



Australian  
Human Rights  
Commission  
*everyone, everywhere, everyday*

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# 2008

## Human rights and crime prevention in Indigenous communities

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Monday, 29th September, 2008.

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This paper is a position statement of the Aboriginal and Torres Strait Islander Social Justice Commissioner (the Commissioner) on human rights and crime prevention in Indigenous communities. It contains information and examples of the Commissioner's work to address crime and its causes in Indigenous communities.

## **Human Rights and Crime Prevention in Indigenous Communities**

### **Key messages:**

- All Indigenous people are entitled to live their lives in safety and full human dignity – without fear of intimidation, violence, abuse or damage to property. This is their cultural right and their human right. Like all Australians, Indigenous peoples are entitled to the full and equal protection of the law.
- Indigenous Australians continue to be over-represented in all aspects of the criminal justice system - both as victims and perpetrators.
- Pre and post release programs for Indigenous men and women exiting prison are important steps in preventing recidivism. They assist in develop strategies for positive re-integration into community life.
- The levels of violence experienced by Indigenous people are higher than for the rest of the population.
- Indigenous Australians have a right to adequate police services which underpin citizenship rights and responsibilities.
- Government officials and community members need to be fearless and bold in reporting suspected incidents of crime, violence and abuse. This means addressing the culture of silence that exists in many Indigenous communities about these issues.
- Crime prevention relates to almost every aspect of policy making and service delivery to Indigenous communities.
- Governments need to work in partnership with Indigenous peoples and communities to identify and implement solutions to address crime.
- Holistic approaches are required to address the causes and the consequences of crime in Indigenous communities. If we treat these crime as simply a law and order and legal compliance matter, we will not achieve lasting improvements to the lives of Indigenous peoples.
- Understanding the causes of crime is essential to crime prevention.
- We can no longer accept the making of commitments to address Aboriginal and Torres Strait Islander inequality without putting into place processes and programs to match the stated commitment.

More information online at:

[http://www.humanrights.gov.au/social\\_justice/familyviolence/index.html](http://www.humanrights.gov.au/social_justice/familyviolence/index.html)

## **Crime Prevention Projects**

Over the past five years the Commissioner has investigated and researched the issue of crime and crime prevention in Indigenous communities, particularly as it relates to violence. The research includes:

- the relationship between substance abuse, crime and imprisonment;
- the interaction of Aboriginal customary law and human rights;
- the need for human rights education among Indigenous communities;
- addressing the needs of Indigenous women exiting prison;
- the significance of violence as a barrier to women achieving leadership positions and for women's equality generally;
- the significant role of violence and abuse as a causative factor in Indigenous women entering and then re-entering prison at alarmingly high rates;
- international models for programs aimed at addressing inter-generational trauma and grief through healing;
- the impact of violence on Indigenous youth in developing cognitive disabilities, in under-performance in schools and entry into the juvenile and then adult criminal justice processes;
- the relationship of violence to the high incidence of mental illness and youth suicide among Indigenous peoples; and
- violence being both a reflection of, and a cause of, poor health among Indigenous peoples.

The projects include:

### **1. Cognitive Disability Project:**

Indigenous young people with cognitive disabilities and/or mental health issues are some of the most disadvantaged and vulnerable young people in Australia. They often face systemic failures and discrimination which contributes to the unacceptably high number of these young people in the juvenile justice system.

This report considers the existing evidence on Indigenous young people with cognitive disabilities and/or mental health issues and maps some of the services currently available. The report contains a number of case studies that point to a framework for early intervention and diversion.

The research shows that early intervention and diversion have the potential to prevent crime and promote the human rights of Indigenous young people with cognitive disabilities and/or mental health issues.

More information about this issue is available online at:  
[http://www.humanrights.gov.au/social\\_justice/publications/cognitive.html](http://www.humanrights.gov.au/social_justice/publications/cognitive.html)

## **2. Community Legal Education (Program)**

In 2007 HREOC was funded by the Australian Attorney-General's Department to develop and deliver an education module aimed at preparing Community Legal Education workers for employment in Family Violence Prevention Legal Services. In 2008 the Commission delivered a week long training session to assist workers in strategies that raise awareness amongst Indigenous Australians about the standards of Australian law that are relevant to family violence and to clarify the relationship between Australian law and customary law.

The need for this information is especially relevant because in 2006 the Commonwealth Government introduced the *Crimes Amendment (Bail and Sentencing) Act* which was aimed at limiting the consideration that Commonwealth courts could give to Aboriginal and Torres Strait Islander customary laws when hearing bail and sentencing applications. In 2007, similar amendments were made to the Northern Territory Criminal Code, limiting NT courts from considering customary law as a mitigating factor in bail and sentencing applications.

The Commission is continuing its work in this area. For more information contact the Commission Office on: (02) 9284 9719

## **3. National Healing Body**

There is currently no national body that assists Aboriginal and Torres Strait Islander peoples to restore wellbeing for themselves and for their descendants through holistic healing programs.

The Commission is currently working with other stakeholders to address the healing needs of Aboriginal and Torres Strait Islander people who are:

- affected by the policies of forcible removal from family, including the intergenerational impacts of that removal;
- affected by family violence;
- perpetrators of anti-social behaviour associated with disempowerment and discriminatory practices; and
- exiting the criminal justice and other justice systems.

