

**Submission
No 74**

INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

Organisation:

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**SUBMISSION BY ELIZABETH RICE
TO
INQUIRY BY SOCIAL ISSUES COMMITTEE OF NSW LEGISLATIVE COUNCIL
INTO
*OVERCOMING INDIGENOUS DISADVANTAGE***

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Section 1.0: Introduction

This submission focuses on some of the Indigenous rights issues that must be addressed if Indigenous disadvantage is to be overcome in Australia, and particularly in NSW.

The central argument in the submission (which is expressed in Section 2) is that, unless Indigenous rights are fully recognised and fully integrated into policies, plans, programs and services intended to improve outcomes for Indigenous people, there can be only limited gains from attempts to overcome Indigenous disadvantage.

The submission then notes (in Section 3) that, while some aspects of Indigenous rights are reflected in some NSW government activities, there is no clear NSW government statement of:

- Indigenous rights as a whole
- how the NSW government integrates Indigenous rights into its policies, plans, programs and services
- how it measures its performance in relation to this matter
- where public information can be found on all the above matters.

The submission does not intend to deny the value of those policies, plans, programs and services which do incorporate aspects of Indigenous rights into their activities, or the commitment and achievements of the staff and community members who develop, implement and review them.

Instead the intention is to highlight the areas where governments need to do more to ensure that Indigenous rights, in their entirety, are realised.

For this reason the submission identifies:

- areas where the NSW government can take unilateral action to make improvements in relation to the realisation of Indigenous rights
- areas where the NSW government needs to act multilaterally, either with the Commonwealth or with other states and/or territories, to achieve improvements.

In Section 4, the submission outlines the elements of a possible national framework for integrating human rights and social equity. It also comments on the resource issues involved in developing and implementing holistic approaches, including those required in Indigenous affairs. Section 5 collects the recommendations implicit in the previous sections, and Section 6 reinforces the need for both a rights-based approach and action to implement it.

In making this submission, the author has drawn on her background in NSW public sector multi-agency activities (including aspects of Indigenous policy), in Commonwealth/State relations, in working with an Aboriginal organisation to help overcome Indigenous disadvantage, as a casual teacher of social policy at tertiary level, as a current PhD student examining the relevance of Indigenous knowledge and governance systems to social planning, and as a member of an Aboriginal reconciliation group.

However, the author does not claim that the submission provides an exhaustive analysis of the issues it covers, or that it represents Indigenous perspectives. The latter are best obtained directly from Indigenous people themselves.

For this reason, the submission also requests the Inquiry to consider:

- accommodating requests from Indigenous organisations, and other organisations with a strong focus on Indigenous issues, to present oral evidence at one of the Inquiry's hearings
- extending the hearing schedule, and the location of the hearings, if that is necessary to accommodate these requests.

Section 2.0: Rights and Overcoming Indigenous Disadvantage

2.1 Centrality of Indigenous Rights

The central argument in this submission is that, unless Indigenous rights are fully recognised and fully integrated into policies, plans, programs and services intended to improve outcomes for Indigenous people, there can be only limited gains from attempts to overcome Indigenous disadvantage.

Even if only one area of human rights - self-determination - is examined, the picture is clear. As Australia's Human Rights and Equal Opportunity Commission (HREOC) states on its current website, where it explicitly links Indigenous disadvantage to the loss of the right to self-determination:

The loss of this right to live according to a set of common values and beliefs, and to have that right respected by others, is at the heart of the current disadvantage experienced by Indigenous Australians. Without self-determination it is not possible for Indigenous Australians to fully overcome the legacy of colonisation and dispossession.

http://www.hreoc.gov.au/social_justice/info_sheet.html viewed 18 March 2008

Further, HREOC has also emphasised the need for human rights to be used as a tool for both the planning of public policy, and the analysis of its efficacy, when, through its Social Justice Commissioner, it argued that:

Generally speaking, in Australia we have not converted our international human rights obligations into domestic law and practice very well. This is particularly the case in relation to economic, social and cultural rights, such as the right to health, housing, education and so forth. As a result, human rights standards do not enjoy prominence as a tool in planning policy or in holding governments accountable in Australia.

(http://www.anu.edu.au/caepr/conference/Calma_Social_Justice.pdf, viewed 10 March 2008, p1)

Despite these exhortations from the nation's premier human rights body, the recognition and realisation of Indigenous rights in Australia is still inadequate. While government responses, state and federal, do frequently invoke the concept of self-determination, there are serious omissions in the concept's application. For example, self-determination in relation to land is reflected only in the limited recognition of native title rights. In relation to governance, the rhetoric of self-determination has not yet resulted in "a functional engagement with government"¹. In terms of structural arrangements, there are still no overarching agreements, such as a treaty or treaties, which could give full expression to Indigenous rights.

