Wrongs and Rights: the economic, social and cultural rights of Indigenous peoples in Australia

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Foreword

The Commonwealth's failure to acknowledge the rights of its Indigenous citizens can no longer be ignored.

For over fifty years now the Commonwealth has developed a very positive role in promoting an educational and social agenda to benefit millions of people around the world.

Yet the needs of a substantial number of citizens have been deliberately avoided as the Commonwealth insists that Indigenous policy is best left to nation states and the United Nations.

However the same argument holds true for every area of Commonwealth activity!

If the Commonwealth believes that all its member countries are best able to develop individually and within the United Nations framework, then what is the relevance of the Commonwealth itself?

Such an obvious double standard cannot be sustained and it is time there was a serious re-evaluation of Commonwealth attitudes towards Indigenous citizens.

Clearly the legacy of colonialism has impacted severely on Commonwealth relationships with Indigenous people.

Recent crises in Fiji and Zimbabwe have demonstrated that Indigenous issues divide communities from the standards set by the Commonwealth. Such conflict continues to emerge in other regions of the Commonwealth and will continue to do so until there is open minded, strategic leadership on resolving Indigenous poverty, displacement and resulting tensions.

As this report shows, however, the lives of many Indigenous people in Australia are affected by ill health, shorter life expectancy, higher mortality rates, reduced educational attainments, unemployment, poor housing, poverty, violence, and cultural loss.
Indigenous people themselves are marginalised by the failure of the Australian community, and indeed the Australian government, to come to terms with Australia’s often violent history of colonisation and dispossession and to acknowledge Indigenous peoples’ economic, social and cultural rights.

In the circumstances, the Commonwealth of Nations has a special potential to lead the international community and to set an example in the areas of Indigenous policy and Indigenous rights.

We hope that this report will add to the collective knowledge of Commonwealth policy-makers and assist in finding fresh impetus for addressing the long overdue neglect of Indigenous people.

Margaret Reynolds
Australian Project Co-ordinator
Executive Summary

Introduction
This 'Wrongs and Rights' report provides an overview of recent research into Aboriginal and Torres Strait Islander peoples in Australia as at 2001, based on a number of economic and social welfare indicators, including health, education, housing, employment, law and justice, reconciliation, culture, land and native title, and self-determination.

The report is part of a three-year advocacy and research project on Indigenous Rights in Commonwealth of Nations countries. The project has two interrelated purposes: to encourage the Commonwealth to recognise that Indigenous rights must be part of any serious concern for human rights; and to gather information on the rights of Indigenous peoples in the Commonwealth.

The project is focusing on twenty Commonwealth countries in which there are significant Indigenous rights issues: Australia is one of those countries.

As recognised in the 1966 International Covenant on Economic, Social and Cultural Rights, economic, social and cultural rights cover many of the necessities of life for health, social and cultural well-being and an adequate standard of living: the right to food, clothing and housing, physical and mental health, education, work, rest and leisure, the right to form and join trade unions and strike, to social security, and to scientific and cultural life.

It is a matter of public record that although Aboriginal and Torres Strait Islander people make up only a small proportion of Australia's total population, they are one of the most disadvantaged groups in Australia, especially in comparison to non-Indigenous Australians.

Indigenous health
Aboriginal and Torres Strait Islander people bear a much greater burden of poor health than other Australians, beginning early in life and continuing throughout their life cycle. Indigenous people die younger and in greater numbers in all age groups, with the exception of 65 years and over, in contrast to non-Indigenous Australians.
In 1997-99, life expectancy was estimated to be 56 years for Indigenous men and 63 years for Indigenous women in Australia. These expectations are around 20 years less than for non-Indigenous people.

The main causes of death among Indigenous adults in 1997-99 were: diseases of the circulatory system (including heart disease and strokes), external causes (accidents, self-harm and assault), cancers, diseases of the respiratory system, and endocrine diseases (particularly diabetes). For all causes of death, there were nearly three times as many deaths as expected for Indigenous men and women.

Indigenous people are the least healthy sub-population in Australia. Despite their greater health needs, however, expenditure is much lower for Aboriginal and Torres Strait Islanders than for other Australians in the major federal government-funded health programmes. This failure in Australia contrasts markedly with the situation among Indigenous peoples in New Zealand, Canada and the United States.

Education
Indigenous people are also substantially disadvantaged within the Australian education system. They have on average a lower rate of participation in the education system, and are less likely to complete high school and to pursue post-school qualifications than non-Indigenous Australians.

In 1996, nearly half of Indigenous people of working age had no formal education. Although schooling in Australia is compulsory until the age of 15 years, participation rates by Indigenous primary students (around 86%) were lower than those for non-Indigenous students (about 93%).

The rate of attendance of Indigenous children in secondary schooling is also low, although it appears to be improving. In 1997, the secondary school completion rate for Indigenous students (14%) was more than half that for non-Indigenous students (24%).

Tertiary outcomes for Indigenous people in all regions are also poor, and are worst in the more remote regions. In 1996, a much lower proportion of the
Indigenous population (nearly 11%) held post-secondary qualifications, compared to the total population (30%).

Australian government funding to address Indigenous disadvantage has increased since the mid-1990s but it remains small in relation to overall spending on education and the continuing level of disadvantage. There is still much to be done to bring the level of education of Indigenous Australians to a satisfactory standard and to a comparable level with non-Indigenous Australians.

**Employment**

Aboriginal and Torres Strait Islander people are the most identifiable disadvantaged group within Australian society with regard to employment. When compared with the rest of Australia's population, the Indigenous population has a lower employment to population ratio, a considerably higher unemployment rate and a lower labour force participation rate.

In 1994, the official unemployment rate for Indigenous people reached 27.8%, descending to 17.6% in 2000. This compares unfavourably with unemployment rates for non-Indigenous people which recorded 10.6% in 1994 and 7.3% in 2000.

Indigenous-specific employment programmes appear to be achieving better outcomes for Indigenous people than mainstream employment programmes, although the higher Indigenous unemployment rate makes these programmes more necessary.

**Housing and standard of living**

Housing is an important human need, as well as a common social and economic goal in Australia. By comparison with many countries and with international standards, most Australians are adequately housed, but increasing homelessness and declining home ownership are a source for concern for Indigenous people.

There is a lower level of home ownership among the Indigenous population than in the general population. Only 31% of Indigenous households own or are purchasing their homes, compared to 70% of households in the total
population. Indigenous households and families are much more likely than the rest of the population to rely on renting. Nearly 64% of Indigenous households rent, compared to 27% of all Australian households.

Indigenous people, particularly in rural and remote communities, frequently do not have access to a decent standard of living, defined as adequate food, water and housing, and often live in areas without roads and basic services.

Aboriginal people also experience a high incidence of poverty and are two to three times more likely to be below the poverty line than non-Indigenous people. The 1996 national census showed that Indigenous people in Australia are over-represented in almost all income categories below $20,800, and under-represented in all income categories above this amount.

**Law and society**

The operation of the Australian criminal justice system, including law enforcement, the courts and incarceration, impacts particularly heavily on Aboriginal and Torres Strait Islander people.

Trends in Indigenous adult imprisonment over the last decade showed an increase of 65% between 1988 and 1995. In 1998, Aboriginal or Torres Strait Islander prisoners in Australia represented 19% of the total prisoner population, nine times the proportion of Indigenous people in the general population (2%). Indigenous children are also significantly over-represented in the juvenile justice system: about 41% of the children in corrective institutions in 1996 were Indigenous.

In 1987, a Royal Commission was set up to investigate the disproportionately high number of recent deaths of Aboriginal people held in police and prison custody. The Commission's report made wide-ranging recommendations designed to reduce the number of Indigenous people taken into custody, but many recommendations have still not been implemented. Indigenous people remain dramatically over-represented in the criminal justice system, and deaths in custody still occur at unacceptably high levels.

Indigenous people are also more likely than other Australians to be victims of violence. Recent studies of violence in Indigenous communities have noted
that the types of violence are worsening and the rates of violence are increasing in some Indigenous communities and regions.

Mandatory sentencing legislation, which imposes mandatory sentences of imprisonment for certain property offences, was introduced in Western Australia in 1996 and in the Northern Territory in 1997. It was criticised by Australian human rights and community groups, as well as by United Nations treaty bodies, for its disproportionate and discriminatory impact on Indigenous people, although it has since been substantially repealed in the Northern Territory and is currently under review in Western Australia.

Between 1910 and 1970, government policies of removing Aboriginal and Torres Strait Islander children from their families and communities and placing them in non-Indigenous community, government or church institutions or homes resulted in the 'Stolen Generations'. The subsequent loss of their families, identity, culture, spirituality and land has had devastating effects across many generations of Indigenous people. There have been unsuccessful calls for the Australian government to apologise to Indigenous people for past policies which led to the Stolen Generations.

The matter of an apology has been linked to the ongoing process of reconciliation between Indigenous and non-Indigenous Australians. Since 1991, the Council for Aboriginal Reconciliation, established by the Australian government, has headed a steady groundswell of popular support for increased recognition of Indigenous rights. There is growing understanding among non-Indigenous Australians that Indigenous people were treated badly in the past, although less awareness of the effects that this may have on Indigenous people today.

**Culture**

Indigenous culture lies at the heart of Aboriginal and Torres Strait Islander identity. Indigenous cultures contribute substantially to the Australian economy in a variety of industries, and Indigenous art has become an important and distinctive feature of contemporary Australian cultural tourism.

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Economic, social and cultural rights of Indigenous peoples in Australia
Indigenous Rights in the Commonwealth project
There is concern among some Indigenous communities that the authenticity of their culture is being lost, however. Indigenous images and other cultural material are increasingly misappropriated by non-Indigenous individuals or organisations, resulting in inappropriate cultural expression or the disclosure of cultural knowledge to those not authorised to know or view it.

Although Australia’s current intellectual property laws provide limited protection of the traditional cultural knowledge of Indigenous peoples, there is no protection of spiritual or moral rights to culture, nor of intangible forms of cultural and intellectual property such as traditional knowledge, stories, song and dance.

There has been discussion over Indigenous customary law, revolving around the application of traditional law to disputes within Indigenous communities and how it might replace or interact with Australia’s legal system.

Land also plays a vital role in Indigenous culture, identity and spirituality. In the landmark case of *Mabo*, brought to the Australian High Court in 1992 by Mr Eddie Mabo of Murray Island in the Torres Strait, the High Court acknowledged that Indigenous peoples had rights of ownership of the land which they had not ceded and which had not automatically been extinguished by British occupation. These rights were called native title.

The *Native Title Act* 1993 implemented the findings of the *Mabo* case and established processes to deal with native title claims. Following a change of government in 1996, the new Australian government passed legislation to amend the *Native Title Act* in 1998, partly in response to a related 1996 case involving the Wik peoples of northern Queensland.


**Self-determination**
The right of self-determination is one of the fundamental principles of international human rights law. In practice, however, the principle of self-determination has been difficult to define, particularly with regard to
Indigenous peoples. Self-determination for Indigenous peoples has become a political issue, particularly for countries which were colonial powers.

Indigenous groups around Australia have consistently called for public discussion on various models of Indigenous self-determination, as well as for negotiation of a treaty with Indigenous peoples. There is some concern that little has been achieved in the past decade towards self-determination policies for Indigenous peoples.

Since 1985, Indigenous representatives have worked with the United Nations on a Draft Declaration on the Rights of Indigenous Peoples, covering a number of economic, social and cultural rights and freedoms, as well as establishing procedures for resolving conflicts or disputes between Indigenous peoples and States.

Conclusions
The research into the current status of the economic, social and cultural rights of Aboriginal and Torres Strait Islander peoples in Australia reveals a grim pattern. The indicators of Indigenous disadvantage are complex and interrelated, and the ways in which Indigenous people experience disadvantage do not appear to have solutions which are simple or can be applied in isolation: “it is not simply a matter of building schools and providing books.”

Although mainstream programmes and services were intended to meet the needs of all Australians, many Indigenous people do not or cannot access these services, or are unaware that these resources are available to them. Indigenous people are more likely to access Indigenous-specific programmes and services designed to address their needs.

Even in the areas of health, education, housing and employment where Indigenous-specific programmes exist, however, the funds are often insufficient to remedy the level of need or are inappropriately allocated. So far, government expenditure in these areas has proved inadequate to the task of raising Indigenous people to a position of equality in Australian society.

Yet Indigenous disadvantage has been well known to both the Australian government and the community for a long time. Numerous reports and
publications have already focused on problems in Indigenous health, education, housing and employment.

This is deeply disturbing in light of the commitment by various Australian governments to eliminating Indigenous disadvantage, particularly since this situation is unique among Western nations.

The Australian government must accept that it has the major responsibility for the delivery of services and programmes which impact on the economic, social and cultural welfare of the Indigenous population, although recent governments have found that support for Indigenous issues is electorally unpopular in Australia. As long as there are believed to be few votes in it, the political price for failing to address Indigenous disadvantage remains low.

**International organisations**

The international community may be able to provide assistance with Indigenous rights. In recent years, however, there has been an extraordinary convergence of international criticism of the Australian government by the United Nations Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, for its treatment of Indigenous peoples.

The Australian government has objected strongly to this criticism and has all but rejected the moral authority of the United Nations in this matter.

The Commonwealth of Nations may provide appropriate alternative leadership and indeed, this is an area in which the Commonwealth of Nations can make a distinctive contribution. Many of the problems facing Indigenous peoples today are the direct result of colonialism and the dispossession policies of the former British Empire.

The Commonwealth has also made strong commitments to fundamental human rights, which must include the rights of Indigenous peoples.

The Commonwealth has not taken a specific position with regard to the rights of Indigenous and tribal peoples, however, nor has it encouraged member States to develop Indigenous policy in their own countries. The
Commonwealth Secretariat has acknowledged very little responsibility on its part to Indigenous peoples in its member countries. In July 2001, the Office of Commonwealth Secretary-General Don McKinnon wrote that:

…it is basically left to each Commonwealth Government to deal with indigenous people's issues in the context of their national policies; it is expected, of course, that such policies would be consistent with the Commonwealth's fundamental political values.

The 'Wrongs and Rights' report does not share Commonwealth Secretary-General's confidence that the Australian government is dealing with Indigenous issues in a way that is "consistent with the Commonwealth's fundamental political values", or indeed with international human rights standards.

Rather, this report has indicated a number of areas in which the economic, social and cultural rights of Aboriginal and Torres Strait Islander peoples in Australia today are breached or, at best, inadequately addressed, particularly in comparison to non-Indigenous Australians. It has also noted the failure of successive Australian governments to improve significantly economic, social and cultural outcomes for Indigenous peoples.

Recommendations
Accordingly, this report offers a series of recommendations to encourage Commonwealth Heads of Government and the Commonwealth Secretariat to recognise the issue of Indigenous rights and to place them prominently at the centre of Commonwealth programmes and activities.

Although Indigenous peoples are increasingly claiming their rights, they will not obtain them on their own. By virtue of its colonial history, the Commonwealth is an appropriate body to assist the Indigenous peoples of Australia and other member countries. It has a special potential to support them in combating discrimination and disadvantage and in realising their human rights.

Indeed, it has an historic and moral responsibility towards Indigenous peoples to do so.
Economic, social and cultural rights of Indigenous peoples in Australia
Indigenous Rights in the Commonwealth project
Introduction

This report provides an overview of recent and current research into the lives of Aboriginal and Torres Strait Islander peoples in Australia, with a particular focus on the status of their economic, social and cultural rights.

The 1966 International Covenant on Economic, Social and Cultural Rights, together with the International Covenant on Civil and Political Rights, sets out the "interconnected and interdependent" fundamental human rights which are enshrined in the Universal Declaration of Human Rights.

As recognised in the International Covenant on Economic, Social and Cultural Rights, economic, social and cultural rights cover many of the necessities of life which lead to health, social and cultural well-being and an adequate standard of living: the right to food, clothing and housing, physical and mental health, education, work, rest and leisure, as well as the right to form and join trade unions and strike, the right to social security, and to scientific and cultural life.

Economic, social and cultural rights
Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acknowledges the right of all peoples to self-determination, including the right to determine freely their political status and to pursue freely their economic, social and cultural development. Article 1(2) provides that all peoples may freely dispose of their natural wealth and resources and that a people may not be deprived of its own means of subsistence, while paragraph 3 requires States parties to the Covenant to promote the realisation of the right of self-determination and to respect that right in conformity with the provisions of the Charter of the United Nations.

The principle of self-determination is considered sufficiently important under international law to be repeated in article 1 of the International Covenant on Civil and Political Rights (ICCPR).

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Article 3 of the ICESCR binds States parties to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.

The Covenant allows States to limit the enjoyment of the rights provided in conformity with the Covenant only for lawful purposes which are compatible with the nature of the rights and solely to promote the general welfare in a democratic society (article 4). No State, group or person has the implied right to destroy any of the rights or freedoms recognised in the Covenant, or to limit them to a greater extent than the Covenant itself provides, and in the event of any inconsistency the highest standard of compliance with fundamental human rights is expected (article 5).

The right to work, including the right to gain a living by work freely chosen or accepted, requires States parties to provide technical and vocational training (article 6). States parties also recognise the right to the enjoyment of just and favourable conditions of work, including fair wages and a decent living, safe and healthy working conditions, equal opportunity for promotion, and reasonable rest and leisure (article 7).

In article 8, the Covenant safeguards the right to establish and join a trade union and to strike lawfully, as well as the right to social security in article 9. The right to protection of the family unit, protection of all children from economic or social exploitation, and the right to maternity leave and benefits are also guaranteed in the Covenant (article 10). States parties to the Covenant recognise the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions (article 11). Article 12 acknowledges the right to enjoyment of the highest attainable standard of physical and mental health, while article 13 protects the right to education, including free, available and compulsory primary education, and generally available and accessible secondary (including technical and vocational) and higher education.
More specifically, article 14 acknowledges the importance of universal education by requiring those States parties who do not already have free and compulsory primary education to work out a plan for its progressive implementation.

Article 15 acknowledges the right of everyone to take part in cultural life, to enjoy scientific progress, and to be able to protect their scientific, literary or artistic productions.

Finally, article 2 of the ICESCR requires States parties to take steps, individually and through international assistance and co-operation, to the maximum of their available resources (including domestic resources and any available international economic and technical assistance and co-operation\(^3\)) and by all appropriate means, including legislative measures, to achieve progressively the full realisation of the rights recognised in the Covenant.

Under article 2, States parties also undertake to guarantee the exercise of the economic, social and cultural rights in the Covenant without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, origin, property, birth or other status.

There is no clear distinction between these rights and they cannot – and should not – easily be separated into discrete categories of economic, social or cultural rights. Most rights evidence both economic and social concerns, and although some are referred to as “social welfare rights” and speak directly to the purpose of reducing poverty and deprivation, others address the social and economic needs of all citizens.\(^4\)

Cultural rights do not figure greatly in the International Covenant on Economic, Social and Cultural Rights, however, and have tended to be dealt with under the non-discrimination or specific rights provisions of the

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International Covenant on Civil and Political Rights, to the neglect of the specifically economic and social rights dimension of cultural rights.\

This is particularly unfortunate with regard to Indigenous peoples' rights, since Indigenous culture, and in many cases the loss of culture, plays a significant role in the lives of many Indigenous people in Australia today. Many recent Australian studies have recognised the importance of Indigenous culture and noted the difficulty of separating Indigenous economic or social disadvantage from the breakdown of Indigenous cultural life.

'Wrongs and Rights' report
This report is part of a three-year research and advocacy project on the rights of Indigenous peoples in Commonwealth of Nations countries, funded by the European Commission. The Indigenous Rights in the Commonwealth project, which commenced in February 2001, is co-ordinated by the Commonwealth Policy Studies Unit, a think-tank for Commonwealth member States, communities, business and non-governmental organisations, based at the Institute of Commonwealth Studies, University of London.

The Indigenous Rights in the Commonwealth project has two interrelated purposes: firstly, to encourage the Commonwealth to recognise that Indigenous rights must be part of any serious concern for human rights and to place Indigenous rights at the heart of Commonwealth programmes and activities by providing relevant expert input to Commonwealth Heads of Government Meetings (CHOGMs) and the Commonwealth Secretariat; and secondly, to gather information on the rights of Indigenous peoples in Commonwealth countries.

In conjunction with partner organisations, including the University of Queensland in Australia and representatives of Indigenous peoples, and in consultation with the Commonwealth Association of Indigenous Peoples (CAIP), the project has been researching key issues affecting Indigenous

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Economic, social and cultural rights of Indigenous peoples in Australia
Indigenous Rights in the Commonwealth project
peoples in Commonwealth countries. These have included constitutions and treaties; land rights; questions of cultural identity or assimilation; relationships to development, the environment, and economic and social rights.

The project is focusing on twenty Commonwealth member countries in which there are significant Indigenous rights issues: Australia is one of those countries.

The 'Wrongs and Rights' report also contributes to a related project carried out by the CPSU. This two-year project, commenced in January 2001 and funded by the UK Department for International Development, focuses on the collection of statistical data on Indigenous populations in the Commonwealth, with particular reference to the international development targets of 2015 and Indigenous peoples' economic, social and cultural rights.

There are seven international development targets, all based on a 1990 start, which both the United Nations and the Commonwealth of Nations, in its 1997 Edinburgh summit, have committed themselves to meeting by 2015.

These targets include: a reduction by one-half in the proportion of people living in extreme poverty (taken to be US$1 a day); universal primary education in all countries; demonstrated progress towards gender equality and the empowerment of women by eliminating gender disparity in primary and secondary education by 2005; a reduction by two-thirds in the mortality rates for infants and children under age five by 2015; a reduction by three-quarters in maternal mortality rates by 2015; and access through the primary health care system to reproductive health services for all individuals of appropriate ages as soon as possible and no later than 2015.7

Richard Bourne, Head of the Commonwealth Policy Studies Unit and co-ordinator of the international development targets project, has noted that the targets pose various methodological and conceptual difficulties.

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In some countries, for example, there are no separate data for Indigenous peoples, while in others (such as Australia) statistics have only recently started to be collected consistently or reliably. In addition, the targets may be inappropriate when applied to certain Indigenous peoples who live outside a cash economy, or for whom more cash may be a marker of welfare dependency suffering, or who would prefer land ownership and a traditional level of subsistence.\(^8\)

In Australia, although social security benefits, public education and public health care are universally available, there are disparities in the availability of these services to Indigenous peoples, particularly those living in rural and remote regions, and in the rates at which they are accessed by Indigenous peoples. The fact that most Aboriginal and Torres Strait Islander people in Australia are able to access more than US$1 a day does not negate their economic disadvantage, particularly in relative terms.

The information in this report is based on statistical data, articles and reports published by the Australian Bureau of Statistics, government departments and non-governmental organisations in the areas of health, education, housing, employment, law and justice, reconciliation, culture, land and native title, and self-determination.

The majority of the research was carried out in 2001 and much of it is based on data from the five-yearly national Census of Population and Housing carried out in 1996. Although the Census of Population and Housing was distributed again in 2001, results only started to become available in late 2002, too late to be included in this report. Preliminary readings of the 2001 Census data, however, suggest that for the most part there has not been a substantial improvement in the conditions or well-being of Aboriginal and Torres Strait Islander peoples in Australia.

The report concludes by offering a set of recommendations to Commonwealth member countries in the interests of promoting and protecting the economic, social and cultural rights of Indigenous peoples.

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Economic, social and cultural disadvantage
This report was not required to determine the question of whether or not Indigenous peoples in Australia experience breaches of their economic, social and cultural rights. It is a matter of public record that Indigenous people suffer extreme and widespread disadvantage in contemporary Australia, especially in comparison to non-Indigenous Australians.

The Australian Bureau of Statistics noted in 2000 that:

Aboriginal and Torres Strait Islander people make up only a small proportion of Australia’s total population. However, as Australia’s original inhabitants and carriers of some of the oldest continuous cultures in the world, they have a unique status in our nation. They are also one of the most disadvantaged groups in Australia.

Differences between Aboriginal and Torres Strait Islander people and all Australians are evident across a range of demographic, social and economic indicators.9

These indicators of disadvantage are complex and are often inter-related: if Indigenous children suffer from poor health or nutrition, they will find it difficult and unrewarding to concentrate in school. Similarly, if they have received an inadequate education, Indigenous adults will struggle to compete for jobs in a knowledge-based workforce. If there is significant unemployment among Indigenous people, particularly over several generations, there will be a corresponding degree of low self-esteem, depression and frustration in Indigenous families and communities.

These issues were examined by the Australian House of Representatives Standing Committee on Family and Community Services in its recent report entitled Health is Life:

...the major factors affecting Indigenous health include: socio-economic status; social and cultural factors, including past dispossession and dislocation; access to good quality health care, which can be reduced by barriers such as lack of cultural awareness, location, workforce limitations and financial circumstances;

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environmental factors; and specific risk factors, such as poor nutrition, alcohol misuse and high levels of tobacco consumption.\textsuperscript{10}

This was supported by the findings of a report released in 2001 by a collaboration of community groups, including the Australian Conservation Foundation, the Australian Council of Social Service, the Australian Council For Overseas Aid, and the Aboriginal and Torres Strait Islander Commission (ATSIC).

Their report, entitled \textit{A Just and Sustainable Australia}, found that certain groups in society bear a disproportionate amount of the burden of unemployment, poverty, homelessness and inadequate housing, education and health. It confirmed that Indigenous Australians continue to bear the greatest burden of economic, social and cultural disparity.

