

INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

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Aboriginal Health and Medical Research Council of New South Wales



Standing Committee on Social Issues

Parliament House

Macquarie St

Sydney NSW 2000

Dear Sir/ Madam,

INQUIRY INTO CLOSING THE GAP – OVERCOMING INDIGENOUS DISADVANTAGE

Please find attached the submission of the Aboriginal Health & Medical Research Council of NSW (AHMRC). This submission was endorsed by the Board at its meeting on 29th November 2007, in order to meet the original closing date of 30 November for submissions to the above Inquiry. For that reason it does not directly deal with developments that have occurred after the submission deadline was extended to 31 January 2008.

The main development is, of course, the changes announced by the Council of Australian Governments (COAG) at its meeting on 20th December 2007. Since the creation of a

Funded by NSW Health

Working Party on Indigenous Reform has now replaced the unspecified planning processes of the COAG Secretariat on the so-called *Indigenous Generational Reform* processes described at the COAG meetings in July 2006 and April 2007, it is important to stress that these new processes do not alter the conclusions arrived at in the AH&MRC submission.

According to the COAG Communiqué of 20th December 2007, the *Working Party on Indigenous Reform*, is to be “... overseen by a Commonwealth Minister, with deputies who are nominated by the States and Territories at a senior departmental level [and] ... senior officials from all jurisdictions”. The Communiqué asserts that this is a “break with previous practice”. It may be so in relation to Working Parties on other issues. However, it is a very old and discredited practice for Australian Governments in “reforming” Aboriginal Australians. It is essentially the same as the practice agreed at the Premier’s Conference in Adelaide in 1936: “a Conference of Chief Protectors and Boards controlling aborigines in the States and the Northern Territory” from which others were excluded. This suited the participants in the *Initial conference of Commonwealth and State Aboriginal authorities* (Canberra, 21st to 23rd April, 1937) very well. They agreed amongst themselves that anthropologists and missionaries and others described as “arm-chair experts” should be excluded; and the notion that Aboriginal people might be included in the decision-making process was never even considered.

Thus, although the COAG commitment to “... work with Indigenous communities ...” is welcome, the processes by which Government has decided to work with Aboriginal

people seem to be the same in 2007 as they were in 1937. Thus the Board's recommendations about the need for radical reform of these processes are just as important on 31 January 2008 as they were when the submission was endorsed. Apart from anything else, the COAG decisions raise questions about the role of this current NSW *Inquiry*. Plans are to be presented to a COAG meeting in March 2008, while the *Inquiry* will still be holding public hearings. Since there are to be four COAG meetings a year to "drive reform", there will have been another one by the time this *Inquiry* submits its Interim report of 30 June 2008, and yet another before the *Inquiry* submits its Final Report on 28 November 2008. Thus, while the *Inquiry* is proceeding, the Government officials in the COAG Working Party will be:

"Identifying further joint reforms and implementation timetables by the end of 2008, including in the following areas:

- *basic protective security from violence for Indigenous parents and children;*
- *early childhood development interventions;*
- *a safe home environment;*
- *access to suitable primary health services;*
- *supporting school attendance;*
- *employment and business development opportunities; and*
- *involving local Indigenous people in the formulation of programs that support them."*

This rush to "reform" Aboriginal people ignores all the lessons of history. As our submission highlights, the virtue of a "generational" plan is that there is time to get the

process right. We want to call the attention of the *Inquiry* to a report that will have its 25th anniversary before the Inquiry concludes: *Report to the Minister for Health, Hon LJ Brereton, of the New South Wales Task Force on Aboriginal Health, September 1983*. At page 53 of that *Report* it says:

“5.11 ...The Task Force advocates, as a measure which can help to close the gap between black and white health care, an expanded role, with adequate funding, for Aboriginal Community-controlled health services.”

Now, 25 years later, the Aboriginal community-controlled health sector is still looking at ways and means of closing the gap, and still making representations to government inquiries whose deliberations are being bypassed by committees of Government officials in a rush to “close the gap” by processes that failed in NSW between 1983-2008, and which nevertheless seem to be expected to work in future.

For example, at page 20 of the 1983 report, the life expectancy of Aboriginal people is estimated by the NSW Department of Health to be 49 years for men and 59 years for women in 1981-82, as against 68.8 years and 75.7 years respectively for non-Aboriginal men and women. A four-nation comparison published during the extended submission period for the current *Inquiry* gives life expectancy data for the period 1990/91 through 2000/01, and their Table 3 is reproduced below (Cooke M, Mitrou F, Lawrence D, Guimond E, Dan Beavon D. Indigenous well-being in four countries: An application of the UNDP’S Human Development Index to Indigenous Peoples in Australia, Canada,

New Zealand, and the United States. *BMC International Health and Human Rights* 2007, 7:9 doi:10.1186/1472-698X-7-9 (provisional PDF).

Table 3 – Life expectancy at birth, years (Life expectancy index score)

	Australia Non-Aboriginal	Aboriginal and Torres Strait Islander	Aboriginal-Non-Aboriginal Gap
1990/1	80.2 (.920)	59.6 (.577)	20.6 (.343)
1995/6	81.4 (.939)	59.4 (.573)	22.0 (.366)
2000/1	82.8 (.964)	59.6 (.576)	23.2 (.388)

	Canada Non-Aboriginal	Canadian Aboriginal (Registered Indian)	Gap
1990/1	77.9 (.882)	70.6 (.760)	7.3 (.122)
1995/6	78.5 (.892)	72.2 (.787)	6.3 (.105)
2000/1	78.7 (.895)	72.9 (.798)	5.8 (.097)

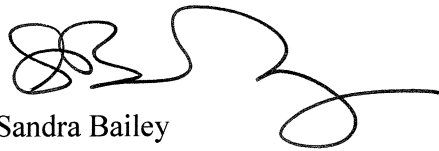
	New Zealand Non-Aboriginal	Maori	Gap
1990/1 ²	76.4 (.856)	67.7 (.712)	8.7 (.144)
1995/6	78.0 (.883)	69.4 (.741)	8.6 (.142)
2000/1	79.6 (.910)	71.1 (.769)	8.5 (.141)

	United States Non-Aboriginal	American Indian and Alaska Native	Gap
1990/1	75.4 (.841)	70.2 (.753)	5.2 (0.88)
1995/6	76.2 (.854)	71.1 (.768)	5.1 (.086)
2000/1	76.6 (.859)	70.6 (.760)	6.0 (.099)

That is to say, the NSW Task Force of 1983 was looking at a mortality gap of 19.8 years for men and 16.7 years for women, and in 2008 we are looking at a mortality gap that is larger. In these circumstances, the assumption that Government officials are the best judges of what is good for Aboriginal people must surely be re-examined.

For all of these reasons, we believe that the case argued in our submission has been strengthened by the events that have occurred since it was approved by the Board on 29th November, and we urge the Inquiry to consider it very seriously indeed.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Sandra Bailey

Chief Executive Officer

31st January 2008

SUBMISSION



Aboriginal Health & Medical Research Council of NSW

The AH&MRC appreciates the opportunity to make a submission to the NSW Legislative Council *Inquiry into Overcoming Indigenous Disadvantage*.

This submission was authorised by the Chair and Board of the AH&MRC at its meeting on 27th-29th November 2007.

Preamble

Although we have responded to some of the Terms of Reference of the Inquiry, the Board wishes to make a more fundamental case for placing Social Justice for Aboriginal people beyond the vagaries of political chance for long enough – 25 years in the first instance – to achieve it.

The Board is very conscious of the fact that the Australian people have just voted to remove from office a government that abolished ATSIC after 16 years of operation and thus eliminated the only nationally elected body for Aboriginal people.

Likewise, the Australian people have just removed power from the individuals who, in government, unilaterally swept aside decades of gains by Aboriginal people in the Northern Territory under the pretext of defending the human rights of Aboriginal children as guaranteed by the *UN Convention on the Rights of the Child*, and set aside the Racial Discrimination Act in so doing.

Likewise, the Australian people have just removed from office those who substituted a mean-spirited petty trading for the recognition of basic human rights.

Lastly, the Australian people have just removed from power the government that shamed Australians before the whole world by being one of only four to vote against the adoption of the *UN Declaration on the Rights of Indigenous Peoples* – a declaration that the incoming government has a mandate to support.

The Board is very conscious of the fact that this result might have been quite different if some unrelated issue of concern to 97.5% of the Australian people had made the result of this particular election go in a different direction, and that Australian Government policy towards Aboriginal people would be continuing along the previous path.

The Board is also very conscious of the fact that 36 years of meetings in Aboriginal Community Controlled Health Services have occurred since AMS

Redfern was established in 1971, and that our people are only forty years away from the Referendum of 1967 at which the Australian people put behind them the policies that were almost genocidal in outcome, whatever their stated intent may have been. Aboriginal people have survived. The issue is for Aboriginal people now to receive Social Justice.

The Board wishes to remind the NSW Government that this is where it all began on 18th January 1788, and how our people received the visitors:

“The boat in which his Excellency was, rowed up the harbour, close to the land, for some distance; the Indians keeping pace with her on the beach. At last an officer in the boat made signs of a want of water, which it was judged would indicate his wish of landing. The natives directly comprehended what he wanted, and pointed to a spot where water could be procured; on which the boat was immediately pushed in, and a landing took place.

As on the event of this meeting might depend so much of our future tranquillity, every delicacy on our side was requisite. The Indians, though timorous, shewed no signs of resentment at the Governor's going on shore; an interview commenced, in which the conduct of both parties pleased each other so much, that the strangers returned to their ships with a much better opinion of the natives than they had landed with; and the latter seemed highly entertained with their new acquaintance, from whom they condescended to accept of a looking glass, some beads, and other toys.¹”

¹ Watkin Tench, Capt. of the Marines. Sydney Cove, Port Jackson, New South Wales, 10 July, 1788.

Unfortunately, what His Excellency really wanted was to land "... in order to take possession of his new territory, and bring about an intercourse between its old and new masters". There was another agenda behind the "want of water".

The Board therefore calls upon the NSW Government to make a new beginning, by using this Inquiry to lead the way towards returning responsibility for the achievement of Aboriginal Social Justice to the hands of the Aboriginal people.

We have based our submission on key principles in the *United Nations Declaration on the Rights of Indigenous Peoples*, as applied to Aboriginal and Torres Strait Islander people in Australia, especially Article 23, which states that Aboriginal people have the right to determine and develop priorities and strategies for exercising the right to development, and in particular the right to be actively involved in developing and determining health, housing and other economic and social programs that affect us, and, as far as possible, to administer such programs through our own institutions.

After considering recent history, and in particular the abolition of ATSIC and the Northern Territory "Emergency" Response, the AH&MRC Board is convinced that only Aboriginal and Torres Strait Islander people can be guaranteed to retain an interest in seeing that health and other programs are sustained in a consistent way over the period to achieve reductions in mortality amongst our people,

independent of politics driven by other concerns and all the other changes of such a time.

We therefore believe that a 25-year program is a necessary minimum, and that the program currently referred to by the Council of Australian Governments (COAG) as “Indigenous Generational Reform” should be renamed as the “Aboriginal Social Justice” program, and governed by an appropriate independent statutory body, initially the Human Rights and Equal Opportunity Commission under its Aboriginal Social Justice portfolio, with quarantined funding, as a program developed and determined and administered by Aboriginal and Torres Strait Islander people by internationally recognised moral right.

Within that, the AH&MRC view is that primary health care should be placed in the hands of an adequately resourced Aboriginal Community Controlled Health sector, and that should be expanded in accordance with a key recommendation of the National Aboriginal Health Strategy 18 years ago:

“Primary level Aboriginal Health Services presently being delivered by State Governments should be transferred to existing or proposed Aboriginal Community Controlled Primary level Services – p xxv, National Aboriginal Health Strategy, *NAHS Working Party, 1989*

An Aboriginal Community Controlled Health Service (ACCHS) is a primary health care service initiated and operated by the local Aboriginal community to deliver

holistic, comprehensive, and culturally appropriate health care to the community which controls it (through a locally elected Board of Management).²

The ACCHS system has come a long way, supported not over-generously by governments, since 1971. It is recognised by the Office of Aboriginal and Torres Strait Islander Health that Aboriginal communities, through ACCHS, are measurably more successful in the provision of primary health care services to Aboriginal people and communities than other agencies.