¹ The author of this submission understands that this phrase has been given currency by Dillon, M.C., and Westbury, N.D., the authors of the 2007 work *Beyond Humbug: Transforming Government Engagement with Indigenous Australia*, Seaview Press, Westlakes, SA.

Finally, Australia has never supported the development of a representative Indigenous decision-making body ***structured in accordance with Indigenous governance systems*** – and at present there is no national representative Indigenous decision-making body at all – although the current federal government has made a commitment to establishing “a national representative body and regional representative structures for Indigenous Australians” that “will empower Indigenous Australians to hold all levels of government to account” and to finalising these structural arrangements, and the related functions, “in partnership with Indigenous Australians”. (See Items 50-51 of the ALP National Platform and Constitution at http://www.alp.org.au/platform/chapter_13.php#13human_rights_and_responsibilities viewed 19 March 2008.)

2.2 Evidence re Indigenous Rights and Disadvantage

In the same paper in which the HREOC Social Justice Commissioner commented on Australia’s poor record in converting international human rights obligations into domestic law and practice, he also drew attention to the:

... significant developments occurring in the human rights system worldwide which demonstrate the suitability of a human rights framework for advancing policy development and which ultimately can guide improvements in Indigenous socio-economic outcomes.

(http://www.anu.edu.au/caepr/conference/Calma_Social_Justice.pdf, viewed 10 March 2008, p1)

Just one instance from Canada makes the point, as is evident from a recent paper presented by Nicole Watson, of UTS’ Jumbunna Indigenous House of Learning, to the Annual General Meeting of ANTaR (NSW) on 1 March 2008. In this paper, Ms Watson draws attention to the crucial role of self-determination in overcoming Indigenous disadvantage. To quote Ms Watson (unpublished paper) in full:

There is also an abundance of evidence from overseas indicating that Indigenous communities who thrive are those who have control over their affairs. For example, research from Canada suggests that Indigenous communities that have reclaimed a degree of self-government enjoy better health than those that have not. For example, Lalonde and Chandler examined the youth suicide rates of 196 First Nations groups in British Columbia.² While some groups suffered rates 800 times the national average, suicide was non-existent in just over half. Lalonde and Chandler hypothesised that the latter group had given its members a sense of cultural continuity that protected individuals from suicidal behaviour. The hypothesis was tested by the use of six variables that included taking steps to secure title to traditional lands, reclaiming rights of self-government, control over health services and the existence of facilities to maintain culture. In communities where all six variables existed, the youth suicide rate was zero for the five year period that had been studied.³

This is just one example from one researcher in an Indigenous unit at an Australian university. A brief internet search indicates that there are numerous Indigenous units at Australian universities with researchers who have an interest in rights and disadvantage, as well as other University units with an interest in this area (eg The Gilbert + Tobin Centre of

² Chandler MJ, Lalonde C. Cultural Continuity as a Hedge against Suicide in Canada’s First Nations. *Transcultural Psychiatry*. 1998; 35(2): 191-219.

³ Same reference as above.

Public Law at <http://www.gtcentre.unsw.edu.au/>). In addition, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) has an extensive online catalogue with hundreds of entries relevant to this area, as well as researchers who specialise in a wide range of areas related to Indigenous social and cultural wellbeing, and Indigenous country and governance.

The Inquiry may have already pursued these avenues in seeking evidence on effective approaches to overcoming Indigenous disadvantage (and at least two Indigenous units have already participated in submissions to the Inquiry). However, if the Inquiry requires additional evidence in relation to approaches that work either in Australia or the rest of the world, it might consider seeking advice directly from some of the bodies mentioned above.

2.3 Australian Indigenous Views on Rights

The sections above reflect what has happened to date in relation to Australian Indigenous rights. However, the position is currently changing as the federal government commences the process of implementing its commitment, in Item 44 of the ALP National Platform and Constitution, that: "Labor will endorse the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and be guided by its benchmarks and standards.". (See http://www.alp.org.au/platform/chapter_13.php#13human_rights_and_responsibilities viewed 19 March 2008.)

Recently the federal government sought community views on "... matters relating to how they ought to formally indicate their support for the Declaration at the United Nations" (see http://www.hreoc.gov.au/social_justice/declaration/comments.html viewed 19 March 2008).

As part of this process, HREOC specifically sought the views of Indigenous organisations on the following matters:

- the sections of the Declaration to which they would like the government to emphasise a commitment
- the steps they think that the government should take to show support for the Declaration
- in the long-term, the steps the government should take to implement the commitments in the Declaration in Australia
- other comments they wish to make about the Declaration at this stage.