It is clear that Indigenous disadvantage must be considered within a framework which takes all economic, social and cultural factors into account. The Australian House of Representatives Standing Committee on Family and Community Services acknowledged:

\ldots there are a number of inter-related factors which impact on poor health among Indigenous people, and its persistence. The relationship between these factors is complex, and current evidence does not allow us to assess the relative importance of one factor over another...\textsuperscript{11}

The 2001 \textit{A Just and Sustainable Australia} report noted some of these factors:

Poor health, education, employment and housing are closely linked to deeper issues of self-determination, land rights, reparation for the forcible removal of children, economic independence and respect for culture and identity.\textsuperscript{12}

\textsuperscript{10} House of Representatives Standing Committee on Family and Community Affairs. \textit{Health is Life}, Commonwealth of Australia: Canberra, 2000, at 7-9.
\textsuperscript{11} House of Representatives Standing Committee on Family and Community Affairs. \textit{Health is Life, ibid.}, at 7-9.
These links must be acknowledged. A submission to the House of Representatives Standing Committee on Family and Community Services emphasised:

It is very important that the final report looks holistically at cultural, social and economic issues (the underlying causes of good health).\(^\text{13}\)

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Economic, social and cultural rights of Indigenous peoples in Australia

Indigenous Rights in the Commonwealth project
1. Indigenous peoples

1.1 Indigenous identity
Aboriginal and Torres Strait Islander identity has only relatively recently been formally recognised in Australia. In May 1967 a national referendum was held seeking popular support to amend the Australian Constitution. The amendments were to give the Australian federal government power to legislate in relation to Aboriginal people (previously the responsibility of the Australian states) and to include Aboriginal and Torres Strait Islander people in national and state population counts. Reflecting the prevailing political climate the referendum was passed, with 91% of eligible voters supporting the amendments in the most overwhelming ‘yes’ vote ever received in an Australian referendum.

Since this time, the Australian government has used a three-part administrative ‘working definition’ of Aboriginal and Torres Strait Islander identity, which was confirmed by the Australian High Court in 1983:

An Aboriginal or Torres Strait Islander is a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives.

In section 4 of the 1989 Aboriginal and Torres Strait Islander Commission Act and other Commonwealth legislation, ‘Aboriginal’ is defined simply as “a person who is a member of the Aboriginal race of Australia”. Torres Strait Islanders, a distinct people from mainland Australian Aborigines, with their own culture and identity, originate from the group of islands in the sea between Cape York, on the north-eastern tip of Australia, and Papua New Guinea, although they had long-standing contact with Aboriginal people to the south and Melanesians to the north.

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15 This report has inserted clarification where possible to avoid confusion between the Commonwealth government of Australia and the UK-based Commonwealth of Nations.

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The following working definition of Indigenous peoples, which has been endorsed by the Commonwealth Policy Studies Unit, is similar to the definition in the International Labour Organisation's 1989 Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries:

Typically, indigenous peoples are differentiated from others by virtue of their (a) prior origin in a territory, (b) subjugation by external political structures such as those of nation states, (c) cultural distinctiveness from the majority population [including a special cultural tie with their lands], and (d) self-definition as indigenous or 'first peoples'.

The standard question previously used by the Australian Bureau of Statistics in the national Census of Population and Housing, other ABS surveys and many national administrative datasets (such as hospital, birth and death records and data collected by community service providers) to establish Aboriginal or Torres Strait Islander ('Indigenous') identity was: 'Are you of Aboriginal or Torres Strait Islander origin?' In 1996, for the first time, the Census allowed the possibility of answering 'yes' to both of the options.

1.2 Population numbers
From the outset it must be noted that the availability and quality of data about the Indigenous population in Australia has varied considerably over time. The Australian Bureau of Statistics itself has acknowledged that the data about Aboriginal and Torres Strait Islander people obtained from its national censuses and other surveys are limited by such factors as the extent to which Indigenous people have been included in such surveys, the accuracy with which they are identified in both surveys and administrative datasets, uncertainties about Indigenous population estimates, and concerns about

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17 Commonwealth Policy Studies Unit (CPSU), 'Recognising and Protecting Indigenous Peoples' Rights in the Commonwealth: Memorandum to the Commonwealth Heads of Government attending CHOGM', Brisbane, Australia, 6-9 October 2001 (this Memorandum was updated before being circulated at the postponed CHOGM in Coolum, Australia, 2-5 March 2002), CPSU: London, 2001, at 4. The updated memorandum is available on the CPSU website: www.cpsu.org.uk, as at 6 June 2002.

whether the survey methods employed are always the most suitable for the purposes of identification.19

Although Aboriginal and Torres Strait Islander peoples were only included in the official census count of the Australian population after 1967, estimates of Indigenous population numbers were attempted at every census since Australia’s federation in 1901. This limits the reliability of the population data, however, particularly for comparative purposes. The table20 below provides some indication of Indigenous population numbers in Australia since 1901:

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901</td>
<td>93,000</td>
</tr>
<tr>
<td>1921</td>
<td>72,000</td>
</tr>
<tr>
<td>1933</td>
<td>81,000</td>
</tr>
<tr>
<td>1947</td>
<td>76,000</td>
</tr>
<tr>
<td>1954</td>
<td>75,000</td>
</tr>
<tr>
<td>1961</td>
<td>84,000</td>
</tr>
<tr>
<td>1966</td>
<td>102,000</td>
</tr>
<tr>
<td>1971</td>
<td>115,953</td>
</tr>
<tr>
<td>1976</td>
<td>160,915</td>
</tr>
<tr>
<td>1981</td>
<td>159,897</td>
</tr>
<tr>
<td>1986</td>
<td>227,645</td>
</tr>
<tr>
<td>1991</td>
<td>265,492</td>
</tr>
<tr>
<td>1996</td>
<td>386,049</td>
</tr>
<tr>
<td>2001</td>
<td>427,094 (a) - 502,339 (b)</td>
</tr>
<tr>
<td>2006</td>
<td>469,135 (a) - 649,009 (b)</td>
</tr>
</tbody>
</table>

As at 30 June 1996, the estimated resident population of Indigenous people in Australia was 386,049, equating to 2.1% of the total population. The Torres Strait Islander population was 38,830, or around 10% of the Indigenous population in Australia.\textsuperscript{21}

Between 1991 and 1996, the ABS identified an increase of 33% in the number of people identifying as Indigenous between the years 1991 and 1996, a disproportionate increase which could not be explained by natural increase (births, deaths and migration) nor by a corresponding increase for the total population (5%). Similarly, the 1996 Census count of Indigenous people was substantially higher (55%) than the numbers counted in the 1986 Census, compared to the 12% increase in the number of non-Indigenous people in Australia.

The ABS has estimated that a major factor in this recent increase is likely to be a surge in the willingness of Indigenous people to identify as such on the census form. Previous government policies meant that there could be disadvantage or stigma attached to identification as Indigenous, while recent changes in policy and community attitudes may be reflected in an increasing desire of Indigenous people, particularly those of both Indigenous and non-Indigenous origins, to identify with the Indigenous community.

Based on 1996 Census data, the ABS has estimated that resident Indigenous population numbers at 30 June 2001 will be between 427,094 and 502,339. At this time, the Indigenous population will constitute 2.2-2.5% of the total Australian population.

The Indigenous population is estimated to increase from 386,049 in 1996 to 469,135 in 2006 at an annual average growth rate of 2% per year. If the increasing rate of identification experienced between 1991 and 1996 is assumed to continue, the Indigenous population is projected to increase at an annual average rate of 5.3% per year, reaching 649,009 in 2006. By either of

\textsuperscript{21} Office of Aboriginal and Torres Strait Islander Affairs, Department of Immigration and Multicultural and Indigenous Affairs, based on Australian Bureau of Statistics data. ABS website: www.abs.gov.au, as at 20 September 2002.

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these calculations, the Indigenous population is growing much faster than the total Australian population (1.2% in 1996-97).\textsuperscript{22}

1.3 Ages
The Indigenous population is also, on average, considerably younger than the total Australian population, as shown in the age profile table below,\textsuperscript{23} based on data from respondents to the ABS National Health Survey:

\textsuperscript{22} ABS, 'Experimental Projections of the Aboriginal and Torres Strait Islander Population: 30 June 1996 to 30 June 2006', \textit{op. cit.}

The relative youth of the Indigenous population is reflected in the proportion of the population aged under 15 years and 65 years or older. In 1996, 40% of Indigenous people (around 155,000 people) were aged under 15 years, compared with 21% of non-Indigenous people. In 2006 the proportion of Indigenous people aged under 15 years is projected to decrease only slightly to 37% of the total Indigenous population.

In 1996, the median age of Indigenous people was 20 years, compared to 34 years for the total Australian population, and this is projected to increase slightly to 21 years by 2006. This age difference is largely a product of higher fertility rates in the Indigenous population but it also reflects high death rates, occurring at younger ages.

In 1996 2.6% of the Indigenous population, or around 10,000 people, were aged 65 years or over, compared with 12% of the non-Indigenous population. In 2006, this is estimated to decrease only fractionally to 2.5%. Between the ages of 15 and 65 years, the largest age groups in 1996 were 15-19 and 20-24, with 38,014 (around 10% of the total Indigenous population) and 36,637 (9.5%) people respectively. In 2006 this is not expected to change, with between 51,963 (low series projections) and 71,886 (high series) or around 11% of people aged 15-19 years, and between 45,468 and 62,899 people (around 10%) aged 20-24 years.

1.4 Distribution
In 1996 more than half the Indigenous population of Australia lived in New South Wales (28.5%) and Queensland (27.2%), with another quarter in Western Australia (14.4%) and the Northern Territory (13.1%). Indigenous people made up a relatively small proportion of the total population in each of the states and territories (3.2% or less), especially in Victoria, where they represented 0.5% of the total state population. This excludes the Northern

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Territory, however, where 51,900 Indigenous people represented 28.5% of the total population.

The table below indicates the estimated resident population of Indigenous people in the states and territories of Australia:

![Table showing estimated resident population of Indigenous people in Australia as of 30 June 1996.](image)

According to ABS experimental projections, in 2006 the states of Queensland (with between 133-179,000 people) and New South Wales (between 133-216,000 people) will have the largest Indigenous populations, followed by Western Australia (67-80,000 people), the Northern Territory (61-64,000),

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South Australia (27-32,000), Victoria (27-33,000), Tasmania (18-36,000) and the Australian Capital Territory (4-8,000).28

The Indigenous population has a different geographic distribution compared to the total Australian population. Contrary to popular portrayal, Indigenous people do not all live in rural or remote areas, although environmental and health problems are often more visible in these communities and thus tend to be the focus of more media attention. The population is evenly distributed through urban, rural and remote areas, and the same problems and needs generally apply to all Indigenous communities, wherever they are living.

At the time of the 1996 Census, 30.3% of the Indigenous population lived in major urban areas (populations of 100,000 or more) and 42.3% in other urban areas (populations of 1,000 to 99,999), compared to 62.7% and 23.3% respectively of the total population. A further 10.8% of the Indigenous population lived in rural areas with populations ranging from 200 to 999, and 16.6% lived in the remainder of the state or territory, compared to 2.5% and 11.5% respectively of the total population.29

1.5 Women
According to the 1996 Census data, the estimated resident population of 386,049 Indigenous people in Australia consisted of 195,581 women and 190,468 men. Half of all Indigenous women were aged under 21 years, compared with half of all Indigenous men, who were aged under 19 years (for the total Australian population these figures were 35 and 33 years respectively).

The role of women within Indigenous communities and families cannot be overstated, since in many cases they have the primary responsibility for the care, education and discipline of children. Families and extended families revolve around the women, and they are heavily relied on to provide


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stability, to resist external (non-Indigenous) influences, and to maintain Aboriginal practices and values within the family and community.

In 1984, at the request of the Australian government, an Aboriginal Women’s Task Force was established to consult with Indigenous women around Australia.

The Task Force’s report found that the issues which were most important to Aboriginal women were the dignity and survival of Indigenous Australians, as well as “day-to-day matters of survival”. These included problems of housing shortages and poor maintenance and infrastructure provision; cultural discrepancies and language difficulties with the mainstream education system; police harassment of children in the schools; health issues, including alcohol and substance abuse, lack of available nutritious food particularly in remote areas, cultural insensitivity and lack of co-ordination in the provision of health and legal services; and the lack of culturally appropriate accommodation to care for the elderly and children.

Other major concerns were unemployment, welfare dependency and insufficient job opportunities, linked to greater issues of self-determination and land rights, which were important to break the “cycle of dependency” and restore “their spiritual, economic and social base”. Overall, there was a lack of information about how to deal with governments, and about the services and programmes which were available to Indigenous women.

The issue of culture was not treated separately by the report:

The maintenance of cultural practices, language, art and values are intertwined with the struggle for better housing, education, health, child care, employment, legal aid and land rights legislation that recognises the dispossession of Aboriginal people.30

The report also found that the breakdown of traditional ceremonial practices and roles has resulted in women assuming the major responsibilities for children of both sexes and all ages. Although the report concluded that some of the traditional values and practices exist and are passed from one

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generation to another, these additional responsibilities have placed the women "under considerable stress as they contend with both Aboriginal and non-Aboriginal influences."31

Many Aboriginal and Torres Strait Islander women struggle with a dual burden of discrimination on the basis of their sex as well as their race, which can compound existing economic, social and cultural difficulties.

2. Health

The World Health Organisation has defined health not just as the absence of disease but as a state of complete physical, mental and social well-being. The National Aboriginal Health Strategy Working Party took this concept further, concluding in 1989 that an appropriate definition of health for Aboriginal people is:

Not just the physical well-being of the individual but the social, emotional, and cultural well-being of the whole community.\(^{32}\)

Aboriginal and Torres Strait Islander people bear a much greater burden of poor health than other Australians. The health disadvantage of Indigenous people begins early in life and continues throughout their life cycle.\(^{33}\) While there are regional differences, the health status of Indigenous Australians is poor everywhere.

2.1 Life expectancy

The data on life expectancy and mortality rates provide some indication of the poor state of health among Indigenous people.

According to the Australian Bureau of Statistics, mortality data, like much of the other statistical information for Indigenous people, are inconsistent and therefore unreliable. There is some degree of under-identification of Indigenous deaths in all jurisdictions and, as a result, the differences between Indigenous and non-Indigenous mortality are under-estimates of the true differences. This makes it difficult to assess changes in Indigenous mortality over time.

In order to create a 'national' picture of Indigenous mortality, the ABS combined the death registration data from Queensland, South Australia,\(^{32,33}\)

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\(^{33}\) ABS. *Australian Social Trends 2000*, op. cit., at 25.
Western Australia and the Northern Territory for the period 1997-99. The mortality rate for Indigenous men of 18 deaths per 1,000 population was 2.6 times that of the total male population in Australia (7 per 1,000). The mortality rate of 11 per 1,000 for Indigenous women was 2.2 times that of the total female population (5 per 1,000).

Age-specific death rates for the Indigenous population were substantially higher than for the total population in all age groups in 1999. The greatest difference in the rates was in the age group 45-54 years, where the Indigenous age-specific death rate was nearly 300% greater than the total Australian age-specific death rate.

The majority of deaths among Indigenous men (76%) and Indigenous women (65%) occurred before the age of 65 years. This is the reverse of data for non-Indigenous deaths, in which the majority of male (73%) and female (84%) deaths occur after the age of 65 years. In addition, approximately 45% of deaths among Indigenous men and 34% of deaths among Indigenous women occurred before the age of 45 years, compared to 10% and 6% of deaths among non-Indigenous men and women respectively, as illustrated below:

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34 ABS & AIHW. 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2001', op. cit., at 110.

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Economic, social and cultural rights of Indigenous peoples in Australia
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8.2 AGE DISTRIBUTION OF DEATHS(a), Males—1997-99

(a) Data for Queensland, South Australia, Western Australia and Northern Territory combined. Based on year of registration.
Source: ABS data available on request, Deaths Registration Database.

8.3 AGE DISTRIBUTION OF DEATHS(a), Females—1997-99

(a) Data for Queensland, South Australia, Western Australia and Northern Territory combined. Based on year of registration.
(b) Data values for non-Indigenous females are too small to be visible on the graph.
Source: Data available on request, ABS Deaths Registration Database.
The data which exist indicate grossly disproportionate life expectancy rates\(^{37}\) for Indigenous men and women relative to the total Australian population, with Indigenous people dying younger and in greater numbers in all age groups, with the exception of 65 and over, in contrast to non-Indigenous Australians.

Data available for Indigenous people for the period 1991-96 indicate that life expectancy at birth was approximately 57 years for males and 66 years for females.\(^{38}\) According to the Australian Bureau of Statistics, Indigenous female life expectancy at this time was comparable to that for women in Iraq, Western Sahara, Bolivia and Pakistan, while Indigenous male life expectancy was comparable to that of men in Lesotho, Western Sahara and Bolivia.\(^{39}\)

The relative mortality gap between Indigenous and non-Indigenous people in Australia appears to have widened in recent years. In 1997-99, life expectancy was estimated to have dropped to 56 years for Indigenous men and 63 years for Indigenous women in Australia.

These expectations are around 20 years less than those for non-Indigenous people at the same time: 76 years for men and 82 years for women. Similar life expectancy rates have not been experienced in Australia by the total male population since 1901-10 and by the total female population since 1920-22.

Despite ratifying the International Covenant on Economic, Social and Cultural Rights in 1975, Australia has the dubious distinction of being the only developed country with a dispossessed Indigenous minority whose men, on average, will not live long enough to claim a retirement pension.

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\(^{37}\) Life expectancy refers to the average number of years a person of a given age and sex can expect to live if current age-specific mortality rates continue to apply throughout his or her lifetime: ABS & AIHW, ‘The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001’, op. cit., at 120.


2.2 Infant and maternal mortality
On average, Indigenous mothers begin childbearing at a younger age, have higher birth rates in their teenage years and early twenties and tend to have more children than non-Indigenous mothers. The fertility rate for Aboriginal and Torres Strait Islander women is higher than the national average: 2.2 children compared to 1.8 for non-Indigenous women in 1996.

Infant mortality is also higher than the national average. In the 1970s, the Indigenous infant mortality rate was over 80 deaths per 1,000 live births. By 1981, it had fallen to around 26 deaths per 1,000 live births, a rate equivalent to that experienced by non-Indigenous Australians in the 1940s and 1950s.

Since 1981, improvements have been gradual, but the Indigenous rate has remained about two and a half times that of the total population. In 1999, the Indigenous infant mortality rate was 14.1 infant deaths per 1,000 live births, 2.8 times higher than the overall Australian rate of 5.7 per 1,000 live births.

The highest mortality rates for Indigenous infants were from the Northern Territory (19) and Victoria (17.3), while the lowest were from South Australia (7.8). Almost one in five infant deaths in Queensland, South Australia, Western Australia and the Northern Territory combined were identified as Indigenous, including 28% of all deaths from Sudden Infant Death Syndrome.

Low birth weight babies are more likely to have poor health and die in childhood, and in 1994-96 the babies of Indigenous mothers were almost twice as likely to be of low birth weight as babies of non-Indigenous mothers: 12% of Indigenous babies (compared to 6% of non-Indigenous babies) weighed less than 2500 grams at birth. They were also more than twice as likely as babies of non-Indigenous mothers to be stillborn or to die within the

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42 ABS & AIHW. 'The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001', op. cit., at 113.

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first 28 days of birth: 22 perinatal deaths per 1,000 Indigenous births compared to 10 per 1,000 for non-Indigenous births.\textsuperscript{43}

According to the National Health and Medical Research Council’s ‘Report on Maternal Deaths in Australia 1991-93’, the maternal mortality rate for Indigenous women in 1991-1993 was 41 per 100,000 live births, more than four times higher than the rate of 10 per 100,000 for non-Indigenous women.\textsuperscript{44}

In 1994-1996, the most recent period for which detailed data appear to be available, eight (9.6\%) of the 83 maternal deaths where Indigenous status was known were of Indigenous women.\textsuperscript{45} An avoidable factor was judged to have been present in three of the Indigenous deaths. Reflecting the higher rate of confinements among Indigenous women, the maternal mortality rate for Indigenous women in 1994-1996 was 35 per 100,000 live births, slightly reduced from the 1991-93 rate but still more than three times higher than the rate of 10 per 100,000 for non-Indigenous women.\textsuperscript{46}

2.3 Causes of death
Death rates are also disproportionately high among Indigenous men and women for virtually every cause of death. The rates of death from many chronic diseases rise at an earlier age and stay higher throughout the life span for Indigenous people than for all Australians.\textsuperscript{47}

Australian Bureau of Statistics data show that the main causes of death for Indigenous people in the period 1997-99 were: diseases of the circulatory system (including heart disease and strokes), deaths due to external causes (predominantly accidents, self-harm and assault), neoplasms or cancers, diseases of the respiratory system, endocrine diseases (particularly diabetes) and digestive disorders.

\textsuperscript{43} ABS. Australian Social Trends 2000, op. cit., at 25.
\textsuperscript{44} Australian Indigenous HealthInfoNet. ‘Australian Indigenous HealthInfoNet key facts’, op. cit.
\textsuperscript{46} Australian Indigenous HealthInfoNet. ‘Australian Indigenous HealthInfoNet key facts’, \textit{ibid}.
\textsuperscript{47} ABS. Australian Social Trends 2000, op. cit., at 25.
These causes accounted for approximately 80% of all identified Indigenous deaths in Queensland, South Australia, Western Australia and the Northern Territory between 1997-99.

Although these were also the leading causes of death among the Australian population as a whole, Indigenous men and women had higher death rates and were more likely than the total Australian population to die at much younger ages from these causes.

The table\textsuperscript{48} below, based on 1997-99 death registration data from Queensland, South Australia, Western Australia and the Northern Territory, indicates the number of Indigenous deaths as a result of these causes:

\textsuperscript{48} ABS & AIHW. ‘The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001’, \textit{op. cit.}, at 116.
### 8.6 Deaths from Selected Causes—1997-1999(a)

<table>
<thead>
<tr>
<th></th>
<th>Indigenous Males</th>
<th>Indigenous Females</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>no.</td>
<td>SMR(b)</td>
</tr>
<tr>
<td>Circulatory</td>
<td>750</td>
<td>3.1</td>
</tr>
<tr>
<td>External causes</td>
<td>496</td>
<td>2.8</td>
</tr>
<tr>
<td>Neoplasms</td>
<td>320</td>
<td>1.4</td>
</tr>
<tr>
<td>Respiratory</td>
<td>206</td>
<td>4.1</td>
</tr>
<tr>
<td>Endocrine/metabolic</td>
<td>169</td>
<td>7.2</td>
</tr>
<tr>
<td>Digestive</td>
<td>119</td>
<td>4.7</td>
</tr>
<tr>
<td>Mental disorders</td>
<td>62</td>
<td>2.4</td>
</tr>
<tr>
<td>Genitourinary</td>
<td>58</td>
<td>5.8</td>
</tr>
<tr>
<td>Infectious/parasitic</td>
<td>58</td>
<td>4.2</td>
</tr>
<tr>
<td>Nervous system</td>
<td>55</td>
<td>2.3</td>
</tr>
<tr>
<td>Ill-defined</td>
<td>76</td>
<td>6.0</td>
</tr>
<tr>
<td><strong>All causes</strong></td>
<td>2,515</td>
<td>2.9</td>
</tr>
</tbody>
</table>

(a) Data from Queensland, South Australia, Western Australia and the Northern Territory combined. Based on year of registration.

(b) Standardised mortality ratio = observed deaths divided by expected deaths, based on all-Australian age, sex, and cause-specific rates.

Source: ABS data available on request, Deaths Registration Database.

The table also shows a ratio of the expected number of deaths, with ratios above ‘1’ indicating excess deaths. Indigenous populations recorded excess deaths from each of these causes. Indigenous men were approximately three times more likely than the total Australian population to die from diseases of the circulatory system such as heart attacks, angina and strokes, while Indigenous women were four times as likely to die from respiratory disorders. For all causes of death, there were nearly three times as many deaths as expected for both Indigenous men and women.
For all cancers, the incidence rate for Indigenous people was lower than for non-Indigenous people or for the total population. However, the rate of death from cancers is higher among Indigenous people than among non-Indigenous people or the total population. Cancers were responsible for 13% of all deaths identified as Indigenous, and the majority of these deaths were due to malignant cancers, including cancers of the liver, stomach, intestine, gall bladder, pancreas, bronchus, lung, larynx and trachea.\footnote{ABS & AIHW. ‘The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001’, \textit{ibid.}, at 115-8.}

There were 40% more deaths than expected from cancer among Indigenous people, based on all-Australian death rates. Some of this difference may be due to the more complete identification for cancer deaths than cancer incidence among Indigenous people. It may also be attributed to the higher proportions of more fatal cancers among Indigenous people than among the non-Indigenous population, or to the later diagnosis of cancer at a more advanced stage among Indigenous people, or to differences in treatment outcomes by stage of cancer at diagnosis.

Generally, lung cancer had the most common occurrence among Indigenous males, with lung and cervical cancer the most common among Indigenous females. Apart from these, the incidence of liver and pancreas and smoking-related cancers tended to be higher among the Indigenous population.\footnote{Australian Indigenous HealthInfoNet. ‘Australian Indigenous HealthInfoNet key facts’, \textit{op. cit.}}

2.4 Health risk factors
Surveys have revealed a high prevalence of smoking among Indigenous people, approximately twice the rate for non-Indigenous people.\footnote{ABS & AIHW. ‘The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001’, \textit{op. cit.}, at 70.} In 1994, a National Aboriginal and Torres Strait Islander Survey was carried out by the Australian Bureau of Statistics. The survey found that 54% of Indigenous males and 46% of Indigenous females aged 13 or more years smoked. Approximately 15% of Indigenous males and 14% of Indigenous females aged 13-15 years reported that they smoked, while over 60% of Indigenous
males and over 50% of Indigenous females aged 22-24 years reported the same.