Wherever an ACCHS exists, community members elect its Board, and these in turn elect regional representatives to a state-level body, the affiliates of the National Aboriginal Community Controlled Health Organisation (NACCHO).

In keeping with the philosophy of self-determination, Aboriginal communities operate over 130 ACCHS's across Australia. They range from large multi-functional services employing several medical practitioners and providing a wide range of services, to small services without medical practitioners, which rely on Aboriginal health workers and/or nurses to provide the bulk of primary care services, often with a preventive, health education focus. The services form a network, but each is autonomous and independent both of one another and of government. The integrated primary health care model adopted by ACCHSs is in

² The Aboriginal Health & Medical Research Council of New South Wales. *Primary, secondary and tertiary health care services to aboriginal communities*. AHMRC Monograph Series Volume 1. Number 1. 1999 <http://www.ahmrc.org.au/Downloads/MonographVol%201%201999.pdf>

keeping with the philosophy of Aboriginal community control and the holistic view of health that this entails.

'Aboriginal health is not just the physical well being of an individual but is the social, emotional and cultural well being of the whole community in which each individual is able to achieve their full potential thereby bringing about the total well being of their community. It is a whole-of-life view and includes the cyclical concept of life-death-life.' (NAHS, 1989).

The solution to address the ill health of Aboriginal people can only be achieved by local Aboriginal people controlling the process of health care delivery. Local Aboriginal community control in health is essential to the definition of Aboriginal holistic health and allows Aboriginal communities to determine their own affairs, protocols and procedures.

Thus, NACCHO represents local Aboriginal community control at a national level to ensure that Aboriginal people have greater access to effective health care across Australia. NACCHO provides a coordinated holistic response from the community sector, advocating for culturally respectful and needs based approaches to improving health and well being outcomes through ACCHSs.

Despite this, numerous Aboriginal Community Controlled Health Services have witnessed an ever-growing tendency by mainstream health services, or even

hospitals, to utilise Aboriginal health funding in attempts to duplicate primary care services provided by ACCHS's.

The argument advanced in support of this is that there is better infrastructure, management and program support within the mainstream health sector to provide a given program. Where this is the case it may be because of neglect in implementing the funding recommendations within the National Aboriginal Health Strategy (NAHS) which, in addition to recommending adequate resourcing of existing services, recommended expansion of Aboriginal Health Services and smaller Aboriginal health clinics throughout the country. Skill transfer, education and training, and adequate resourcing of ACCHS would provide more positive, cost effective and comprehensive results than attempts at duplicating primary health care provision.

This counter-productive exercise is also prevalent in case specific program money which federal, state and autonomous regional health bodies can divest into mainstream services. Such programs as Otitis Media, family health, diabetes, mental health, antenatal and post natal care, certain screening, immunisation, sexual health and environmental health are programs which by their very nature all require intimate and consistent close contact with the Aboriginal community. However, these essentially community programs can have their funding allocation diverted to agencies, universities and mainstream services rather than to ACCHS's, or at the State level in NSW the AHMRC, which

have direct and intimate contact with Aboriginal families and children - the very community people who require these essential services.

Aboriginal Health Workers employed by the mainstream health sector perform important roles providing preventative health education and health promotion programs in addition to the vital task of facilitating access and equity to secondary and tertiary health care services for Aboriginal people.

These necessary and complementary duties are important in the overall provision of health services to Aboriginal people which should not be jeopardised by perceived responsibilities which merely duplicate existing Community initiatives or compete with the Aboriginal community controlled health sector in its provision of primary health care services - services which it can provide quite easily and more efficiently.

The AH&MRC Board wishes the Inquiry to understand the enormous burden of slowly growing and operating services that have to be assembled from piecemeal funding, with multiple reporting requirements, with constant demands for “accountability” against objectives and program structures determined by others, and well beyond anything required of comparable primary care services in the mainstream.

The AH&MRC Board wishes the Inquiry to understand the fatigue and frustration of the last eleven years, and in particular the bizarre contrast between the flood of funding into the Northern Territory Emergency Response with no evidence base or accountability whatsoever, as compared with the trickle-feeding of funding and demands for evidence and accountability faced by the ACCHS sector.

In summary, the Board is requesting the Inquiry to very seriously consider how to place the achievement of Aboriginal Social Justice in the hands of Aboriginal people for the next 25 years, with guarantees of the resources that currently are dispersed across multiple hands and subject to all sorts of influences that Aboriginal people cannot control.

The Board wants a single point of planning, a single point of accountability and a single monitoring process, so that energy can be focused on the job to be done, rather than all the things on which it is consumed at present.

The only example we could find of a comparable undertaking is the Snowy Mountains Hydro Electric Scheme, and we have thus presented it here. However the Board wishes to qualify that example with the observation that Aboriginal communities are not things being built, but rather are social constructs, continually growing and changing and therefore mechanisms need to be in place to encourage this growth and development.

Overview

We have not attempted to address all of the Terms of Reference in detail, because as usual resources are limited.

Instead, we have focused this submission on a number of key things:

- the governance issues associated with revising the COAG policy of “Indigenous Generational Reform” to one of “Aboriginal Social Justice” (TOR 1.a), with special reference to:
 - the rights to health and healthcare stated in the UN Declaration of the Rights of Indigenous peoples; and
 - the need for a sustained national multilateral commitment for a 25-year process; and
 - Limitations of the Federal Government Northern Territory Emergency Response as a model of governance of complex 25-year change processes in NSW (TOR 1(d));

- Limitations on the Murdi Paaki COAG trial as a model of governance of complex 25-year change processes in NSW (TOR 1(f)).
- the specific role of health service developments in closing the gap in health-adjusted life expectancy³ (TOR 1(b)(ii)) over a 25-year period, especially;
 - the need for sustained policy keyed to the next five Australian Health Care Agreement (AHCA) 5-yearly cycles to support this; and
 - the immediate priority of a 10 year program (2 AHCA cycles) to establish comprehensive primary health care as enunciated by the Aboriginal Social Justice Report 2005; and
 - the NSW State Plan priority of reducing ambulatory-care-preventable hospitalisations; in relation to quarantining of savings for reinvestment in ambulatory care services and in relation to Commonwealth-state cost sharing in primary care; and
 - Specification of the complementary roles of “mainstream” services (both Commonwealth-funded and State-funded) and Aboriginal

³ Mathers CD, Murray CJL, Salomon JA. Methods for Measuring Healthy Life Expectancy. Chapter 33 in Murray CJL, Evans DB (eds) *Health Systems Performance Assessment: Debates, methods, and Empiricism*. Geneva: World Health Organization, 2003. URL: <http://whqlibdoc.who.int/publications/2003/9241562455.pdf>

Community-Controlled Health Services (ACCHS's) in reducing the gap in health Adjusted Life Expectancy; with a view to agreeing a strategic development path over the next 10 years for them.

The overall objective of our submission is to give reasons why a 25-year Aboriginal Social Justice objective must have supporting processes that are fit for purpose. This means they must suit a 25-year purpose, not just be responses to the chosen “emergencies” of the year. For that, they have to be designed from the outset to be sustainable in an environment where there will be repeated “acute” problems and pressures for Governments and organisations to change policies and priorities and programs through the period.

In that context, the main implication of the COAG trials, including Murdi Paaki, is that they were set up on a tripartite basis amongst three elected bodies, namely Federal and State governments and ATSIC, and then the first body abolished the third and substituted arrangements that suited it better.

TABLE OF CONTENTS

PREAMBLE	1
OVERVIEW	11
TABLE OF CONTENTS	14
COAG ABORIGINAL SOCIAL JUSTICE (TOR 1A)	15
COAG-ASJ GOVERNANCE WITH SPECIAL REFERENCE TO:	18
<i>The rights to health and healthcare stated in the UN Declaration of the Rights of Indigenous Peoples</i>	18
COAG-ASJ GOVERNANCE WITH SPECIAL REFERENCE TO:	28
<i>The need for a sustained national multilateral commitment for a 25-year process</i>	28
<i>Example 1: The Snowy Mountains Hydro-Electric Scheme</i>	30
COAG-ASJ GOVERNANCE WITH SPECIAL REFERENCE TO:	34
<i>Limitations of the Federal Government Northern Territory Emergency Response as a model of governance of complex 25-year change processes in NSW (TOR 1(d));</i>	34
<i>Government receives Cape York Institute welfare report</i>	42
<i>National emergency response to protect Aboriginal children in the NT</i>	43
COAG-ASJ GOVERNANCE WITH SPECIAL REFERENCE TO:	50
<i>Limitations on the Murdi Paaki COAG trial as a model of governance of complex 25-year change processes in NSW (TOR 1(f)).</i>	50
HEALTH SERVICES AND LIFE EXPECTANCY (TOR 1(B)(II))	53
HEALTH SERVICES AND LIFE EXPECTANCY (TOR 1(B)(II))	56
<i>The need for sustained policy keyed to the next five Australian Health Care Agreement (AHCA) 5-yearly cycles</i>	56
HEALTH SERVICES AND LIFE EXPECTANCY (TOR 1(B)(II))	63
<i>Immediate priority for a 10 year program (2 AHCA cycles) to establish comprehensive primary health care as enunciated by the Aboriginal Social Justice Report 2005</i>	63
HEALTH SERVICES AND LIFE EXPECTANCY (TOR 1(B)(II))	65
<i>NSW State Plan priority of reducing ambulatory-care-preventable hospitalisations; in relation to quarantining of savings for reinvestment in ambulatory care services and in relation to Commonwealth-state cost sharing in primary care</i>	65
HEALTH SERVICES AND LIFE EXPECTANCY (TOR 1(B)(II))	67
<i>Specification of the complementary roles of “mainstream” services (both Commonwealth-funded and State-funded) and Aboriginal Community-Controlled Health Services (ACCHS’s) in reducing the gap in health Adjusted Life Expectancy; with a view to agreeing a strategic development path over the next 10 years for them.</i>	67
TERMS OF REFERENCE	76
UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES	78
UN CONVENTION ON THE RIGHTS OF THE CHILD	96
INSTITUTIONAL RACISM IN AUSTRALIAN HEALTHCARE: A PLEA FOR DECENCY (HENRY, HOUSTON & MOONEY MJA 2004)	131

COAG Aboriginal Social Justice (TOR 1a)

1. That the Standing Committee on Social Issues inquire into and report on:
 - (a) policies and programs being implemented both within Australia (States/ Territories/ Federal) and internationally aimed at closing the gap between the lifetime expectancy between Aboriginal people and non-Aboriginal people (currently estimated at 17 years), with the assessment of policies and programs including but not limited to: New Zealand, Canada, North America, South America, and also considering available reports and information from key NGOs and community organizations,

At its meetings of July 2006 and April 2007, COAG defined “Indigenous Generational Reform” (IGR) as a process at the national level to close gaps in all measures of social disparity between Aboriginal people and others, within a generation. The COAG Secretariat is to prepare a plan by December 2007, in consultation with others, including peak Aboriginal organizations.

Indigenous Generational Reform⁴

COAG reaffirmed its commitment to closing the outcomes gap between Indigenous people and other Australians over a generation and resolved that the initial priority for joint action should be on ensuring that young Indigenous children get a good start in life.

COAG requested that the Indigenous Generational Reform Working Group prepare a detailed set of specific, practical proposals for the first stage of cumulative generational reform for consideration by COAG as soon as practicable in December 2007. National initiatives will be supported by additional bi-lateral and jurisdiction specific initiatives as required to improve the life outcomes of young Indigenous Australians and their families.

