will take for a representative body to be functional.

Second, ambitious targets should be set.

Indigenous policy should not be allowed to simply drift along without ambition and without targets. It is not good enough to rely on 'record levels of expenditure' as the measure of progress.

It is time to be bold and to be honest. The lack of goals for achievement in Indigenous affairs, with targets and benchmarks to measure progress over time, is actually a failure of

accountability and transparent policy.

In his apology speech, the Prime Minister acknowledged this. He stated:

Our challenge for the future is now to... embrace a new partnership between Indigenous and non-Indigenous Australians...

A new beginning which contains real measures of policy success or policy failure. A new beginning, a new partnership, on closing the gap with sufficient flexibility not to insist on a one-size-fits-all approach for each of the hundreds of remote and regional Indigenous communities across the country but instead allows flexible, tailored, local approaches to achieve commonly-agreed national objectives that lie at the core of our proposed new partnership. And a new beginning that draws intelligently on the experiences of new policy settings across the nation.^[5]

For two years now, I have been leading a coalition of organisations in an effort to embed targets and benchmarks into Indigenous health policy in order to meet the goal of achieving Aboriginal and Torres Strait Islander health equality within a generation.

This has become known by many as the 'close the gap' campaign, and it uses a human rights based approach to health programming to cut through the malaise that currently exists in Indigenous health policy. In terms of human rights implementation, it is cutting edge stuff.

It is most heartening that the new government has begun to take up the challenges that we have put forth through the close the gap campaign. In his apology speech, Prime Minister Rudd accepted the need for targets and goals when he said:

unless we as a parliament set a destination for the nation, we have no clear point to guide our policy, our programs or our purpose; no centralised organising principle...

None of this will be easy. Most of it will be hard—very hard. But none of it, none of it, is impossible, and all of it is achievable with clear goals, clear thinking, and by placing an absolute premium on respect, cooperation and mutual responsibility as the guiding principles of this new partnership on closing the gap.^[6]

This is a critical element for policy reform at the federal level.

Third, and related to this, such targets and goals should receive bipartisan support and form the basis of inter-governmental cooperation.

We need long term commitments to make real progress in Indigenous affairs.

This requires stability and determined action. And it requires longer term funding, especially for community initiatives so that they no longer are beset from the perennial problems of pilot funding or short term funding arrangements.

Bipartisan support is essential to support this. Achieving improvements in Indigenous disadvantage should sit above party politics.

The recently established Joint Commission on Indigenous Policy provides the vehicle for this to occur. In my view, this could be enhanced by ensuring that this Commission is supported by the input of the best and brightest from across society – with business leaders, academics, community workers and others invited to contribute to its work – to ensure that its work is evidence based and informed.

These targets and commitments should also be applied across governments. The newly announced COAG Working Group on Indigenous Reform provides the platform for this to occur.

Ultimately, it should lead to consolidated agreements between the states and Commonwealth for Indigenous affairs, be built into funding agreements for housing, health, education and other services, with compliance and accountability mechanisms affecting the distribution of Special and General Purpose Payments by the Commonwealth.

Much can be achieved if the federal government ensures that the targets agreed are matched with teeth for accountability and implementation.

Fourth, once goals and targets have been set, government processes must be reformed and re-engineered to ensure that they are capable of meeting these challenges.

Target setting is not a rhetorical exercise. Once a target is set in good faith, it requires a realistic assessment of the inputs and approaches necessary to achieve it, and then action to match resources to the level of need.

There has rarely been a time when Indigenous services have been funded to the level of need. This is a primary reason relating to the failure to achieve substantial improvements over the past decade.

Recently, the Australian National Audit Office assessed the whole of government arrangements for Indigenous affairs. It found a fundamental problem in how government programs for service delivery matched with the government's ambitions. These ambitions were reflected in three priority areas for action as agreed through COAG, and as reflected in the Overcoming Indigenous Disadvantage reporting framework.

The ANAO noted that whole of government delivery of services requires departments to work together to develop budgeting and reporting arrangements that meet both the accountability obligations of individual departments and also contribute to the collective achievement of, and accountability for, whole of government outcomes.

They concluded that none of the agencies audited identified their contributions to meeting the priorities as set by COAG and their Ministers, and none of them had developed whole of government measures of accountability. Few even identified within their internal systems what the key priorities for action were. So:

While departments individually identify their activities in Indigenous affairs in their accountability documentation, there is little in the way of performance information at the aggregate level to assess and inform progress in terms of the... identified priority areas for action in whole of government Indigenous service delivery.^[7]

In many ways, this is symptomatic of the lack of a targeted plan of action by the federal government to date. And it is symptomatic of a troubled system for whole of government service delivery.

Through successive *Social Justice Reports* I have provided a running commentary on the potential benefits and the concerns about this whole of government system. Contrary to many, I still see much potential in this system. Particularly, I see potential in community brokers and local level agreement making processes, coordinated on a regional level through the Indigenous Coordination Centres.