Indigenous people were up to eight times more likely to die from smoking-related diseases than non-Indigenous people. The most common causes of death among Indigenous people due to cigarette smoking were coronary heart disease, lung cancer (for Indigenous males) and bronchitis (for Indigenous females).\textsuperscript{52}

Alcohol abuse is another serious threat to Indigenous health and well-being and has been identified as one of the most pressing concerns for Aboriginal and Torres Strait Islander people and communities,\textsuperscript{53} although several surveys have demonstrated that Indigenous people are less likely to consume alcohol than non-Indigenous people.

The 1994 National Aboriginal and Torres Strait Islander Survey found that 19% of Indigenous men and 34% of Indigenous women across Australia reported that they had never drunk alcohol.\textsuperscript{54} Those who do consume alcohol are more likely to do so at hazardous levels, however. Over 20% of Indigenous male drinkers were in the 'high risk' category for alcohol consumption compared with 8% of non-Indigenous male drinkers. Indigenous women were less likely to be in this category than Indigenous men, but were still more likely than non-Indigenous female drinkers to consume alcohol at hazardous levels.\textsuperscript{55}

Substance abuse, such as petrol or glue sniffing, is also a significant problem affecting young people, in particular, in a number of Indigenous

\textsuperscript{52} Australian Indigenous HealthInfoNet. ‘Australian Indigenous HealthInfoNet key facts’, op. cit.

\textsuperscript{53} Aboriginal and Torres Strait Islander Women’s Task Force on Violence. The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report, commissioned by the Queensland Department of Aboriginal and Torres Strait Islander Policy and the Office for Women in the Department of the Premier and Cabinet [no publication details], 1999, at 63.


\textsuperscript{55} ABS & AIHW. ‘The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001’, op. cit., at 70.
communities. Petrol sniffing can cause confusion, aggression, lack of co-ordination, hallucinations, respiratory problems, and chronic disability including mental impairment, and can lead to serious long-term and permanent physical damage.\textsuperscript{56}

Non-insulin dependent diabetes is estimated to be 10-30\% more prevalent among Indigenous than non-Indigenous people, occurring also at younger ages among Indigenous people. Overall, Indigenous people have a high prevalence of risk factors known to be important in the development of this type of diabetes.

In addition, the effects of socio-economic factors such as low levels of education, high levels of unemployment, low incomes, poor housing and related environmental conditions have a negative impact on Indigenous health.\textsuperscript{57}

\textbf{2.5 Diet and nutrition}

Diet and nutrition are important factors in maintaining health, and these are areas in which Indigenous people may suffer indirect disadvantage, since many live in remote areas of Australia with limited opportunities to obtain affordable, healthy food. Shops in remote locations are less likely to stock a variety of basic fresh foods or better nutritional items, the cost of basic food is considerably higher in rural and remote communities than in metropolitan and regional centres, and the supply and delivery system is structured in favour of metropolitan areas.

An increase of 25\% in the number of Indigenous children diagnosed with malnutrition and diarrhoea in the Northern Territory since 1999 has been attributed by health professionals to factors such as poverty and a decrease in the infrastructure in remote communities.\textsuperscript{58}

\textsuperscript{56} ABS & AIHW, 'The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples 2001', \textit{ibid.}, at 72.

\textsuperscript{57} Australian Indigenous HealthInfoNet, 'Australian Indigenous HealthInfoNet key facts', \textit{op. cit.}

\textsuperscript{58} 'NT indigenous malnutrition growing', ABC News email, 8.20am, 23 November 2002.
Additional factors which may affect nutrition include restricted access to traditional foods, lack of knowledge of the nutritional value of foods, and lack of culturally appropriate nutrition information.

The diet of many Indigenous people has undergone rapid changes within a relatively short time period, from a fibre-rich, high protein, low saturated fat ‘traditional’ diet, to one in which refined carbohydrates and saturated fats predominate. The National Health and Medical Research Council has noted that these lifestyle changes, which are similar to those experienced by Indigenous populations in other countries, have resulted in a group of conditions known collectively as the ‘insulin resistance syndrome’. These include obesity, type 2 diabetes, cardiovascular disease and renal disease, all of which are more common among Indigenous than non-Indigenous Australians.  

2.6 Health services
Health services in Australia are structured around the location of the total population, which is mainly urban and non-Indigenous.

In 1999, an inquiry was set up into the distribution of Commonwealth [Australian government] funding for programmes and services affecting Indigenous people, specifically in the areas of health, housing and infrastructure, employment and training, and education. The Commonwealth Grants Commission Report on Indigenous Funding, released in 2001, noted the existence of a range of physical and cultural barriers preventing Indigenous access to services.

These barriers, which can affect the ability of Indigenous people to take actions that lead to improved health, include problems such as distance, availability of transport, access to doctors and pharmaceuticals, and access to culturally appropriate services.

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Distance to services is a significant potential barrier to Indigenous people's access to and use of health facilities, health services and health professionals. For Indigenous people, health status generally declines with remoteness. Nationally, a large proportion of the Indigenous population was estimated to live in close proximity to the services that they might require, but this varied depending on the place of residence.

In each state, less than 10% of Indigenous people did not have a doctor, either permanent or visiting, within 25 kilometres, and only one in three Indigenous people living in rural areas had a permanent doctor (defined as one who was available at least three days per week) within this range. Aboriginal health workers were located within 25 kilometres of 83% of the Indigenous population, but this varied from 53% in Tasmania to 93% in the Northern Territory.

There were large differences in distances, and therefore access, to hospitals across the country. While about 95% of Indigenous people in Victoria were reported to be living within 25 kilometres of the nearest hospital, one in two Indigenous people in the Northern Territory had to travel over 100 kilometres.\textsuperscript{62}

Language and cultural differences also present obstacles to Aboriginal and Torres Strait Islander people using health services.\textsuperscript{63} A submission by an Indigenous man to the House of Representatives Standing Committee on Family and Community Affairs \textit{Health is Life} report stated:

\begin{quote}
We have a belief that health is achievable only when the people who suffer the greatest disadvantage have ownership and control of the process and the programmes that are directly related to it.\textsuperscript{64}
\end{quote}


\textsuperscript{63} ABS & AIHW. ‘The Health & Welfare of Australia’s Aboriginal & Torres Strait Islander Peoples 1999’, \textit{op. cit.}, at 70.

\textsuperscript{64} Tilmouth, William. Submission to the House of Representatives Standing Committee on Family and Community Affairs, \textit{Health is Life}, \textit{op. cit.}, at 36.
Another submission noted that where Indigenous communities have been able to maintain their cultures there has been a greater sense of community well-being than in areas which have experienced a breakdown in community and cultural linkages.\textsuperscript{65}

Some health providers in Western Australia have introduced the notion of 'cultural security' or 'cultural safety' into their services to address Indigenous concerns in ways that are both culturally and medically acceptable:

Cultural safety in health services happens when people feel able to use a service provided by people from another culture without risk to their culture.\textsuperscript{66}

Examples of cultural safety in practice include the substitution of kangaroo blood for human blood in traditional ceremonies; treatment of patients by health staff of the same sex as the patient; utilising traditional medicines and healers; and even the health provider simply acknowledging that the life experiences and perspectives of Indigenous patients may differ from the dominant non-Indigenous culture.\textsuperscript{67}

The history of institutionalised racism against Aboriginal and Torres Strait Islander people in Australia has resulted in many Indigenous people, particularly in remote communities, distrusting government services and workers and preferring not to consult them. The importance of addressing Indigenous ownership and cultural needs must be taken into account in planning and providing community and health services, if those services are going to meet the needs of and be used by Indigenous people.

\textbf{2.7 Health cover}

While all Australians have free public health cover, a 1997 government-funded study found that Indigenous people face considerable barriers which impede their full access to the major federal government-funded health

\textsuperscript{65} Phillips, Dr N. Submission to the House of Representatives Standing Committee on Family and Community Affairs, \textit{Health is Life}, \textit{ibid.}, at 69.

\textsuperscript{66} Ramsden, Irihapeti, Remote Area Nurses' Conference 1999. Submission to the House of Representatives Standing Committee on Family and Community Affairs, \textit{Health is Life}, \textit{ibid.}, at 70.

\textsuperscript{67} House of Representatives Standing Committee on Family and Community Affairs. \textit{Health is Life}, \textit{ibid.}, at 70-2.
programmes, Medicare and the Pharmaceutical Benefits Scheme (PBS). These barriers include the extent to which Indigenous people are aware of their entitlements, and the cultural appropriateness of the enrolment requirements for Medicare and the PBS. These factors, combined with financial disadvantage, compound the health difficulties faced by Indigenous people by, for example, resulting in deferred treatment of illness.

Although private health insurance provides more comprehensive health cover, the 1995 National Health Survey indicated that non-Indigenous adults aged 18 years and over living in non-remote areas were nearly four times more likely to report having private health insurance than Indigenous people aged 18 years and over living in non-remote areas (43% compared with 11%).

In addition, compared with non-Indigenous Australians, Indigenous people used fewer private services such as doctors in private practice, private hospitals, dentists and privately funded allied health professionals. Indigenous people were, on average, much higher users than non-Indigenous people of publicly-funded and state-funded health services, particularly the admitted patient services in hospitals and community health services.

Expenditure was much lower for Aboriginal and Torres Strait Islanders than for other Australians using Medicare and the Pharmaceutical Benefits Scheme. When relative income position is taken into account, public expenditure on the health of Aboriginal and Torres Strait people appeared to be similar to that for non-Indigenous people in low-income groups, despite the much lower health status of Aboriginal and Torres Strait people.

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69 ABS & AIHW. 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 1999', op. cit., at 69.


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A report produced by the Australian Institute of Health and Welfare in 2001 estimated that total expenditure by Australian governments and the private sector on community and public health services to Indigenous people in the 1998-1999 financial year was $1.2 million. This is equivalent to $3,065 per person compared with $2,518 per person for non-Indigenous people - a ratio of 1.22:1\(^{71}\), compared with a ratio of 1.08 in 1995-96.\(^{72}\)

The 2001 Commonwealth Grants Commission Report on Indigenous Funding confirmed that “health outcomes for Indigenous Australians are much poorer than for other Australians”, particularly for Indigenous people in remote areas.

Total health resources including funding are greater in urban areas than in rural and remote regions, and although this situation applies equally to Indigenous and non-Indigenous Australians, it “does not match the pattern of needs for Indigenous health funding”:

[o]verall funding for Indigenous health, while slightly above the average spent on all Australians, is significantly below what would be expected for a group with such a poor health status.\(^{73}\)

The report noted that

the poorer health status of Indigenous people, and their greater reliance on the public health system, would justify at least a doubling of the average per capita government expenditure on non-Indigenous people.\(^{74}\)

\(^{71}\) AIHW. ‘Expenditures on health services for Aboriginal and Torres Strait Islander people 1998-99’, ibid., at 2.


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In conclusion, Indigenous people are the least healthy sub-population in Australia. There is evidence that the disparity between Indigenous and non-Indigenous health, at least measured by mortality rates, has widened in recent years.

The *Health is Life* report criticised the lack of improvements in Indigenous health and mortality:

The failure to make significant improvements in the health of Australia’s Indigenous population is unique in the developed world and yet there is nothing that is unique in the experience, disease pattern, or circumstances of Aboriginal and Torres Strait Islander people which could reasonably explain the failure to make satisfactory progress.\(^75\)

The House of Representatives Standing Committee on Family and Community Affairs noted that this failure in Australia contrasts markedly with the situation among Indigenous peoples in New Zealand, Canada and the United States (refer Appendix 2), where there has been the commitment to provide adequate resources for appropriate community-controlled primary health care, environmental services and encouragement of improved education.

The best that can be said of the overseas experiences is that the success achieved in those countries "generates considerable confidence that effective action in Australia will produce substantial changes in Indigenous health".\(^76\)

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\(^75\) House of Representatives Standing Committee on Family and Community Affairs. *Health is Life*, *op. cit.*, at 6.

3. Education

The poor health of Aboriginal and Torres Strait Islander people is an important determinant of their ability and opportunities to participate fully in other spheres of activity, such as education. Poor health hinders the school attendance of many Indigenous children and restricts their ability to learn. This has been referred to as

a domino effect of health and social problems leading to children suffering serious hearing loss, being malnourished and getting insufficient sleep which then leads to poor attendance and non-punctuality which impedes effective learning outcomes.\textsuperscript{77}

Indigenous people are substantially disadvantaged within the Australian education system. They have on average a lower rate of participation in the education system, and are less likely to complete high school and to pursue post-school qualifications than non-Indigenous Australians. Indigenous children are also less likely than non-Indigenous children to be attending an educational institution full-time.

At the same time Indigenous people often have reduced access to employment opportunities, which may affect their motivation to remain in the education system beyond the compulsory years of schooling. This can contribute to a long-term cycle of disadvantage and poverty.

3.1 Primary school
According to 1996 data, nearly half of Indigenous people of working age had no formal education.\textsuperscript{78}


\textsuperscript{78} ABS. \textit{Year Book Australia} 1999, \textit{op. cit.}, at 106.

\textsuperscript{77} Economic, social and cultural rights of Indigenous peoples in Australia
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As illustrated in the table\textsuperscript{79} below, the 1994 Survey of Education Attainment found that 5\% of Aboriginal and Torres Strait Islander people aged 15 years and over had never been to school, compared to only 0.3\% of the total Australian population.

Age was a significant factor, and there was a sharp decline in the percentage of people who had never been to school, from a peak of over 26\% for people aged 55 years and over to less than 1\% for people aged 15 to 24 years. Not surprisingly, more people living in capital cities than the rest of the state or Northern Territory had been to school. This was particularly evident in the 55 years and over age group, where 5\% of people in capital cities had never been to school, compared to 32\% of those in the rest of the state.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure18.png}
\caption{Persons aged 15 years or over who had never been to school, 1994}
\end{figure}

Although schooling in Australia is compulsory until the age of 15 years, in 1996, participation rates by Indigenous primary students (around 86%) were lower than those for non-Indigenous students (about 93%).

A 1998 report commissioned by the Aboriginal and Torres Strait Islander Commission (ATSIC) into the Aboriginal Study Grants Scheme known as Abstudy noted that anecdotal evidence suggested that large numbers of school-aged Indigenous children, particularly those in remote and regional areas, were not attending primary school regularly.

The table below, based on data from the 1996 Census, shows that 57% of Indigenous 16 year-olds were students, compared to 83.5% of 16 year-olds in the total Australian population. More Indigenous 16 year-old girls (nearly 61%) were studying, compared to 53.2% of Indigenous 16 year-old boys:

<table>
<thead>
<tr>
<th>Participation in education and educational attainment, 1996</th>
<th>Indigenous population</th>
<th>Total population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Males</td>
<td>Females</td>
</tr>
<tr>
<td>Participation in education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 year olds who are students</td>
<td>53.2</td>
<td>60.8</td>
</tr>
<tr>
<td>18–24 year olds in post-secondary education</td>
<td>9.4</td>
<td>11.4</td>
</tr>
<tr>
<td>25 year olds and over in post-secondary education</td>
<td>4.7</td>
<td>6.9</td>
</tr>
<tr>
<td>Educational attainment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Left school aged 15 years or under</td>
<td>41.1</td>
<td>38.9</td>
</tr>
<tr>
<td>Vocational qualification or undergraduate or associate diploma</td>
<td>10.8</td>
<td>8.7</td>
</tr>
<tr>
<td>Bachelor degree or higher</td>
<td>1.6</td>
<td>2.3</td>
</tr>
</tbody>
</table>

Source: 1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People (Cat. no. 2604.0); unpublished data, 1996 Census of Population and Housing.

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82 ABS, '1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People', op. cit.

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There was also a difference in the number of students leaving school aged 15 years or under: 40% of Indigenous students, compared to one-third of non-Indigenous students.

3.2 Secondary school
The rate of attendance of Indigenous children in secondary schooling is also low, which may reflect a ‘flow-on’ effect from poor attendance at primary school.

Data and anecdotal information suggest that Indigenous grade progression rates are generally lower than for non-Indigenous students. Participation rates for Indigenous secondary students are also significantly below rates for non-Indigenous students, about 65% compared with about 85%, especially in states where Indigenous students are more likely to be living in remote locations.83

The situation appears to be improving, however. According to the 1991 Census, 36.1% of Indigenous 20-24 year-olds and 14.1% of non-Indigenous 20-24 year-olds had left school at or before age 15, thus failing to complete the compulsory years of schooling. The 1996 Census data indicated that both figures had dropped: 29.2% of Indigenous 20-24 year-olds left school at or before 15 years of age, compared with 9.3% of non-Indigenous 20-24 year-olds.

The retention rates for Indigenous students in post-compulsory secondary school years 11 and 12 have also increased significantly, from 12% in 1989 to 31% in 1997,84 although this is still less than half the retention rate for non-Indigenous students of over 70%. This gap is particularly evident in year 12, the final year of schooling, as illustrated in the table85 of comparative

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retention rates for Years 10, 11 and 12 for Indigenous and total Australian students between 1989 – 1996\(^8\), below:

<table>
<thead>
<tr>
<th>School Year</th>
<th>Year</th>
<th>Indigenous students(^9)</th>
<th>Total Australian students</th>
<th>Retention Rate Gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 10(^8)</td>
<td>1989</td>
<td>70.1</td>
<td>97.1</td>
<td>27.0</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>71.7</td>
<td>98.2</td>
<td>26.5</td>
</tr>
<tr>
<td></td>
<td>1991</td>
<td>78.7</td>
<td>98.8</td>
<td>20.1</td>
</tr>
<tr>
<td></td>
<td>1992</td>
<td>83.0</td>
<td>99.1</td>
<td>16.1</td>
</tr>
<tr>
<td></td>
<td>1993</td>
<td>78.5</td>
<td>98.3</td>
<td>19.8</td>
</tr>
<tr>
<td></td>
<td>1994</td>
<td>78.6</td>
<td>97.0</td>
<td>18.4</td>
</tr>
<tr>
<td></td>
<td>1995</td>
<td>76.5</td>
<td>96.4</td>
<td>19.9</td>
</tr>
<tr>
<td></td>
<td>1996</td>
<td>75.8</td>
<td>96.7</td>
<td>20.9</td>
</tr>
<tr>
<td>Year 11(^9)</td>
<td>1989</td>
<td>33.9</td>
<td>77.2</td>
<td>43.3</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>36.8</td>
<td>80.5</td>
<td>43.7</td>
</tr>
<tr>
<td></td>
<td>1991</td>
<td>41.6</td>
<td>86.0</td>
<td>44.4</td>
</tr>
<tr>
<td></td>
<td>1992</td>
<td>45.5</td>
<td>87.8</td>
<td>42.3</td>
</tr>
<tr>
<td></td>
<td>1993</td>
<td>52.0</td>
<td>87.4</td>
<td>35.4</td>
</tr>
<tr>
<td></td>
<td>1994</td>
<td>47.5</td>
<td>85.3</td>
<td>37.8</td>
</tr>
<tr>
<td></td>
<td>1995</td>
<td>48.7</td>
<td>83.3</td>
<td>34.6</td>
</tr>
<tr>
<td></td>
<td>1996</td>
<td>47.2</td>
<td>83.4</td>
<td>36.2</td>
</tr>
<tr>
<td>Year 12(^9)</td>
<td>1989</td>
<td>14.4</td>
<td>60.3</td>
<td>45.9</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>17.6</td>
<td>64.0</td>
<td>46.4</td>
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<tr>
<td></td>
<td>1991</td>
<td>21.8</td>
<td>71.3</td>
<td>49.5</td>
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<tr>
<td></td>
<td>1992</td>
<td>24.9</td>
<td>77.1</td>
<td>52.2</td>
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<tr>
<td></td>
<td>1993</td>
<td>25.2</td>
<td>76.6</td>
<td>51.4</td>
</tr>
<tr>
<td></td>
<td>1994</td>
<td>32.5</td>
<td>74.6</td>
<td>42.1</td>
</tr>
<tr>
<td></td>
<td>1995</td>
<td>30.6</td>
<td>72.2</td>
<td>41.6</td>
</tr>
<tr>
<td></td>
<td>1996</td>
<td>29.2</td>
<td>71.3</td>
<td>42.1</td>
</tr>
</tbody>
</table>


\(^9\) States/Territories started collecting data on Indigenous students in different years. Retention rates for New South Wales, Victoria, Tasmania and the Australian Capital Territory are calculated from a Year 7 base, while rates for Queensland, South Australia, Western Australia, and the Northern Territory are calculated from a Year 8 base.


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The numbers of Indigenous secondary school graduates also appear to be increasing. In 1997, the secondary school completion rate for Indigenous students (14%) was over half the rate for non-Indigenous students (24%).\textsuperscript{91} Limited information from Western Australia and South Australia indicates that in 1999 and 2000 around 55% of Indigenous students who started Year 12, the final year of secondary schooling, graduated from secondary school, compared with about 80% of non-Indigenous students.\textsuperscript{92}

Between 1990 and 1999, Australia experienced a 65% increase in Indigenous students at school, with an increase in the number of Indigenous people attending each level of school in every state and territory. In 1990, 1994 and 1999 there were generally more Indigenous males in primary education than females, but more Indigenous females in secondary education than males.\textsuperscript{93}

3.3 Post-secondary education

Low secondary school attendance and retention rates are reflected in the rate of tertiary education. Compared with the rate of tertiary qualifications attained by the total Australian population, tertiary outcomes for Indigenous people in all regions are poor, and are worst in the more remote regions.\textsuperscript{94}

Data from the 1996 Census of Population and Housing showed that only 12% of Indigenous people aged 19 were in full-time tertiary education, one-third of the rate for the total population of the same age. This trend continued, with 10.4% of Indigenous people aged 18-24 years studying at a post-secondary level, compared to 28.2% of 18-24 year-olds in the total population.\textsuperscript{95}


\textsuperscript{95} ABS. ‘1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People’, op. cit.
In 1996, a much lower proportion of the Indigenous population held post-secondary qualifications (nearly 11%) than the total population (30%). There was a significant difference between the proportion of Indigenous people aged 15 years and over who had obtained a vocational qualification (basic or skilled) or undergraduate or associate diploma (9%), compared with 20% of the total population aged 15 years and over. Only 2% of Indigenous people had attained a bachelor’s degree or higher, while 10% of the total population had attained this level of education.96

In 1999, about 8,000, or 1.3%, of university students were Indigenous. This is less than the proportion of Indigenous people in the population.97

3.4 Vocational education and training
More Indigenous students are enrolled in vocational education and training (VET) courses than in any other post-secondary education provider, and the numbers are increasing each year. A recent newspaper article reported that around 25% of Indigenous people aged 15-64 are undertaking some form of vocational training.98

Although such training greatly improves employment outcomes (80% of Indigenous people with VET qualifications are in the labour force, compared with 49% of those without), there is still a disparity between outcomes for Indigenous and non-Indigenous Australians.

In 1996, 52% of Indigenous VET graduates were in employment the year after completion, contrasted with 71% of non-Indigenous graduates.99

This does not appear to have improved in recent years. The 2001 Commonwealth Grants Commission report on Indigenous funding noted that

96 ABS. Year Book Australia 1999, op. cit., at 106.

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data from the three years to 1998 indicate that only 50% of Indigenous graduates of 1998 were employed in May 1999, compared with 74% of non-Indigenous graduates.

Unemployment rates for 20-24 year-old Indigenous holders of VET qualifications, 22% in 1996, are also worse than for non-Indigenous people (13%), particularly in rural and remote areas.

There is a widely held perception among Indigenous people that much of the training delivered to them in the past has been ineffective and has not led to employment, reducing their motivation to undertake further training. The Commonwealth Grants Commission report noted that the quality of VET qualifications attained by Indigenous students appears to be of limited use securing a competitive advantage in the job market.100

3.5 Literacy and numeracy

Literacy and numeracy levels are much lower among Indigenous students than non-Indigenous students. The Australian government’s Indigenous literacy and numeracy strategy found that seven out of ten Indigenous students are below basic literacy and numeracy standards, compared to three out of ten non-Indigenous students.101

Reading standards achieved by Indigenous Year 3 students are rising but are still lower than those of non-Indigenous students. In 1996, around 20% of Indigenous students tested for literacy skills attained the reading benchmark while in 1999 this had increased to about 66% of Indigenous students who had attained the benchmark, compared to approximately 87% of non-Indigenous Year 3 students in 1999.102

Following an inquiry into Indigenous education, the Senate Employment, Workplace Relations, Small Business and Education Committee noted in its

2000 report that “equity for Indigenous people in most educational sectors had not been achieved”. The report made 34 recommendations to improve educational outcomes for Indigenous people, the first of which called for literacy and numeracy skills of Indigenous people to be raised to the level of non-Indigenous people as “an urgent national priority”.103

3.6 Education services
School education services for Indigenous people are mainly provided through mainstream systems and institutions: the state government education systems, the Catholic education systems, and the independent schools. There are a few independent schools run by Indigenous communities, mostly in remote areas, but no widespread Indigenous education system. The majority of Indigenous students, around 88% in 1999, are enrolled in government schools.104

There is often a lack of adequate teaching conditions and facilities available to Indigenous students, particularly at the secondary level and in remote areas. According to an independent review of Indigenous education in the Northern Territory, 80% of the facilities available are unconducive to good teaching and easy learning, while regular upgrades and maintenance of the schools’ communications and facilities infrastructure, including toilets and grounds, are not carried out.105

There is great variation between the states in Indigenous access to schools. In the Northern Territory and Western Australia, in particular, 79% and 54% respectively of Indigenous students live in remote locations.106


Access to training is also limited in the remote regions. The special needs of Indigenous people in remote regions and the greater costs of delivering effective training in those regions are not adequately recognised.