COAG also agreed that urgent action was required to address data gaps to enable reliable evaluation of progress and transparent national and jurisdictional reporting on outcomes. COAG also agreed to establish a jointly-funded clearing house for reliable evidence and information about best practice and success factors.

COAG requested that arrangements be made as soon as possible for consultation with jurisdictional Indigenous advisory bodies and relevant Indigenous peak organisations.

For the purposes of this submission, we have taken “generation” as a period of 25 years, following the Aboriginal Social Justice Report 2005. To make a more fundamental point, we have replaced the phrase “Indigenous Generational Reform” with “Aboriginal Social Justice” (ASJ, or COAG-ASJ) hereafter.

⁴ Source: <http://www.coag.gov.au/meetings/130407/index.htm#indigenous>

Although the COAG-ASJ process is undefined in detail, it is broader than TOR1a because it would aim to close gaps in social indicators whether or not they are relevant to closing the mortality gap. That said, the vast majority of social factors – for example those considered under TOR 1b – would generally be regarded as having some impact on mortality, so that it would be splitting hairs to make a distinction between factors in scope for COAG-ASJ that are not in scope for TOR1a.

Thus we have taken the COAG-ASJ process as the overarching national policy that is relevant to TOR 1a. Likewise, we see the COAG-ASJ program now being developed as the overarching national program relevant to TOR 1a. For these reasons, the COAG-ASJ governance processes are most important to consider.

COAG-ASJ Governance with special reference to:

The rights to health and healthcare stated in the UN Declaration of the Rights of Indigenous Peoples

After a 25-year history, the UN Declaration of the Rights of Indigenous Peoples was accepted by the UN General Assembly on 13th September 2007. Although Australia was one of the four countries to vote against adoption, the then Australian Opposition said that it would reverse this on coming to office. As of 24th November 2007, therefore, rights in this declaration may be taken as representing the position of the incoming Australian Government.

However, over 25 years, governments change, and to sustain rights over 25 years, a degree of bipartisan agreement is required. It is thus relevant to contrast the views of the Declaration taken by the spokesperson for the sponsoring States, by the representative of the former Australian Government, and by the UN High Commissioner on Human Rights.

... with the conclusion of this process that has taken 25 years, I would like to especially thank you, Madam President⁵, for your effort and I would like to thank your facilitator, Ambassador Davide of the Philippines⁶, for bringing the parties together as well as to thank all for flexibility shown: Government representatives as well as indigenous peoples' representatives.

We feel certain that this text will set the foundations for a new and sound relationship between indigenous peoples of the world and states and societies where and with whom they share their lives. ... we call upon all delegations to join this initiative for human rights and development, adopting it without a vote. Thank you Madam President.

His Excellency Luis Enrique Chávez Basagoitia, Permanent Representative of Peru

In respect to the nature of the declaration, it is the clear intention of all states that it be an aspirational declaration with political and moral force, but not legal force. ... Having said that, Madam President, ... we are aware that its aspirational contents will be relied on in setting standards by which states will be judged in their relations with indigenous peoples.

Accordingly, the Government of Australia has been concerned throughout the negotiations to ensure that the declaration is meaningful, is capable of implementation, and enjoys wide support in the international community. We believe this declaration ... fails in all of these respects and Australia cannot therefore support it. Thank you.

His Excellency Robert Hill, Permanent Representative of Australia

⁵ Sheikha Haya Al Khalifa, President of the 61st Session of the General Assembly of the United Nations.

⁶ His Excellency Hilario G. Davide, Jr., Permanent Representative of the Philippines to the United Nations, appointed as facilitator 6 June 2007.

The High Commissioner for Human Rights welcomes the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly on 13 September 2007, as a triumph for justice and human dignity following more than two decades of negotiations between governments and indigenous peoples' representatives.

The UN Declaration was adopted by a majority of 144 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).

The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples. The Declaration addresses both individual and collective rights; cultural rights and identity; rights to education, health, employment, language, and others. It outlaws discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them. It also ensures their right to remain distinct and to pursue their own priorities in economic, social and cultural development. The Declaration explicitly encourages harmonious and cooperative relations between States and indigenous peoples.⁷

⁷ <http://www.ohchr.org/english/issues/indigenous/declaration.htm>

The main rights relevant to the COAG-ASJ process are in Articles 21, 23 and 24.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.
Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

The reference in Article 24(2) to “an equal right to the highest attainable standard of physical and mental health” makes it quite clear that closing the mortality gap is not just a desirable thing, but a human right.

- Equality of the standard of health is not limited to mortality or mortality-related health issues. Thus it includes for example dental health.

Article 24(2) also makes it clear that it is a responsibility of UN States to create programs (“take the necessary steps”) to achieve “progressively” the equality at the highest attainable standard of health.

- The COAG-ASJ program is the most appropriate umbrella for this.

The reference in Article 24(1) to a right to “maintain [indigenous peoples] health practices” is not limited to any particular forms.

- Where Aboriginal people have a preference for being served by Aboriginal Community-Controlled Health Services, this may be considered as a human right.
- The right to “as far as possible, ...administer [health, housing and other economic and social] programmes through their own institutions” also

makes ACCHS's and other Aboriginal organisations the preferred form to be supported "as far as possible" by States.

Article 21(1) makes it clear that improvement in "education, employment, vocational training and retraining, housing, sanitation, health and social security", amongst others, "without discrimination", is also a human right.

- The discriminatory social security provisions in the Northern Territory Emergency Response" are in violation of this right, and that it would not constitute the "special measures" mentioned in Article 21(2).

Article 23, however, is the one most relevant to governance. It confers a right to "determine and develop priorities and strategies" for development, and "to be actively involved in developing and determining health, housing and other economic and social programmes" that affect Aboriginal people.

- The current COAG-ASJ process of "consultation" with Aboriginal organisations is an inadequate reflection of this right.

As a minimum the COAG-ASJ consultation process should follow the principles that the AH&MRC developed in partnership with NSW Health in relation to assessing the "Aboriginal health impact" of a policy. The document is on the NSW Health department web-site, and may be downloaded at

[http://www.health.nsw.gov.au/pubs/a/pdf/ab_impact_state_book.pdf].

It has a number of key principles, which we commend to the Senate in reviewing this legislation. In relation to development of policy, they are:

Development of the policy, program or strategy

1. Has there been appropriate representation of Aboriginal stakeholders in the development of the policy, program or strategy?

2. Have Aboriginal stakeholders been involved from the early stages of policy, program or strategy development?

The focus of question 1 is the involvement of appropriate Aboriginal stakeholder representatives in the policy development process. The focus of question 2 is the timing of that involvement, namely whether Aboriginal stakeholder representatives have been involved from the early stages of the policy development process.

Within the context of health policy development in NSW, Aboriginal representation can broadly be divided into two types: government and community based.

In most cases government representation will consist of staff from the NSW Department of Health and/or Area Health Services, and community representation will involve the AH&MRC, Aboriginal Community Controlled Health Services (ACCHSs) and/or other providers of health services for Aboriginal people.

In some circumstances broader representation may be required, involving stakeholders such as other State and Commonwealth government departments, local government, other Aboriginal

peak bodies, and/or other community-based health service providers (for example, general practitioners, medical specialists and community nurses). ...

3. Have consultation/negotiation processes occurred with Aboriginal stakeholders?

4. Have these processes been effective?

The focus of questions 3 and 4 are the processes of consultation and negotiation, and although not the same, these activities often apply equally in many circumstances.

Effective consultation/negotiation processes are essential to policy development and evaluation. Too often, however, insufficient time and resources are dedicated to these processes and they are poorly delivered and managed. Many participants have been left disappointed, frustrated, cynical and wary of future involvement.

This is particularly true for consultation/negotiation involving Aboriginal people.

Effective consultation/negotiation processes should be based on principles of openness, transparency, integrity, partnership, trust and mutual respect for the legitimacy and point of view of all participants.

For Aboriginal people, the principles of selfdetermination and a holistic view of health must also be included. Non-Aboriginal staff involved in consultation/negotiation processes with Aboriginal people should strongly consider participating in Aboriginal cultural awareness training programs to help them better understand Aboriginal history and culture.

The outcomes of consultation/negotiation should not be pre-determined. Effective consultation may not always lead to agreement; it should lead to a better understanding of stakeholder positions.

The AH&MRC Board view is that the COAG-ASJ process needs governance that complies with and supports the rights in the UN Declaration on the Rights of Indigenous Peoples.

That is to say, COAG is the appropriate peak body at which State power is exercised in accordance with the Declaration

However we do not accept that the COAG Secretariat, even in “consultation with jurisdictional Indigenous advisory bodies and relevant Indigenous peak organisations” is the relevant planning process.

The Board’s view is that there is a need for a governing body in which the rights of Aboriginal peoples, especially those under Article 23, can be exercised to determine the priorities, processes and programs.

Specifically, the Board sees the Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body that currently has the statutory independence (though not the resources) to take responsibility for this work.

Although it is true that the former Australian Government did not accept the UN Declaration in which these rights are asserted, in fact its criticisms were of other aspects of the Declaration. Thus it might reasonably be expected that, once established and after operating for a period and reporting to the UN, this form of governance would be acceptable.

COAG-ASJ Governance with special reference to:

The need for a sustained national multilateral commitment for a 25-year process

The mortality and other gaps in social indicators between Aboriginal people and others are not new things that were discovered in 2007. Forty years has already passed since the Referendum that gave the Commonwealth power to make specific laws for Aboriginal people, twenty years has passed since the first drafts of the ATSIC Act were available. There have been many plans and programs under “business as usual with additions” processes. None of them have closed the gaps. It is reasonable to conclude that these processes are inadequate, and others have given typical reasons:

***Working for change*⁸**

The lack of collaboration in the past has hindered progress for Indigenous people. The reasons for poor collaboration include:

- ***a failure by all levels of Government to commit to long-term initiatives, instead of quick-fix solutions;***
- *constant staff changes among senior public servants;*

⁸ In 1999, there was a report in Queensland from a Task Force chaired by Ms Boni Robertson [Queensland Government, Department of Aboriginal and Torres Strait Islander Policy and Development. The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report. December 1999.] A particularly useful feature of this report was an 8-page listing of previous reports and a synopsis of their recommendations from around Australia, back to 1988. the report is available at [<http://www.women.qld.gov.au/?id=109>].

- *appointment of Government Ministers for short terms, so they do not become familiar with their portfolios;*
- *the lack of coordination of policies and programs across Governments;*
- *the squandering of public monies in duplicated programs;*
- *the under representation of Indigenous peoples in senior positions; and*
- ***the absence of Indigenous people in decision-making processes.***

The AH&MRC view is that there is a need for something new. A 25-year plan has many special features because of the time frame under consideration:

- What is “practical” or “pragmatic” or “realistic” now is not particularly relevant – the issue is what is needed for 25 years.
- Time taken to plan and/or establish structures and processes in the beginning is not particularly critical – the issue is to have the right ones in place.
- Over 25 years, governments change. The commitment must be at a level beyond political partisanship.
- The one group who will have a sustained interest, no matter what, in this process working, is the Aboriginal community. Any governance process must place responsibility with Aboriginal people.

There are not many examples of successful national projects in Australia with a time frame on the order of 25 years. However, we can look at one well-known example.

Example 1: The Snowy Mountains Hydro-Electric Scheme

The first proposal for diverting water from the Snowy River was in 1884: the scheme itself ran over 25 years from 1949-1974. Thus there was an obvious gap between where the water was and where it could be used, for many years before a 25-year plan was created to close the gap.

The scheme achieved its objectives over 25 years, and was recognised by various international engineering awards.