(For exact questions, and further information about the Declaration, see internet address above.)

If HREOC publishes the results of this exercise, all policy makers and implementers - as well as bodies such as the Social Issues Committee of the NSW Legislative Council, which are well placed to influence the direction of policy - should shortly have access to recent Indigenous views on these matters. These views would be invaluable in working out priorities for integrating Indigenous rights into policies, plans, programs and services.

However, while this development in consultation is welcome, it highlights the need for representative Indigenous decision-making bodies, rather than *ad hoc* mechanisms, for obtaining Indigenous views.

Section 3.0: NSW Government, Indigenous Disadvantage and Indigenous Rights

This section of the submission attempts to deal with the issues arising from an inter-related set of factors. These factors are:

- The extraordinarily high levels of Indigenous disadvantage today result, directly and indirectly, from breaches of Indigenous rights in the first place.
- Attempts to overcome Indigenous disadvantage tend to treat Indigenous people as simply members of a population group, without specifically acknowledging their rights as First Peoples or recognising that attempts to overcome Indigenous disadvantage will only be fully effective when Indigenous rights are integrated into them.
- Overcoming Indigenous disadvantage requires a holistic approach with multiple agencies working together effectively, yet there are many unresolved problems in multi-agency activities, in NSW as elsewhere, which affect how well governments can deliver a holistic approach.

Throughout the remaining sections of this submission, the discussion ranges across all three factors.

3.1 NSW Government and Indigenous Disadvantage

3.1.1 NSW Approaches and Activities

The NSW government responds to Indigenous disadvantage through a range of approaches and activities. These include:

- a state-wide whole of government approach expressed in:
 - aspects of the *NSW State Plan*
 - the NSW Aboriginal Affairs Plan, *Two Ways Together*, which pre-dates the State Plan but has been articulated to it (State Plan, p 11)
 - the *NSW Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities: 2006 – 2011*, which was developed after both *Two Ways Together* and the State Plan, and on which progress will be “reported through the State Plan and *Two Ways Together* reporting processes” (NSW *Interagency Plan*, p 8)
 - Ministerial Circulars such as M2006-10 on Improving Outcomes for Aboriginal People and their Communities
- individual government agencies’ corporate plans
- the activities of individual government agencies, either across the state or within one or more geographical areas of the state, including Indigenous-specific services as well as general services which Indigenous people can access
- collaborative approaches across NSW government agencies, either across the state (eg early intervention) or in specific geographic areas (eg Priority Communities under the Aboriginal Communities Development Program), or through the various CEOs’ clusters
- the funding of local government services, non-government services and, in some cases, for-profit services - either through grants, subsidies or fees-for-service
- collaborative approaches with the Commonwealth, including portfolio initiatives at Ministerial level as well as initiatives determined at head of government level through the Council of Australian Governments (COAG).

3.1.2 Problems with NSW Approaches and Activities

This may appear to provide a coherent, comprehensive and effective approach to overcoming Indigenous disadvantage; however this appearance is superficial, as in practice there are limits to the coherence, the comprehensiveness and the effectiveness of the measures outlined above. These limitations are a function of:

- difficulties in integrating all these approaches and activities, which can affect:
 - multiple agencies as they try to integrate the management and implementation of joint activities into the management and implementation of the activities for which they have sole responsibility

- individual agencies as they try to mesh existing activities with new Plans (eg the *NSW State Plan* or the *NSW Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities*), or try to shape new activities in ways that reflect these Plans
 - outcomes for clients
- the adequacy of the policies which govern either individual agency activities or collaborative activities
- difficulties in reporting in a meaningful way on multiple and sometimes overlapping plans
- the resources available for implementation
- the lack of an Indigenous rights framework.

The result of the NSW approaches is a complex mix of activities, involving all levels of government, and a complex mix of problems. These interact to affect how well the NSW government can respond to Indigenous disadvantage – and all of them except the last one are common to any area of government activity. They are therefore issues that the NSW government needs to address in all areas involving multi-agency work, whether for Indigenous or non-Indigenous people.

3.1.3 Need for Review of NSW Indigenous Affairs Policy

The comments above are not intended as a criticism of a holistic approach – to the contrary, as a holistic approach is necessary to respond to all aspects of Indigenous disadvantage. Their point is to indicate that the task of overseeing such a complex mix of approaches and activities has become so unwieldy that it is time for either a complete review of the way the NSW government responds to Indigenous issues or, at the very least, for the development of an overarching, publicly accessible statement that guides all the NSW activities that respond to Indigenous disadvantage. For reasons set out in Section 3.2.1.3, none of the current government documents, including the State Plan, is adequate for the latter purpose.