A lack of high schools in rural and remote areas can result in secondary school-aged children being taught by primary school teachers or in community education centres and ‘TAFE-style’ courses.\footnote{Tertiary And Further Education (TAFE) colleges provide training in vocational and other areas of education. ATSIC. ‘Submission to the Human Rights and Equal Opportunity Commission Inquiry into Rural and Remote Education in Australia’, \textit{op. cit.}, at 16.} The absence of nearby schools also results in many Indigenous children in rural and remote areas having to travel to the nearest high school in the nearest town, often many hundreds of kilometres away from their homes, to continue their secondary schooling.

The problems of isolation and estrangement that this can cause have been documented in publications such as the final report of the Royal Commission into Aboriginal Deaths in Custody:

\begin{quote}
Leaving home to attend school in a capital city or regional centre can be a traumatic experience for Indigenous children from both rural and remote locations. ... as many as 10,000 to 12,000 Indigenous students aged between 12 and 15 years living in remote communities do not attend education facilities because of a lack of post-primary schooling facilities within a reasonable distance of their home. The reluctance of Indigenous students to leave their home town is due to a lack of financial and emotional support in the cities.\footnote{ATSIC. ‘Submission to the Senate Inquiry into Indigenous Education’, quoted in ATSIC, ‘Submission to the Human Rights and Equal Opportunity Commission Inquiry into Rural and Remote Education in Australia’, \textit{ibid.}, at 16-7.}
\end{quote}

Language and cultural differences also present barriers to participation in education, and there is wide variation between the states in the proportion of Indigenous students who speak a language other than English at home. In 1996, 12% of all Indigenous children aged 5-14 years spoke an Indigenous language, 13% of the total Indigenous population spoke an Indigenous language at home, 5% of Indigenous people did not speak English at all, and
of those remaining, 26% said they did not speak English well. In the Northern Territory, around 64% of Indigenous people usually speak a language other than English.

In December 1998 the Northern Territory government, which had previously supported bilingual education programmes in areas where Aboriginal languages are widely spoken, announced that these would be replaced with English-as-a-second-language programmes.

The relationship between language and Indigenous identity is clear:

There is a strong connection between education, language and culture. Thus education is about a sense of Indigenous identity. Unless identity gains prominence alongside other educational issues, we are swamped, and our language and culture will die out. A sense of Indigenous identity must be integrated in the education system.

3.7 Education funding
The 2001 Commonwealth Grants Commission report into Indigenous funding found that, with regard to Indigenous education and outcomes,

the limited available data confirm that Indigenous students continue to experience widespread disadvantage and have achievements that are below those of non-Indigenous students.

This disadvantage is most evident in remote regions. The report was particularly critical of what it termed “mainstream schooling”, noting that if school education

111 ATSIC. As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians (2nd ed), op. cit., at 37.
fails to meet the needs of Indigenous students, Indigenous outcomes will fail to match those of non-Indigenous students. ...it is by no means clear that current mainstream approaches are delivering sufficiently rapid improvements.

Perhaps most significantly,

[while Commonwealth funding to address Indigenous disadvantage has increased since the mid 1990s, it remains small in relation to overall spending on education and the continuing level of disadvantage. ...It is not clear that the allocation of Indigenous-specific funds between the government and non-government sectors is consistent with need.]^{113}

More specifically, the Commonwealth Grants Commission report noted that the main Indigenous-specific supplementary programme funded by the Australian government was the Indigenous Education Strategic Initiatives Programme (IESIP), intended to play a key role in the government’s strategy to close the gap between Indigenous and non-Indigenous education outcomes.

The IESIP funds education providers according to the actual number of Indigenous enrolments they attract, but the report found that although funding allocations have increased since the mid-1990s, the funds are not targeted to regions on the basis of need, and the quantum of the funds is small in view of the disadvantage faced by Indigenous students and does not address the unmet needs of school-aged Indigenous young people.

Another Indigenous-specific education programme is Abstudy, an income assistance scheme providing a living allowance and supplementary benefits to full-time Indigenous secondary and tertiary, and some primary, students.

Recent changes to the Abstudy scheme took effect in 2000, aligning Indigenous student benefits with existing income support and entitlement schemes payable to non-Indigenous students, except for cases where the

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disadvantage addressed by the benefit is unique to or disproportionately concentrated on Indigenous students.\textsuperscript{114}

These changes have been criticised for reducing the entitlements of new Indigenous mature-age students, as well as sole parents and those with families or on a disability support pension. This places an additional financial obstacle in the path of potential students from these groups and constitutes a potential discouragement from pursuing further education and training.

A recent report found that there was "zero progress" in Indigenous attendance at university in 2001:

commencing enrolments by Aborigines and Torres Strait Islanders have failed to climb back from a dramatic fall in 2000, when cuts were made to the Abstudy scheme.\textsuperscript{115}

In 1999, ATSIC observed that educational outcomes for Indigenous people are directly related to other areas of disadvantage: poverty, poor quality housing, health, domestic violence, unemployment, and the family or community's level of education, all of which can adversely affect school attendance and learning outcomes. Although outcomes have improved significantly over the past twenty years, there is still much to be done to bring the level of education of Indigenous Australians to a satisfactory standard and to a comparable level with non-Indigenous Australians.\textsuperscript{116}

With half the Indigenous population aged less than 25 years, there is a great need for effective education and training programmes to improve educational outcomes for Indigenous people in Australia.


\textsuperscript{115} Buckell, Jim. 'Abstudy losses continue to hurt', \textit{op. cit.}

\textsuperscript{116} ATSIC. 'Submission to the Human Rights and Equal Opportunity Commission Inquiry into Rural and Remote Education in Australia', \textit{op. cit.}, at 5, 9.
4. Employment

Poor or inadequate education contributes directly to poor employment outcomes. An analysis of data from the 1994 National Aboriginal and Torres Strait Islander Survey and from the Centre for Aboriginal Economic Policy Research at the Australian National University has indicated a clear trend for increased employment of people with increased educational attainment. More specifically, individuals whose education had not advanced past Year 10 (the end of compulsory schooling) had reduced chances of employment.  

Indigenous people are the most identifiable disadvantaged group within Australian society with regard to employment. When compared with the rest of Australia's population, the Indigenous population has a lower employment to population ratio, a considerably higher unemployment rate and a lower labour force participation rate.

According to the National Aboriginal and Torres Strait Islander Survey, the main difficulty for unemployed people seeking work was that there were no jobs available in the local area, particularly in more remote regions, or that people had insufficient education to enable them to compete effectively for jobs. Around 27% of Indigenous persons aged 15 years and over were engaged in voluntary work, however, including hunting, fishing, or gathering food, working for community or sporting organisations, on committees and at a school or with youth groups.

4.1 Unemployment


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120 ABS. 'Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians', op. cit., at 34, 37.

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status of Indigenous (table A1) and non-Indigenous (table A2) populations from 1994-2000. According to these tables, the unemployment rate for Indigenous people reached its highest levels of 27.8% in 1994 and 25% in 1998, and descended to 20.9% in 1995 and 17.6% in 2000. This compares unfavourably with unemployment rates for non-Indigenous people which, over the same seven-year period, recorded their highest levels of 10.6% in 1994 and 9.7% in 1995, and lowest levels of 8.1% in 1999 and 7.3% in 2000.

According to ATSIC calculations, however, the unemployment rate in 1996 was 41.4% for Indigenous people, considerably higher than the official unemployment rate of 22.9%, especially compared to 8.5% for all Australians. Similarly, the overall employment rate for Indigenous people in 1996 was 30.8% of Indigenous people aged over 15 years (compared to 55% of the non-Indigenous population). These figures exclude Indigenous employment under the Community Development Employment Projects (CDEP) scheme.121

The CDEP scheme was established by the Australian government in 1976 to provide local employment opportunities for Indigenous people. The scheme operates as a voluntary work programme to encourage the unemployed to undertake community work in return for receipt of government unemployment benefits.122 It provides an income and job skills for individuals within Indigenous communities and organisations, which themselves determine the type of community development projects. The CDEP scheme had expanded to include 30,600 participants in 262 Indigenous communities by June 2000.123

CDEP funding can have a significant impact on measures of the Indigenous labour force by masking true unemployment rates. The Australian Bureau of Statistics classifies participants in the CDEP schemes as being employed, although it notes that this is a contentious issue for some analysts.

The impact of CDEP is very apparent in employment statistics, according to the Commonwealth Grants Commission’s 2001 report on Indigenous funding. If CDEP scheme participants — who account for nearly one-third of total Indigenous employment — were not included in the statistics, the Indigenous unemployment rate would be up to 40%. The report also noted that the CDEP scheme provides mostly part-time work, paid at rates equivalent to the unemployment allowance, 124 while the lack of a training component which might lead to employment outcomes restricts the effectiveness of the CDEP programme. 125

A recent review of the CDEP scheme stated that:

While it has been successful in improving employment, it has not been totally successful in raising income levels for Indigenous peoples. 126

4.2 Labour force data

According to the Australian Bureau of Statistics, in 2000, Indigenous people accounted for 1.2% of the total number of persons in employment overall. 127

Tables A1 and A2 in Appendix 3 show the official labour force status of Indigenous and non-Indigenous populations between 1994 and 2000, divided according to residence in capital cities of Australia, sparsely settled areas or elsewhere in the state.

According to this data, in 1994 the labour force participation rate (the number of people in the labour force expressed as a percentage of the population aged 15 years and over) was 63.4% for the non-Indigenous population, while for the Indigenous population it was 53.1%. By 2000, the labour force

participation rate for the non-Indigenous population had increased fractionally to 63.7%. In contrast, the labour force participation rate had decreased slightly to 52.9% for Indigenous people in 2000.

The labour force participation rate was considerably higher for Indigenous men, at 64%, than for Indigenous women, at 42.6%. The labour force participation rate was also considerably higher for men (72.9%) than for women (54.8%) in the non-Indigenous labour force.128

In 2000, there were approximately 110,900 Indigenous people aged 15 years or over in employment: 38,100 Indigenous people employed in capital cities, 12,200 employed in sparsely settled areas and 60,600 in the balance of the states. They represented 43.6% of the Indigenous population aged 15 years and over, compared with an employment to population ratio of 59% for the 8.8 million non-Indigenous employed people aged 15 years and over.

The employment to population ratio for Indigenous people was significantly higher (48%) in capital cities than in sparsely settled areas (26.5%), while the employment to population ratio for non-Indigenous people was 60% in capital cities and 76.4% in sparsely settled areas. Nearly 20% of the Indigenous population aged 15 years and over live in sparsely settled areas, however, which are generally remote areas where employment opportunities are scarce, in contrast with less than 1% of the non-Indigenous population aged 15 years and over.

The employment to population ratio was 51% for Indigenous males, compared with 36% for Indigenous females, while for non-Indigenous males the employment to population ratio was 68% and 51% for non-Indigenous females.129

4.3 Employment programmes
An independent report produced in 1998 by the Centre for Aboriginal Economic Policy Research at the Australian National University analysed the

129 ABS, 'Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians', ibid., at 7-8.
effort required to produce employment equity between Indigenous and non-Indigenous Australians. Based on 1996 Census data, it concluded that the growth in jobs for Indigenous Australians is unlikely to keep pace with the rise in the Indigenous working age population.

The report estimated that the mainstream (excluding CDEP) employment to population ratio for Indigenous people will decline from its already low level of 30.8% in 1996 to 27.4% in 2006, meaning that barely one-quarter of Indigenous people will be in mainstream employment. By comparison, the proportion of non-Indigenous adults in mainstream employment is expected to remain stable at 55%. The report also estimated that, under a worst-case scenario, unemployment rates amongst Indigenous people could increase to 48% by 2006.\textsuperscript{130}

In 1999, the Australian government launched a new Indigenous Employment Policy, with the support of Aboriginal and Torres Strait Islander leaders and employer groups, with the aim of increasing employment opportunities for Indigenous people leading to an improvement in participants' economic status. The policy has three components, including the Indigenous Employment Program (IEP). The IEP is intended to supplement Job Network (the mainstream employment programme under which job seekers are referred to contracted service providers) and to provide assistance in locations where Job Network either does not operate or is insufficient to meet local needs.\textsuperscript{131}

In 2001, the Commonwealth Grants Commission noted in its report on Indigenous funding that the Australian government's Job Network is delivering mixed results for Indigenous people. There are ongoing problems, such as a high degree of variability in Indigenous access to services and a lack of broad acceptance of Job Network within the Indigenous community, while employment outcomes for Indigenous people remain poor.

In contrast, although it was too early to detect a conclusive trend, the IEP was delivering a significant proportion of assistance to remote regions, and the employment outcomes being achieved under IEP appeared good, relative to outcomes for Indigenous people from mainstream employment programmes.\textsuperscript{132}

The report concluded, however:

\begin{quote}
The unemployment rate of Indigenous Australians is far higher than any other group in society. Given the demographic profile of Indigenous people, this situation will deteriorate further unless special efforts are made.\textsuperscript{133}
\end{quote}

The importance of economic independence and sustainability to Indigenous people and communities was emphasised in the report \textit{A Just and Sustainable Australia}:

\begin{quote}
The absence of a sound economic base in many Aboriginal communities, particularly for those living in traditional and often isolated areas, restricts job opportunities and the capacity for economic independence. Such inequities are increased by poor skill and literacy levels, overwhelming health and housing issues and poverty...effectively clos[ing] the labour market to many Indigenous people.\textsuperscript{134}
\end{quote}

\begin{flushleft}
\textsuperscript{134} Bennett, Scott. \textit{White Politics and Black Australians}, Allen & Unwin: St Leonards, 1999, quoted in Yencken, D & Porter, L, \textit{A Just and Sustainable Australia}, \textit{op. cit.}, at 43.
\end{flushleft}
5. Housing and standard of living

Housing is an important human need, as well as a common social and economic goal in Australia. Having a home that provides adequate shelter and basic services is an expectation of most Australians.

According to the 1996 Census of Population and Housing, Aboriginal and Torres Strait Islander people are disadvantaged in terms of housing need. There is a national shortfall of almost 39,000 bedrooms to house Indigenous families adequately.\textsuperscript{135}

5.1 Homelessness

By comparison with many countries and with international standards most Australians are adequately housed, but increasing homelessness and declining home ownership are a source for concern, particularly among Indigenous people.

Indigenous people are particularly vulnerable to homelessness, although this does not necessarily have the same meaning or manifest itself in the same way as for non-Indigenous people in Australia.

Research into Indigenous homelessness in 1997 found that Indigenous perceptions of homelessness differ from non-Indigenous perceptions in a number of ways, including spiritual forms of homelessness which relate to separation from traditional land or from family; overcrowding, which is a ‘hidden’ form of homelessness arising from Indigenous peoples’ reliance on assistance from extended families; transient and mobile lifestyles, often resulting from cultural obligations which result in temporary, intermittent and often cyclical patterns of homelessness; a relatively larger proportion of Indigenous people having to travel to access services; women and young people escaping unsafe environments; and lack of access to housing or having ‘nowhere to go’.\textsuperscript{136}


\textsuperscript{136} Keys Young. ‘Homelessness in the Aboriginal and Torres Strait context and its possible implications for the Supported Accommodation Assistance Program, Final Report’, 1998.
In 1996-97 it was estimated that there were approximately 12,000 homeless Indigenous Australians. In 1996, of those who did have a place to live, 7% lived in a dwelling with ten or more people. This was more than fifty times the proportion of non-Indigenous people living in such conditions.\textsuperscript{137}

5.2 Home ownership

Home ownership is an important indicator of social disadvantage, as it points both to the financial capacity of a household and also to the degree of security, privacy and autonomy that a household can enjoy.

After years of dispossession, high unemployment and under-employment, and little hereditary wealth, it is not surprising that there is a lower level of home ownership among the Indigenous population than in the general population. According to the Australian Bureau of Statistics table\textsuperscript{138} below, only 30.8\% of Indigenous households own or are purchasing their homes, compared to 70\% of households in the total population.

\textbf{Housing and living arrangements, 1996}

<table>
<thead>
<tr>
<th>Tenure type(a)</th>
<th>Owner/ purchaser</th>
<th>Renters</th>
<th>Household type(b)</th>
<th>One-family</th>
<th>Two or more families</th>
<th>Lone-person</th>
<th>Families(c)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Indigenous population</td>
<td>30.8</td>
<td>63.8</td>
<td>80.3</td>
<td>6.2</td>
<td>13.4</td>
<td>29.6</td>
<td></td>
</tr>
<tr>
<td>Total population</td>
<td>70.0</td>
<td>27.1</td>
<td>75.0</td>
<td>1.2</td>
<td>23.8</td>
<td>14.5</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{a} As a proportion of all households. Households with other tenure not shown.

\textsuperscript{b} Family and lone-person households only. The definition of Indigenous households does not encompass group households.

\textsuperscript{c} As a proportion of all families.

Source: 1996 Census of Population and Housing; Aborginal and Torres Strait Islander People (Cat. no. 2034.0); unpublished data, 1996 Census of Population and Housing.

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\textsuperscript{137} House of Representatives Standing Committee on Family and Community Affairs. *Health is Life*, op. cit., at 158-9.

\textsuperscript{138} ABS. *Australian Social Trends 2000*, op. cit., at 24.

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Economic, social and cultural rights of Indigenous peoples in Australia

Indigenous Rights in the Commonwealth project
Indigenous households and families are much more likely than the rest of the population to rely on renting, especially public housing and community housing, than to own or to be purchasing their homes. Nearly 64% of Indigenous households rent, compared to 27% of all Australian households.

Indigenous people also experience more crowding, with 3.7 people in Indigenous households nationally, compared to 2.7 people for non-Indigenous households. Nearly 7% of Indigenous households consisted of ten or more people, compared to 0.1% of non-Indigenous households. Although there are more Indigenous one-family households (80.3%) than one-family households in the total Australian population (75%), 6.2% of households in the Indigenous population consist of two or more families, compared to 1.2% of households in the total population. Similarly, only 13.4% of Indigenous households consist of one person, while 23.8% of households in the total Australian population are lone-person households.

The 2001 Commonwealth Grants Commission report on Indigenous funding confirmed that overcrowding and poor quality housing are significant issues in rural and remote regions, and that infrastructure needs “are still high in many small remote communities”, and recommended initiatives to promote home ownership if the housing needs of Indigenous people are to be met.

A 1996 evaluation report carried out by an independent statutory review body on ATSIC’s Home Ownership programme found, on the basis of data from the 1994 National Aboriginal and Torres Strait Islander Survey, that:

home ownership [was] significantly associated with a higher probability of mainstream employment, and a lower probability of criminal arrests and family violence, all of which are priority areas of government intervention. ... ATSIC home loan clients also reported a greater sense of economic empowerment, security, stability, enhanced lifestyle choices, and improved self-esteem.

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142 ATSIC. As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians (2nd ed), op. cit., at 33.

Economic, social and cultural rights of Indigenous peoples in Australia
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5.3 Household services

Indigenous people, particularly those living in rural and remote communities, frequently do not have access to a decent standard of living, which may be defined as adequate food, water and housing, and often live in areas without basic infrastructure such as roads and basic services.

In its 1999 Community and Housing Infrastructure Needs Survey, the Australian Bureau of Statistics found that over 90% of the permanent dwellings in Indigenous communities were community-owned or managed, while of the 18,565 dwellings in Indigenous communities, 2,284 or 12% were temporary or improvised occupied dwellings. Twenty-three per cent of the dwellings required major repairs and a further 10% needed to be replaced.\(^{143}\)

Whilst almost all permanent dwellings in Indigenous communities had the basic services of water, power and sewerage systems connected, the survey also indicated that there were substantial problems with the operation of these services. Of the 348 communities with a population of 50 or more, 58 had their water supply fail water testing, 57 experienced frequent power interruptions and 204 had had leakages or overflows in their sewerage system in the 12 months prior to the survey.

The lack of adequate housing, or difficulties with the supply of drinking water, electricity or sewerage systems, has a major impact on the quality of life in many Aboriginal and Torres Strait Islander communities.\(^{144}\)

5.4 Housing assistance

Approximately 20% of all Australian government expenditure on public and community housing is provided to Indigenous people, with ATSIC receiving the largest component for the Indigenous-specific housing programmes which it administers,\(^ {145}\) including the Community Housing and Infrastructure Programme which funds community housing targeted to


\(^{144}\) ABS, Year Book Australia 2001, op. cit., at 319.

\(^{145}\) Yencken, D & Porter, L. A Just and Sustainable Australia, op. cit., at 32-3.

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Economic, social and cultural rights of Indigenous peoples in Australia
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greatest need; the Home Ownership programme which lends money to assist low-income Indigenous families to purchase their own homes; and the Aboriginal Rental Housing Programme which allocates funds to provide Indigenous housing, particularly in rural and remote areas.

Based on results from the 1996 Census and the 1999 Community and Housing Infrastructure Needs Survey, ATSIC has estimated that, due to the accumulating backlog of Indigenous housing needs in rural, remote and urban areas, over $3 billion will be needed to bring housing to an adequate standard. At current funding levels it will take up to twenty years for the backlog to be redressed.146

The 2001 Commonwealth Grants Commission report on Indigenous funding has also stated that although data are not available to ascertain whether mainstream housing services are accessed equitably by Indigenous people in urban and rural regions where this form of housing is more common...[the small amount of mainstream funding allocated to remote regions in the past suggests that these funds do not generally target areas where the depth of Indigenous need is greatest.147

Clearly, increasing the level of funding and allocating it more appropriately according to need will be fundamental to ensuring that an adequate standard of living is provided for Indigenous households.

The report emphasised:

Improving housing for Indigenous people, who often do not have the same access to housing as others, is closely linked to desired improvements in overall well-being and socio-economic status.148

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5.5 Income

Many of the disadvantages Indigenous people face are due to their low incomes. Data from the 1996 Census showed that Indigenous people in Australia are over-represented in almost all income categories below $20,800, and under-represented in all income categories above this amount. They are two to three times more likely to be below the poverty line than non-Indigenous people.

In 1994 the National Aboriginal and Torres Strait Islander Survey reported that 72% of Indigenous families had family incomes within the range of the lowest two quintiles, making them the poorest 40% of all families.

The survey showed that the average income for full-time non-CDEP employed Indigenous people was $27,300, 13% lower than the average income for all full-time employed people in Australia. This figure decreased to an average income of $21,142 when all employed Indigenous people were included, 24% lower than the average income for all employed non-Indigenous workers, reflecting the greater reliance by Indigenous people on low-income and part-time work.

In 1996 the overall average income for Indigenous people aged 15 years and over was $14,200, 30% less than the average income ($21,100) for the total Australian population.

The table of comparative individual weekly income below, shows that in 1996 the median personal income of Indigenous people aged 15 years and over was $218 per week, approximately 65% of the median income of all Australians ($294):

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150 Yencken, D. & Porter, L. *A Just and Sustainable Australia*, op. cit., at 40.
152 ABS. ‘1996 Census of Population and Housing: Aboriginal and Torres Strait Islander People’, op. cit.

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Economic, social and cultural rights of Indigenous peoples in Australia
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### 5.2 INDIVIDUAL WEEKLY INCOME, BY AGE—PERSONS AGED 15 YEARS AND OVER(a)

<table>
<thead>
<tr>
<th>Age group (years)</th>
<th>15-24</th>
<th>25-44</th>
<th>45 and over</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDIGENOUS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Negative/nil income</td>
<td>9368</td>
<td>3140</td>
<td>1843</td>
<td>14381</td>
</tr>
<tr>
<td>$1-$159</td>
<td>22929</td>
<td>21592</td>
<td>12021</td>
<td>57442</td>
</tr>
<tr>
<td>$160-$299</td>
<td>15760</td>
<td>27113</td>
<td>15560</td>
<td>58442</td>
</tr>
<tr>
<td>$300-$399</td>
<td>5620</td>
<td>13113</td>
<td>3910</td>
<td>22643</td>
</tr>
<tr>
<td>$400-$599</td>
<td>4486</td>
<td>15117</td>
<td>4567</td>
<td>24170</td>
</tr>
<tr>
<td>$600-$799</td>
<td>960</td>
<td>6643</td>
<td>1872</td>
<td>9480</td>
</tr>
<tr>
<td>$800-$999</td>
<td>151</td>
<td>2144</td>
<td>732</td>
<td>3097</td>
</tr>
<tr>
<td>$1,000 or more</td>
<td>291</td>
<td>1642</td>
<td>793</td>
<td>2726</td>
</tr>
<tr>
<td>Not stated</td>
<td>7900</td>
<td>7345</td>
<td>4015</td>
<td>19260</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>67513</td>
<td>97848</td>
<td>46213</td>
<td>211574</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Median income(b)</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TOTAL</strong></td>
<td>142</td>
<td>265</td>
<td>217</td>
<td>218</td>
</tr>
</tbody>
</table>

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Not surprisingly, the median weekly income was higher for employed people than for those not working, but even among those employed, median incomes were lower for Indigenous than for non-Indigenous people. In 1996, the median income received by employed Aboriginal and Torres Strait Islanders was substantially less than that received by employed non-Indigenous people ($365 and $493 per week respectively).

