

## **NATIONAL HUMAN RIGHTS CONSULTATION SUBMISSION**

11<sup>th</sup> June 2009

### ***Submission made on behalf of:***

- Professor Fiona Stanley, Telethon Institute for Child Health Research, University of Western Australia
- Professor Bernard Guerin, University of South Australia and Desert Knowledge CRC
- Mr Wes Miller, Chief Executive Officer, Jawoyn Association
- Amanda Gordon, Director, Senior Clinical Psychologist, Armchair Psychology Practice
- Associate Professor Pat Dudgeon, University of Western Australia
- Professor Martha Augoustinos, University of Adelaide
- Professor Peter Buckskin, University of South Australia
- Associate Professor Tracey Bunda, Yunggoendi, First Nations Centre for Higher Education and Research
- Associate Professor Juli Coffin, Combined Universities Centre for Rural Health
- Professor Rob Donovan, Curtin University
- Professor Neil Drew, University of Notre Dame
- Professor Kevin Dunn, University of Western Sydney
- Dr. Marisa Gilles, Combined Universities Centre for Rural Health
- Ms. Heather Gridley, Australian Psychological Society
- Dr. Pauline Guerin, Flinders University of South Australia
- Professor Celia Hammond, University of Notre Dame
- Professor Lyn Henderson-Yates, University of Notre Dame
- Dr. Cheryl Kickett-Tucker, Telethon Institute for Child Health Research
- Professor Carmen Lawrence, University of Western Australia
- Associate Professor Deborah Lehmann, Telethon Institute for Child Health Research
- Ms. Anne Lipzker, Australian Psychological Society
- Mr. Dennis McDermott, Flinders University
- Associate Professor David Mellor, Deakin University
- Professor Helen Milroy, University of Western Australia
- Professor Jill Milroy, University of Western Australia
- Professor Bob Montgomery, Australian Psychological Society
- Professor Martin Nakata, University of Technology
- Dr. Yin Paradies, University of Melbourne

- Dr. Anne Pedersen, Murdoch University
- Lt. General John Sanderson
- Dr. Christopher Sonn, Victoria University
- Mr. Geoffrey Stokes, Aboriginal Community Member – Kalgoorlie
- Professor Lance Twomey
- Professor Iain Walker, Murdoch University
- Associate Professor Roz Walker, Telethon Institute of Child Health Research
- Associate Professor Ted Wilkes, Curtin University of Technology
- Professor Joan Winch, Aboriginal Elder
- Mr. Michael Wright
- Dr. Dawn Darlaston-Jones, University of Notre Dame, Australia
- Ms. Ashleigh Owen, University of Notre Dame, Australia
- Ms. Whitney Darlaston-Jones, University of Notre Dame, Australia
- Ms Annie Lee, University of Notre Dame, Australia
- Ms. Belle Glaskin, Canning Division of General Practice
- Ms. Faye D'Souza, University of Notre Dame
- Mr. Dorian Gray, University of Notre Dame, Australia
- Ms. Maude Walsh, Telethon Institute of Child Health Research
- Ms. Karen Ugle, Yorgum Aboriginal Family Counselling Services
- Ms. Aileen Marwung Walsh, University of Western Australia

\* Please note that giving the Institutional Affiliation does not imply Institutional endorsement of the submission

### **Background**

On the 1st and 2<sup>nd</sup> June 2009, over 40 leading researchers from across Australia met at the University of Western Australia Boatshed in Perth, to discuss research concerning racism towards Indigenous Australians. This Roundtable brought together Indigenous and non-Indigenous leaders and racism researchers, with the recognition that *high quality research and evidence must be at the heart of our endeavours to inform public policy and everyday practice* in order to understand and combat racism in all its forms. The two-day meeting significantly advanced the themes of social justice and reconciliation in Australian society. The submission was drafted at that meeting and is presented as a declaration from the participants.

## 1. Which human rights should be protected and promoted?

We strongly support:

- the protection of all civil and political and economic, social and cultural rights.
- a Human Rights Act for Australia. We feel that this is critically important given the ease with which the *Racial Discrimination Act 1975* was suspended in 2007.
- immediate re-instatement and strengthening of the *Racial Discrimination Act 1975* with full integrity.
- the full implementation of *the United Nations' Declaration on the Rights of Indigenous Peoples* (the Declaration). We identify **each right and all collective rights** as identified in the Declaration, as being a minimum standard for the protection and promotion of the rights of Aboriginal and Torres Strait Islander peoples, the original inhabitants of this land.
- we specifically note the protective factors of the following rights:
  - the right to culture and language and their protection
  - the right to self-determination
  - the right to live free from discrimination
  - the right to education
  - the right to housing
  - the right to social security with dignity
  - the right to live safely and live free from violence
  - the right to lands and resources peoples have traditionally owned.
- that the Australian Government collect accurate qualitative and quantitative data on Aboriginal and Torres Strait Islander peoples to enable the fundamental right to proper planning, policy development, service delivery, and allocation of funding. This data collection must be done within an Indigenous framework and Indigenous people must be involved in all stages of the design and delivery processes. This suggestion is in accordance with Recommendation 103 of the Durban Review Conference outcomes document:

*Recommends that States that have not yet done so establish mechanisms to collect, compile, analyse, disseminate and publish reliable and disaggregated statistical data, and undertake all other related measures necessary to regularly assess the situation of all victims of racism, racial discrimination, xenophobia and related intolerance, in accordance with the Durban Declaration and Programme of Action.*

Further to this we recommend that Aboriginal and Torres Strait Islander peoples should have options to be identified by their language group, tribal group or specific community (if that is their preference) in all data

collection, including ABS data collection, as is done successfully elsewhere in the world even with large numbers of affiliated groups.

