

Australia's 2015 UPR—NGO Coalition Fact Sheet 8

Aboriginal and Torres Strait Islander Peoples

Since the last UPR, positive developments for Australia's Aboriginal and Torres Strait Islander Peoples have included a commitment by the Australian Government to Constitutional Recognition, the adoption of the World Conference of Indigenous Peoples Outcome Document and continued commitment to the strategy for "Closing the Gap" aimed at improving health and life expectancy.

However, few of the recommendations made by the Special Rapporteur on Indigenous Rights have been implemented.¹ Aboriginal and Torres Strait Islander Peoples continue to suffer significant disadvantage in the enjoyment of their human rights.

In almost all social indicators, Aboriginal and Torres Strait Islander Peoples continue to rate as among the most disadvantaged peoples in Australia. Aboriginal and Torres Strait Islander Peoples rate far worse than non-Indigenous people in education, employment, health, standard of living, hospitalisation rates of Aboriginal and Torres Strait Islander women and incidence of family violence. Over-representation in the child protection and criminal justice systems has increased since 2010. Since the first cycle of the UPR, the gap in life expectancy between Aboriginal and Torres Strait Islander Peoples and non-Indigenous Australians has dropped slightly from 11.4 to 10.6 years for males and from 9.6 to 9.5 years for females.

Since the change of Federal Government in September 2013, the new 'Indigenous Advancement Strategy' has seen overall cuts to funding of \$603 million over 5 years from health, education, welfare and legal services. These cuts have seen a move away from the Closing the Gap Targets and the narrowing of funded Aboriginal and Torres Strait Islander program areas from 150 to five. Additionally, funding cuts have sought to stymie self-determination with defunding of the National Congress of Australia's First Peoples and cuts to the advocacy and law reform budgets of Aboriginal and Torres Strait Islander organisations.

Proposed Recommendation:

Australia should continue to review and implement the Special Rapporteur's recommendations, consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

United Nations Declaration on the Rights of Indigenous Peoples

In the first cycle of the UPR, recommendations were made for Australia to ensure the full and effective implementation of the UNDRIP. Despite the UNDRIP incorporating the substantive rights outlined in seven key treaties to which Australia is a signatory, Australia continues to view the UNDRIP as merely aspirational rather than a binding legal document. It is encouraging that the Australian Government agreed to the World Conference on Indigenous Peoples Outcome Document.

Proposed Recommendation:

Australia should promote full awareness of the Declaration on the Rights of Indigenous Peoples amongst the legislature, the judiciary and the civil service, as well as incorporating awareness and understanding of these human rights standards at all levels in the education system.

Northern Territory Intervention

The Commonwealth Government has reinstated the *Racial Discrimination Act 1975* (Cth) in the Northern Territory as part of the Stronger Futures legislation which superseded the *Northern Territory Emergency Response Act 2007*. While the Stronger Futures legislation is not explicitly discriminatory under the *Racial Discrimination Act 1975* (Cth), because the majority of people living in affected areas in which these regulations and laws apply are Aboriginal people, the legislation is discriminatory in practice. The Stronger Futures Measures are incompatible with human rights standards in a number of ways, including lack of self-determination and free, prior and informed consent; the income management and school attendance measures curtail the enjoyment of human rights; and there is limited evidence to show the Stronger Futures Measures are reasonable and proportionate.

¹ Australian Council of Human Rights Authorities, *Australia's Universal Periodic Review, 2014 Progress Report* (December 2014) 25.

Proposed Recommendation:

Australia should revise the national intervention in the Northern Territory in close cooperation with Aboriginal and Torres Strait Islander Peoples to ensure the policies and programs are rationally connected to, reasonable, and in proportion to the achievement of social development of Aboriginal and Torres Strait Islander Peoples.

Native Title

The strict requirement of the *Native Title Act 1993* (Cth) of continuous connection with the land since colonisation is incompatible with the UNDRIP, whilst other discriminatory aspects of the native title system remain in place. Reforms to the *Native Title Act* have created legal certainty for governments and third parties at the expense of native title, but fail to deliver compensation for the wrongful extinguishment of native title to Aboriginal and Torres Strait Islander peoples.

Proposed Recommendations:

Australia should regularly review native title laws to ensure that the lands, territories and resources of Aboriginal and Torres Strait Islander Peoples are returned in accordance with human rights standards for ownership and development.