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This difference is not explained by differences in occupations, level of qualifications held, or age. Indigenous employees had a lower median weekly income than non-Indigenous people for nearly every occupation group, except the group 'elementary clerical, sales and service workers' for which median incomes were similar. Indigenous people also had a lower median weekly income than non-Indigenous people for every level of qualification.

Consistent with this, Indigenous households had a lower median weekly income than all households ($540 and $632 respectively). Reflecting the greater number of people supported, household income calculated per capita was substantially lower for Indigenous households ($158 per week) than for the total population ($310 per week).

5.6 Poverty
Poverty is both a cause and a consequence of social indicators such as poor educational achievement, health, housing, employment and income levels. One of the major concerns identified by the Royal Commission into Aboriginal Deaths in Custody was the high incidence of poverty experienced by Aboriginal and Torres Strait Islander people.

Dr Boyd Hunter of the Centre for Aboriginal Economic Policy Research at the Australian National University has used the metaphor of 'three nations' to distinguish between the living standards of the Australian population, divided into rich and poor non-Indigenous Australians and Indigenous Australians:

> indigenous Australians are different from other poor and rich Australians in the nature and extent of destitution experienced in much of their community.

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...Indigenous living standards are qualitatively and quantitatively different to other poor and rich Australians.\textsuperscript{156}

Hunter described a current tendency in Australian society and public debate to appeal for unity and equal treatment. There is a perception within some sectors of the Australian community that government expenditure on Indigenous services results in Indigenous people being treated more favourably, rather than an understanding that these measures are intended to redress Indigenous disadvantage and to meet Australia's international human rights obligations.

This is reflected in the emphasis in government administration and policy on treating Indigenous people as if they are or should be the same as non-Indigenous people, and attempting to 'mainstream' Indigenous-specific programmes and services to minimise the possibility of 'downward envy' against Indigenous Australians.

He warned that this might have an adverse impact on Indigenous outcomes if the causes of indigenous poverty are fundamentally different to those of other poverty:

[in areas such as housing] treating the indigenous and other poor in the same manner may [perpetuate] the relative disadvantage of the indigenous community.\textsuperscript{157}

\textsuperscript{156} Hunter, Boyd, 'Three Nations, Not One: Indigenous and other Australian poverty', \textit{op. cit.}, at v, vii.
\textsuperscript{157} Hunter, Boyd. 'Three Nations, Not One: Indigenous and other Australian poverty', \textit{ibid.}, at 16.
6. Law and society

6.1 Criminal justice system
The operation of the criminal justice system, including law enforcement, the
courts and incarceration, impacts particularly heavily on sectors of the
Aboriginal and Torres Strait Islander population. This was highlighted
during the course of the Royal Commission into Aboriginal Deaths in
Custody,¹⁵⁸ set up in 1987 to investigate the disproportionately high number
of deaths of Aboriginal people held in police and prison custody (discussed
in section 6.3 of this report).

The National Aboriginal and Torres Strait Islander Survey, carried out by the
Australian Bureau of Statistics in 1994, included a section on law and justice
issues and involvement with the criminal justice system. Of 197,500
Indigenous respondents aged 13 years and over, more than 20% reported
having been arrested or detained by police in the five years leading up to the
survey (1989-94). Young men in the age group 18-24 years showed a
particularly high proportion of arrest (46%) and 32% of these had been
arrested more than once over the five years.¹⁵⁹ In 1994 some 25% of
Indigenous people between 18 and 44 had been arrested at least once in the
past five years.¹⁶⁰

The most frequently reported reason for arrest (32% of those arrested) was
“disorderly conduct/drinking in public”, followed by drink driving offences
(23%). Almost 10% of the population surveyed claimed that they had been
“hassled” by the police in the previous 12 months, and 4% of males stated
that they had been physically assaulted by police during the previous year.

Substantial proportions of Indigenous people surveyed felt that police were
not doing a good job in dealing with crime (27%), violence (22%) or family
violence (21%). Nationally, the reason most frequently given for police not

¹⁵⁸ ABS. Year Book Australia 1999, op. cit., at 318.
¹⁵⁹ ABS. 'Occasional Paper: National Aboriginal and Torres Strait Islander Survey – Law and
¹⁶⁰ House of Representatives Standing Committee on Family and Community Affairs. Health
is Life, op. cit., at 158.

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doing a good job in dealing with violence and with crime generally was that police were “too slow to respond”, accompanied by the perception that police “don’t understand Aboriginal/Torres Strait Islander people/culture” and “don’t fully investigate”. Failure to understand the people and culture was the reason most frequently cited in the area of family violence, followed by “too slow to respond”.

While the majority of respondents to the survey thought that Indigenous people’s relationships with the police were better or about the same compared to five years earlier, 19% believed that they had worsened.

The establishment of positions for community police and police liaison officers has been a welcome step towards addressing these problems and improving relations between the police forces and Indigenous people and communities.

There were a number of characteristics which were significantly associated with the probability of arrest over the previous five years, adjusting for other relevant characteristics. The strongest association was with labour force status, or being unemployed. This was followed by perceiving that relations with the police had worsened over the previous five years, age group, state of residence, and having been taken away from family as a child.\footnote{ABS, ‘Occasional Paper: National Aboriginal and Torres Strait Islander Survey – Law and Justice Issues’, \textit{op. cit.}}

\section*{6.2 Imprisonment}
Aboriginal and Torres Strait Islander people are heavily over-represented in Australian prisons. Trends in Indigenous adult imprisonment over the last decade showed an increase of 65% between 1988 and 1995. There has also been an upward trend in the number of Indigenous youth incarcerated that has increased by 55% in recent years. Increases in Indigenous adult and juvenile imprisonment have outstripped any increase among non-Indigenous people.\footnote{ATSIC, ‘Issues: Law and Justice: Royal Commission into Aboriginal Deaths in Custody’, \texttt{www.atsic.gov.au/issues/law_and_justice/rciadic/establishments_findings_outcomes/executive.asp}, as at 7 July 2001.}
In 1997, the incarceration rate for Indigenous adults was over fourteen times that for other adult Australians. Indigenous children are also significantly over-represented in the juvenile justice system, with about 41% of the children in corrective institutions in 1996 being Indigenous.\(^{163}\)

A table of prisoners and imprisonment rates,\(^{164}\) below, shows that as at 30 June 1998, there were 3,750 Aboriginal or Torres Strait Islander prisoners in Australia, representing 19% of the total prisoner population. This was nine times the proportion of Indigenous people in the general population (2%).

<table>
<thead>
<tr>
<th>Prisoners and imprisonment rates, 1998</th>
<th>Unit</th>
<th>Indigenous prisoners</th>
<th>All prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>no.</td>
<td>3,750</td>
<td>19,906</td>
</tr>
<tr>
<td>Median age</td>
<td>years</td>
<td>27.5</td>
<td>30.0</td>
</tr>
<tr>
<td>Rate of imprisonment(a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aged 18–19 years</td>
<td>rate</td>
<td>1,888</td>
<td>196.9</td>
</tr>
<tr>
<td>Aged 20–29 years</td>
<td>rate</td>
<td>2,837</td>
<td>311.3</td>
</tr>
<tr>
<td>Aged 30–39 years</td>
<td>rate</td>
<td>1,877</td>
<td>197.1</td>
</tr>
<tr>
<td>Aged 40 years or over</td>
<td>rate</td>
<td>460.2</td>
<td>54.6</td>
</tr>
<tr>
<td>All prisoners(b)</td>
<td>rate</td>
<td>1,663</td>
<td>139.0</td>
</tr>
<tr>
<td>Offences committed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assault</td>
<td>%</td>
<td>24.3</td>
<td>12.0</td>
</tr>
<tr>
<td>Break and enter</td>
<td>%</td>
<td>14.7</td>
<td>13.4</td>
</tr>
<tr>
<td>Drugs(c)</td>
<td>%</td>
<td>1.2</td>
<td>9.2</td>
</tr>
<tr>
<td>Fraud and misappropriation</td>
<td>%</td>
<td>1.3</td>
<td>4.0</td>
</tr>
</tbody>
</table>

(a) Rate per 100,000 people.
(b) Includes 17 year old prisoners in some States.
(c) Includes possession/use, dealing and growing/manufacturing of drugs.


In 1998 Indigenous people were approximately twelve times as likely as other people to be imprisoned (1,663 Indigenous adults per 100,000 were imprisoned, compared to 139 per 100,000 of total Australian adults), and were much more likely to be imprisoned in every age group. In 2000-2001 the

\(^{163}\) House of Representatives Standing Committee on Family and Community Affairs. Health is Life, op. cit., at 158.
\(^{164}\) ABS. Australian Social Trends 2000, op. cit., at 24.
national imprisonment rate per 100,000 Indigenous adults had increased to 1,727.4, compared with a rate of 115.6 for non-Indigenous prisoners.\textsuperscript{165}

Aboriginal and Torres Strait Islander prisoners were also more likely to be imprisoned at a younger age than the total prisoner population. The median age of Indigenous prisoners was 27 years, compared with 30 years for all prisoners. The rate of imprisonment of Indigenous young people aged 18-19 years (although this figure includes prisoners as young as 17 years in some states) was 1,888 per 100,000 Indigenous young people, contrasted with a low 196.9 for all young prisoners per 100,000 people in the total population.

There were differences in the Indigenous and total imprisonment rates according to state, but in 1998 the Indigenous rate was at least six times the total rate in most states and territories. The Northern Territory recorded the highest proportion of Indigenous prisoners to all prisoners (73%), followed by Western Australia (32%).\textsuperscript{166}

In December 1999, according to the ABS, the imprisonment rate in Western Australia was 2,972 Indigenous prisoners per 100,000 Indigenous people, 21 times the non-indigenous rate, while in the Northern Territory 67% of all prisoners were Indigenous. By 2000-2001, Indigenous imprisonment rates were highest in Western Australia and lowest in Tasmania.\textsuperscript{167}

Indigenous prisoners were more likely to have been imprisoned for assault (24%) than all prisoners (12%), and less likely to have been imprisoned for drug related offences (1%) than all prisoners (9%).\textsuperscript{168}

Although in 1999 there were more Indigenous men (3,600 adult male prisoners or 3,300 prisoners per 100,000 Indigenous men) in prison than Indigenous women (300 adult female prisoners or 260 prisoners per 100,000 Indigenous women), the over-representation of Indigenous women in prison

\textsuperscript{165} Productivity Commission Steering Committee for the Review of Commonwealth/State Service Provision. 'Fact Sheet: Government Services and Indigenous People', \textit{op. cit.}, at 19.

\textsuperscript{166} ABS, \textit{Australian Social Trends 2000}, \textit{op. cit.}, at 24.

\textsuperscript{167} Productivity Commission Steering Committee for the Review of Commonwealth/State Service Provision. 'Fact Sheet: Government Services and Indigenous People', \textit{op. cit.}, at 19.

\textsuperscript{168} ABS, 'Occasional Paper: National Aboriginal and Torres Strait Islander Survey – Law and Justice Issues', \textit{op. cit.}

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was higher than the over-representation of Indigenous men. Indigenous women are nineteen times more likely than non-Indigenous women to be imprisoned, while Indigenous men are fifteen times more likely than non-Indigenous men to be imprisoned.

In the Northern Territory, 60% of all adult female prisoners were Indigenous, and Indigenous women were nine times more likely to be imprisoned than non-Indigenous women. In Western Australia, 40% of all adult female prisoners were Indigenous, and Indigenous women were 27 times more likely than non-Indigenous women to be imprisoned.  

A study of the determinants of educational attainment found that the experience of arrest reduced the likelihood of a young person being in secondary school by approximately 26% for males and 18% for females. Living in households where a family member has been arrested or has a history of arrest also has a negative impact, reducing an Indigenous young person’s chances of being in school by an additional 23% for males and 20% for females. In view of the high level of involvement with police and the rate of incarceration of Indigenous people, these are disturbing statistics.  

6.3 Aboriginal Deaths in Custody
In 1987, a Royal Commission was set up to investigate the disproportionately high number of deaths of Aboriginal people held in police and prison custody, specifically, 99 Aboriginal deaths in custody which occurred between January 1980 and May 1989.

The number of deaths aroused grave concern among members of the Indigenous and non-Indigenous communities alike. If non-Aboriginal people had died in custody at the same rate over the same period, for example, there would have been nearly 9,000 deaths in the non-Indigenous community.

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Between 1987 and 1990, the Royal Commission investigated the underlying social, cultural and legal issues behind the deaths in custody, examining the position of Indigenous people in relation to health, housing, education, employment and income, as well as the immediate circumstances surrounding them.

The Commission's five-volume final report, tabled in May 1991, discussed the ways in which the attitudes of the dominant non-Indigenous society, racism both overt and hidden, and institutional racism, adversely affected Aboriginal people, and how some laws weighed unequally upon Aboriginal people.

The report concluded that although there was no evidence that any of the deaths had been caused by deliberate violence or brutality on the part of police or prison officers or administrations, the cases revealed that there was little appreciation on the part of these officers of the duty of care they owed to those in their custody. In some cases, this lack of care was identified as a factor in the deaths.

The unacceptably high rate at which Indigenous people were dying in custody was directly related to the gross disproportion of Indigenous people in custody across Australia. The report noted that:

the more fundamental causes for the over-representation of Aboriginal people in custody are not to be found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place. ...the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society - socially, economically and culturally.\(^\text{172}\)

Furthermore, it was apparent in every case examined by the Commission that

the Aboriginality of those who died played a significant and in most cases dominant role in their being...and dying in custody.\(^\text{173}\)


The national report made 339 wide-ranging recommendations designed to reduce the number of Indigenous people taken into custody, remedy social disadvantage and achieve the empowerment and self-determination of Indigenous society. One of these recommendations, in view of the absence of reliable information on Indigenous peoples, was that the Australian Bureau of Statistics conduct the 1994 National Aboriginal and Torres Strait Islander Survey.\textsuperscript{174}

The implementation of some Royal Commission recommendations has led to a degree of improvement in Indigenous imprisonment, including a reduction in Indigenous deaths in custody in police cells; a growing awareness by custodial and medical staff of issues concerning the proper treatment of both Indigenous and non-Indigenous prisoners; and a greater commitment to cross-cultural training for police, the judiciary and other criminal justice staff. There has also been a growth in Indigenous community-based initiatives, including night patrols, cell visitor schemes, elders groups involved in community sanctioning and Indigenous-run community programmes for offenders.

Independent national reviews commissioned by ATSIC to evaluate government implementation of the recommendations, however, suggest that many have not been implemented, despite all Australian governments committing themselves to implementing the majority of them. This has been largely due to a lack of will, and to the adoption of more punitive approaches to law and order issues in many states and territories.

Several of the independent reports found that the Royal Commission’s recommendations still have enormous potential to reform key aspects of criminal justice administration and to reduce significantly the number of Aboriginal and Torres Strait Islander people in custody.\textsuperscript{175}

Despite the Royal Commission, Indigenous people remain dramatically over-represented in the criminal justice system, and deaths in custody are still occurring at unacceptably high levels. While there has been some reduction

\textsuperscript{174} ABS. Year Book Australia 1999, op. cit., at 318.
\textsuperscript{175} ATSIC. ‘Issues: Law and Justice: Royal Commission into Aboriginal Deaths in Custody’, op. cit.
in the overall number of people held in police custody, the proportion of Indigenous people held in police custody has increased slightly since the 1980s.

Recent data show that in 2000, of the 25 deaths in policy custody and custody-related operations around Australia, five were Indigenous deaths: two in New South Wales and one each in Queensland, Western Australia and South Australia.\textsuperscript{176}

\textbf{6.4 Violence}

Personal safety is an essential element of well-being, and Indigenous people are more likely than other Australians to be victims of violence. In 1997-99, deaths due to external causes, such as accidents, intentional self-harm and assault, accounted for 16\% of all Indigenous deaths, three times more than all-Australian rates. The majority (71\%) of these deaths were of men and were caused by intentional self-harm (34\%) and transport accidents (27\%), while the main causes of death due to external causes among Indigenous women were transport accidents (31\%), assault (19\%) and intentional self-harm (17\%).\textsuperscript{177}

According to the 1994 National Aboriginal and Torres Strait Islander Survey, of those Indigenous people aged 13 years or more who said they had been attacked or verbally threatened in the year prior to the interview, some 44\% indicated they had been attacked or threatened on three or more occasions.

Approximately 45\% of Indigenous respondents aged 13 years and over believed that family violence was a common problem in their area. Lower proportions of capital city residents perceived family violence to be a common problem in their area than respondents of other urban or rural areas. Only 12\% of Tasmanian Indigenous people felt that family violence was a common problem locally, compared with 45\% nationally and 55\% in Western Australia.\textsuperscript{178}

\textsuperscript{176} Productivity Commission Steering Committee for the Review of Commonwealth/State Service Provision. 'Fact Sheet: Government Services and Indigenous People', \textit{op. cit.}, at 3.

\textsuperscript{177} ABS & AIHW. 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2001', \textit{op. cit.}, at 117.

\textsuperscript{178} ABS, 'Occasional Paper: National Aboriginal and Torres Strait Islander Survey – Law and Justice Issues', \textit{op. cit.}
Women in every age group were more likely than men to perceive family violence as a common problem. This was confirmed in 1999, when the Queensland government established an Aboriginal and Torres Strait Islander Women’s Task Force on Violence. The Task Force, chaired by Ms Boni Robertson, was commissioned by the Queensland government to identify the issues leading to violence against women, children and families in Aboriginal and Torres Strait Islander communities in Queensland, as well as to advise on possible strategies or solutions to address the violence.

Their report discussed the alcohol and substance abuse, physical and mental health problems, high unemployment, low educational attainment, isolation, poverty, dispossession, marginalisation and cultural fragmentation, which were a cause and also an effect of the different forms and cycle of violence in many Indigenous communities:

We do not need to be psychiatrists to see that violence is often the last resort for people living with a sense of hopelessness and despair.

Overwhelmingly, the report concluded, Indigenous women simply wanted an end to violence, alcohol and drug misuse, and to have their families reunited, although they believed that the plight of Indigenous men should also be acknowledged and addressed in order for Indigenous people to work collectively.

A 2001 federal government study into violence in Indigenous communities noted that the types of violence - defined as spouse assault, homicide, rape and sexual assault, child violence, suicide, self-injury, inter-group violence, psychological abuse, economic abuse, cyclic violence and dysfunctional

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180 Aboriginal and Torres Strait Islander Women’s Task Force on Violence. The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report, op. cit., at vi-vii.

181 Aboriginal and Torres Strait Islander Women’s Task Force on Violence. The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report, ibid., at xxxiii-xxxiv.

182 Aboriginal and Torres Strait Islander Women’s Task Force on Violence. The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report, ibid., at 277.
community syndrome - are worsening and the rates of violence are increasing in some Indigenous communities and regions.\textsuperscript{183}

One researcher suggested that a factor defined as "cultural exclusion" is impacting severely on Aboriginal and Torres Strait Islander men in particular, whose feelings of helplessness and powerlessness are underscored by their increasing economic and social reliance on the women in their communities. This "cultural exclusion" is preventing Aboriginal people from realising the ideals of the dominant culture, particularly those in remote regions such as northern Australia, who lack the linguistic, educational, economic and political means for manoeuvring within the mainstream power structure:

\begin{quote}
In a system [of welfare dependency] that discourages substantial upward mobility, stifles dissonance and prevents total collapse, Aborigines of isolated Australia are suspended, immobile, powerless and contained.\textsuperscript{184}
\end{quote}

The study indicated that mainstream programmes for resolving, combating or preventing violence often failed to be culturally relevant to Indigenous people, while initiatives which had emerged from within Indigenous communities and did meet community aspirations tended to perform better. Programmes run by, as well as for, Indigenous people also re-establish community authority and community ownership and management of and responsibility for local justice issues and problems.\textsuperscript{185}

One anti-violence strategy currently achieving success in reducing violence in Indigenous communities in Canada and New Zealand is based on the ideology of 'Heal the spirit and you will heal the problems', although this approach does not appear to have been adopted in Australia.\textsuperscript{186}

In 2001 the Queensland government also commissioned an inquiry, headed by Mr Tony Fitzgerald QC, into issues of law and justice, including the

\textsuperscript{186} Memmott, Paul, Stacy, Rachael, et al. Violence in Indigenous communities, \textit{ibid.}, at 100.
causes, nature and extent of violence and alcohol abuse in Indigenous communities in Cape York, in far north Queensland.

The report found that a destructive cycle of social and economic privation prevailed in many of the small, poor and remote communities, where "the lives of the people are ravaged by tragedy, poverty, alcohol and other substance abuse, violence and poor health." 187 On these communities Aboriginal women are 104 times more likely to be assaulted than non-Indigenous women in Queensland, many babies are born with foetal alcohol syndrome, and life expectancy for Cape York's Indigenous people is 25 years less than for the general population.

Although the report attracted national media attention, it was also received with some reserved cynicism. Boni Robertson, who headed the Aboriginal and Torres Strait Islander Women's Task Force on Violence in 1999, commented that the Cape York Justice Study report covered "old ground... We need to get beyond the inquiry stage now and do something about it." 188

The double challenge facing governments, as well as Indigenous and non-Indigenous communities, is to empower Indigenous people to solve these problems, since violence in Indigenous communities is likely to be resolved best by the communities themselves.

6.5 Legal services
Not many Indigenous young people or adults had sought assistance from a legal service. Overall, 15% of Indigenous people aged 13 years and over had used legal services in the twelve months leading up to the 1994 survey, 19% of males and 12% of females. The majority (67%) of these had used a specialist Aboriginal Legal Service, rather than a state- or territory-provided legal aid service, private legal practitioner or other form of legal service.

The majority of the work carried out by most Aboriginal Legal Services is in the area of criminal law. This can occupy their resources to the exclusion of

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188 Charlton, Peter. 'Shouting to be heard', The Courier-Mail, 21 November 2001, at 15.
many Aboriginal and Torres Strait Islander women, who primarily seek legal assistance for family law matters.

This highlights the importance of providing a variety of Indigenous-specific and culturally appropriate legal aid services to cater for Indigenous men and women. Greater numbers and a wider distribution are needed: over 80% of Indigenous people living in rural areas were more than 50 kilometres from the nearest legal service, as were 57% of those living in non-capital city urban areas.\textsuperscript{189}

\textbf{6.6 Mandatory sentencing}

Mandatory sentencing legislation, which was introduced into Western Australia in 1996 by amendments to the \textit{Criminal Code} 1913 (WA) and into the Northern Territory in 1997 by amendments to the \textit{Sentencing Act} 1995 (NT) and the \textit{Juvenile Justice Act} 1993 (NT), imposes mandatory sentences of imprisonment or detention following convictions for certain property offences.

In October 2001, a change of government in the Northern Territory led to the substantial winding back of mandatory sentencing legislation. Western Australia is now the only state in Australia which imposes minimum mandatory terms of imprisonment for property offences, although mandatory sentencing legislation has recently been under review by a Western Australia Ministry of Justice inquiry.\textsuperscript{190}

Although on the face of it the legislation appeared to be neutral and non-discriminatory, and moreover proved electorally popular in both Western Australia and the Northern Territory, it was strongly criticised by human rights and community groups around Australia for its disproportionate and discriminatory impact on Indigenous people, particularly Indigenous young people.

\textsuperscript{189} ABS, 'Occasional Paper: National Aboriginal and Torres Strait Islander Survey - Law and Justice Issues', \textit{op. cit.}

Mandatory sentencing, combined with the over-representation of Indigenous people in the justice system, increases the imposition of mandatory custodial sentences, since Indigenous people are more likely to have a previous record of convictions and to appear in court for offences, and thus are more likely to fall within the scope of the mandatory sentencing regimes.

ATSIC observed that the principal offences which fell within the mandatory sentencing regimes were those most likely to be committed by Indigenous people, while the types of offences which were most likely to be committed by non-Indigenous people, such as 'white collar' fraud, were excluded from these regimes.191

Mandatory sentencing also imposes penalties which are not only obligatory, thereby removing the possibility of judicial discretion for extraordinary or mitigating circumstances, but can be disproportionate to the severity of the crime committed.

An additional discriminatory factor was the location of detention centres in Western Australia and the Northern Territory, most of which are hundreds if not thousands of kilometres away from many Indigenous communities. Indeed, the removal and incarceration of Indigenous young people away from their families was one of the destabilising factors investigated and criticised by the Royal Commission into Aboriginal Deaths in Custody, which recommended:

that governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.192

International criticism of Australia’s mandatory sentencing legislation was levelled by UN human rights expert treaty bodies. The Committee on the Elimination of All Forms of Racial Discrimination and the Human Rights Committee, in March and July 2000 respectively, expressed their concern


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about its racially discriminatory impact and the disproportionate nature of the punishments imposed on Indigenous peoples.

Both Committees questioned the compatibility of the mandatory sentencing laws with Australia’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. They urged the Australian government to review the mandatory imprisonment legislation in Western Australia and the Northern Territory, on the basis that it allowed penalties which were disproportionate to the seriousness of the crimes committed and, in addition, that it appeared to be inconsistent with strategies undertaken by Australian (including state and territory) governments to reduce the over-representation of Indigenous people in the criminal justice system.\textsuperscript{193}

Although the Australian government has the power to enact legislation overriding state and territory laws, it chose not to do so in the case of mandatory sentencing.