But the system as it stands is not working. This is in part due to the absence of any systemic

approach to engagement with Indigenous peoples, but it has also been the result of the tight control at the central level of activities that occur regionally.

There needs to be a continued focus on local level agreement making to build the capacity of Indigenous communities, as well as that of the government. A community partnership or community development model is not too big a leap from the existing structure and should be explored further.

And fifth, Indigenous policy making should be based on a commitment to human rights

Fundamental to good policy development is that all legislation, policies and programs developed and implemented by governments should be consistent with international human rights standards.

At present, domestic Indigenous policy making processes treat human rights as a prescriptive framework that is focused on *what you can't do* and on a *compliance mentality*. The limited efforts to engage with human rights principles are at the most crude and basic level, such as crafting measures so that they can avoid accusations of racial discriminatory treatment.

Clearly this is an essential component of the human rights system. But it is much more than this. It also encourages the adoption of proactive measures to create an enabling framework for active participation and engagement of all citizens, and particularly for those who are disadvantaged or powerless.

The human rights framework promotes a focus on ensuring that different segments of the population are able to participate fully. This requires a focus on gender equality; the rights of children and a focus on the best interests of the child; as well as providing recognition and protection for cultural diversity.

Human rights provide an enabling framework that promotes active engagement of Indigenous peoples through partnerships, shared decision making and ultimately shared responsibility for outcomes.

Importantly, human rights also provide a framework to assist in targeting government activity to areas of greatest need. One of the fundamental goals of human rights is the provision of equality before the law and non-discriminatory treatment for all. Where such discrimination exists, such as the entrenched discrimination against Indigenous peoples that is reflected in disproportionately high rates of disadvantage, there are obligations on the national government to ensure that actions by government to address these inequalities are sufficiently targeted, are progressively reducing the inequality gap and are doing so as quickly as possible and utilising the maximum of available resources.

If I return briefly to the NT intervention, it reveals the dangers of not adopting a human rights based approach.

Measures that violate the human rights of the intended beneficiaries are more likely to work in ways that undermine the overall well-being of these communities in both the short and longer term.

For example, the Government has clearly stated that the NT intervention seeks to address a breakdown in law and order in Aboriginal communities. And yet it potentially involves introducing measures that undermine the rule of law and that do not guarantee Aboriginal citizens equal treatment to other Australians.

If this is the case, then it places a fundamental contradiction at the heart of the NT intervention

measures. This will inhibit the building of relationships, partnerships and trust between the Government and Indigenous communities. It would also undermine the credibility of the measures, and ultimately, threaten the sustainability and long term impact of the measures.

Human rights obligations are not merely technical matters that sit distant from the day to day realities of life for Indigenous children and their families. The ability of children, their families and their communities to enjoy their human rights has a profound impact on the environment in which they live, grow and develop.

It fundamentally impacts upon their hopes and aspirations, in empowering or disempowering them, and in supporting or restricting different life paths and ultimately the choices that people make about their futures.

Put simply, all measures to address family violence and child abuse should themselves respect human rights. It would be outrageous to suggest that it is not possible to achieve this.

So to conclude, the new government may not yet have fully realised it, but they have been left with a system for delivering on the government's commitments to Indigenous affairs and reconciliation that is severely limited in its capacity; that has developed and mutated out of an urgent desire to do better, but which has ignored the evidence in adopting change; and which has become disconnected from the very people it is meant to service.

This creates serious challenges for the government. Reform is necessary to ensure appropriate standards of accountability are upheld; that a clear, consistent vision is applied; and that the capacity exists to deliver.

Unless this is addressed within a learning framework, with an eye to detail and basic standards of good policy practice being applied, the government may find that it becomes frustrated at the lack of achievement and the intractable nature of the existing disparities in life circumstances experienced by many Indigenous peoples.

The first step on this road is mutual respect and a partnership.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.

Note: This is the second in a series of six speeches outlining an agenda for change in Indigenous Affairs. The "Essentials for Social Justice" series will be presented between December 2007 and April 2008, and will be available online at:
http://www.humanrights.gov.au/social_justice/essentials/index.html.

[1] <http://www.apsc.gov.au/media/briggs080208.htm>.

[2] www.apsc.gov.au/media/shergold080208.htm.

[3] The Hon Mal Brough, 2nd Reading Speech – *Northern Territory Emergency Response Bill 2007*, Hansard, 7 August 2007, p10.

[4] http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm.

[5] http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm.

[6] http://www.pm.gov.au/media/Speech/2008/speech_0073.cfm.

[7] See further: http://www.anao.gov.au/director/publications/auditreports/2007-2008.cfm?item_id=A0CE05401560A6E8AA45071FCB8C974B.

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