A further reason for review is the changing federal environment in relation to Indigenous affairs, which may well require more than the issuing of a Ministerial Circular (eg M2006-10 referred to in Section 3.1.1) to ensure that federal and state efforts in overcoming Indigenous disadvantage are as effective as possible.

This need for review is not surprising as, in any area of government activity, policy and operations evolve over time, until the point is reached where constant amendment becomes counter-productive. Failure to act when this point is reached risks the effectiveness of service delivery and also limits the capacity of the system to evaluate the results of policy, program development and service delivery in the area under consideration.

The final reason for a review is that the failure to integrate Indigenous rights, in a clear and formal way, into the NSW government's approach to Indigenous affairs will inevitably limit the effectiveness of its efforts to overcome Indigenous disadvantage.

This means that the NSW government needs to concurrently:

- review the current collection of approaches and activities in Indigenous affairs
- address outstanding problems in multi-agency work
- work out how to integrate Indigenous rights into a new framework for overcoming Indigenous disadvantage.

It will then be in a position to create a new framework that respects and fosters all aspects of Indigenous rights while also incorporating both the basic services that Indigenous people,

along with other Australians, need to achieve a reasonable standard of living, and targeted programs and services to address specific aspects of Indigenous disadvantage.

The remaining parts of Section 3 provide a more detailed analysis of specific issues associated with the incorporation of Indigenous rights into NSW policy, planning, operations and review.

3.2 NSW Government and Indigenous Rights

As the introduction to this submission noted, there is no clear NSW government statement of:

- Indigenous rights as a whole
- how the NSW government integrates Indigenous rights into its policies, plans, programs and services
- how it measures its performance in relation to this matter
- where public information can be found on all the above matters.

3.2.1 Lack of Indigenous Rights Statement

There are local as well as national factors which help to explain the absence of a clear, comprehensive statement of Indigenous rights in NSW.

The local factors include the following:

- the NSW response to Indigenous disadvantage has multiple approaches, each of which has its own plans, program and/or services relating to this issue
- some of the documents associated with these activities refer to Indigenous rights; however, these references are generally to a limited range of rights only
- this generally weak approach to conceptualising and recognising Indigenous rights also characterises the key whole of government documents relating to Indigenous affairs in NSW, which are the State Plan and *Two Ways Together*.

3.2.1.1 Local Factor 1 – Multiple Approaches

The multiplicity of sources of Aboriginal policy, plans, programs and services has been demonstrated in Section 3.1.2 above. This is not in itself a problem for Indigenous rights but, as indicated in Section 3.1.2, a problem for the administration of government in every area of multi-agency activity.

The aspect that **is** a problem for Indigenous rights is that without a clear and comprehensive policy statement of the NSW government's approach to Indigenous affairs as a whole, there is no obvious "home" for a statement of its approach to Indigenous rights.

If there were such a statement, this would be the ideal place to both state and reinforce the rights of Indigenous peoples in NSW, and to illustrate how those rights will be integrated into policies, plans, programs and services in NSW.

3.2.1.2 Local Factor 2 – Limited Recognition of Rights

The references to Indigenous rights - in the mix of documents that comprises the NSW approach to Indigenous affairs – are generally to a limited range of rights only. In the NSW Government submission to this Inquiry (Submission No 40), for example, recognition of rights seems to be limited to cultural appropriateness and cultural sensitivity in service delivery. The exception appears to be in the text on Murdi Paaki, where the future directions section refers to local community governance structures, and assumes that the Partnership communities could, as long as the appropriate resources are provided, implement their

Action Plans utilising participatory *Community capacity assessment tools* (Submission No 40, p 79).

3.2.1.3 Local Factor 3 – Weak Rights Approach in Key NSW Whole of Government Documents

The two key NSW whole of government documents relating to Indigenous Affairs are the *NSW State Plan* and *Two Ways Together*. Neither of these documents refers specifically to Indigenous rights.

As the State Plan is, according to the NSW Premier, the NSW government's "foundation document" for delivering better services in NSW (see Premier's statement at <http://www.nsw.gov.au/stateplan/>), it is worth examining its strengths and weaknesses in a little detail.

At the outset the author acknowledges that:

- there is considerable benefit in having a State Plan
- the *NSW State Plan* is a work in progress.

Some of the benefits are that:

- there is at least an overarching statement for whole of government service delivery
- agencies now report specifically on the identified Indigenous targets in the Plan, as well as indicating how their activities in other priority areas impact on Indigenous outcomes
- some of the measures used in the Plan link to national measures in the area concerned
- the online reporting facility allows information on results to be made public as it becomes available.

Despite these benefits, there are inherent weaknesses, even at this stage of the Plan's development, that will limit its effectiveness if not rectified. These were evident even at the draft stage of the Plan, in which its treatment of both rights in general, and Indigenous affairs in particular, were inadequately conceptualised.