Project Name, Location	Designated Year
<u>Snowy Mountains Hydro-Electric Scheme, New South Wales, Australia</u> The Snowy Mountains Hydro-Electric Scheme, consisting of sixteen large dams, 145 km of tunnels, seven power stations, a pumping station, and 80 km of aqueducts is a world-class civil engineering project that provides vital electric power and irrigation water. Its construction, which commenced in 1949 and was completed in phases through 1974, was modeled after the Tennessee Valley Authority (TVA). This monumental project brought great economic growth to the southeastern sector of the country.	1997

<http://www.asce.org/history/landmark/projects.cfm?menu=name>

The delays before 1949 were in part due to differing opinions across States and with the Commonwealth as to what would be best to do, which reflected parochial interests. The usual processes of inquiries and royal commissions followed:

The debate raged through a string of inquiries and royal commissions, perpetually divided on whether the water should be used for irrigation in a Snowy-Murrumbidgee scheme, or, as the twentieth century progressed, for hydro-electricity in a Snowy-Murray scheme. The balance began to tilt towards hydro-electricity during the Second World War, when the Commonwealth Government began to worry over the vulnerability of its coastal thermal power stations.

Eventually, in the absence of consensus as to what should be done, special powers were invoked by the Commonwealth:

...New South Wales still held out for its own scheme, forcing the Commonwealth to invoke its defence powers and put through legislation giving it total control of the alpine headwaters and the development of the Scheme. The Snowy Mountains Hydro-Electric Power Act, operative from 7 July 1949, also encompassed the establishment of a Snowy Mountains Hydro-Electric Authority to construct and operate the scheme.

The project was not bipartisan at the outset, but soon was supported by those who had opposed it on constitutional grounds.

In a broadcast 'Report to the Nation' in May 1949, the Prime Minister, Mr Chifley, declared:

"The Snowy Mountains plan is the greatest single project in our history. It is a plan for the whole nation, belonging to no one State nor to any group or section This is a plan for the nation and it needs the nation to back it."

At a function marking an advanced stage of construction at the Tumut Pond dam in 1958 the then Prime Minister, Sir Robert Menzies, who by now had revised his opinion of the project, spoke of the triumph of the scheme, to which he added:

"In a period in which we in Australia are still, I think, handicapped by parochialism, by a slight distrust of big ideas and of big people or of big enterprises ... this Scheme is teaching us and everybody in Australia to think in a big way, to be thankful for big things, to be proud of big enterprises and ... to be thankful for big men."

The legislation conferred enormous power on the statutory body that administered the scheme, and the program of work was administered rigorously:

The commissioner, Hudson, was a hard taskmaster to whom budgets and timetables, once set, were inviolate. He pushed administrators, engineers and workers alike with punishing vigour – driven by a burning to silence the political critics who said the scheme was too fantastic and beyond Australia's financial and technical capabilities. Under the contractors being pushed by Hudson's ceaseless urging, tunnelling crews repeatedly broke world records for weekly progress.

Hudson was intolerant towards anyone he didn't consider was pulling their weight. Sackings for less than total commitment to the project were commonplace and written into standing orders to all supervising officers.

However, although regarded by many as tyrannical, Hudson expected no more of others than he did of himself. He abhorred red tape and any pomp and ceremony accorded to him because of his position.

The AHMRC Board believes that equivalent levels of achievement and accountability are needed for a 25-year program, though the methods chosen must recognise that Aboriginal communities are not things being built, but rather are social constructs, continually growing and changing and therefore mechanisms need to be in place to encourage this growth and development.

The Board's view is that there is a need for a governing body in which the rights of Aboriginal peoples, can be exercised to determine the priorities, processes and programs.

Specifically, the Board sees the Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body that currently has the statutory independence (though not the resources) to take responsibility for this work.

COAG-ASJ Governance with special reference to:

Limitations of the Federal Government Northern Territory Emergency Response as a model of governance of complex 25-year change processes in NSW (TOR 1(d));

The main implication of the Northern Territory Emergency Response is that it shows how easily the ongoing COAG governance processes can be ignored.

The planned COAG response to prevention of violence and child abuse was swept aside by an “emergency” that was in no way new or suddenly apparent; that was initially said to be in response to a report until the authors of the report stated how little the actions resembled anything they had recommended; and later said to be in defence of the Rights of the Child (see attachment) – despite the fact that the Commonwealth Government had not seen fit to send in a report to the UN monitoring body in its first term, had then submitted two together, and had received a critical response from them, without any “emergency” action.

Thus, under the COAG communiqué of July 2006, the planned Commonwealth input was only *“in the order of \$130 million over four years to support national and bilateral actions on the basis that the States and Territories have agreed to complement this effort with additional resources to be negotiated on a bilateral*

basis". Then, within 14 months, by unilateral decision, funding bills amounting to \$587 million were before the Commonwealth Parliament.

Even that funding (which was subsequently increased) is about twice the amount provided to ACCHS's by OATSIH in a year. When the accountability requirements for ACCHS funding is contrasted with the non-accountability of the NTER, it is difficult to avoid seeing this as what has been called "institutional racism"⁹.

As those authors concluded:

Aboriginal people merit so much more from white Australia. First and foremost, they deserve white Australia's trust — trust that Aboriginal people know better than white Australians what is good for Aboriginal people. They deserve (and not just in their music and dancing) recognition of their culture. Two things are necessary — first, Australian society needs to listen and hear the calls of the disadvantaged (and there are so many in Australia today, especially Aboriginal people); then, those who have compassionate voices need to use them. Many people working in healthcare and in universities have social consciences and believe in social justice. They need not only to give voice to the voiceless, but to give themselves voice as decent, white Australians.

In this Australia — this divided, divisive, racist, socially unjust society that we have built — we now need institutions and policies that will unbuild it. We need to acknowledge that the "fair go" is struggling to survive, if not already dead.

⁹ Henry BR, Houston S, Mooney GH. Institutional racism in Australian healthcare: a plea for decency. *Medical Journal of Australia* 2004; 180:517-520.

Fairness and compassion need to be once again the guiding principles of our leaders and our democracy. Only then can we build a society where decency can become the fundamental in addressing Aboriginal health.

There will be no sudden breakthrough; there is no magic pill. Decency, however, is a good place to start.

This submission is about institutions and policies that will build a socially just and undivided society with no gaps. It is sometimes argued that “separate” institutions and policies, or even rights, for Aboriginal people are “divisive” – that there should be “one Australia”. That is not the issue. There is “one Australia” no matter what. The problem is that there are also gaps within it that have not been closed by existing plans and governance. The issue is what will work best to close the gaps, and our view is that a single Aboriginal-controlled process is best for doing that.

The AH&MRC Board’s view is that the COAG-ASJ governance processes must be associated with quarantined budgets adequate to the task that cannot be diverted to other purposes – and the test of this would be that it should be impossible for another “Emergency Intervention” of this type to occur at the discretion of a single government.

The Board's view is that there is a need for a governing body in which the rights of Aboriginal peoples, especially those under Article 23, can be exercised to determine the priorities, processes and programs.

Specifically, the Board sees Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body that currently has the statutory independence (though not the resources) to take responsibility for such a budget.

Some issues about the process and its application in NSW have been added here from the AH&MRC submission to the 1-day Senate Inquiry on the NTER legislation. These simply amplify the different standards of evidence and accountability involved, and generate no new conclusions.

Issue #5. The lack of a mandate or rationale for expanding the Cape York Institute trial in four communities to all parents of school-age children, whether Aboriginal or not, everywhere in Australia via legislative instruments.

In plain English, the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 divides Australia into three zones, which differ in the

basis on which a person may be commended to Centrelink for the implementation of income management provisions.

- In the four designated communities in Cape York, the “Queensland Commission” makes these recommendations. We assume that this “Commission” has been created along the lines indicated in the report from the Cape York institute. It is assumed that the designated Queensland communities have more or less voluntarily agreed to participate in this process, and that there are rules for their decisions that can be defended.
- In the Northern Territory, everyone who has stayed overnight in one of the 73 designated Aboriginal communities is automatically deemed to be in need of income management, unless the Minister decides otherwise.
- In the rest of Australia, other rules apply, and they apply in the case of child protection to every parent of every child, and in the case of school enrolment and school attendance, to every parent of every child who is required to attend school.

It is with the last of these “zones” that we are concerned here.

Among other things, the Bill empowers the Secretary of the Commonwealth Department of Family and Community Services and Indigenous Affairs to issue a

legislative instrument that declares an individual primary school or a high school in a State or Territory (or all such schools in a whole State or whole Territory and an area within a State or Territory) to be a declared primary school or a declared high school for the purposes of those parts of the act referring to (a) non-enrolment in school or (b) unsatisfactory attendance at school.

Similarly, the Bill empowers the Secretary and/or Minister at various places to make legislative instruments that define unsatisfactory attendance and other key things.

Then, the Secretary may issue a warning (section 123UL) to a parent stating that they may be subject to the income management provisions of the Bill on the grounds of non-enrolment (Section 123UD (5) onwards) or unsatisfactory attendance (Section 123UL) and the onus is on the parent to prove that this is not so. In the absence of such proof, the Secretary may place the person under income management, and the usual channels of appeal are not available to that person.

Under Sections 123UD (non-enrolment) and 123UE (unsatisfactory attendance) there are no requirements in the Bill that any particular source of evidence needs to be used by the Secretary: however section 123ZB of the Bill indicates how the relevant information may be obtained:

123ZEB Disclosure of information to the Secretary—school enrolment and attendance

(1) Despite any law (whether written or unwritten) in force in a State or Territory:

(a) a State or Territory; or

(b) a non-government school authority; or

(c) any other person who is responsible for the operation of one or more schools;

may give the Secretary information about the enrolment, or non-enrolment, of children at school.

(2) Despite any law (whether written or unwritten) in force in a State or Territory:

(a) a State or Territory; or

(b) a non-government school authority; or

(c) any other person who is responsible for the operation of one or more schools;

may give the Secretary information about the attendance, or non-attendance, of children at school.

These provisions empower parties to supply the Commonwealth with personal identifying information despite privacy and other laws in force in NSW. All non-Government Senators who spoke in the debate on this Bill on 8th August expressed grave concerns about the rushed drafting and curtailed debate; especially in relation to the aspects of the legislation that apply outside the

Northern Territory. In addition, the distinguished former Judge Murray Wilcox QC said of the legislation on 6th August: "I must say I am amazed to see any federal government introduce into the parliament legislation of this nature. People may think 'Well it doesn't matter, they're only people up in the Northern Territory, but if they can do that in the Northern territory they can do that in any community in the country, and I think we all ought to be concerned when governments behave like that.'"

In principle, the Bill gives the Federal Minister and Departmental Secretary the power to declare any school or area of NSW, and seek information about enrolments and/or attendance of individuals by wholly unspecified processes that are in no way constrained by State legislation.

Moreover, presumably because of the haste in drafting, any of the parties specified in (a) (b) or (c) may give the Secretary information about "children at school", not limited to the school/s for which they are responsible.

However, that is only a minor issue, relative to others.

- Apart from the \$3 million investment that produced a document – admittedly advised by seconded Treasury officials – from the Cape York Institute, there is no evidence or rationale given for why this intervention is either necessary nor likely to be effective. The history of the Cape York Institute report may

be taken from the media release that Minister Brough released 2 days before announcing the measures to be taken in the Northern Territory:

<http://www.atsia.gov.au/media/media07/190607.aspx>

Government receives Cape York Institute welfare report

Minister for Families, Community Services and Indigenous Affairs, Mal Brough, today received a report from the Cape York Institute about tackling welfare dependency in Indigenous communities.

Mr Brough said the report - From Hand Out to Hand Up: Cape York Welfare Project- was spearheaded by Aboriginal activist Noel Pearson in partnership with the remote Indigenous communities of Aurukun, Coen, Hope Vale and Mossman Gorge in the Cape.

"In late 2005, Noel Pearson and the Institute approached the Howard Government with a proposal to radically change the way welfare was administered to remote Indigenous communities in the Cape.