- that, as outlined again in response to Question 3 below, the Australian Government officially recognises the rights of Indigenous peoples as having a special place as our First Nations' peoples.

## 2. Are human rights sufficiently protected and promoted?

The human rights of Aboriginal and Torres Strait Islander peoples are not sufficiently protected or promoted. As researchers and practitioners we know this because of the clearly documented poor outcomes in relation to health, education, incarceration, child protection, morbidity and mortality. These problems have been persistent in Aboriginal and Torres Strait Islander communities for some time. If human rights were adequately protected and promoted, those who were at highest risk would have received the *best and most targeted* services to address disadvantage.

This data has already been supported in many major Government reports including: the *Social Justice Reports*, the *Bringing Them Home Report*, the *Little Children are Sacred Report* and the *Royal Commission Report into Aboriginal Deaths in Custody*.

We also note that the Human Rights Consultation will be writing another such report to government on the outcomes of the consultations. We urge the Australian Government not to ignore yet another important report relating to human rights in Australia.

We point to the following selection of issues as indications of how the human rights of Aboriginal and Torres Strait Islander peoples are not adequately protected:

- in response to data on child abuse gathered in the *Little Children are Sacred Report*, the Howard Government was able to fully suspend the *Racial Discrimination Act 1975* with little or no consultation.
- lack of follow-up to the *Bringing Them Home Report*
- if we had proper protection of human rights we would have understood the full implications and devastating consequences of the removal of children from families and lands and had remedial healing programs available to these programs. A human rights response to the forcible removal of children would be to acknowledge the subsequent distress of families.

- the watering down of the *Native Title Act* with the 1998 amendments has weakened the position of Aboriginal and Torres Strait Islander peoples. Land and connection to land is at the core of Aboriginal spirituality and well being. Aboriginal people have a right to their lands and the resources which they have traditionally owned. The native title system is unnecessarily lengthy and complex. Some current complaints have been in the system for around 15 years and are still not resolved. This process has been divisive for many Aboriginal and Torres Strait Islander peoples and has had serious and real impacts on their well being.
- Aboriginal and Torres Strait Islander peoples were without a voice after the disbanding of ATSIC and subsequently had limited opportunity to influence policy development and decision making.
- Aboriginal and Torres Strait Islander peoples do not have access to justice. The justice system is not fair. Extensive existing data indicates that Aboriginal and Torres Strait Islander peoples experience race discrimination at every stage of the justice system. For example, in Western Australia 43% of prisoners are Indigenous from 3.5% of the population.
- we need to better understand pathways and life long outcomes in Aboriginal and Torres Strait Islander contexts rather than assume that context is universal. One of the worst assumed pathways is demonstrated in the foetal alcohol syndrome story. There is almost no support available to enable children with foetal alcohol syndrome to access education. Around 50% of children with foetal alcohol syndrome are incarcerated as young adults or adults.
- Many Aboriginal and Torres Strait Islander children do not have access to safe, culturally appropriate, resourced, and accessible quality education. These children need the highest standards of education, rather than the present low expectation from the system and the teachers. Many previous recommendations in reports have not been followed up.
- The right to language is a significant right and it needs to be available in schools. Teaching in language is an important protective factor and this is widely evidenced. This evidence has been ignored. Language specialists are no longer employed in remote schools and there are currently only a small handful of schools in all of Australia teaching indigenous languages.
- The right to safe, culturally appropriate, resourced and accessible services to support social and emotional well-being for good 'mental health'. This includes the recognition of historical and cultural contexts for social and emotional well-being and this needs to be included in psychological and psychiatric assessments.

### 3. How can we better protect human rights?

We can strengthen human rights protections by:

#### ***Legal and Political***

- Deleting section 25 of the Constitution (the race power) and replace it with a racial equality clause.
- Unconditionally re-instating and strengthening the *Racial Discrimination Act 1975* with dire urgency
- Introducing a Human Rights Act for Australia
- Introducing an Indigenous Rights Act for Australia that will truly protect the original peoples of Australia and give them grounds from which to pursue their ends. This could be based on the New Zealand example of equal (1) partnership, (2) participation and (3) protection by the Crown. It should emphasize the First Nations status of Indigenous peoples in Australia.
- Making all future reports, inquiries and commissions pay attention to and follow the recommendations of previous reports.

#### ***Social***

- Dedicating greater resources to Aboriginal and Torres Strait Islander human rights education
- Dedicate greater effort in education and research to the elimination of racism and discrimination
- Establish better enumeration of Aboriginal and Torres Strait Islander people's in partnership with them, to ascertain how they choose to be classified.
- Because of the clearly documented poor outcomes in relation to health, education, incarceration, child abuse and neglect, morbidity and mortality, make all future service provision through government, as well as all research and enquiry, explicitly embrace the human rights aspects of what they do and what they find out.