To make the point re rights in general, in the draft Plan child protection services and services for people with disabilities were listed as relating to the heading: "Compassion and support for the most vulnerable". However, responding to the needs of children, and of people with disabilities, is not just a matter of compassion and support, but a matter of rights – many of which are covered in UN conventions to which Australia is a signatory. Similarly, the treatment of Indigenous affairs was inadequate - the draft referred to Indigenous issues and acknowledged Indigenous disadvantage; however there was no reference to them in the summary, nor any reference to Indigenous rights.

Despite the revisions made to the draft Plan, the final version of the Plan has not addressed these issues adequately. The simple renaming of a priority, for example, does not overcome inherent problems in its conceptualisation. These problems remain, for example, in the area of "Rights, Respect and Responsibility" where the only reference to Aboriginal people relates to a target to "increase participation in volunteering, sports, cultural and artistic activity especially for people from low income, non-English speaking and Aboriginal communities" (State Plan, p 7). Apart from being a weak response to rights, this, together with the targets in the "Fairness and Opportunity" area, provides a good example of the limited understanding of rights issues and the treatment of Aboriginal people as just another population group.

If the NSW government believes that the aggregation of all its service delivery priorities **will** address both human rights and social justice issues, it should say so, clearly and succinctly, and also indicate how this aggregation will do so. If it believes that one type of right is more important than another it should also state that clearly and provide an argument in support of its case. These difficulties are yet one more illustration of the problems that occur when a plan lacks a carefully thought through and clearly articulated policy basis, including a statement of the principles that govern the matters it deals with.

There **are** models for state planning which overcome many of the flaws in the current State Plan. A summary of one developed by this author, which integrates multi-agency work into the structures of government, is provided at Attachment A. This model links people and places to the decisions of Cabinet - through local and regional processes which converge at state level. It also links planning and budgeting at these levels, and allows for the incorporation of national issues affecting NSW. A key difference between this model and the State Plan is that while the State Plan relates to service delivery priorities, without any overt link to the policies which govern them, a strategic policy statement is central to the model at Attachment A. More information on this model can be provided on request.

Getting all aspects of the State Plan right is an important issue as it is now the main yardstick by which agencies determine which activities they will reduce or eliminate, which activities they will retain, and which new activities they will seek to introduce – whether for Indigenous or non-Indigenous people.

3.2.1.4 National Factor 1 – Lack of Federal Leadership

Over the last decade or so, there has been a lack of leadership from the Commonwealth on the issue of Indigenous rights. Had there been Commonwealth leadership on this matter, there would have been pressure on all States and Territories to incorporate Indigenous rights into policies, plans, programs and services, especially through agreements reached at Ministerial Council and COAG levels.

3.2.1.5 National Factor 2 – Weak Rights Approach Nationally

Finally, the lack of focus on Indigenous rights in NSW occurs within a context where, as a nation, Australia does not have strong protection for individual rights in general. For a recent Indigenous view of how protection of individual rights interacts with the protection of collective rights (as contained, for example, in UNDRIP), see HREOC Social Justice Commissioner Tom Calma's speech of 4 April 2008 on *Indigenous Rights and the debate over a Charter of Rights in Australia* (available at http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/20080404_charter.html).

As a result of all these factors, and despite the whole of government approaches, the NSW approach to Indigenous rights is both fragmented and weak.

3.3 Measuring NSW Performance in Overcoming Indigenous Disadvantage and Respecting Indigenous Rights

The principal difficulty in measuring government performance on Indigenous rights in NSW is that there is no Indigenous rights framework against which to measure performance. There are also secondary difficulties relating to the unresolved problems in multi-agency activity, but as these overlap with the performance reporting issues, they are discussed later in Section 3.4.

In relation to the principal difficulty, the lack of a clearly articulated Indigenous rights framework means that NSW agencies have to make assumptions about which Indigenous rights are the most important. There is thus no common basis for the task of:

- examining the most effective ways of integrating Indigenous rights into the NSW plans, programs and services that attempt to overcome Indigenous disadvantage
- developing measures for recording and evaluating the results of the approaches adopted.

Nor is there a national framework which sets out these understandings.

The most comprehensive framework for these purposes in NSW is the State Plan which, despite its inherent flaws, does provide some advances on measurement and reporting (see Section 3.2.1.3 above). However, these advances do not overcome the multi-agency problems already signalled for discussion in Section 3.4 below; nor, with its generally weak rights approach does the State Plan in its present form provide a suitable framework for measuring the results of an integrated rights approach.