"The Institute told us that the mainstream welfare system was not benefiting Indigenous communities, in fact, it told us that welfare offered these communities little more than a pathway to lifelong dependency."

Mr Brough said the Howard Government provided \$3 million to the Institute in 2006 to work with communities to find better ways to assist Indigenous people.

"We agreed that the absolute priority was the welfare of children and dealing with the causes of child neglect and abuse.

“Communities want changes that ensure parents are held to account for the education and care for their children and incentives created for young people to aspire to a future which gives them choices and opportunity for the future.”

Mr Brough said the Government would closely examine the report

“This is a high quality report which is ambitious and wide ranging and I congratulate the Institute for its work and thank the communities for their involvement,” Mr Brough said.

Presumably after a “close examination” of the report for two days, an adjacent media release appeared at <http://www.atsia.gov.au/media/media07/210607.aspx>

National emergency response to protect Aboriginal children in the NT

In response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory, the Australian Government today announced immediate, broad ranging measures to stabilise and protect communities in the crisis area.

The immediate nature of the Australian Government’s response reflects the very first recommendation of the Little Children are Sacred report into the protection of Aboriginal children from child abuse in the Northern Territory which said: “That Aboriginal child sexual abuse in the Northern territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments....”

All action at the national level is designed to ensure the protection of Aboriginal children from harm.

The emergency measures to protect children being announced today are a first step that will provide immediate mitigation and stabilising impacts in communities that will be prescribed by the Minister for Families, Community Services and Indigenous Affairs.

The measures include:

- *Introducing widespread alcohol restrictions on Northern Territory Aboriginal land.*
- *Introducing welfare reforms to stem the flow of cash going toward substance abuse and to ensure funds meant to be for children's welfare are used for that purpose*
- *Enforcing school attendance by linking income support and family assistance payments to school attendance for all people living on Aboriginal land and providing meals for children at school at parents' cost*
- *Introducing compulsory health checks for all Aboriginal children to identify and treat health problems and any effects of abuse*
- *Acquiring townships prescribed by the Australian Government through five year leases including payment of just terms compensation*
- *As part of the immediate emergency response, increasing policing levels in prescribed communities, including requesting secondments from other jurisdictions to supplement NT resources, funded by the Australian Government.*
- *Requiring intensified on ground clean up and repair of communities to make them safer and healthier by marshalling local workforces through work-for-the-dole*
- *Improving housing and reforming community living arrangements in prescribed communities including the introduction of market based rents and normal tenancy arrangements*
- *Banning the possession of X-rated pornography and introducing audits of all publicly funded computers to identify illegal material*
- *Scrapping the permit system for common areas, road corridors and airstrips for prescribed communities on Aboriginal land, and;*
- *Improving governance by appointing managers of all government business in prescribed communities*

The national emergency response will be overseen by a Taskforce of eminent Australians, including logistics and other specialists as well as child protection experts. Magistrate Sue Gordon, chair of the National Indigenous Council and author of the 2002 Gordon Report into Aboriginal child abuse in Western Australia has agreed to take a leadership role on the Taskforce.

At first glance, it might seem that the two boxed items are the analogues of initiatives described in the Cape York Institute report. However, there are some critical differences.

- By what one hopes is a due process in which the relevant communities were consulted, they agreed to the process.
- The decision-making about who is or who is not subjected to income management, as outlined in the Cape York institute report, is made by a body on which community leaders are represented: this being presumably the “Queensland Commission identified in the legislation before the Senate inquiry.
- In that legislation, the Secretary of FACSIA is required to abide by specific terms that the Queensland Institute specifies. [Section 123ZK Secretary must comply with certain directions given by the Queensland Commission]

By contrast, in the Northern Territory declared communities, the situation is quite different.

- There are no communities who sought such a process or were lavishly funded to develop a model that might suit them.
- The decision-making is (ultimately) made by the Minister, by virtue of the exemption power, starting from a default position in which everyone is included.
- There is no power of any other body to modify the conditions, and the usual channels of appeal in social security matters are removed, despite an amendment having been moved to allow them.

And again, in the remaining zone, the conditions are different again:

- There are no communities who sought such a process or were lavishly funded to develop a model that might suit them.
- The decision rules are made via legislative instruments, as yet unspecified, and the Legislative Instruments Act 2003 recommends, but does not require, any consultation with any affected party.
- Having made the recommendation (in the case of child protection) or provided information (in the case of enrolment/ attendance) the notifying body has no clause equivalent to that applying to the Queensland Commission whereby it may require the Secretary to comply with any directions – at best this might be placed in a legislative instrument, once written.

Now, arguments by analogy might be plausible if the Cape York Institute model were something that had been trialled and proven for notionally willing participants, rather than a document received by Minister Brough two days before the Emergency measures were announced. However, there is no evidence whatsoever that this process will work even in Cape York, let alone anywhere else.

This is a very poor base on which to argue for a change in the social welfare conditions that apply to every child in Australia and their parents.

On this matter the AH&MRC supports the view of Senator Bartlett in the debate on 8th August:

I do not think that many people in the wider community are aware that the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 has a whole range of measures that have nothing at all to do with the Northern Territory.

That legislation puts in place the framework for enabling payments to be quarantined for people across the country if they are seen as not meeting requirements regarding enrolment of their child at school or school attendance benchmarks, or if they have notifications regarding child protection. It also includes the framework regarding the Cape York welfare reform trials, which I am supportive of trialling, of letting them go ahead and seeing how they work.

There are significant, and—let us not kid ourselves—very far reaching changes in one of these bills to do with potential quarantining of welfare payments for parents across the country in relation to areas like school attendance, enrolment and child neglect notifications.

As I have been informed by government briefings, these changes are not likely to come into operation until 2008, and certainly not before next year. We are not going to get a chance to look at these very far reaching and significant measures. We are being asked to start debating them straightaway.

Even though there is not the faintest suggestion that there is urgency for these measures, they are being pushed through under the cloak of the Northern Territory situation.

I am not saying that I oppose those measures; frankly, I am interested in exploring how those measures could work, what other things might attach to them, what role the states would play. I would be interested in hearing more from the Cape York institute about how those measures are going to work up there, because they have done a lot of work on them. They have got resources backing it. They have got a whole range of programs attached to it. They are linking it in to people at the community level. It would be very useful for the Senate to inform itself about all of those things.

If we were to support this motion we would be facilitating an inability for us to inform ourselves. If we vote for this motion we will be forcing ourselves not to inform ourselves, which is simply not responsible. The whole point and the history of the standing order that prevents legislation being introduced and debated straightaway was to prevent legislation from being bulldozed through unless the case could be made for urgency.

In circumstances where there is a federal election before the end of this year, it is only reasonable to expect that a Government would want to go openly to the electorate with an information campaign about why this radical reform of the Welfare system that affects every parent and child in the country is necessary,

when most of them are not within a thousand kilometres of the Northern Territory or Cape York. This is an issue that should be addressed at COAG, not in a rush driven by irrelevant considerations.

The AH&MRC Board's view is that the COAG-ASJ governance processes must be associated with quarantined budgets adequate to the task that cannot be diverted to other purposes – and the test of this would be that it should be impossible for another “Emergency Intervention” of this type to occur at the discretion of a single government.

The Board's view is that there is a need for a governing body in which the rights of Aboriginal peoples, especially those under Article 23, can be exercised to determine the priorities, processes and programs.

Specifically, the Board sees Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body that currently has the statutory independence (though not the resources) to take responsibility for such a budget.

COAG-ASJ Governance with special reference to:

Limitations on the Murdi Paaki COAG trial as a model of governance of complex 25-year change processes in NSW (TOR 1(f)).

In broad terms, the Murdi Paaki COAG Trial was originally a tripartite agreement between three representative elected bodies, namely the Commonwealth and NSW Governments and ATSIC.

Subsequently, the Commonwealth partner abolished the ATSIC partner, so that the Community Working Parties (CWPs) were not elected structures, not incorporated bodies, and so on. The “secretariat” services for coordinating these working parties were originally funded by CDEP positions, and then incorporated as part of the trial funding.

The concept of CWPs is generally agreed to be a good model for discussion and the ongoing development of plans. Thus it is certainly worth building on the processes of governance in the Murdi Paaki COAG trial.

However, when it comes to forming agreements, the basic problem is fundamental to the experience of Aboriginal people dealing with processes designed by others – an imbalance of power.

Mr Calma— ... One of the major flaws in what is proposed is that having no regional structure in place and relying on ICC managers to negotiate with Indigenous communities really put communities in a position where the power base is with the ICC managers. The communities could be put in a position where they have to take certain directions because that is the only way they are going to get funding. We believe that they need to be on an equal footing with the people they are negotiating funding for. There needs to be an education program, an empowerment program, for Indigenous communities and Indigenous people so that they can negotiate with and express their views in a confident manner with the people who are delivering the services. ... If the community are not skilled enough to be able to express their views or to be able to negotiate then they are in a lesser position than the person delivering the program.¹⁰

Moreover, to the extent that the importance of different components of an intervention can be judged by the amount of money committed to them, the main intervention was the installation and operation of evaporative coolers in some hundreds of homes. The general logic that linked this intervention to the educational outcome was that parents would be more likely to be at home to manage feeding and homework and so forth if the house were as cool as clubs and hotels. A question that arises in relation to that is what happens in winter, when heating would seem to be more relevant. But in fact a more specific logic was the signing of agreements in return for the evaporative coolers, in which the

¹⁰ Commonwealth of Australia. Official Committee Hansard, Senate Select Committee On The Administration Of Indigenous Affairs, Public Hearing, Wednesday, 2 February 2005, Surry Hills. <http://www.aph.gov.au/hansard/senate/commtee/S8049.pdf>

relevant outcomes were required, so arguably anything of value might be set against these outcomes.

Even supposing that there was some evidence that the installation of evaporative coolers (or provision of other goods of value) was the best and most cost-effective way to achieve an educational outcome, and that community members not involved in the “community working parties” all agreed that this was their preferred option, and that the outcomes were actually achieved, this would prove little about anything else.

The AHMRC Board view is the Murdi Paaki model of Community Working Parties would be of considerable value within an overall governance process of the kind we have requested here.

Otherwise, it is a model for Aboriginal people to consult about plans with little or no control over whether they will be funded, and to enter into agreements where one party has all the power.

Health Services and Life Expectancy (TOR 1(b)(ii))

1) That the Standing Committee on Social Issues inquire into and report on:

a) ...

b) the impact of the following factors on the current lifetime expectancy gap:

i) environmental health (water, sewerage, waste, other)

ii) health and wellbeing

iii) education

iv) employment

v) housing

vi) incarceration and the criminal justice system

vii) other infrastructure,

We have chosen to interpret “the current lifetime expectancy gap” as being defined as Health Adjusted Life Expectancy (HALE). It is about 15 years at present¹¹ (see table).

¹¹ Vos T, Barker B, Stanley L, Lopez AD 2007. *The burden of disease and injury in Aboriginal and Torres Strait Islander peoples 2003*. Brisbane: School of Population Health, The University of Queensland.

Table 6.11: Health-adjusted life expectancy at birth by area and sex, Indigenous Australian and total Australian populations, 2003

	HALE (years)		Life expectancy at birth lost due to disability (%)	
	Males	Females	Males	Females
Indigenous Australians	56	60	18	13
Non-remote	58	62	12	12
Remote	51	56	13	13
Total Australian population	71	75	10	9

“Because substantial resources are devoted to reducing the incidence and the impact on people’s lives of conditions that cause ill health but not death, it is important to capture both fatal and non-fatal health outcomes in any measure of population health. Health Adjusted Life Expectancy (HALE) is a summary measure of the level of population health that captures the full health experience of the population and not just mortality. Healthy life expectancy adds up expectation of life for different health states with adjustment for severity distribution and thus is sensitive to changes over time or differences between countries in the severity distribution of health states.”¹².