6.7 The ‘Stolen Generations’
Over the past two hundred years, Aboriginal and Torres Strait Islander peoples have been subject to government policies which have attempted variously to displace, isolate or eventually assimilate them.

Many Indigenous groups were rounded up and moved to reserves or missions, sometimes hundreds of kilometres away. This frequently removed them from their traditional lands, and also placed different tribal peoples, and sometimes warring groups, together on the same land, exacerbating the potential for conflict.

Indigenous people were forbidden to speak their traditional languages or practise their culture, and were required to seek official permission before leaving the missions or reserves. Indigenous workers on reserves or missions

were often excluded from industrial awards and their wages were held in trust by police or mission managers who arbitrarily gave them 'pocket money'. In some areas this was the practice until relatively recently, continuing until 1972 in the state of Queensland. Many Aboriginal and Torres Strait Islander workers never received the money which was withheld from their wages, and are still awaiting compensation.

In 1937 Australian federal and state governments agreed to attempt to assimilate those Indigenous people not of 'full blood' into the wider population. In 1951, this policy was extended to all Aboriginal people. The assimilationist policies were intended to assist the Aboriginal 'problem' to disappear - the people would lose their culture and their identity within the wider community.194

The policies of assimilation reached their peak between 1910 and 1970, during which period many Indigenous children were removed from their families and communities and placed in non-Indigenous community, government or church institutions or homes.

The 'stolen' children were isolated from their families and their traditional lands. Often they were not told about their Indigenous status, while some were told that they were Greek, Italian, Asian or a descendant of some other culture. Initially the foster homes were with non-Aboriginal families, although from the late 1960s placements began with Aboriginal families. While many Aboriginal families tried to have their children returned, they were not successful against the government system.

The 1994 National Aboriginal and Torres Strait Islander Survey found that more than 10% of people aged 25 years and over reported being taken away from their natural family. This compared to less than 2% for people aged 14 years or under. Of the 12,500 people who reported being taken away from their natural families, 31.7% were raised by non-Aboriginal or Torres Strait

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194 ATSIC. As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians (2nd ed), op. cit., at 10.
Islander adoptive or foster parents, 30.7% by missions, and 27.9% by orphanages or children’s homes.\textsuperscript{195}

In 1995 a national inquiry was established and conducted by Australia’s Human Rights and Equal Opportunity Commission to examine the policies, events and outcomes in the cases of forcible removal of Indigenous children from their families. The Commission heard submissions and evidence from government, community and church representatives as well as from hundreds of Indigenous people and families who had been affected.

The inquiry concluded that between 1910 and 1970, between one in three and one in ten Indigenous children had been forcibly removed from their families and communities as a result of government policies at the time. In 1997 it submitted its report of the inquiry, entitled ‘Bringing Them Home’.

The devastating effects of the removal of the ‘Stolen Generations’ are considered to have directly or indirectly affected every Indigenous family in Australia. Aboriginal people suffered intense feelings of powerlessness, anguish, loss, grief and bereavement as a result of these separations. They lost their identity, culture, spirituality and their land, a particularly significant loss in view of the spiritual, cultural, political and economic importance which the land has for Indigenous peoples. This has resulted in high rates of depression, suicide, self-injury, violence, substance misuse, as well as other mental and physical health problems Australia.\textsuperscript{196}

It is worth noting that the Royal Commission into Aboriginal Deaths in Custody found that 43 of the 99 deaths it investigated were people who had been separated from their families as children.\textsuperscript{197}


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ATSIC, together with church groups and other community organisations, has called upon the Australian government to offer a formal apology to Indigenous people and communities, particularly to the Stolen Generations themselves, for past government policies which permitted the removal of Indigenous children from their families and communities.

The Australian Senate has apologised to Indigenous people, while the government has expressed regret but declined to apologise, on the basis that these policies were a product of their time and not intended to be harmful and are not the responsibility of present governments.

In contrast, a number of formal apologies have been offered to Indigenous people and communities for practices and policies that were responsible for the Stolen Generations by state governments, churches, trade unions, local governments, non-governmental organisations, and thousands of individuals and community groups around Australia, and indeed internationally.\(^\text{198}\)

In 2000, the Committee on the Elimination of All Forms of Racial Discrimination criticised the Australian government’s apparent hostility to a just settlement with the ‘stolen generations’ of Indigenous children, and found that the Australian government was in breach of the Convention on the Elimination of All Forms of Racial Discrimination.

The matter of an apology has also been linked to the process of reconciliation between Indigenous and non-Indigenous Australians.

### 6.8 Reconciliation

Reconciliation has been described as “a means of dealing with Indigenous disadvantage and promoting tolerance and respect in the wider Australian community” or, more specifically,

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\(^{198}\) The Pope recently offered another formal and unreserved apology to the Indigenous peoples of Oceania for past “shameful injustices” of the Catholic Church, including the forcible separation of Indigenous children from their families. Vatican website: [www.vatican.va](http://www.vatican.va), as at 24 November 2001.

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[2] Indigenous Rights in the Commonwealth project
a vehicle for developing a better understanding of Aboriginal history, culture and society and for closer contacts between Aboriginal and other Australians for mutual learning and collaboration and for mutual care and respect for the land.\textsuperscript{199}

The process of reconciliation dates back to the late 1980s, when ATSIC was established in 1990 by the Australian government under the \textit{Aboriginal and Torres Strait Islander Commission Act 1989} (Cth), to replace the Department of Aboriginal Affairs with an independent statutory authority elected by Aboriginal people.\textsuperscript{200}

In 1991, the Australian government voted unanimously to establish the Council for Aboriginal Reconciliation and to commence a formal reconciliation process to be concluded by the year 2001, the centenary of Australian Federation.

The Council, composed of Indigenous and non-Indigenous community and political leaders, was established to address and facilitate the process of 'reconciliation', with the object of

promoting a process of reconciliation between Aborigines and Torres Strait Islanders and the wider Australian community...\textsuperscript{201}

The Council headed a steady groundswell of popular support for increased recognition of Indigenous rights in all areas. In May 2000, the formal process of reconciliation culminated in the presentation of documents by the Council to the Prime Minister: a Declaration of Reconciliation and four National Strategy proposals for economic independence; to address Aboriginal and Torres Strait Islander disadvantage; to promote recognition of Aboriginal and Torres Strait Islander rights; and to sustain the reconciliation process.\textsuperscript{202}

\textsuperscript{199} Yencken, D & Porter, L. \textit{A Just and Sustainable Australia}, op. cit., at 43.

\textsuperscript{200} ATSIC. \textit{As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians} (2\textsuperscript{nd} ed.), op. cit., at 24-5.


In many respects, the Council for Aboriginal Reconciliation and the community-based reconciliation movement achieved a great deal during the 1990s ‘decade of reconciliation’, moving the formal process of reconciliation from the periphery to the heart of the national political and social agenda.\textsuperscript{203}

This was particularly evident in 2000, when community support for reconciliation was expressed by crowds of around a quarter of a million people attending a People’s Walk for Reconciliation across the Sydney Harbour Bridge. Many thousands more people joined similar bridge walks and related events on the same day and in following weeks in cities and towns around Australia.\textsuperscript{204}

The issue and politics of reconciliation also emerged as a central theme of the 2000 Sydney Olympics, which brought Aboriginal athletes such as Cathy Freeman to international prominence, and paid homage to Indigenous peoples and culture in the opening and closing ceremonies. ATSIC Chair Geoff Clark referred to the opening ceremony of the Sydney Olympics as “a celebration of our survival...a milestone on the road to reconciliation”.\textsuperscript{205}

The Aboriginal and Torres Strait Islander flags are increasingly recognised and flown to celebrate public events such as National Reconciliation Week and National Aboriginal and Islander Day Observance Committee (NAIDOC) Week, and to acknowledge Indigenous public figures. There are increasing numbers of Indigenous elected representatives on local government councils, although there have been few Indigenous people at the state or territory government level and only two Indigenous politicians have ever been elected to Australia’s federal parliament.

There is growing recognition among non-Indigenous Australians that Aboriginal and Torres Strait Islander people were treated badly in the past. There is little understanding, however, of the effects that this may have on


\textsuperscript{204} Yencken, D & Porter, L. A Just and Sustainable Australia, op. cit., at 78-9.

contemporary Indigenous people. This may be in part because Indigenous people have little impact on the daily lives and experiences of non-Indigenous Australians, many of whom will never come into contact with an Aboriginal or Torres Strait Islander person.

There is also a general reluctance in Australian society and public debate to discuss the history of colonialism and its legacy of Indigenous disadvantage, much less to address them. Many continuing breaches of the economic, social and cultural rights of Indigenous peoples may be attributed to a lack of understanding in Australian society of the long-term impacts of colonisation:

While there is less overt prejudice towards Indigenous people today, non-Indigenous Australians are still reluctant to accept the level of disadvantage faced by Indigenous people and the extent of the effort needed to redress these problems.

Commissioner Elliott Johnston QC, heading the Royal Commission into Aboriginal Deaths in Custody, noted in the 1991 National Report:

Non-Aboriginal Australia must face the fact that for a very long time we have proceeded on the basis that Aboriginal people were inferior, were unable to make decisions affecting themselves, that we knew what was best for them, that we had to make decisions affecting them; it became second nature for us to have that attitude. It is very easy for us to adopt that attitude without even being aware that we are adopting it.

...I say very frankly that when I started upon my work in this Commission I had some knowledge of the way in which broad policy had evolved to the detriment of Aboriginal people and some idea of the consequences. But, until I examined the files of the people who died and the other material which has come before the Commission and listened to Aboriginal people speaking, I had no conception of the degree of pin-pricking domination, abuse of personal power, utter paternalism, open contempt and total indifference with which so many Aboriginal people were visited on a day to day basis.

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208 Yencken, D & Porter, L. A Just and Sustainable Australia, op. cit., at 43.
Although Australians today cannot be held responsible for the past, clearly they have benefited from the dispossession of Indigenous people. As High Court Justice Gerard Brennan noted in his judgement in the landmark native title Mabo case (discussed in section 7.8 of this report), Aboriginal dispossession “underwrote the development of Australia”.210

Professor Henry Reynolds has noted the absence from mainstream historical writing in the late 19th and early 20th centuries of stories concerning Indigenous people and frontier conflict. The popular myths of colonial Australia and its pioneering men and women, which are integral to the contemporary Australian sense of nationalism, have been based on such historical absences, which he described as a “cult of forgetfulness practised on a national scale”,211 one which has been impeding the process of reconciliation:

And telling the truth is central to the Aboriginal agenda for reconciliation. [Indigenous peoples] want to have the truth told about numerous things – about the taking of the children, about the exploitation of labour, the systematic abuse of women. ...They want white Australia to own, to accept, to identify with a past that they know only too well.

Reconciliation means the reconciling of the two stories about what happened when pioneer settlers met indigenous people all around a vast, moving, ragged frontier. They want us to talk about the line of blood. They want us to take it seriously and treat it with gravity, to recognise that violence was not just an aberration or an accident but rather that it was central to the creation of modern Australia. They would like us to admit that settlement grew out of the barrel of a gun. For how else can their loss of ancestral lands be understood and explained?212

In its final recommendation, the Royal Commission into Aboriginal Deaths in Custody suggested:

That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if

210 ATSIC. As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians (2nd ed), op. cit., at 9.
211 This term was first used by anthropologist W E H Stanner, in his 1968 Boyer lecture for the Australian Broadcasting Corporation, quoted in Reynolds, Henry, Why Weren’t We Told?, Penguin: Ringwood, Vic., 2000, at 91-2.
212 Reynolds, Henry. Why Weren’t We Told?, ibid., at 126.
community division, discord and injustice to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged.213

The Royal Commission warned, however, that

[i]t the reconciliation of Aboriginal and non-Aboriginal society demands a very strong commitment to the elimination of Aboriginal social, economic and cultural disadvantage.214

There is no further reconciliation work anticipated by the current Australian government. According to ATSIC, recent research suggests that community attitudes towards Indigenous people and Indigenous rights in Australia have declined, rather than improved.215

7. Culture

Indigenous culture lies at the very heart of Aboriginal and Torres Strait Islander people’s identity. A submission to the House of Representatives Standing Committee on Family and Community Affairs’ *Health is Life* report noted that the destruction of Indigenous culture is a significant contributing factor to the incidence of poor health and diseases among Indigenous people:

Lack of access to land can break down culture very effectively because a lot of the cultural activities are related to the land. As we break down culture we will get worse health not better. We will get worse mental health and we will get worse physical health. With poor mental health you get depression, you do not look after your diabetes, you eat the wrong foods, you have too much salt, you do not care about yourself, your blood pressure goes up and you have a stroke. We go into all these chronic diseases that are taking over from the infectious diseases in injuring and killing Aboriginal people.\(^{216}\)

7.1 Cultural heritage

There is no simple or universal definition of culture, but Indigenous cultural heritage can be defined as the intangible and tangible aspects of the body of cultural practices, resources and knowledge systems which belong to Indigenous peoples collectively as their birthright and are passed on by them as part of their expression of cultural identity.

Indigenous culture includes literary, performing and artistic works; Indigenous languages; traditional and spiritual knowledge; traditional law; Indigenous burial artefacts, ancestral remains and human genetic material; cultural environment resources and immovable cultural property (including sacred sites and other sites of significance); and, indeed, anything which is based upon the living culture of Indigenous peoples.\(^{217}\) Since Indigenous culture is a living one, cultural practices and their expression are constantly evolving.

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\(^{216}\) Phillips, Dr N. Submission to the House of Representatives Standing Committee on Family and Community Affairs, *Health is Life, op. cit.*, at 69.

Indigenous culture also encompasses spirituality, a connexion with the land, and a complex network of family and social relationships, duties and responsibilities. This can be difficult for non-Indigenous people to understand and Indigenous culture has tended to be interpreted narrowly:

Aboriginal culture is the very antithesis of western ideology. The accent on individual commitment, the concept of linear time, the switch in focus from spiritual to worldly, the emphasis on possession and the pricing of goods and services, the rape of the environment and, above all, the devaluing of relationships between people, both within families and within the whole community, as the determinant of social behaviour are totally at variance with the fundamental belief system of Aboriginal people.218

The 1994 National Aboriginal and Torres Strait Islander Survey identified some aspects of Indigenous cultural affiliation and practice. Over 84% of Indigenous people aged 13 years and over saw elders as important, while slightly less than 60% identified with a clan, tribal or language group. Seventy-five per cent of Aboriginal and Torres Strait Islander people recognised an area as their homelands and 72% had attended Indigenous cultural activities in the past year. The level of cultural affiliation was higher in rural areas than in urban areas.219

7.2 Indigenous arts
Indigenous cultures contribute substantially to the Australian economy in a variety of industries, including arts and crafts, tourism, biotechnology, advertising, film, academic and research, and music, among others. Indigenous art, including stories, paintings, traditional tools and instruments and traditional ceremonies, dance and music, has become an important and distinctive feature of contemporary Australian cultural tourism, attracting hundreds of millions of dollars annually.220

Indigenous images and other cultural material are frequently reproduced by non-Indigenous businesses, however, with the products then widely


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disseminated around Australia and exported to other countries, often purporting to be 'authentic Aboriginal' or 'Aboriginal-style' products.

Much of the profit is taken by non-Indigenous businesses, either in Australia or overseas, rather than the traditional owners, and this is causing concern among some Indigenous communities that the authenticity of their culture is being lost.\textsuperscript{221}

\subsection*{7.3 Indigenous languages}
There are similar concerns with regard to Indigenous languages, since language and culture "stand together as the pillars supporting the intrinsic sense of identity and membership of any race of people". Indigenous languages describe the relationships "between people and places including knowledge of natural features, plants and animals" and "are regarded as 'owned' entities in the same way that songs, ceremonies and land are owned"\textsuperscript{222}:

Language links many Indigenous peoples to their land (country), it protects their history through story and song, it holds the key to kinship systems and to the intricacies of tribal law including spirituality, secret/sacred objects and rites.\textsuperscript{223}

At the time of the first European settlement, more than 500 Indigenous dialects are believed to have been spoken by the Indigenous population. These dialects made up approximately 200-250 distinct languages (in terms of groupings with similar grammar and vocabulary).\textsuperscript{224} Since then, however, the expansion of non-Indigenous Australians over the continent has resulted in the loss of many languages and dialects, as many speakers have died and others have shifted to speaking other Indigenous languages, English or dialects.

In 1994, according to the National Aboriginal and Torres Strait Islander Survey, 21\% of Indigenous respondents aged 5 years and over spoke an

\textsuperscript{221} Janke, Terri. \textit{Our Culture Our Future}, \textit{op. cit.}, at 37-40.
\textsuperscript{222} Janke, Terri. \textit{Our Culture Our Future}, \textit{ibid.}, at 20.
\textsuperscript{223} Yencken, D & Porter, L. \textit{A Just and Sustainable Australia}, \textit{op. cit.}, at 80.

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Aboriginal or Torres Strait Islander language. For 14% of people aged 13 years and over, an Aboriginal or Torres Strait Islander language was their main language.\(^{225}\) In 1996, about 48,200 people (approximately 13% of Indigenous people) spoke an Indigenous language at home. Most speakers lived in the more remote central and northern regions of Australia, such as in the Northern Territory and northern Western Australia.\(^{226}\)

There is growing concern among Indigenous communities over the loss of their languages, as the cultural significance of the languages is lost with them. Recording languages which are no longer in daily use and regaining knowledge of past languages is a cultural priority for many Indigenous Australians.

The importance of maintaining the remaining Indigenous languages was affirmed in Australia’s language policy in the 1980s, which recognised the central importance of Indigenous languages in conveying traditional knowledge and expressing the world view of the people who speak them.\(^{227}\)

Since then, the Aboriginal and Torres Strait Islander Commission has funded community-initiated programmes aimed at the maintenance, retrieval and revival of Indigenous languages and improving awareness and appreciation of them in the wider community.\(^{228}\)

7.4 Appropriation of cultural knowledge
The misappropriation of Indigenous biodiversity or nutritional knowledge has already proved to be a problem for Indigenous communities, with cases in which plants traditionally used for healing by Indigenous peoples have


been studied and even patented by non-Indigenous pharmaceutical companies.\textsuperscript{229}

There are also serious concerns about the misappropriation by non-Indigenous people or companies of words and phrases in Indigenous languages, which are then used for private naming or commercial purposes.

This can not only give a false impression that the individual or business is related to or administered by Indigenous people and communities, but can also result in unauthorised or inappropriate cultural expression, such as tourist women playing the didgeridoo (which is not permitted), or the disclosure of secret or sacred cultural knowledge to those not authorised to know or view it.

Indigenous elders are becoming concerned at the popularity of Indigenous arts and crafts and the economic values being attached to them,\textsuperscript{230} as well as the appropriation of Indigenous spirituality and the increasing desire of non-Indigenous people, particularly followers of 'new age' spirituality, to share and experience Indigenous spiritual rituals.

Finally, a number of Indigenous cultural objects and ancestral remains have been held over the past two centuries by museums or universities around Europe and Australia, although repatriation programmes have been able to restore some of them to their traditional communities. This is particularly important in the case of ancestral remains, as Indigenous law holds that the deceased must be returned to their traditional lands in order for the spirit to find rest.\textsuperscript{231}

7.5 Cultural protection

Existing intellectual property laws do not protect the traditional knowledge of Indigenous peoples. Western law can only attribute copyright ownership to an individual, not to an entire community through its generations. It focuses on tangible commodities, rather than evolving traditions and art forms such as dance, legends, storytelling, ceremonies and tool-making

\textsuperscript{229} Janke, Terri. \textit{Our Culture Our Future}, op. cit., at 24-6.

\textsuperscript{230} Mathewson, Ruth. 'Artistic licence', op. cit.

techniques, places value in historic and scientific significance, not cultural and spiritual, and has been designed to protect commercial and economic interests, rather than cultural heritage.\(^{232}\)

In practice, Australia’s current intellectual property laws provide limited protection of Indigenous intellectual and cultural property rights. They do not protect spiritual or moral rights to culture, however, nor intangible forms of cultural and intellectual property such as traditional knowledge, stories, song and dance.

Statutory protection such as that afforded by the Copyright Act 1968 (Cth), which Indigenous Australians have predominantly relied on to protect their cultural heritage, is unaffordable or inaccessible for many Indigenous people, and requires them to resort to legal remedy which is often inappropriate.

Other legislative protection of some forms of Indigenous cultural heritage includes the Australian Archives Act 1983 (Cth) which regulates government records, a vast collection of which relate to Indigenous peoples over the centuries; the Trade Practices Act 1974 (Cth), which can prevent misleading or deceptive conduct; the Native Title Act 1993 (Cth), dealing mainly with land protection; and the Copyright Act 1968 (Cth), which protects artistic, musical, dramatic and literary works, but only for the artist’s lifetime plus fifty years.

The protection of areas and objects of particular significance to Indigenous peoples was dependent on the various state and territory laws until the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) was enacted as an interim and ‘last resort’ measure to provide protection in the event of failure of state or territory legislation to protect Indigenous heritage. Its purpose was:

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\text{[t]he preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects of particular significance to Aborigines in accordance with Aboriginal tradition.}^{233}\]

\(^{232}\) Mathewson, Ruth. ‘Artistic licence’, \textit{op. cit.}

\(^{233}\) Aboriginal and Torres Strait Islander Heritage Protection Act 1984, s. 4, quoted in ATSIC, ‘Aboriginal and Torres Strait Islander Peoples and Australia’s Obligations under the United Nations International Covenant on Economic, Social and Cultural Rights’, \textit{op. cit.}, at 41.
In 1986 the ‘sunset clause’ was removed from the legislation and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* became permanent.

The Act has not been entirely successful in protecting Indigenous heritage sites, however. An ATSIC report to the United Nations Committee on Economic, Social and Cultural Rights in 2000 noted that since its enactment some 200 applications for protection under the Act have been lodged. These have resulted in eight declarations relating to the protection of objects of significance to Aboriginal people; emergency declarations protecting five sites of significance on a short-term basis; and five long-term declarations for protection of areas of significance, only two of which remain in place.  

It can be difficult for Indigenous people to prove the existence of secret or sacred sites to the extent which is required by legislation. Many Indigenous people are also wary of amendments to legislative protection. The vulnerability of Indigenous people to such legislative amendments was demonstrated in the long-running Hindmarsh Island dispute. In the early 1990s, the proposed construction of a bridge connecting the town of Goolwa in South Australia with Hindmarsh Island was opposed by local Indigenous groups, who claimed that the proposed construction threatened the destruction of sites which were sacred to the Ngarrandjeri people, especially the women, of the area.

Two applications for long-term protection under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* were invalidated on the basis of problems in the process and eventually, in 1997, the Australian parliament enacted special legislation to remove the Hindmarsh Island bridge area from the scope of the *Heritage Protection Act*. A constitutional challenge to the Act was taken to the Australian High Court in 1998, but was unsuccessful.  

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234 ATSIC. ‘Aboriginal and Torres Strait Islander Peoples and Australia’s Obligations under the United Nations International Covenant on Economic, Social and Cultural Rights’, *ibid.*, at 41.


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In 1996, the *Aboriginal and Torres Strait Islander Heritage Protection Act* was reviewed by the Hon. Elizabeth Evatt, who made a series of recommendations to provide more effective protection of Indigenous cultural heritage. In 1998, the Australian government introduced the Aboriginal and Torres Strait Islander Heritage Protection Bill, intended to replace the existing Act.

With regard to the proposed Bill, ATSIC noted in 1998 that:

> As currently drafted, the [proposed] legislation would allow the [Australian government] to accredit state/territory legislation and limit its own involvement to applications involving the 'national interest'. This would effectively remove the Commonwealth's obligation to provide 'last resort' protection.²³⁶

In 1999 the Australian Senate approved the Bill, subject to amendments which were in line with the Evatt recommendations, but these amendments were rejected by the government in the House of Representatives and the new Bill has not yet been passed.

Significant threats to the protection of Indigenous heritage and culture currently exist in other areas. The development of a uranium mine at Jabiluka in the World Heritage area of Kakadu National Park in the Northern Territory, for example, has caused concern among the Indigenous land-owning groups in the area over the likely damage to important mythological sites, as well as over health and social problems liable to arise from the development.²³⁷

In July 2000, the Human Rights Committee, an expert treaty body which considers human rights violations under the International Covenant on Civil and Political Rights, found that the Australian government should take the necessary steps in order to secure for the Indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources.

²³⁶ ATSIC. *As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians* (2nd ed), *op. cit.*, at 45.

²³⁷ ATSIC. 'Aboriginal and Torres Strait Islander Peoples and Australia's Obligations under the United Nations International Covenant on Economic, Social and Cultural Rights', *op. cit.*, at 43.

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The Committee noted that traditional forms of economy of Indigenous minorities (such as hunting, fishing and gathering), and sites of religious or cultural significance for such minorities, should be protected, and that the pending Bill intended to replace the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* should address these concerns.\(^{238}\)

The United Nations Educational, Scientific and Cultural Organisation (UNESCO), together with the World Intellectual Property Organisation, recently requested the drafting of a new legal model to protect Indigenous cultural heritage and intellectual property rights. This *sui generis* legislation, to be presented in mid-2002 to the UN and the trade and economic ministers of Pacific countries, including Australia and New Zealand, would co-exist with Western copyright law, but would create a new legal forum to protect Indigenous knowledge and expressions of culture, and specifically to protect communities rather than individuals.