This issue should be revisited when comparative information is available from the self-referred Inquiry into State Plan Reporting currently being conducted by the Public Accounts Committee of the NSW Legislative Assembly. This Inquiry has Terms of Reference that include:

1. The adequacy and appropriateness of performance measures for progress in achieving the Plan objectives;
2. The adequacy and appropriateness of audit requirements for performance measures;
3. Mechanisms for review and updating of the Plan;
4. Experience in other jurisdictions, particularly Victoria, Tasmania and South Australia regarding effective reporting and review mechanisms; and
5. Any other related matters.

(Source:

<http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/2A8939E2E21C4293CA25736300182A11>, viewed 28 April 2008)

3.4 Reporting on NSW Performance in Overcoming Indigenous Disadvantage and Respecting Indigenous Rights

There are two main issues here. The first is the nature of the information available to the public. The second is the difficulties, in the area of multi-agency activity, of amalgamating information from multiple sources so that it still provides meaningful results. Both these issues are discussed in more detail below as, although they relate to reporting on current NSW government attempts to overcome Indigenous disadvantage, if unresolved they will also undermine any attempts it makes in the future to report on its performance on Indigenous rights.

3.4.1 Information Available

At present, the sources of official performance information available to the public in relation to NSW government activities include at least the following:

- the budget
- agency annual reports
- plan and program reports and reviews
- reports from the Audit Office of NSW and the Ombudsman

- reports of *ad hoc* or transient committees such as the Aboriginal Child Sexual Assault Task Force
- statistical information such as that provided by the NSW Bureau of Crime Statistics and Research
- government commissioned reports on issues of special interest
- government commissioned inquiries of various kinds, including royal commissions
- the NSW components of national reports produced by agencies such as the Productivity Commission and the Australian Institute of Health and Welfare.

Parliamentary inquiries such as this one also make valuable information and analysis available to the public, by publishing submissions received and transcripts of hearings, and by reporting an inquiry's findings. For example, even before it is complete this Inquiry, through its publication of the NSW government submission (Submission No 40), has provided the first publicly available information on any agency's progress in implementing the Actions in the *Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities* (see pp 29-30, and p 32 of Submission No 40, and pp 21-23 of the NSW Health submission appended to Submission No 40).

In addition, in NSW, the public's right to information is backed up by the provisions of s14 of the NSW Freedom of Information Act 1989, under which almost all NSW Government agencies must prepare a Statement of Affairs and a Summary of Affairs. Under s15 (1) of that Act, each of those agencies:

... shall cause copies of:

- (a) its most recent statement of affairs, and
- (b) its most recent summary of affairs, and
- (c) each of its policy documents,

to be made available for inspection and purchase by members of the public.

Despite this apparently liberal regime, in practice it is too complex a task for even informed members of the public to pull together the disparate elements of public reporting in NSW and assess the NSW government's performance – on either overcoming Indigenous disadvantage or promoting Indigenous rights.

This again points to the need for a clear statement of the government's strategic directions, not just its service delivery priorities.

3.4.2 Multi-Agency Problems in Measurement

These problems affect measurement of any area of public policy involving multiple agencies and/or multiple plans. Unless these problems are resolved, they will create similar problems in measuring performance on Indigenous rights.

To use the State Plan again as an example, performance on NSW service delivery priorities is now also reported through the State Plan, with specific areas of activity (eg Indigenous affairs, disability issues, mental health, transport, etc) articulated to the State Plan through pre-existing frameworks, plans and/or strategies with their own reporting requirements. The reporting timelines of all these approaches are not necessarily aligned, with the State Plan reporting annually, and *Two Ways Together*, for example, reporting two-yearly.

Further, some aspects of Indigenous Affairs now have a three-layered reporting structure for collaborative effort. For example, performance on implementing the Actions in the *Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities*, which appears

to have multiple reporting routes before it even reports to the Minister (see p 7), will ultimately be reported through *Two Ways Together*, which in turn is articulated to the State Plan.

Very complex reporting structures for collaborative effort run the risk of creating:

- meaningless measures as, for the measures to fit with complex reporting regimes, they may become so general that they no longer relate sufficiently to the specific outcomes required
- distorted measures, as agencies have to force their measures into an artificial fit with these reporting regimes.

Unless these issues are addressed, reporting on joint activity will appear to demonstrate progress, while in many cases the underlying reality will remain largely unchanged, to the detriment of community confidence, staff morale and client outcomes.

Section 4.0: Integrating Human Rights and Social Equity Approaches – A New Framework

As stated in the introduction to Section 3, breaches of Indigenous rights - in relation to culture, spirituality, family and land - are the main causes of the high levels of Indigenous disadvantage today, and the main reason why governments now need to focus strongly on overcoming Indigenous disadvantage.