The HALE indicator is particularly valuable in the context of monitoring improvements in health that will in due course lead to reduced mortality, because it is sensitive to changes in the distribution of “health states” whose impact on HALE occurs through disability.

¹² Mathers CD, Murray CJL, Salomon JA. Methods for Measuring Healthy Life Expectancy. Chapter 33 in Murray CJL, Evans DB (eds) *Health Systems Performance Assessment: Debates, Methods, and Empiricism*. Geneva: World Health Organization, 2003. URL: <http://whqlibdoc.who.int/publications/2003/9241562455.pdf>

It is important in the current process, simply because current mortality data comes from people dying in the current year, and in the early years of a program those dying will only have been exposed to its impact for a very short time. For that reason alone, mortality is not a very sensitive indicator of the impact of programs in the early years. By contrast, achieving substantial changes in the relative prevalence of illnesses can impact on HALE at any time.

Health Services and Life Expectancy (TOR 1(b)(ii))

The need for sustained policy keyed to the next five Australian Health Care Agreement (AHCA) 5-yearly cycles

So far as health services are concerned, the main funding agreement at the Commonwealth-State level is the 5-yearly AHCA, of which the next is to be signed in 2008.

As part of the governance of a sustained 25-year process, there is a need to link these short-term 5year agreements together, and to ensure that a quarantined component associated with the health aspects of the COAG-ASJ process is planned for the whole sequence.

The references to Aboriginal health in the existing 2003-2008 AHCA (NSW) have been highlighted below to indicate the relatively weak links that exist at present.

Shared Responsibilities of the Commonwealth and New South Wales

14. The Commonwealth and New South Wales share responsibility for facilitating health service reform and the sharing of information to gain a better understanding of the

changing dynamics of the Australian health care system. They will work together, and with other States as appropriate, to:

- (a) develop and co-ordinate national health service reform;
- (b) implement the Pathways Home program in accordance with Schedule B;
- (c) implement the National Mental Health Strategy;
- (d) implement the National Palliative Care Strategy; and
- (e) participate in AHMAC agreed governance arrangements for information management and information technology.

15. The Commonwealth and New South Wales will implement this Agreement consistent with the principles outlined in:

- (a) the agreement on Aboriginal and Torres Strait Islander Health (Framework Agreement);
- (b) the National Aboriginal and Torres Strait Islander Health Information Plan; and
- (c) the National Strategic Framework for Aboriginal and Torres Strait Islander Health (NSFATSIH) as endorsed by State Governments.

16. Recognising the co-operative relationship between them, the Commonwealth and New South Wales agree that they will not institute or sanction arrangements which unreasonably impose an additional financial burden on the other party.

17. Where it can be demonstrated that a change in service delivery arrangements would

improve patient care, patient safety or patient outcomes, the Commonwealth and New South Wales agree to implement such changes in an open and consultative manner and, as appropriate, recompense the other party where costs are transferred to that party.

PART 4 – REFORM

18. New South Wales and the Commonwealth are committed to working with other States to progress the reform agenda agreed by Commonwealth and State Ministers for Health on 27 September 2002. The Commonwealth considers that for its part, such reform can take place within existing funding parameters.

19. In line with clause 18, the specific areas of national co-operation to deliver reform include:

- (a) improving the interface between hospitals and primary and aged care services;
- (b) achieving continuity between primary, community, acute, sub-acute, transition and aged care, whilst promoting consumer choice and improved responsiveness.

Initial priorities for a stronger continuum of care approach will be cancer care and mental health services; and

- (c) exploring setting up a single national system for pharmaceuticals across all settings.

20. This will be supported by ongoing joint work in the areas of information management, quality and safety improvement and workforce. Access to services for Aboriginal and Torres Strait Islander people will also be a high priority.

21. Subject to signing an agreement between the Commonwealth and New South Wales on issues including the rate of reimbursement, appropriate clinical guidelines, data requirements and risk sharing arrangements, pharmaceuticals may be provided through the Pharmaceutical Benefits Scheme (PBS) to admitted public and private patients on separation, to non-admitted patients and to day admitted patients for a range of cancer chemotherapy drugs made available by specific delivery arrangements provided under section 100 of the *National Health Act 1953*

Ongoing Development of Performance Indicators

12. New South Wales agrees to work together with the Commonwealth and all other States through AHMAC agreed information management and information technology governance arrangements to develop and refine appropriate performance indicators. This includes:

- (a) continuing the development of data items, national minimum data sets and mental health outcome data; and

(b) continuing the development of performance indicators of effectiveness, efficiency, quality, appropriateness, accessibility, safety and equity of public hospital services.

13. These indicators will relate to both admitted and/or non-admitted patient services and will include:

(a) waiting times for access to services, including, but not confined to elective surgery and emergency department waiting times;

(b) indicators of Aboriginal and Torres Strait Islander health;

(c) measures of safety and quality of care, including adverse events, as agreed through the Australian Council on Safety and Quality in Health Care or any successor;

(d) indicators of effort in medical training and medical research;

(e) mental health reform indicators;

(f) rural and remote access to public hospital services;

(g) indicators of access to and quality of palliative care services;

(h) indicators of access to and quality of rehabilitation and step-down services;

and

(i) indicators of efficiency and effectiveness.

The problem with the AHCA mechanism is illustrated by the very different health policies presented at the recent Federal Election. Quite different AHCA's would

have been developed for 2008-13 depending on which Party won the election on November 24th.

Apart from that, there is no guarantee of continuity from one AHCA to another.

There are mechanisms within the AHCA for quarantining particular components and having special reporting associated with them, as in the case of Mental Health Reform.

The AHMRC Board view is that the health services components of the COAG-ASJ process should be implemented via the AHCAs ONLY if there is agreement that guarantees continuity over the 25 years.

The Board's view is that there is a need for a governing body to determine and monitor a quarantined Aboriginal health allocation within AHCAs.

Specifically, the Board sees the Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body that currently has the statutory independence (though not the resources) to take responsibility for such a controlled AHCA allocation.

Health Services and Life Expectancy (TOR 1(b)(ii))

Immediate priority for a 10 year program (2 AHCA cycles) to establish comprehensive primary health care as enunciated by the Aboriginal Social Justice Report 2005

This item applies the principle of quarantined AHCA components to the immediately upcoming AHCA (2008-13) which would in fact be negotiated and signed in between the Committee's Interim and Final Reports, and the subsequent (2013-18) AHCA.

Because of the fact that the current AHCA will be agreed before the *Inquiry* reports, the AHMRC Board's view is that there is not enough time to identify the requirements of "comprehensive primary health care" for negotiation on the current AHCA. Thus, the relevant mechanism would be an external development and funding that could either be incorporated by agreement within the current AHCA, or operate separately until the next one.

Specifically, the Board sees the Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body

that currently has the statutory independence (though not the resources) to take responsibility for managing this.

Health Services and Life Expectancy (TOR 1(b)(ii))

NSW State Plan priority of reducing ambulatory-care-preventable hospitalisations; in relation to quarantining of savings for reinvestment in ambulatory care services and in relation to Commonwealth-state cost sharing in primary care

This area of work indicates the need for appropriate cost-sharing arrangements across Commonwealth-funded and State-funded services.

Ambulatory-care-preventable conditions depend mainly on non-inpatient services, of which the majority would fall under the heading of “comprehensive primary health care” as in the previous item. Most of these would be expected to be Commonwealth-funded, but the savings in inpatient care would mainly be received by the State-funded hospital system. Unless there is a mechanism for sharing these costs and benefits, patient care could be compromised by debates over “cost-shifting”.

There are Coordinated Care trials in which “cashed out” Medicare and other entitlements are contributed to pooled funding, and some similar arrangement would be desirable.

The AHMRC Board view is that this needs to be addressed within the overall COAG-ASJ mechanism for health services.

Health Services and Life Expectancy (TOR 1(b)(ii))

Specification of the complementary roles of “mainstream” services (both Commonwealth-funded and State-funded) and Aboriginal Community-Controlled Health Services (ACCHS’s) in reducing the gap in health Adjusted Life Expectancy; with a view to agreeing a strategic development path over the next 10 years for them.

In this context, the AHMRC Board endorses the submissions made by NACCHO¹³, and by the AH&MRC¹⁴ to the *Senate Select Committee On The Administration Of Indigenous Affairs* in 2004-5. We also call the attention of the Inquiry to submissions to that *Inquiry* made by the NACCHO affiliate in Victoria (VACCHO¹⁵) and the 270 or so other submissions to that inquiry which were ignored in deciding to abolish ATSIC rather than build on it by restructuring.

The point the Board wishes to emphasise is that Aboriginal Community Controlled organisations are consulted, are invited to comment on papers and strategies and policies, are invited to make submissions, and so on, by a wide range of government bodies, and this is not a very efficient process.

Therefore we simply repeat the main point:

¹³ http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub179.pdf and http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub179a.pdf

¹⁴ http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub221.pdf

¹⁵ http://www.aph.gov.au/Senate/committee/indigenousaffairs_ctte/submissions/sub180.pdf

The AH&MRC Board view is that the COAG-ASJ process needs governance that complies with and supports the rights in the UN Declaration on the Rights of Indigenous Peoples.

Within that, the Board's view is that primary care should be placed in the hands of an adequately resourced Aboriginal Community Controlled Health sector, and that should be expanded in accordance with a key recommendation of the National Aboriginal Health Strategy 18 years ago:

“Primary level Aboriginal Health Services presently being delivered by State Governments should be transferred to existing or proposed Aboriginal Community Controlled Primary level Services – p xxv, National Aboriginal Health Strategy, NAHS Working Party, 1989

The Board's view is that there is a need for a governing body in which the rights of Aboriginal peoples, especially those under Article 23, can be exercised to determine the priorities, processes and programs.

Specifically, the Board sees the Human Rights and Equal Opportunity Commission, via its Aboriginal Social Justice portfolio, as the only body that currently has the statutory independence (though not the resources) to take responsibility for this work.

Discussion of some of these issues can be found in the AHMRC evidence presented in hearings of the previously mentioned Senate Inquiry¹⁶.

Ms Bailey— ... I think, irrespective of our objections, we are obliged to work within these new structures, so we have got a bit of a dichotomy there. I guess that, at the end of the day, we are seeking certainty and, specifically, a commitment to a model that embraces the essential elements of progress. The reports, structures, principles and policies that are in place in Aboriginal health have been worked through over a number of years with very involved community consultation and negotiations with government, and they are based on the recommendations of the National Aboriginal Health Strategy, which was one of the most broadly based consultative processes ever—probably broader than the ATSIC consultations in the early eighties.

It is essential that we keep these agreements, policies and processes in place because the changes that we need to see in Aboriginal health and in the Aboriginal community's well-being in general are not going to be overnight outcomes. They need a sustained effort by all parties concerned, strong partnerships and persistence with soundly based policies and principles so that we can actually get there. If we keep changing direction and working in

¹⁶ Official Committee Hansard, Senate Select Committee On The Administration Of Indigenous Affairs, Public Hearing, Wednesday, 2 February 2005, Surry Hills.
<http://www.aph.gov.au/hansard/senate/commtee/S8049.pdf>

an ad hoc way—that was a criticism of the National Aboriginal Health Strategy: that there was a lack of coordination and a lack of community involvement—then we are never going to achieve those goals. We have suggested in our submission a model to harness the value of those existing services, structures and roles and so on. We can talk about that in more detail if you want us to.

Ms Bailey—Yes. The events that transpired last year where there was a review of ATSIC, then an announcement by Mark Latham and then all of a sudden John Howard making an announcement that he is going to abolish ATSIC ‘now’. And then of course there were all the changes that came in with the OIPCs and the ICCs without any consultation, without any regard for any of the recommendations in any of the reports, based on nobody’s advice. It is very autocratic behaviour and as an organisation representing Aboriginal community controlled health services, we feel very vulnerable—not just for our own existence, but for the ongoing support for Aboriginal Medical Service as an entity.