Australia should reverse the onus of proof for title to lands to require evidence that lands, territories and resources have been legitimately acquired from Aboriginal and Torres Strait Islander Peoples.

Stolen Generations and Stolen Wages

The forced removal of Aboriginal and Torres Strait Islander children from their families was official government policy from 1909 to 1969. Once in care, high proportions were psychologically, physically and sexually abused. Consequently, substance abuse, depression, anxiety, post-traumatic stress and suicide are commonplace.

From 1900 to the 1980s, many Australian State and Territory governments withheld wages and other payments from Aboriginal and Torres Strait Islander Peoples under their care and protection. A large amount of this retained money was never paid to those entitled to it. This has had economic, social, cultural, civil, political and historical implications for Aboriginal and Torres Strait Islander Peoples and is directly related to the disadvantage and poverty experienced today.

Australia has failed to implement a national reparation scheme, including compensation, for

members of the ‘Stolen Generations’² or for the ‘Stolen Wages’ of many Aboriginal and Torres Strait Islander peoples.³ Failure to properly redress the policies of the ‘Stolen Generations’ has led to ongoing escalation in the removal of Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander children now account for almost 35% of all children in care despite comprising only 4.4% of the nation’s child population.⁴

Proposed Recommendation:

Australia should establish a national reparations scheme, including compensation, for members of the ‘Stolen Generations’ and implement all recommendations contained in the *Bringing Them Home Report*, especially in relation to current child removal practices. Australia should also establish a national compensation scheme for people adversely affected by Stolen Wages policies.

² Stolen Generations refers to Aboriginal and Torres Strait children who were forcibly removed from their families under official government policies between 1909 and 1969 to promote assimilation. The UN Human Rights Committee, the Special Rapporteur on Indigenous People and the Australian Human Rights Commission have all called on the government to provide compensation to the Stolen Generations. See, James Anaya, Special Rapporteur, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010) [19]; Australian Human Rights Commission, *Social Justice Report 2008* (2008) ch 4; Human Rights Committee, *Concluding Observations: Australia*, UN Doc CCPR/C/AUS/CO/5 (3 April 2009) [15].

³ Stolen wages is a term used to refer to the wages of ‘Indigenous workers whose paid labour was controlled by the Government’ – in many cases, Aboriginal and Torres Strait Islander people did not receive any wages at all, or received insufficient wages. See, Parliament of Australia, Senate Legal and Constitutional Affairs Committee, *Unfinished Business: Indigenous Stolen Wages* (2006).

⁴ Nationally, 14 991 Aboriginal and Torres Strait Islander children and 27 827 non-Indigenous children were in out-of-home care at 30 June 2014: Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services* (2015) 15.13.

Economic Social and Cultural Rights

Aboriginal and Torres Strait Islander children, particularly those living in remote communities, suffer from severe disadvantage, including in relation to child mortality, living standards, health and education.⁵ There is a lack of culturally appropriate services⁶ and significant barriers to education persist, including a lack of bilingual education programs.⁷

Proposed Recommendation:

Australia should ensure availability of, and funding for, quality community controlled services across early childhood, health, family support, housing and youth sectors, including programs to address critical overcrowding and housing shortages.

Australia should ensure Aboriginal and Torres Strait Islander Peoples give their consent to the development and implementation of policies and programs that impact upon their communities and futures.

⁵ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2014*(2014); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4(19 June 2012); Select Committee on Regional and Remote Indigenous Committees, *First Report* (2008); James Anaya, Special Rapporteur, *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Addendum – The Situation of Indigenous Peoples in Australia* (Advanced unedited version), UN Doc A/HRC/15 (4 March 2010) ; Secretariat of National Aboriginal and Islander Child Care, Submission in relation to General Assembly Resolution A/RES/66/141 on the Rights of Aboriginal and Torres Strait Islander Children in Australia 30 April 2012.

⁶ Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4(19 June 2012).

⁷ See, eg, Bruce Wilson, NT Ministry for Education, *A Share in the Future –Review of Indigenous Education in the Northern Territory* (May 2014). Note that both the UN Committee on Economic, Social and Cultural Rights and the UN Child Rights Committee have recommended that the Australian Government preserve and promote bilingual education at schools as well as to ensure adequate resources are provided: Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, Geneva, 42nd session, (4-22 May 2009) [33]; Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc /C/AUS/CO/4(19 June 2012) [75].