However, most attempts to overcome Indigenous disadvantage proceed as though Indigenous people are simply another population group, whose needs can be met in the same way as other population groups suffering extreme disadvantage. There has been a failure to recognise their distinct status as First Peoples, and the full range of rights that derives from that status. There has also been a failure to understand that restoring these rights in practice is integral to overcoming Indigenous disadvantage. Finally, there has been little understanding that Indigenous rights interact with public administration, and that there is as much a need for public administration systems to adapt to Indigenous knowledge and governance systems as there is for Indigenous engagement with public administration systems.

Public administration, although not the most obvious area of relevance to this discussion, provides a good example of the difference between a social equity measure and a human rights measure, even where both may appear to support the same outcome.

Ensuring that Indigenous people have access to the knowledge, skills and experience required to engage with Australia's systems of public administration on equivalent terms to those of other members of the Australian community is a social equity measure. Adapting Australia's systems of public administration to accommodate Indigenous values and Indigenous knowledge and governance systems is a human rights measure. It is also, given the Canadian evidence, a more effective way of ensuring sustainable progress towards the goal of overcoming Indigenous disadvantage.

For sustainable progress to occur towards this goal in NSW, we too need a framework which integrates Indigenous rights and social equity approaches. A possible framework, involving the Commonwealth and all the States and Territories, is outlined below.

4.1 Elements of Framework

For the purposes of discussion, this submission proposes the following as key requirements for a framework that integrates Indigenous rights into policies, plans, programs and services intended to overcome Indigenous disadvantage:

- The framework should be developed in formal partnership with Australia's Indigenous peoples.
- The framework should be a national one.
- The framework should have a statement of Indigenous rights at its core.
- The framework should include the outstanding recommendations of HREOC's *Bringing Them Home* report, including the outstanding components of reparations, with reparations defined (as per Recommendation 3 of *Bringing Them Home*) to mean:
 - acknowledgement and apology
 - guarantees against repetition
 - measures of restitution
 - measures of rehabilitation
 - monetary compensation.
- The framework should provide guidance on how Indigenous rights can be integrated, on a continuing basis, into all aspects of policies, plans, programs and services for Indigenous peoples in Australia, including:
 - those that deliver the basic services to which every member of the community is entitled
 - those intended to address specific areas of Indigenous disadvantage.
- The framework should provide guidance on how to adapt public administration systems so that they can respond appropriately to Indigenous values, and to Indigenous knowledge and governance systems.
- The framework should include a national reporting system that allows meaningful, publicly available information to be collected and analysed on Australia's progress in overcoming Indigenous disadvantage.
- The framework should be the subject of a Commonwealth/State/Territory agreement which also mandates the shared contribution of the resources required to implement the framework.

Australia's governments are practised in developing and implementing national frameworks, and have a range of Commonwealth/State/Territory decision making processes that facilitate this, including the Ministerial Councils and COAG, with COAG already having Indigenous reform on its agenda. They also have many national reporting mechanisms, including those undertaken through the Australian Institute of Health and Welfare, and through the Productivity Commission, with the latter reporting specifically on Indigenous Affairs as well as other areas of government service delivery. There are also many national agreements which mandate the shared contribution of resources, some – such as the successive Commonwealth/State Housing Agreements – being of very long standing.

The time is also ripe for consideration of this sort of framework, given the commitment to Indigenous rights made in the ALP National Platform, as outlined in Section 2.3 of this submission, and the action the current federal government has already taken to seek community views on how it should indicate its support for UNDRIP.

4.2 Resources

Finally, a few words on resources.

Finding the resources for what they want to do is an issue that all agencies face on an ongoing basis as they review their activities, and how to fund them. Logically, the starting

point for these sorts of examinations is to question whether an activity under consideration still needs to be done. If the answer is yes, the next question is whether it can be done more cheaply. One way of undertaking activities more cheaply is to cut costs; however, unless the same level of results can be achieved from the reduced numbers of staff or other resources, this does not equate to an increase in productivity.

The next question is whether there are more productive ways of undertaking the activities. This is the budgeting point that can create considerable difficulties for holistic responses - and these are essential to overcoming Indigenous disadvantage - given that the supporting arguments often refer to the increased effectiveness of these approaches. These arguments are often sound, but the benefits occur well down the track - and well beyond the three and four year electoral cycles of Australia's governments. In the interim, substantial resources are needed to establish and develop the new arrangements. For activities based on sound arguments about effectiveness, there will - in the long run, and all things being equal - productivity gains. There will be either a similar level of results for reduced resources, or a proportionally greater level of results from increased resources. Which of these productivity approaches is adopted depends ultimately on the government of the day.