The concern we have is that we do not want to return to a past when we have decisions being made in an uncoordinated, ad hoc way by one manager in each region of an Indigenous coordination centre. No matter how good they are—they might be very supportive of everything that is in place—but as a matter of principle, it is not an appropriate process. A lot of the planning, evidence, policies and structures that are being put into place to make the changes run the risk of being negated in this process. It appears

to us that there has been a total disregard for what is already in place, that there is just a total lack of understanding as to what is there and why it is important.

Senator RIDGEWAY—You have probably already spoken about this during my time out of the room, but I guess it raises the whole question of mainstreaming services and the effect that that might have on people in the communities being able to access services—whether that would improve, stay at the current levels, or drastically decrease and whether services would be improved on the whole in everything from life expectancy rates, for example, which you would know is appalling even compared to Third and Fourth World countries.

Ms Bailey—There is an absolute need for mainstream services to work in partnership with community controlled health services. That is why we have the partnerships that we have. They are partnerships between service providers. Our structure facilitates or embodies that process whereby the community has direct input and so on. If, for example, the Aboriginal health budget is allocated in the future at a regional level without any regard for state or national planning or frameworks, and the ICC decides to bypass the AMS and work with the area health service, then you are eliminating a very vital part of service delivery for Aboriginal people.

In our submission we note that many years ago Ruddock was on a parliamentary committee that recognised that when an Aboriginal medical service was established the

hospital admission rates, and even the utilisation of emergency departments, dropped considerably as a result of the medical service being established. That was because people were able to access culturally appropriate health services prior to their conditions worsening and requiring emergency treatment. That positive impact of Aboriginal medical services has been widely recognized around the country. I think Minister Abbott has made a statement that there is no intention to mainstream health services or take the funding away from medical services. Minister Vanstone has said in past media releases that specific Indigenous funding will be preserved or protected.

But, like John said, the fact that the Aboriginal health budget is now within the total global budget for Indigenous affairs is a concern to us. Whilst we have been told that it is kept quarantined and kept separate, it indicates to us that it might be that ICCs will take over responsibility for health in the future.

Senator RIDGEWAY—On another matter, whilst I appreciate the need for innovation and ideas to arise from communities, in relation to Indigenous health is it acceptable or should it be acceptable that in places like Kintore, for example, they have gone about raising \$1 million to purchase a dialysis machine? Is it okay in those cases for that to occur when the government, whether it is the Territory government, the federal government or both, have a basic obligation to respond to what is a desperate need within the communities? Someone who is living in Toorak, Paddington or Woollahra can get that provided by the government as a basic obligation. Is it enough for Indigenous people to be told that that is what they ought to be doing?

Ms Bailey—That is right. You have the community being forced to take that initiative. When you take a situation like that you see how much more it will be complicated by mutual obligation and those sorts of agreements and arrangements. No, it is not good enough that communities have to raise money for those services. The need for renal dialysis services in the community and morbidity and mortality caused by renal disease is a major crisis. Whilst it is good that it comes out of the community, it is very important that the government sees its obligation to Aboriginal people as citizens of Australia. There has been a tendency over the years in different areas, whether it be for hospital services, transport or whatever, to refer matters on to an Aboriginal service and so on. Mainstream has been sidestepping its obligations over many years.

Senator SCULLION—Perhaps you can take this on notice as we are running out of time. You mentioned the essential elements of progress. Those principal planks mentioned by both Mr Williams and Mr Vincent were things like partnerships, the original arrangements, the relationships you had with the mainstream—those were the principal planks that needed to be protected. You mentioned a handful of them. Could you do a bit of an audit of those and provide the committee with those essential elements that you think may be threatened by the new arrangements, and in what way?

...

Ms Bailey—I can give you some broad brush strokes because they have not changed much. The definition of Aboriginal health is about not just the wellbeing of the individual but the social, emotional and cultural wellbeing. Implicit in that definition is the need for Aboriginal people to be self-determining. That is one of the principles that has gone out of the window or is just not being recognised at this point by this government, although it has been recognised by previous governments. So Aboriginal medical services are important for that reason—they embody self-determination for Aboriginal people. They can provide meaningful engagement for Aboriginal people in the improvement of wellbeing through the process of culturally appropriate primary health care which is holistic and which cannot be provided through mainstream services.

When it comes to the government doing what it can, it needs to work with those processes, in partnership with the Aboriginal community and the people that are involved with that, which also embodies input from the whole community. So it is a matter of community control, equal partnership with communities and working together so that mainstream can be enhanced, community controlled health services can be supported and that they both complement each other's work so that we get the maximum benefits.

The AHMRC Board endorses and wants to call attention to the last paragraph:

We have so much work to do.

The improvements that are required are due to the impact of dispossession and neglect over many years.

The medical services have been working for a long time to advise governments of what was required.

I refer to the National Aboriginal Health Strategy. The government neglected to implement the strategy. Whatever this government does come up with by way of a new structure, we wonder how much of it will be implemented. It has certainly given rise to a lot of confusion in the community.

As I said, there is community control of the health services, working in partnership with the mainstream, policy development through that process with input from elected structures, and the continuation of the reports and recommendations that are already in place.

When we signed the framework agreement in 1996 and then in the NSFATSIH, the strategic framework, the expression made was, 'At last, we're all in the same car, going in the same direction.' It was felt that we could maximise the effort and achieve results. That is what we are seeking to protect in all of this.

TERMS OF REFERENCE

1. That the Standing Committee on Social Issues inquire into and report on:



- (a) policies and programs being implemented both within Australia (States/ Territories/ Federal) and internationally aimed at closing the gap between the lifetime expectancy between Aboriginal people and non-Aboriginal people (currently estimated at 17 years), with the assessment of policies and programs including but not limited to: New Zealand, Canada, North America, South America, and also considering available reports and information from key NGOs and community organizations,
- (b) the impact of the following factors on the current lifetime expectancy gap:
 - (i) environmental health (water, sewerage, waste, other)
 - (ii) health and wellbeing
 - (iii) education
 - (iv) employment
 - (v) housing
 - (vi) incarceration and the criminal justice system
 - (vii) other infrastructure,

- (c) previous Social Issues committee reports containing reference to Aboriginal people - and assess the progress of government in implementing adopted report recommendations,
- (d) the Federal Government intervention in the Northern Territory and advise on potential programs/initiatives that may or may not have relevance in terms of their application in New South Wales,
- (e) opportunities for strengthening cultural resilience within Aboriginal communities in New South Wales with a focus on language, cultural identity, economic development and self determination, and
- (f) the experiences of the outcomes of the COAG Murdi Paaki trial but also take into account the other COAG trials occurring across Australia and their outcomes/lessons learned.

2. That the Committee provide an interim report to the House by Monday 30 June 2008.

3. That the Committee provide a final report to the House by Friday 28 November 2008.

UN Declaration on the Rights of Indigenous Peoples

United Nations	A/61/L.67	
	General Assembly	Distr.: Limited 7 September 2007
		Original: English
Sixty-first session Agenda item 68 Report of the Human Rights Council		
Belgium, Bolivia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Estonia, Finland, Germany, Greece, Guatemala, Hungary, Latvia, Nicaragua, Peru, Portugal, Slovenia and Spain: draft resolution		
United Nations Declaration on the Rights of Indigenous Peoples		
<i>The General Assembly,</i>		
<i>Taking note</i> of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,		
<i>Recalling</i> its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,		
<i>Adopts</i> the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.		
07-49830 (E) 100907 		

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

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

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

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights¹ and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action,² affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing also that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

¹ See resolution 2200 A (XXI), annex.

² A/CONF.157/24 (Part I), chap. III.

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights³ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

³ Resolution 217 A (III).

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of

the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

UN Convention on the Rights of the Child

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DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

Convention on the Rights of the Child

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CONVENTION ON THE RIGHTS OF THE CHILD

PREAMBLE

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

BEARING in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

RECOGNIZING that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

RECALLING that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

CONVINCED that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

RECOGNIZING that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

CONSIDERING that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

BEARING in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights^[1] (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights^[2] (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

BEARING in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

RECALLING the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

RECOGNIZING that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

TAKING due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

RECOGNIZING the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

HAVE AGREED as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.

With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local

custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the

information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

Submission of the Aboriginal Health & Medical Research Council of NSW to the NSW Legislative Council Standing Committee on Social Issues Inquiry into Overcoming Indigenous Disadvantage– 31/01/2008

- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily

deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and

vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of

child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the

maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent;

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that;

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

Submission of the Aboriginal Health & Medical Research Council of NSW to the NSW Legislative Council Standing Committee on Social Issues Inquiry into Overcoming Indigenous Disadvantage– 31/01/2008

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the

human rights and fundamental freedoms of others and which takes into account the
Submission of the Aboriginal Health & Medical Research Council of NSW to the NSW Legislative Council
Standing Committee on Social Issues Inquiry into Overcoming Indigenous Disadvantage– 31/01/2008

child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention.

Reports shall also contain sufficient information to provide the Committee with a

comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1(b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the

United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.[\[3\]](#)

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.[\[4\]](#)

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.[\[5\]](#)

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.[\[6\]](#)

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

[Signatures not reproduced here.]

[\[1\]ATS 1980 No. 23](#) Act 1981 No. 24 and 1986 No. 125; SD 10 p. 20; UNTS 999 p. 171; UKTS 1977 No. 6 (Cmnd. 6702); ILM 6. p. 368.

[\[2\]ATS 1976 No. 5](#) SD 10 p. 13; UNTS 993 p. 3; UKTS 1977 No. 6 (Cmnd. 6702); ILM 6 p. 360.

[\[3\]](#) Signed for Australia 22 August 1990.

[\[4\]](#) Instrument of ratification deposited for Australia 17 December 1990 subject to the following reservation:

"Article 37

Australia accepts the general principles of this Article. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to

be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia."

[5] The Convention entered into force generally 2 September 1990.

[6] The Convention entered into force for Australia 16 January 1991.

Source: <http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>

**Institutional racism in Australian healthcare: a plea for
decency (Henry, Houston & Mooney MJA 2004)**

Institutional racism in Australian healthcare: a plea for decency

Barbara R Henry, Shane Houston and Gavin H Mooney

Fairness and compassion are the bases for improving Aboriginal health

THERE IS NO DISPUTE THAT ABORIGINAL HEALTH in Australia is both poor and very much worse than that of non-Aboriginal people, and their life expectancy at birth is about 21 years less for men and 19 years less for women. Among Aboriginal and Torres Strait Islander males, 6.8% die in infancy, compared with 1% for the rest of the population. For females the figures are 6.7% and 0.8%. A large array of diseases are much more prevalent among Aborigines.¹

This is not news. The question is how to improve this situation. The argument presented in this article rests on two core and related ideas:

- that our health services are “institutionally racist”; and
- that such racism stems from Australia being, or at least having become, an uncaring society.

The way forward that we propose is recognising and addressing institutional racism. This would provide a framework for improving Aboriginal health. We believe, however, that acceptance of the need to address such racism can only come about through building a more compassionate and decent society.

To suggest that healthcare in Australia is institutionally racist may be confronting for some, but we argue not only that it is institutionally racist, but, more importantly, that such racism represents one of the greatest barriers to improving the health of Aboriginal and Torres Strait Islander people. We will also indicate what might be done to overcome this institutional racism and improve Aboriginal health.

Defining institutional racism

Institutional racism “refers to the ways in which racist beliefs or values have been built into the operations of social institutions in such a way as to discriminate against, control and oppress various minority groups”.² It has been claimed that “Institutional racism is embedded in Australian institutions”.³ Often, institutional racism is covert or even unrecognised by the agents involved in it.