According to Professor Kamal Puri, who is developing the legal framework:

> The main purpose is to give indigenous people what they have deserved for a long, long time: self-respect and monetary reward for their contributions to arts and crafts, medicinal knowledge and cultural continuity.

As at mid-June 2002, although ministers from other Pacific countries had already agreed to adopt and enact this model legislation on Indigenous intellectual property, Australia and New Zealand were calling for another year’s delay in order to examine it further.\(^{239}\)

### 7.6 Traditional law

Indigenous law is identified with Indigenous culture. Father Frank Brennan has observed that “Aboriginal law embraces all we might variously describe as law, religion, philosophy, art and culture.”\(^{240}\) In a submission to the Royal

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\(^{239}\) Mathewson, Ruth. ‘Artistic licence’, *op. cit.*


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Commission into Aboriginal Deaths in Custody, Professor Marcia Langton elaborated:

What our people mean when they talk about their Law, is a cosmology, a worldview which is a religious, philosophic, poetic and normative explanation of how the natural, human and supernatural domains work. Aboriginal Law ties each individual to kin, to 'country' – particular estates of land – and to Dreamings. One is born with the responsibilities and obligations which these inheritances carry...and they are not considered to be optional.  

There has been much discussion on the application of traditional law to disputes within Indigenous communities. The debate is ongoing over the role that Indigenous customary law might play within Australia and on how it might replace or interact with common and statutory law in Australia’s legal system. This issue is particularly problematic in relation to the number of Indigenous people who do not live in isolated or remote communities, who are in contact with and whose actions affect both Indigenous and non-Indigenous citizens.  

The question of traditional law is all the more relevant since the 1992 landmark case of Mabo (discussed in section 7.8 of this report), in which the High Court acknowledged the laws and customs of Indigenous people and recognised traditional law for the purposes of determining Indigenous ownership rights and title to particular lands.

7.7 Land rights
Land plays a vital role in Indigenous identity, culture and spirituality. Aboriginal and Torres Strait Islander peoples have a relationship with and obligations to care for the land which parallel the complex network of social relationships and responsibilities within Indigenous communities. The relationship between Indigenous people and their land is another concept which has proved difficult for non-Indigenous people in Australia to understand:

242 Brennan, Frank, SJ. 'Constitutional possibilities for self-determination for Aborigines and Torres Strait Islanders', op. cit.
The Aboriginals’ bond with their land is unlike that which any people of agricultural or industrial societies experience. The whole of their lives, religious and cultural as well as physical is bound up in the love, conservation and celebration of the country. ...In losing their land Aboriginals also lost their good health.²⁴³

The struggle to achieve recognition of their association with their land and to obtain land rights has been a long and difficult one for Indigenous people in Australia. It has been most successful in remote areas which have either been inhabited continuously by Indigenous people or have not been populated by non-Indigenous Australians.

In the 1960s, the Yolngu people of north-east Arnhem Land in the Northern Territory opposed a takeover of their traditional lands by a bauxite mining company. Their case, brought to the Federal Court in 1972, was unsuccessful and resulted in a ruling that the Yolngu people could not prevent mining on their lands because Australia had legally been unoccupied (‘terra nullius’) at the time of colonisation.

This case led to the establishment of the Woodward Commission of Inquiry into Aboriginal Land Rights in the Northern Territory in 1973. The Woodward report, presented in 1974, found that the aims of land rights were, *inter alia*, to do simple justice to a people deprived of their land without their consent and without compensation; to provide land holdings as a first essential for people who are economically depressed and have no real opportunity of achieving a normal Australian standard of living; and to preserve, where possible, the spiritual link with the land which gives Aboriginal people their sense of identity and which lies at the heart of their spiritual beliefs.²⁴⁴

Justice Woodward recommended that these aims could be best achieved by: preserving and strengthening all Aboriginal interests in land and rights over

land which exist today, particularly all those having spiritual importance; ensuring that none of these interests or rights are further whittled away without consent, except in those cases where the national interest positively demands it and then only on terms of just compensation; providing basic compensation in the form of land for those Aborigines who have been irrevocably deprived of the rights and interests which they would otherwise have inherited from their ancestors, and who have obtained no sufficient compensating benefits from white society; and further providing land to the limit which the wider community can afford in those places where it will do most good, particularly in economic terms, to the largest number of Aborigines.245

Following these recommendations, the Australian government drew up the Aboriginal Land Rights (Northern Territory) Act (Cth), which was passed in 1976. This legislation, the main purpose of which was to grant traditional Aboriginal land in the Northern Territory to and for the benefit of Aboriginal people, has been one of the most important pieces of land title legislation in Australia, and under its provisions around half of the Territory has since been returned to traditional ownership.246

In 1983-84, an inquiry into Aboriginal land issues in Western Australia, headed by Mr Paul Seaman QC, was established to consider, inter alia, the most appropriate form of title over land for the use and benefit of Aboriginal people, and what kinds of relationships to land should be protected. The report of the inquiry expressed concern over a proposal that only Aboriginal people who fitted a narrow definition of "traditional" would be able to establish claims to land:

The great majority of people of Aboriginal descent in Western Australia can make the case that they or their forebears were forcibly dispossessed of traditional land. Many would be unable to obtain any land under a process which demanded proof of Aboriginal tradition.247

245 Northern Land Council, ibid.

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Seaman proposed a broader definition of tradition which would assume that whatever the tradition was at non-Indigenous contact, “it was and is a living and adapting tradition, and has adapted”. This would validate cultural attachments to land and sea based on long-term residence or use.\textsuperscript{248}

7.8 Native title
The most significant case in the recent history of Indigenous land rights in Australia was the \textit{Mabo} case,\textsuperscript{249} brought to the High Court in 1992 by Mr Eddie Mabo and four other representatives of the Meriam people of Murray Island in the Torres Strait.

Mabo claimed that following British colonisation, Australia had been treated as if it were to be a colony of settlement, not of conquest. There were no negotiations or treaties, and Indigenous land was appropriated as unowned land. In a landmark decision, the High Court acknowledged that Indigenous peoples had rights of ownership of the land which they had not ceded and which had not automatically been extinguished by British occupation, overturning the legal fiction of \textit{terra nullius}, which held that the Australian continent had been unoccupied at the time of British arrival and that as a consequence the land belonged to no-one.\textsuperscript{250}

These land ownership rights constituted a form of land title called Native Title which continued to be legally acknowledged under Australian common law and which still existed in areas where Indigenous peoples could show a continued possession, occupation, use and enjoyment of the land based on Aboriginal tradition, custom or law.

Only limited areas of land can be claimed by Indigenous peoples under native title, and these are often vacant tracts of land in areas which have no value for government or private interests. Once established, native title

\footnotesize{\textsuperscript{248} ATSIIC. \textit{As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians} (2\textsuperscript{nd} ed), op. cit., at 43.}

\footnotesize{\textsuperscript{249} \textit{Mabo & Ors. v The State of Queensland} (No 2) (‘The Mabo case’) (1992) 175 CLR 1.}

\footnotesize{\textsuperscript{250} ATSIIC. \textit{As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians} (2\textsuperscript{nd} ed), op. cit., at 9.}

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owners have the rights to exclusive possession, occupation, use and enjoyment of their lands.

Native title was held to have been extinguished in freehold lands, however, and so does not affect cities, towns or farms or leases which allow for exclusive possession, although it can continue to co-exist with pastoral leases and some forms of Crown title.

The *Mabo* decision has been criticised for effectively dividing Indigenous peoples and communities into those groups which had been able to maintain traditional cultures and lifestyles as a result of having little contact with mainstream white society and those who were considered to have weaker traditional links by virtue of sustained contact with the non-Indigenous community. It was argued that the decision should have been sufficiently flexible to cover a broad range of Aboriginal cultures and patterns of social organisation, including the traditions of those Indigenous peoples and communities most fragmented by non-Indigenous contact.

The following year, the *Native Title Act 1993* (Cth) was passed by the Australian parliament to implement the findings of the *Mabo* case and to establish processes to deal with native title claims.

In 1996, a related case involving the Wik peoples of northern Queensland came before the High Court. Known as the *Wik case*, this recognised that native title rights would not necessarily be extinguished by pastoral leases but could continue to co-exist alongside other forms of Australian titles, such as pastoral or grazing leases. Native title could revert in full if these Australian titles were removed, although, in the event of any inconsistency, pastoral leases would override native title.

Following a change of government in April 1996, the new Australian government proposed legislation to amend the *Native Title Act 1993*, partly in response to the *Wik* case. These proposed amendments were intended, *inter alia*, to strengthen the rights of pastoralists to land use, restrict Indigenous rights to negotiate native title and land management, restrict the negotiating

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time-frame, and give state and territory governments the right to negotiate. The amended legislation was passed in 1998.

In 1999, the United Nations Committee on the Elimination of Racial Discrimination found that the provisions of the amended Native Title Act 1998, particularly the extinguishment of Indigenous native title rights such as the right to negotiate title to land, were discriminatory. The Committee expressed its concern over the compatibility of the amended Native Title Act with Australia’s international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, as well as Australia’s domestic obligations under the Racial Discrimination Act 1975 (Cth)\textsuperscript{252}:

While the original Native Title Act recognises and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act. While the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.\textsuperscript{253}

The following year, in July 2000, the United Nations Human Rights Committee ruled that despite judicial and legislative decisions such as Mabo in 1992, Wik in 1996 and the Native Title Act 1993, the native title amendments of 1998 limited the rights of Indigenous persons and communities to effective participation in all matters affecting land ownership and use, and affected their interests in native title lands, particularly pastoral lands.

The Committee recommended in particular that:

\textsuperscript{252} The Racial Discrimination Act 1975 (Cth) enacts in domestic legislation the provisions of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.
the necessary steps be taken to restore and protect the titles and interests of indigenous persons in their native lands, including by considering amending anew the Native Title Act, taking into account these concerns.\textsuperscript{254}

As at 2001, it appears unlikely that this will occur during the term of the current Australian government.

Land ownership under native title offers Indigenous people an important foundation for economic activity. Secure land title provides Indigenous people with the opportunity to negotiate over land access and use, development, agreements and the protection and conservation of the environment.

Ownership of land also provides the means to maintain culture and tradition. Sacred sites can be protected, which would be difficult without recognition of land rights, and Aboriginal people can continue traditional rituals and ceremonies, particularly those associated with the maintenance of country and its resources.\textsuperscript{255}

The formal recognition of land rights under native title has gone some way towards affirming the history and experiences of Aboriginal and Torres Strait Islander peoples in Australia. It is a step towards Indigenous land management and greater self-determination for Indigenous peoples.

It also provides a process by which non-Indigenous Australians can learn to understand the importance of the link between Indigenous peoples and their traditional lands in promoting continued health and well-being.

\textsuperscript{254} UN Human Rights Committee. 'Concluding Observations of the Human Rights Committee: Australia, 24/07/2000', \emph{op. cit.}

\textsuperscript{255} Northern Land Council, \emph{op. cit.}

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8. Self-determination

8.1 International law
The right of self-determination is one of the fundamental principles of international human rights law. It has been noted in various UN General Assembly resolutions\textsuperscript{256} and is expressed in several treaties. The 1945 Charter of the United Nations refers to the principle of self-determination in article 1(2):

The Purposes of the United Nations are:

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

while article 55 of the Charter elaborates:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.\textsuperscript{257}

The right of self-determination is enshrined as article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights:

\textsuperscript{256} Nettheim, Garth. 'International law and sovereignty', in Fletcher, C (ed), \textit{Aboriginal self-determination in Australia}, op. cit., at 73.

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

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

In 1990, the United Nations General Assembly passed resolution 45/164 proclaiming 1993 the International Year of Indigenous Peoples. Its goal was to strengthen international co-operation for the solution of problems faced by Indigenous peoples in such areas as human rights, the environment, development, education and health.

The theme for the Year, ‘Indigenous people - a new partnership’, was aimed at the development of a new and equitable relationship between the international community, States and Indigenous peoples, based on the participation of Indigenous people in the planning, implementation and evaluation of projects affecting their living conditions and future.258

8.2 Indigenous self-determination in Australia

The Aboriginal and Torres Strait Islander Commission was established by the Australian government in 1990 to advise governments and to advocate on Indigenous issues at the regional, national and international levels; to monitor the performance of other government agencies in providing services to their Indigenous citizens; and to administer Aboriginal and Torres Strait Islander programmes, in partnership with other agencies.259


259 ATSIC. As a Matter of Fact: Answering the myths and misconceptions about Indigenous Australians (2nd ed), op. cit., at 24-5.

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Although ATSIC was created as an incremental structure for self-determination and has given Aboriginal and Torres Strait Islander peoples a stronger political voice on Indigenous issues, there is some concern that little has been achieved in the past decade towards self-determination policies for Indigenous peoples in Australia. Rather, the ATSIC Board of Commissioners, a body of Indigenous regional representatives from around Australia, is answerable to the Minister for Aboriginal and Torres Strait Islander Affairs. ATSIC’s budget is controlled by the Australian government in the same way as departmental budgets, and moreover has experienced significant budget cuts in recent years.

8.3 Interpretations of self-determination

In practice, the principle of self-determination and the nature and extent of its application, particularly with regard to Indigenous peoples, has been difficult to define, and has been the source of much disagreement between Indigenous groups and States parties, and between States themselves.

There was strong disagreement over key definitions during the adoption process for the 1989 International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples, as well as during the drafting process for the United Nations Draft Declaration on the Rights of Indigenous Peoples (discussed in section 8.6 of this report), a document which represents one of the most important international developments for the promotion and protection of the basic rights and fundamental freedoms of Indigenous peoples.

Many States refused to use the term ‘peoples’ to refer to Indigenous groups, preferring instead ‘populations’, although Indigenous people themselves have consistently preferred the former term.

At a 1997 meeting of the Commission on Human Rights Working Group, Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Dodson summarised the disagreement:

Discussion of the right to self-determination at this and the previous session of this Working Group has revealed the significant gulls of understanding which exist between Indigenous participants and Member States in relation to many of the central concepts underlying the Declaration. It is by no means clear that Member

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States have developed a full and accurate understanding of what Indigenous peoples mean when we use concepts such as choice, control, consent, equality of participation, and when we speak of our collective rights.260

Self-determination with regard to Indigenous peoples has become a political issue, particularly for countries which were formerly colonial powers. Some States parties, including the United Kingdom, Australia and Canada, have claimed that the international right of self-determination was not intended to and should not supersede national sovereignty. Accordingly, on the basis that a possible link may be made in international law between self-determination and external independence, they have avoided using the term 'self-determination' in relation to Indigenous peoples.

This interpretation of self-determination precludes recourse to such international instruments as the United Nations Charter, which does not authorise the UN to intervene in matters essentially considered to be within the domestic jurisdiction of any State.261

This position was rebutted by ATSIC in a report submitted to the extraordinary meeting called by the UN Committee on Economic, Social and Cultural Rights in August 2000.

Drawing on provisions in the ICESCR, the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination, ATSIC argued that self-determination does not necessarily entail external independence nor the establishment of a separate nation or laws:

...the jurisprudence of international bodies, including the Human Rights Committee and the Committee on the Elimination of All Forms of Racial Discrimination, clearly establishes that the principle of self-determination has an internal application, and that this is particularly the case in respect of Indigenous peoples. ...Such a right of


261 Gudmundur Alfredsson argues, however, that most States could not successfully invoke the UN Charter's domestic jurisdiction rule because, as parties to international agreements, they have consented to the competence of others to discuss their performance in areas covered by the agreements: Alfredsson, Gudmundur. 'International Law, International Organisations and Indigenous Peoples', 36 Journal of International Affairs 113, 1982.
self-determination does not establish either an unqualified right to secession, partition or other changes to the boundaries of existing States. Rather, it establishes limits upon the intrusion by the State into the lives of Indigenous peoples and the interference with or expropriation of their lands and territories.²⁶²

The validity of the international right of self-determination may be indicated by the reluctance of many States to acknowledge it. Professor Erica-Irene Daes, former Chair and Special Rapporteur of the UN Working Group on Indigenous Populations, noted in 1996 that this is also evidence of racism and racial discrimination against Indigenous peoples: why should Indigenous peoples, of all peoples, be excluded from enjoying this right, if it were not for discrimination on the basis of race alone?²⁶³

8.4 Treaties

Indigenous groups around Australia have consistently called for public discussion on various models of Indigenous self-determination, as well as for negotiation of a treaty with Indigenous peoples, on the basis that the sovereign rights of Aboriginal and Torres Strait Islander peoples were not usurped by conquest, they have not been negotiated by any government in the past two hundred years, and they have not been given up by Indigenous peoples at any time in Australia’s history.

A number of reports have noted that the negotiation of a treaty with Indigenous peoples in Australia might provide greater benefits than the recognition of prior ownership:

²⁶² The footnotes to these assertions provide a comprehensive list of source documents: ATSIC, ‘Aboriginal and Torres Strait Islander Peoples and Australia’s Obligations under the United Nations International Covenant on Economic, Social and Cultural Rights’, op. cit., at 6-7.

Treaties, no matter how loosely worded, have appeared to play a significant and useful role in the development of health services, and in social and economic issues, for the Indigenous people of New Zealand, the United States and Canada.\textsuperscript{264}

The UN Office of the High Commissioner for Human Rights has also expressed diplomatic support for treaties with Indigenous peoples:

Many of the [existing] treaties [between Indigenous peoples and the governments of the countries in which they live]...are seen as providing recognition of indigenous self-determination, and a guarantee of the collective rights of the peoples concerned. An agreement which has the character of a solemn pledge by one people to another, when fully honoured by both parties, breeds mutual trust and respect and has a potentially vital role in promoting and protecting the human rights and fundamental freedoms of indigenous peoples.\textsuperscript{265}

8.5 Future self-determination

In the 1991 report of the Royal Commission into Aboriginal Deaths in Custody, Commissioner Elliott Johnston QC stated that the “empowerment of Aboriginal society - and associated with it the right to self-determination” was a central issue in the report and was a key step in resolving the underlying issues of Indigenous disadvantage:

...running through all the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-aboriginal society and that the disadvantage is the product of that domination.

The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.\textsuperscript{266}

The validity of self-determination was clearly established by the Royal Commission:

\textsuperscript{264} Ring, Ian T & Firman, David. ‘Reducing indigenous mortality in Australia: lessons from other countries’, \textit{op. cit.}

\textsuperscript{265} Office of the High Commissioner for Human Rights. ‘Fact Sheet No. 9 (Rev. 1): The Rights of Indigenous Peoples’, \textit{op. cit.}

\textsuperscript{266} Royal Commission into Aboriginal Deaths in Custody. ‘National Report: Overview and Recommendations’, \textit{op. cit.}, at 8.

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For the Aboriginal people [the situation] is different [to that of everybody else who lives in Australia]. They were here, they had their culture, they did not leave and did not ask others to come. They did not go through the process of leaving the old to embrace the new. They never voluntarily surrendered their culture and, indeed, fought tooth and nail to preserve it, throughout dispossession, protection, assimilation, integration. In their own words, they survived and their culture survived; in different forms and to different degrees in different parts of the country as a result of different experiences. They have the right to retain that culture, and that identity. Self-determination is both the expression and the guarantee of that right.

The report outlined three essential prerequisites to the empowerment of Indigenous society and to Aboriginal people having control over their lives and their communities. The first was:

the desire and capacity of Aboriginal people to put an end to their disadvantaged situation and to take control of their own lives. ...Only the Aboriginal people can, in the final analysis, assure their own future.

The second prerequisite called for assistance from the governments, with the support of the electorate, to establish an economic base for Aboriginal people:

the economic base of Aboriginal people was completely destroyed by their being dispossessed of their lands, and their treatment since then has been such that, except to a limited extent in recent times, it has been quite impossible for them to achieve any economic base.

The third prerequisite for empowering Indigenous peoples and their communities was to establish a procedure whereby the broader society could supply assistance and Aboriginal society receive it whilst at the same time maintaining its independent status and without a welfare-dependent position being established between the two groups:

That requires an adherence to the principles of self-determination...

Commissioner Johnston concluded:
In my opinion, there is no doubt that Aboriginal people are capable of, determined to and will in fact exercise self-determination.\textsuperscript{267}

These prerequisites have not been implemented, however, and the goal of self-determination appears to be no closer.

In 1996, the Minister for Aboriginal and Torres Strait Islander Affairs announced that the Australian government would no longer base its Indigenous affairs policies on the principle of self-determination, preferring to use the terms "empowerment" and "self-management".

In May 2000, the Australian government released an alternative document to the reconciliation text prepared by the Council for Aboriginal Reconciliation, in which the government rejected the application of the right of self-determination to the Indigenous peoples of Australia.\textsuperscript{268}

A recent fact sheet entitled 'Indigenous self-management', published by the Department of Immigration and Multicultural and Indigenous Affairs, also presents the Australian government's position:

The Federal Government supports the principle of Indigenous people exercising meaningful control over their affairs, in consultation with government which is held responsible for outcomes. ...terms such as 'self-management' and 'self-empowerment' express this principle ...the term 'self-determination' has implications of separate nations or governments and is, therefore, not supported by the Federal Government.\textsuperscript{269}

8.6 UN Draft Declaration on the Rights of Indigenous Peoples
In 1985, the United Nations Working Group on Indigenous Populations began preparing a draft Declaration on the Rights of Indigenous Peoples, taking into account the comments and suggestions of participants in its

\textsuperscript{267} Royal Commission into Aboriginal Deaths in Custody. 'National Report: Overview and Recommendations', \textit{ibid.}, at 9-10.

\textsuperscript{268} ATSIC. 'Aboriginal and Torres Strait Islander Peoples and Australia's Obligations under the United Nations International Covenant on Economic, Social and Cultural Rights', \textit{op. cit.}, at 6-7.

sessions, particularly representatives of Indigenous peoples, and governments.


In 1995, the Commission on Human Rights established a working group to prepare the Draft Declaration on the Rights of Indigenous Peoples for consideration by the UN General Assembly, which has affirmed that the adoption of a declaration is a major objective of the International Decade of the World's Indigenous People (1995-2004).

Although the Commission Working Group has met a number of times, there has been much deliberation and some contention over the wording and the extent of decision-making power Indigenous peoples should have regarding the text, and it is uncertain whether the Draft Declaration will be approved and adopted by the Commission and the UN General Assembly by the tentative deadline of 2004.

As it stands, the Draft Declaration consists of 19 preambular paragraphs and 45 articles. It covers rights and freedoms, including the preservation and development of ethnic and cultural characteristics and distinct identities; protection against genocide and ethnocide; rights related to religions, languages and educational institutions; ownership, possession or use of Indigenous lands and natural resources; protection of cultural and intellectual property; maintenance of traditional economic structures and ways of life, including hunting, fishing, herding, gathering, timber-sawing and cultivation; environmental protection; participation in the political, economic, social and cultural rights of Indigenous peoples in Australia
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\[270\] In 1999 its name was changed to become the Sub-Commission on the Promotion and Protection of Human Rights. OHCHR website: www.unhchr.ch/html/menu2/2/sc.htm, as at 7 July 2001.


\[272\] Refer Appendix 4: UN Draft Declaration on the Rights of Indigenous Peoples.
economic and social life of the States concerned, in particular in matters which may affect Indigenous people’s lives and destinies; self-determination; self-government or autonomy in matters relating to Indigenous peoples’ internal and local affairs; traditional contacts and co-operation across State boundaries; and the honouring of treaties and agreements concluded with Indigenous peoples.

The Draft Declaration also foresees mutually acceptable and fair procedures for resolving conflicts or disputes between Indigenous peoples and States, involving means such as negotiations, mediation, arbitration, national courts, and international and regional human rights review and complaints mechanisms.

The Draft Declaration further provides that the rights mentioned in it constitute the minimum standards for the survival and well-being of the Indigenous peoples of the world.273

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Conclusions

The research into the current status of the economic, social and cultural rights of Indigenous peoples in Australia reveals a grim pattern.

Starting at birth, many Indigenous people will suffer from a lack of available or accessible health services. They will be subject to diseases and health hazards which will increase as they grow older, compounded by instances of risk behaviour and violence. When they can attend school, there is likely to be little in the school environment or subject matter which is relevant to their culture or daily lives, and they will have few role models in later years to encourage them to continue.

If Indigenous people do not or cannot continue their education, they are set up for a work history of ill-paid or low status jobs and their chances of unemployment are increased.

Meanwhile, the weakening of a cultural framework and the loss of family and social networks, as well as the failure of non-Indigenous society to respect Indigenous peoples and their cultures, underpin the difficulties. Many Indigenous people will experience harassment and violence, and they will be more readily feared, suspected, assaulted, arrested and imprisoned than white Australians. Many will also engage in alcohol or substance abuse, and this will further destroy their health, living standards and culture.

Finally, Indigenous people will not grow old alongside non-Indigenous Australians. On average, they will die twenty years younger, often of preventable diseases and disorders, completing a cycle in which early disadvantage is compounded by further breaches of their economic, social and cultural rights throughout their lifetimes.