However, on a day to day basis the productivity argument remains a critical issue for multi-agency activities - or, for that matter, for critical areas of activity within individual agencies - especially when it is used to deny resources on the basis that, in the long term, the multi-agency activity - or the productivity reforms within an individual agency - will solve complex problems.

While organisations constantly evolve and constantly find better ways of undertaking their activities, there are issues and circumstances where no amount of review of the ongoing need for services, and of better ways of meeting client needs, can free up sufficient funds for new approaches. In these cases, the failure of government to allocate additional resources will have a significant detrimental effect on client outcomes. Overcoming Indigenous disadvantage is one of these issues.

This does not necessarily mean that there must be a specific budget line item for holistic approaches, as collective ownership of a joint issue, such as overcoming Indigenous disadvantage, may be best encouraged by including additional resources in each agency's budget, according to the level of contribution it must make to the joint effort. However, if community confidence is to be maintained, it does mean that governments need to allocate resources commensurate with the size of the problem.

Section 5.0: Recommendations

This section gathers together the recommendations implicit in the previous sections of this submission. Given the timing of this submission, the substance of some of these recommendations may have already received the Committee's consideration.

Recommendation 1

That, to enable a wide range of Indigenous views to be heard, the Committee consider:

- accommodating requests from Indigenous organisations, and other organisations with a strong focus on Indigenous issues, to present evidence at one of the Inquiry's hearings even if they have not made a written submission
- extending the hearing schedule, and the location of the hearings, if that is necessary to accommodate these requests.

Recommendation 2

That the Committee consider contacting a range of Indigenous and non-Indigenous research units, advocacy organisations and other relevant bodies, including those located in tertiary institutions, with a view to locating specialists who could provide evidence of good international practice in integrating Indigenous rights into efforts to overcome Indigenous disadvantage.

Recommendation 3

That the Committee consider approaching the Human Rights and Equal Opportunity Commission with a view to obtaining information about the results of its recent consultation with Indigenous organisations on, among other matters, the sections of the United Nations Declaration on the Rights of Indigenous Peoples to which they would like the federal government to make a commitment.

Recommendation 4

That the Committee consider approaching the Public Accounts Committee (PAC) of the NSW Legislative Assembly with a view to ascertaining whether any information of relevance to the Inquiry into Overcoming Indigenous Disadvantage has emerged from the work undertaken so far on the PAC Inquiry into State Plan Reporting.

Recommendation 5

That the Committee consider recommending that the NSW government concurrently:

- review the current collection of approaches and activities in Indigenous affairs
- address outstanding problems in multi-agency work
- commence work on how to integrate Indigenous rights into a new framework for overcoming Indigenous disadvantage in NSW.

Recommendation 6

That the Committee consider recommending that the NSW government approach the federal government with a proposal for the collaborative development, in formal partnership with Indigenous peoples, of a national framework which integrates Indigenous rights and social equity programs.

Recommendation 7

That the Committee consider recommending that the NSW government commit itself to:

- ensuring that the resources required for developing and implementing new NSW and national approaches as outlined above will be made available
- developing and implementing a transparent reporting system that will allow public scrutiny of how well NSW agencies tailor their activities to the new frameworks and how well they resource them.

Section 6.0: Conclusion

This submission has argued that:

- the root cause of Indigenous disadvantage today is the failure of the Crown to respect the rights of Australian Indigenous peoples in the past
- this disadvantage cannot be redressed without:
 - reparations being made for the breaches of rights
 - additional funding being allocated in areas where Indigenous outcomes are significantly lower than those for other Australians

- ongoing allocation of resources to ensure Indigenous outcomes, when improved, remain commensurate with those of other Australians
- human rights being integrated into the way reparations, and ongoing planning and service delivery are developed, managed, implemented and reviewed.

It has also highlighted some additional difficulties that need to be resolved if outcomes for Indigenous people are to be improved to levels that match those of other Australians. These difficulties include the way multi-agency efforts are developed, planned, managed, implemented and reviewed.

The submission is not intended as a definitive answer to the question of how best to incorporate Indigenous rights into Australia's systems of government - but is an attempt to raise some of the issues that need to be addressed. Although it has been highly critical of some of the key NSW documents in this area, and has canvassed some of the outstanding problems in multi-agency work that these documents demonstrate, the author believes these problems can be overcome.

Finally, the submission does not intend to deny the value of those policies, plans, programs and services which do incorporate aspects of Indigenous rights into their activities, or the achievement of the staff and community members who develop, implement and review them.

As a community, through our governments, we need to do more to support these efforts. Unless we do, we will not be able to "close the gap" nearly as quickly as is required.

Is there a better way?

ii - Responding to People, Places and Governance

Integrated Spatial Governance Model