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Institutional racism in Australian healthcare — some examples

- Funding inequity: Overall funding of Aboriginal healthcare is not commensurate with extra need.⁸
- Different performance criteria for black and white: For example, in Perth, Derbarl Yerrigan Aboriginal Medical Service funding was cut when an “overspend” arose because of success in attracting clients; at the same time the teaching hospitals’ overspend was 120 times as great as that at Derbarl Yerrigan. The teaching hospitals were given an extra \$100 million to cover their overspend.⁹
- “Body part” funding: For instance, separate streams of money for conditions such as diabetes and heart disease for a health service which is intended to be holistic — 26 funding streams (and hence 26 separate accounts and 26 demands for accountability) for the Danila Dilba Aboriginal Medical Service in Darwin.
- Differences in treatment regimens: Aboriginal people in Western Australia born in the 1940s received low-cost nursing care; in contrast, a white cohort of the same age received higher-cost technological care.¹⁰
- Inequitable Medicare Primary Health Care (Medicare Benefits Schedule plus Pharmaceutical Benefits Scheme): In Katjungka (a remote Aboriginal community), \$80 per head per year; in Double Bay (an affluent Sydney suburb), \$900 per head per year.¹¹
- Cultural barriers to Aboriginal use of healthcare services: Inadequate funding to reduce these barriers (such as language barrier and lack of recognition of different constructs of health) for Aboriginal people.

In recent years, interest in both the concept and practice of institutional racism has increased. In the United Kingdom, it was sparked by the Stephen Lawrence Inquiry,⁴ published in 1999. This examined the events which followed the completely unprovoked murder in 1993 of Stephen Lawrence, a young black man, which was “unequivocally motivated by racism”. It found that the investigation was marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers. It claimed that “officers approached the murder of a black man less energetically than if the victim had been white and the murderers black”.

In the context of racial and ethnic disparities, Camara Jones,⁵ an Assistant Professor at Harvard University School of Public Health, has called for “a growing national conversation on racism”, one key aspect of which is “institutionalized racism”. This she sees as being “often evident as inaction in the face of need”. An increasing focus on institutional racism in Aotearoa (New Zealand) was prompted by a visit there by Camara Jones in 1999.⁶

In Australia, institutional racism has been an almost constant feature of our history, from the British designation of the continent as *terra nullius*, through the 1897 Conven-

tion on Federation (where the question of whether Aboriginal people should be counted as "people" in the national census was covered in just 195 words⁶), to the stolen generations and the failure of the federal government to issue an apology. Examples of institutional racism are shown in the Box.

Clash of cultures

We believe that any healthcare system is a social institution built on the cultural stance of the population it serves. It follows that cultural values should provide the value base for health services.

Between Aboriginal and non-Aboriginal Australians, there is not only a difference in culture, but a clash of cultures. We think some white people are at least dimly aware of this. However, the extent of their understanding of the difference between a culture based on individualism, where the individual ranks above the community in importance, and a communitarian culture, in which each individual is less important than the whole, is limited.

One of us, SH,⁷ a Gungulu man, has written: "Aboriginal Peoples have built a communitarian solidarity that includes an awareness and affirmation of the [cultural] difference [of Aboriginal people]. Such communitarian solidarity is a form of civic friendship between peoples that is distinguishable from other forms of friendship because it unites people who are members of the same particularistic cultural community — persons who share a common worldview and use the same primary moral vocabulary." Yet that value base is inadequately recognised in the planning of healthcare services in this country.

Where societies or social entities have a greater awareness of and concern for mutuality, reciprocity and sharing, trust in institutions will be fostered and racism will diminish. Many Australians have embraced the individualism of neo-liberalism. Uniting as a community around little other than the successes of its sporting teams, today's white Australia lacks these "communitarian" traits.

While communitarianism need not always be a force for good (the Nazi vision of the "master race" is a case in point), it can be and has been a beneficial force in Aboriginal culture. Here it is best seen in terms of what the distinguished public servant Coombs¹² describes as "the Aboriginal ethic of accountability to others". This, he writes, "is required by their commitment that autonomy, at a personal and group level, will be exercised so as to ensure that what is done contributes to the care and nurture of others with whom they are related; so that personal behaviour remains socially grounded".

In current health policy there is little attempt to recognise the differences in culture between black and white. The holism of Aboriginal health involves not just a "wholeness", but a series of mutual obligations. Aboriginal Medical Services attempt to provide culturally "secure" services (ie, services based on Aboriginal preferences where differences in culture do not create additional barriers to use). Their poor funding levels, however, severely restrict them in this.

Mainstream services make almost no effort to understand or provide culturally secure services. To deliver such services might increase primary healthcare costs for Aboriginal people by more than 50%.^{9,13} This is because, for example, questioning with respect to history has to be indirect, and preceded by time spent in building trust and confidence between the doctor and patient. This process, to be done well, can be time consuming. Also, advocacy on behalf of the client with other agencies, such as those providing housing, is often expected by Aboriginal clients as part of a GP's role.

The prospects for creating a cohesive Australian community, advancing social capital, furthering equity and reducing racism are not bright. For example, the Human Rights and Equal Opportunities Commission conducted a series of consultations across Australia which showed racism to be widespread and institutionally based, especially with respect to Aboriginal people.¹⁴ We believe that the current Australian federal government puts at risk our social capital in its pursuit of divisive policies. This applies not only to Aboriginal people, but also to other minority groups, defined racially or otherwise. For example, extending upfront fees for universities gives the affluent greater access compared with the poor; and ignoring the principle of universality (which did not rate a mention in the Prime Minister's media release as one of his three pillars of Medicare¹⁵) on Medicareplus creates yet more of a two-tier healthcare system. The government's policies on immigration have been severely criticised by many, including Father Frank Brennan, the Jesuit priest and lawyer, who concludes his book on the subject with an appeal to re-create social capital in Australia: "Many of us would like to return collectively to being a warm-hearted, decent international citizen."¹⁶

We believe that Aboriginal people have lost their trust in the institutions of government, including healthcare services. Lack of respect by white Australians for Aboriginal values, the discounting of these values by those who have sought, patronisingly and paternalistically, to "do good" to Aboriginal people (according to a "good" defined by white fellas), leads to further erosion of trust. The lack of trust by Aboriginal people in white people and white institutions is obvious. More tellingly, we believe there is a lack of trust by Aboriginal people in themselves as a people — a lack of confidence in their culture. It is this last, a legacy of colonisation and its aftermath, that has wreaked the greatest havoc of all.

We also believe that there is a lack of political will and of leadership to deal with inequalities generally in Australian healthcare. The most glaring example in recent times lies in the government's schemes to promote private health insurance. The cost of increasing spending on primary healthcare for Aboriginal people to a level which would take into account such considerations as greater health problems, cultural-access barriers and equity (ie, increasing it to five times the per-capita level for non-Aboriginal people¹⁷) might be measured by the benefit forgone if the government were to halve the rebate (from 30% to 15%) for private health insurance.¹⁸

Progressing from institutional racism

Currently, cultural differences and ignorance create racism, and indifference nurtures it. Cultural differences must be celebrated, rather than denigrated. Former Prime Minister Paul Keating's Redfern Speech on reconciliation pointed the way forward: "I think what we need to do is open our hearts a bit. All of us. Perhaps when we recognise what we have in common we will see the things which must be done... If we open one door others will follow."¹⁹

That was 12 years ago. Today, the converse is true. As we have closed one door, others have followed. So many doors on social justice are closing in this society. We closed the door on a Norwegian freighter carrying abandoned refugees. We close the door on children in detention centres, on poor youngsters trying to get a university place. We close the door on opportunities for Aboriginal people and on the richness of an ancient culture which is potentially there for all Australians to learn from and take pride in.

What scope is there for building compassion? Not much, it might seem, in this neoliberal society and this globalising world. Yet, as the social commentator Richard Titmuss remarked 30 years ago about the UK National Health Service, altruism and compassionate acts are infectious not only to other people, but to other events and circumstances.²⁰ Compassion is *good* for us.

What to do?

Firstly, white Australia must learn to understand Aboriginal culture, particularly with respect to its fundamental philosophy of "communitarian solidarity". Only then can social institutions, such as healthcare services for Aboriginal people, be built on a genuine understanding followed by accommodation of the hopes and aspirations of Aboriginal people. More directly, only then can Aboriginal people have the chance to have health services delivered to them that are, *by right*, as accessible (in the broadest sense) as they are to white Australians.

Secondly, those white people who were described (above) as patronising and paternalistic would cease to be so when, in their "doing good", good was defined by Aboriginal preferences.

Thirdly, Aboriginal communitarian preferences must drive Aboriginal health services, their funding and their performance indicators. Unless the governance of Aboriginal organisations is based on Aboriginal cultural values, these services will not function effectively or efficiently.

Fourthly, public compassion must be built into the Australian social fabric. The "fair go", if it ever existed, has gone, but Australia needs a leadership that will articulate that fair go. The philosopher Martha Nussbaum argues against "impoverished models of humanity" with "numbers and dots taking the place of women and men".²¹ She continues: "...when one's deliberation fails to endow human beings with their full and complex humanity, it becomes very much easier to contemplate doing terrible things towards them...if you really vividly experience a concrete human life, imagine what it is like to live that life,

and at the same time permit yourself the full range of emotional responses to that concrete life, you will...be unable to do certain things to that person. Vividness leads to tenderness, imagination to compassion."²¹

Finally, our call is for a more compassionate society. Attitudes to asylum seekers, to Aboriginal people, to people who are in any way disadvantaged, are linked. Social attitudes need to be more compassionate to all who are disadvantaged, and not just to Aboriginal people.

Conclusion

Aboriginal people merit so much more from white Australia. First and foremost, they deserve white Australia's trust — trust that Aboriginal people know better than white Australians what is good for Aboriginal people. They deserve (and not just in their music and dancing) recognition of their culture. Two things are necessary — first, Australian society needs to listen and hear the calls of the disadvantaged (and there are so many in Australia today, especially Aboriginal people); then, those who have compassionate voices need to use them. Many people working in healthcare and in universities have social consciences and believe in social justice. They need not only to give voice to the voiceless, but to give themselves voice as decent, white Australians.

In this Australia — this divided, divisive, racist, socially unjust society that we have built — we now need institutions and policies that will unbuild it. We need to acknowledge that the "fair go" is struggling to survive, if not already dead. Fairness and compassion need to be once again the guiding principles of our leaders and our democracy. Only then can we build a society where decency can become the fundamental in addressing Aboriginal health.

There will be no sudden breakthrough; there is no magic pill. Decency, however, is a good place to start.

Competing interests

None identified.

References

1. Australian Institute of Health and Welfare. The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples. Canberra: AIHW, 2003.
2. McConnachie K, Hollingsworth D, Pettman J. Race and racism in Australia. Sydney: Social Science Press, 1988.
3. Bolt RJ. It's just how you've been brought up! An Aboriginal perspective on the relationship between the law, racism and mental health [honours thesis]. Sydney: University of Sydney, 2001.
4. The Stephen Lawrence Inquiry. London: Stationery Office, 1999.
5. Jones C. Invited commentary: "Race", racism and the practice of epidemiology. *Am J Epidemiol* 2001; 154: 299-304.
6. Jones C. Maori-Pakeha health disparities. Can treaty settlements reverse the impacts of racism? Available at: www.fulbright.org.nz/voices/axford/jonesc.html (accessed Apr 2004).
7. Houston S. The past, the present, the future of Aboriginal health policy [doctoral thesis]. Perth: Curtin University, 2004.
8. Australian Institute of Health and Welfare. Expenditures on health services for Aboriginal and Torres Strait Islander people 1998-1999. Canberra: AIHW, 2001.
9. Wilkes E, Houston S, Mooney G. Cultural security: some cost estimates from Derbarl Yerrigan health service. *New Doctor* 2002; 77: 13-15.
10. McGuire T, Houston S, Rohwedder E, Montague G. Identifying Aboriginal person care in hospital and Medicare documentation. Perth: Health Department of Western Australia, 1998.