The historical loss of traditional lands and culture, as well as the discrimination to which Indigenous people have been subject for more than two centuries, has had a devastating effect on the ability and willingness of Indigenous people to meet many of the expectations mainstream Australian society.
The 2001 Commonwealth Grants Commission report into Indigenous funding confirmed that

[i]n all regions, and across all functional areas examined in our Inquiry, Indigenous people experience entrenched levels of disadvantage compared to non-Indigenous people.\[274\]

Yet the ways in which Aboriginal and Torres Strait Islander people experience disadvantage do not have solutions which are simple or can be applied in isolation.

Given the greater needs of Indigenous people, the 2001 Commonwealth Grants Commission report noted that

it should be expected that [Indigenous people’s] use of mainstream services would be at levels greater than those of non-Indigenous Australians. This is not the case. Indigenous Australians in all regions access mainstream services at very much lower rates than non-Indigenous people.

Although mainstream programmes and services are intended to meet the needs of all Australians, they are failing to help Indigenous people:

[i]t is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous people...because of barriers to access [including] the way programs are designed, how they are funded, how they are presented and their cost to users. In remote areas, there are additional barriers to access arising from the lack of services and long distances necessary to access those that do exist.

The inequities resulting from the low level of access to mainstream programs are compounded by the high levels of disadvantage experienced by Indigenous people.

This is not surprising. A 1999 study compared the level of government expenditure on services for Indigenous people to other Australians, matching this to the level of need in both groups. The concept of need used in the study was defined as:

the additional effort (if any) required to bring outcomes for Indigenous people to comparable overall levels with the Australian population as a whole\[275\]


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or, in other words, the effort required to ensure that Indigenous people in Australia are treated equally.

The report concluded that Indigenous people are more likely to access specific programmes designed to address their needs, rather than the general services available to all Australians and emphasised:

in all basic areas of health, education, employment and housing the extra spending on services for Indigenous people was entirely justified, given the extreme disadvantage experienced by Indigenous people. In the case of health and housing...current levels of expenditure for Indigenous people were inadequate to address the appalling gap in health and housing between Indigenous and non-Indigenous people.276

Even in the areas of health, education, housing and employment where Indigenous-specific programmes exist, however, the funds are often insufficient to remedy the level of need or are inappropriately allocated. Although some outcomes have improved, government expenditure in these areas has proved inadequate to the task of raising outcomes for Indigenous people to "comparable overall levels with the Australian population".

The Commonwealth Grants Commission report explained one of the difficulties:

[the failure of mainstream programs to effectively address needs of Indigenous people means that Indigenous-specific programs are expected to do more than they were designed for and, as a consequence, focus less on the disadvantaged.277

Dr Boyd Hunter of the Centre for Aboriginal Economic Policy Research at the Australian National University warned of the complexity of the problem. Government policies to eliminate problems of ill health, inadequate

276 Neutze, Max, Sanders, Will & Jones, Giff. 'Public Expenditure on Services for Indigenous People: Education, employment, health and housing', ibid., at 74.

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education, high unemployment, poor housing and living conditions, and
cultural loss should not separately address the deficiencies in each sphere of
life, as they are not independent of each other:

Simply increasing the financial resources available to the indigenous poor may not
be sufficient to alleviate their poverty. ...It is not simply a matter of building schools
and providing books.278

Previous reports
One disturbing fact which emerged during the research for this report was
the existence of numerous publications which have already focused on the
problems in Indigenous health, education, housing and employment. Indigenous disadvantage has been well known to the Australian government
and the community for a long time.

The Australian House of Representatives Standing Committee on Family and
Community Affairs expressed its concern over "innumerable" reports which
have drawn attention over the past twenty years to the poor state of
Indigenous health and welfare.279

Many of the reports reached broadly similar conclusions, but the problems
appear no closer to a resolution today. The Committee observed that,

[d]espite what would appear to have been genuine commitment from all levels of
government there has been little effective progress in implementing the key
recommendations from these reports.280

Moreover, the Health is Life report quoted the Hon. Philip Ruddock (currently
the Minister for Immigration and Multicultural and Indigenous Affairs and
Minister for Reconciliation), who stated, as Chair of the House of
Representatives Standing Committee on Aboriginal Affairs in 1979, that such
reports appeared:

278 Hunter, Boyd. 'Three Nations, Not One: Indigenous and other Australian poverty', op. cit.,
at 16-18.
279 At least seven reports were produced by state, territory and federal governments between
1979 and 1994: House of Representatives Standing Committee on Family and Community
Affairs, Health is Life, op. cit., at 7, 167-70.
280 House of Representatives Standing Committee on Family and Community Affairs. Health
is Life, ibid., at 8.
to have no real impact [after their release] and the appalling state of Aboriginal health is soon forgotten until another report is released.281

One unfortunate effect of the previous reports on Indigenous health and welfare has been the mood of cynicism they have engendered in many Indigenous people. In 1992, Aboriginal and Torres Strait Islander Social Justice Commissioner (and Acting Race Discrimination Commissioner) Bill Jonas observed that:

Until very recently, and in some places still today, Aboriginal people felt and feel that they have been the most researched people in the world...The results of data collection will either be used against Aboriginal people, or they will not be used at all, which makes the whole exercise a waste of time...this research [has] resulted in little material benefit to them.282

In a call to action, the House of Representatives Standing Committee on Family and Community Affairs concluded its report with an appeal for the Australian government

 to accept [that] it has the major responsibility for the provision of primary health care to Indigenous Australians...for the delivery of services and programs which impact on the health and well-being of the Indigenous population.283

The Committee’s report suggested that:

A way needs to be found of harnessing a national effort for a very complex range of issues in a very complex system of government. In the circumstances only the [Australian government] can provide the necessary leadership and coordination.284

281 House of Representatives Standing Committee on Family and Community Affairs. Health is Life, ibid., at 7.
283 House of Representatives Standing Committee on Family and Community Affairs. Health is Life, op. cit., at 3.
284 House of Representatives Standing Committee on Family and Community Affairs. Health is Life, ibid., at 1-3.

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The profound failure of Australian governments to address the economic, social and cultural problems of Indigenous peoples is deeply disturbing in view of the commitment expressed by various Australian governments over the past decade to eliminating Indigenous disadvantage.

Recent governments have found, however, that support for Indigenous issues, such as special measures to achieve equity between Indigenous and non-Indigenous Australians, is electorally unpopular.

As long as there are believed to be few votes in Indigenous issues, the political price for failing to address Indigenous disadvantage remains low.

**International organisations**
For the past decade, there has been a strong focus on Indigenous people at the international level.

The United Nations, the International Labour Organisation and the World Bank have all recognised that the establishment and protection of the rights of Indigenous peoples are an essential part of human rights and a legitimate concern of the international community. Other international bodies, including UNESCO, the World Intellectual Property Organisation and the World Health Organisation, have also been working to define and protect many of the rights of Indigenous peoples. 285

In June 1993, during the International Year of Indigenous Peoples, the second World Conference on Human Rights was held in Vienna. Many hundreds of Indigenous people attended the conference and their representatives addressed the plenary session. In its Vienna Declaration and Programme of Action, the World Conference reaffirmed "the commitment of the international community to [Indigenous people's] economic, social and cultural well-being and their enjoyment of the fruits of sustainable development."

The Conference called upon States, in accordance with international law, to

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take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognise the value and diversity of their distinct identities, cultures and social organisation.  


There has, however, been an extraordinary convergence of international criticism of the Australian government in recent years for its treatment of Indigenous peoples.

In 2000, the expert members of three separate United Nations treaty bodies, the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, expressed concern that the Australian government was violating its international obligations under the relevant treaties.


The members of the Committee on Economic, Social and Cultural Rights, in particular, expressed their “deep concern” that, despite the efforts of the Australian government, Indigenous peoples in Australia continued to experience comparative disadvantage in the enjoyment of their economic, social and cultural rights, particularly in the areas of employment, housing, health and education.\(^{290}\) Under the International Covenant on Economic, Social and Cultural Rights, however, there is no enforcement mechanism, nor any avenue of individual petition to claim breaches of economic, social and cultural rights.

The Australian government has all but rejected the moral authority of the United Nations in this matter. The government objected strongly to the comments, criticising the membership and composition of the Committees and ordering a two-month “whole-of-government review of the United Nations treaty committee system as it affects Australia”.\(^{291}\)

**The Commonwealth**

The Commonwealth of Nations may provide appropriate alternative leadership. The fifty-four member Commonwealth of Nations made strong commitments to human rights in the 1971 Singapore Declaration of Commonwealth Principles and, twenty years later, in the Harare Declaration of 1991.

In the Harare Declaration, the Commonwealth Heads of Government affirmed their commitment to fundamental Commonwealth principles of human dignity and equality, the rule of international law, the liberty of the individual under the law, and equal rights for all citizens regardless of gender, race, colour, creed or political belief, including their right to participate in their society.

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The Heads of Government opposed racial prejudice and intolerance and all forms of racial oppression, recognised “the importance and urgency of economic and social development”, and sought “the progressive removal of the wide disparities in living standards amongst our members.”

They pledged the Commonwealth and its countries to work with renewed vigour, concentrating especially on, *inter alia*, “fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief...”292 Although the Declaration did not refer to Indigenous rights, these must be included in any serious commitment to fundamental human rights.

The Heads of Government concluded the Declaration by reaffirming the principles of the Commonwealth and committing their Governments to pursue them “in areas where we believe that the Commonwealth has a distinctive contribution to offer...”293

The Commonwealth of Nations can make a distinctive contribution in the area of Indigenous rights. Many of the problems facing Indigenous peoples today are the direct result of colonialism and of the dispossession policies of the former British Empire, the precursor to the modern Commonwealth. Of the approximately 250 million Indigenous people around the world, around 150 million live in Commonwealth countries.

Moreover, there are certain common elements among Indigenous communities throughout the Commonwealth with regard to human rights: these communities suffer from significant breaches of their economic, social and cultural rights; they have difficulty exercising their civil and political rights as a result of their marginalisation and minority status in society; and they often do not benefit from the newer generation of rights pertaining to development, the environment, women, and collective rights.294

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293 Commonwealth Heads of Government. ‘Harare Commonwealth Declaration’, *ibid*.

The Commonwealth has not, however, taken a specific position with regard to the rights of Indigenous peoples, nor has it encouraged member States to develop Indigenous policy in their own countries.

This is not an isolated example of the Commonwealth's failure to address breaches of Indigenous rights. Halfway through the designated timetable, most countries are not on track to meet most of the international development targets by 2015, and there is little evidence that Commonwealth member States have identified Indigenous peoples as a particular concern if the targets are to be reached.

Few Commonwealth countries have supported the work carried out by the United Nations Working Group on Indigenous Populations on the Draft Declaration on the Rights of Indigenous Peoples.

Of the fifty-four Commonwealth member countries, only Fiji has ratified the International Labour Organisation's 1989 Convention No. 169 concerning Indigenous and Tribal Peoples. Only forty-three Commonwealth countries have ratified the International Convention on the Elimination of All Forms of Racial Discrimination, and many of those countries are overdue in submitting their reports to the Committee.

Finally, only thirty-two Commonwealth countries are parties to the International Covenant on Economic, Social and Cultural Rights. This is a particularly significant neglect of human rights standards, since this Covenant is one of the most important treaties in guaranteeing basic 'lifestyle' rights.

The Commonwealth Secretariat has acknowledged very little responsibility on its part to Indigenous peoples in its member countries. In July 2001, the Office of Commonwealth Secretary-General Don McKinnon wrote that:

The Commonwealth believes firmly in fundamental human rights, as expressed in the 1971 Singapore Declaration and the 1991 Harare Commonwealth Declaration. However, there is no Commonwealth consensus or policy as such on the rights of indigenous peoples. It is basically left to each Commonwealth Government to deal with indigenous people's issues in the context of their national policies; it is expected, of course, that such policies would be consistent with the Commonwealth's fundamental political values.298

This report does not share the Commonwealth Secretary-General's confidence that the Australian government is dealing with Indigenous people's issues in their national policies in a way that is "consistent with the Commonwealth's fundamental political values", or indeed with human rights standards under international law.

This report has indicated a number of areas in which the economic, social and cultural rights of Aboriginal and Torres Strait Islander peoples in Australia today are breached or, at best, inadequately addressed, particularly in comparison to non-Indigenous Australians. It has also noted the failure of successive Australian governments to improve significantly economic, social and cultural outcomes for Indigenous peoples.

**Recommendations**

In conclusion, this report respectfully urges the Commonwealth Heads of Government to work with the Commonwealth Secretariat to:

- place the issue of Indigenous rights prominently at the centre of the Commonwealth Secretariat and its activities, as well as on the agenda of each CHOGM;
- incorporate a paragraph supporting the rights of Indigenous peoples into the next Commonwealth Declaration;
- sign and ratify the conventions relating to the human rights of Indigenous peoples;

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• support the work of the United Nations Working Group on Indigenous Populations on the Draft Declaration on the Rights of Indigenous Peoples as it currently stands; and

• draft a Commonwealth Declaration on Indigenous Rights to be adopted at the 2005 CHOGM.

Furthermore, this report supports and restates the specific recommendations proposed by the Commonwealth Policy Studies Unit and presented to the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa, and the 2002 Brisbane Commonwealth Heads of Government Meeting.

The recommendations seek to encourage Commonwealth member States to:

• Recognise that Indigenous peoples have rights that need to be protected and that Indigenous rights must be an integral part of any serious programme for the realisation of human rights;

• Recognise Indigenous peoples as 'peoples' with the right freely to determine their own future themselves, a future free from discrimination on the basis of race and one where all peoples are equal. In this context, they should support the right of all peoples, including Indigenous peoples, to self-determination;

• Acknowledge and take responsibility for the colonisation process and its impact on Indigenous peoples;

• Accept responsibility to take specific action to recognise and respect Indigenous peoples' rights and to have this reflected in the next Commonwealth Declaration; such as:
  • establishing an Indigenous Advocacy Unit within the Commonwealth Secretariat to provide specific advocacy and support for Indigenous issues;
  • establishing an Expert Working Group on Indigenous Peoples to report to future CHOGMs on current needs and possible future action with regard to the rights of Indigenous peoples;
• inaugurating a Commonwealth High Commissioner for Human Rights who would take up the issue of Indigenous peoples’ rights in the Commonwealth;

• Commit themselves to reviewing national and international policies that adversely affect the rights of Indigenous peoples, such as:
  • recognising the need to protect Indigenous peoples’ land ownership rights;
  • noting the requirements of existing international standards, particularly the ICERD General Recommendation XXIII and ILO Convention No. 169, that prior, free and informed consent of Indigenous peoples be obtained in all matters of development that affect them;
  • supporting the principle that States and intergovernmental organisations, including the Commonwealth, the World Bank, the International Monetary Fund, regional banks and the World Trade Organisation, should, together with Indigenous peoples, review the impacts of their laws, policies and programmes with the goal of revising those that are incompatible with protection of the rights of Indigenous peoples, including the right to development; and
  • supporting the principle that States provide effective remedies, recourses, redress and other measures - with particular emphasis on the restoration of land rather than monetary compensation - for the loss and destruction of Indigenous lands, natural resources, and environment resulting from exploration and exploitation and extractive activities and programmes;

• Support policies that assist Indigenous advancement, such as:
  • supporting a reference in the next Commonwealth Declaration calling on Commonwealth Governments to conclude their negotiations on the UN Draft Declaration on the Rights of Indigenous Peoples before 2004 and adopt the Declaration as it is currently drafted;
  • effectively implementing, with the necessary funding and personnel, the UN Permanent Forum on Indigenous issues; and
• incorporating the Declaration and Plan of Action from the 2001 UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as they apply to Indigenous peoples and insofar as they are consistent with the UN Draft Declaration on the Rights of Indigenous Peoples, into the next Commonwealth Declaration.

Although Indigenous peoples are increasingly claiming their rights, they will not obtain them on their own. In most democracies, they are a minority group and will be voted down, while in the poorest countries it will usually be possible to argue that there are more non-Indigenous than Indigenous people deprived of economic, social and cultural rights. The case for Indigenous peoples is primarily a moral one, based on contemporary disadvantage and historic suffering.299

By virtue of its colonial history, the Commonwealth is an appropriate body to assist the Indigenous peoples of Australia and other member countries. It has a special potential to support them in combating discrimination and disadvantage and in realising their human rights.

Indeed, it has an historic and moral responsibility towards Indigenous peoples to do so.

Appendices

Appendix 1. The United Nations International Covenant on Economic, Social and Cultural Rights

Appendix 2. Overseas Experiences of Indigenous peoples in the United States, Canada and New Zealand


Appendix 4. The United Nations Draft Declaration on the Rights of Indigenous Peoples
Appendix 1.

The United Nations
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

PREAMBLE

The States Parties to the present Covenant,

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 the members of the human family is the foundation of freedom, justice and peace in world,

Recognising that these rights derive from the inherent dignity of the human person,

Recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights and freedom,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant,

Agree upon the following articles:

PART I

Article 1

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

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognise that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person
any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised herein, or at their limitation to greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognised or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations of confederations and the right of the latter to form or join international trade-union organisations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in the Convention.

Article 9

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognise that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young
persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11
1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the international co-operation based on free consent.

2. The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12
1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13
1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article 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 this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14
Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory of other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and
adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15
1. The States Parties to the present Covenant recognise the right of everyone:
   (a) To take part in cultural life;
   (b) To enjoy the benefits of scientific progress and its applications;
   (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV
Article 16
1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognised herein.
2. (a) All reports shall be submitted to Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
   (b) The Secretary-General of the United Nations shall also transmit to the specialised agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialised agencies insofar as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17
1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialised agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialised agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18
Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialised agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19
The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialised agencies in accordance with article 18.

Article 20
The States Parties to the present Covenant and the specialised agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21
The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialised agencies on the measures taken and the progress made in achieving general observance of the rights recognised in the present Covenant.

Article 22
The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialised agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.
Article 23
The States Parties to the present Covenant agree that international action for the achievement of the rights recognised in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organised in conjunction with the Governments concerned.

Article 24
Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialised agencies which define the respective responsibilities of the various organs of the United Nations and of the specialised agencies in regard to the matters dealt with in the present Covenant.

Article 25
Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

PART V

Article 26
1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialised agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27
1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28
The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29
1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

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

Article 30
Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31
1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.
Appendix 2.

Overseas Experiences

1.1 As mentioned [in the text] Indigenous infant mortality rates in Australia have been declining, but life expectancy has not greatly improved owing to continued high mortality rates.

1.2 This is in contrast with the experience of the Indigenous populations of Canada, the United States and New Zealand.

1.3 Between 1985 and 1996, the mortality rates for Indigenous Australians only fell by about 9 per cent. This was insufficient to close the gap between non-Indigenous mortality rates, which also fell over the same period.

1.4 Death rates for NZ and US Indigenous people, however, decreased more significantly, falling relatively rapidly in the 1970's and then more slowly.

The all causes mortality for the Aboriginal and Torres Strait Islander population is twice as high as the Maori rate, 2.3 times the United States Indigenous rate and 3.1 times the total Australian rate. The Maori death rate declined by 44% in the period between 1974 and 1994 and the United States Indigenous rate by 30% in the same period.2

United States

1.5 In 1972-74, life expectancy at birth for American Indians and Alaska Natives was 63.5 years (higher than the current life expectancy of Indigenous Australians). By 1992-94 this had increased to 71.1 years, only 4.4 years less than that for US All Races and 5.2 years less than that for US Whites.

1.6 Over this same period maternal and infant mortality rates had also declined by 86 per cent and 68 per cent respectively.

1.7 The leading causes of death were diseases of the heart and cancer (the same as for the total population). However, the second leading cause of death for Indian males was accidents. The age adjusted death rates for American Indians and Alaska Natives is 35 per cent higher than for US All Races and were considerably higher for the following causes:

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2 Australian Medical Association and Public Health Association of Australia. Submission to House of Representatives Standing Committee on Family and Community Affairs, *Health is Life*, *ibid.*
• Alcoholism - 579 per cent, tuberculosis - 475 per cent, diabetes mellitus - 231 per cent, accidents - 212 per cent and suicide 70 per cent.

1.8 The population structure is similar to Australia’s Indigenous population, although slightly older reflecting their improved mortality, with 33 per cent under 15 years and 6 per cent older than 64 years. This compares to 22 per cent and 13 per cent respectively for the US All Races population. The median age was 24.2 years compared to 32.9 years.

1.9 In 1989, median household income for Indians in reservation States was $19,897, 66 per cent of the $30,056 for the US All Races population. 31.6 per cent of Indians lived below the poverty level compared to 13.1 per cent of the total population.

Canada

1.10 Life expectancy for Registered Indians in Canada continues to approach parity with the general population. In 1995, the life expectancy for Indian males and females was 69.1 years and 76.2 years respectively and the difference between the general population is expected to be less than six years when 1996 data is released.

1.11 Between 1985 and 1994, injury and poisoning were the leading causes of death among registered Indians, but the rates had declined by almost half over that period. The next leading causes of death in 1994 were diseases of the circulatory system and neoplasms.

1.12 In 1990, average income among Aboriginal persons was $14,198, 70.1 per cent of the $20,264 for the non-Aboriginal population, increasing from 57 per cent in 1985.

1.13 General educational attainment, despite significant improvements between 1986 to 1991, remains lower than for the non-Aboriginal population. The unemployment rate for Aboriginal persons in 1991 was roughly double the non-Aboriginal rates.

New Zealand

1.14 Over the past 40 years, life expectancy for Maori females increased by 17 years and for Maori males by 14 years.

1.15 At the same time, the disparity between Maori and non-Maori life expectancy also narrowed, decreasing from 14.2 years to 5.4 years for Maori males and from 16.5 years to 6.2 years for Maori females.
From 1987 to 1996, mortality rates have decreased by 18 per cent for males and 16 per cent for females, but they are still higher than the non-Maori rates in all age groups except 5-9 years. Maoris had a total age-standardised death rate in 1996 which was almost twice the non-Maori death rate.

The leading causes of death in 1996 were neoplasms and ischaemic heart diseases.

Maori males also had more than twice the Maori female mortality rate for motor vehicle accidents and approximately three times the suicide rate.

Since the mid-1980s, Maori participation in all sectors of education has increased. Between 1984 and 1994, the proportion of Maoris over 16 years still in secondary school increased from 48.8 per cent to 72.4 per cent. Nevertheless disparities persist with non-Maoris. Maoris are less likely to attend early childhood education, remain to senior levels of secondary school or obtain a formal qualification on leaving school.

Over the 1987-1997 decade, the average income of Maori households rose from $26,000 to $37,000, but as the rate of non-Maori income increased at a greater rate the disparity had increased and the average household income is some 78.7 per cent of the non-Maori average.
Appendix 3.

Labour Force Status of Indigenous\(^1\) (A1) and non-Indigenous\(^2\) (A2) Populations

### A1

**Labour Force Status, Indigenous Population Aged 15 Years and Over(a)** — continued

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2. ABS. 'Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians', *ibid.*, at 37.
## A2  
LABOUR FORCE STATUS, NON-INDEPENDENT POPULATION AGED 15 YEARS AND OVER(a) — continued

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* Estimate has a relative standard error of between 25% and 50% and should be used with caution
** Estimate has a relative standard error greater than 50% and is considered too unreliable for general use

(a) Reference period is March 1994, and the month of February for subsequent years.
Appendix 4.

The United Nations
DRAFT DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognising 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 civilisations 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, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

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

Concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in their colonisation 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,

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

Welcoming the fact that indigenous peoples are organising themselves for political, economic, social and cultural enhancement and in order to bring an end to 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,

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

Emphasising the need for demilitarisation of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognising in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children,

Recognising also that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

Considering that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of 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 of self-determination,

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

**Emphasising** 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,

**Solemnly proclaims** the following United Nations Declaration on the Rights of Indigenous Peoples:

**PART I**

**Article 1**
Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

**Article 2**
Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

**Article 3**
Indigenous peoples have the right of 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 have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Article 5**
Every indigenous individual has the right to a nationality.

**PART II**

**Article 6**
Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

**Article 7**
Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including 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 population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

**Article 8**
Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognised as such.

**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 disadvantage 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 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
Indigenous peoples have the right to special protection and security in periods of armed conflict.

States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions.

PART III
Article 12
Indigenous peoples have the right to practise and revitalise 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, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Article 13
Indigenous peoples have the right to manifest, practise, 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 ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

Article 14
Indigenous peoples have the right to revitalise, 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.

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

PART IV
Article 15
Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and 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.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

Article 16
Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.
States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

Article 17
Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

Article 18
Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

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

PART V
Article 19
Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies 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 20
Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

Article 21
Indigenous peoples have the right to maintain and develop their political, economic and social systems, 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. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

Article 22
Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons.

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 determine and develop all 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
Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

PART VI
Article 25
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

Article 26
Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full
recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

**Article 27**
Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. 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.

**Article 28**
Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

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 29**
Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

**Article 30**
Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**PART VII**

**Article 31**
Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

**Article 32**
Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

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

**Article 33**
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in
accordance with internationally recognised human rights standards.

Article 34
Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

Article 35
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 other peoples across borders.

States shall take effective measures to ensure the exercise and implementation of this right.

Article 36
Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

PART VIII
Article 37
States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognised herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

Article 38
Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognised in this Declaration.

Article 39
Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

Article 40
The organs and specialised agencies of the United Nations system and other intergovernmental organisations shall contribute to the full realisation of the provisions of this Declaration through the mobilisation, 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 41
The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

PART IX
Article 42
The rights recognised herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 43
All the rights and freedoms recognised herein are equally guaranteed to male and female indigenous individuals.

Article 44
Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Article 45
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.