For more information contact the Commission Office on:  
(02) 9284 9642

#### **4. Addressing the needs of Indigenous women exiting prison**

The *Social Justice Report 2002* provided an overview of the experiences of Indigenous women in corrections. It highlighted the 'landscape of risk' that Indigenous women are exposed to which leads to their high level of involvement with the criminal justice system. The report expressed concern at the rapid growth of the Indigenous female prison population, as well as high rates of recidivism. The report identified a lack of post-release support programs for Indigenous women when they exit prison. It called for further research to address the lack of information on the existence and accessibility of such programs.

Addressing this, the Social Justice Commissioner's unit conducted research and consultations during 2003 and 2004 to identify what support programs are available to Indigenous women upon their release from prison. The Social Justice report 2004, considers post release resources including accommodation options, counselling and other programs which may assist in reconnecting Indigenous women with their families and communities.

More information about Indigenous women exiting prison is available at:

[http://www.hreoc.gov.au/Social\\_Justice/sj\\_report/sjreport04/2WalkingWithTheWomen.html](http://www.hreoc.gov.au/Social_Justice/sj_report/sjreport04/2WalkingWithTheWomen.html)

#### **5. Indigenous communities dealing with family violence and abuse: recognising 'promising practice' and learning from achievements**

The *Social Justice Report 2007* highlights existing initiatives aimed at dealing with family violence and abuse in Indigenous communities, and ultimately preventing harm to Indigenous women and children.

This report provides definitions and some of the key concepts of family violence and abuse in Indigenous communities. It identifies key challenges for addressing family violence in Indigenous communities and the key elements of a human rights based approach to family violence.

The Report presents 19 case studies of promising practice in dealing with family violence and abuse in Indigenous communities. The case studies are presented under the following themes:

- Community education and community development;
- Healing;
- Alcohol management;
- Men's groups;
- Family support and child protection;

- Safe houses; and
- Offender programs.

The following characteristics summarise the success factors of the case studies:

**Community generated:** The most successful programs are those that are developed by and for the community, as they promote self determination and respond to individual community needs.

**The importance of community engagement:** This means consulting the community through out the process of program development, especially when the initiative has come from a government department, rather than the community itself. Community engagement is more than just consultation. Communities should be given real power to make decisions and have input into the program development and implementation.

**Community development:** Community development and capacity building often need to take place before communities are able to take ownership of family violence initiatives. For instance, men's groups and other ways Indigenous men come together can help build leadership capacity in communities and facilitate the spreading of a strong anti-violence norm.

**A partnership approach:** All of the successful case studies were built on partnerships, be it with government departments or other agencies. Partnership can be seen in cooperation and accountability between parties.

**Holistic:** The underlying, situational and precipitating factors of violence and abuse all need to be tackled, often simultaneously. So while a person participating in a healing program, might present with issues around alcohol or drug use, a whole range of practical, cultural, psychological and emotional needs might need to be dealt with as well.

**Connection to culture:** Strong culture and respect for traditional law reinforces anti-violence messages and builds positive community identity. Men's groups, offender programs and family support services and community education programs involve Elders and respected community members to create a bridge between the past, cultural knowledge and solutions to family violence and abuse.

**Family is a crucial part of Indigenous culture:** Successful programs, especially in the realm of child protection, keep close and extended family involved wherever possible. This might take the form of weekend trips out bush with extended family members to get bush tucker to instil a 'sense of pride in country and self'.

**Involving men in the solutions to family violence:** Initially, most services and responses to family violence were created by and for women, leaving some men feeling alienated and powerless. Men need to be brought back into the process and recognised as an integral part of the solution. Men's groups facilitate this process by connecting up men to break down social isolation, promoting traditional male culture and building pride.

**Empowering women:** Women need to be actively involved and encouraged to generate their own solutions to family violence and abuse. Women's traditional culture and authority in the community needs to be recognised and promoted.

**Building on existing community strengths:** There are often significant resources, networks and knowledge in communities. This means that programs start from a solid foundation and there is no need to reinvent the wheel.

**Indigenous staff expertise and networks:** Indigenous staff make the crucial difference in successful services due to their connection with community and culture and ability to engage with clients. Indigenous workers are able to powerfully challenge myths that justify violence and abuse.

**Sustainability:** Successful programs are often the programs that have the necessary skills, commitment and resources to keep operating over a period of time. There might be other programs that are operating in areas of greater need but good governance, accountability and the ability to provide evaluation data to funder's leads to sustainability over the longer term.

**Flexibility:** Because culturally appropriate services are usually few and far between, successful programs need to be flexible enough to deal with clients and situations that may be outside of their core business, as they may practically be the only option available. Flexibility is also required to meet the needs of the community. This can involve outreach services rather than expecting clients to attend an office, or at least help with transport.

**Community - based rehabilitation options for offending:** Given the Royal Commission into Aboriginal Deaths in Custody and the continued over representation of Indigenous people in custody, community based options for rehabilitation are preferred where the safety of the victim can be assured. Custody is seen as a destructive force in Indigenous communities, with little rehabilitative impact. Based on the experience of the Indigenous Family Violence Offender Program, women seem

more comfortable reporting violence if they think their men will remain in the community.

More information is available online at:

[http://www.hreoc.gov.au/Social\\_Justice/sj\\_report/sjreport07/chap2.html](http://www.hreoc.gov.au/Social_Justice/sj_report/sjreport07/chap2.html)

## **Indigenous participation in the criminal justice system**

Strategies to prevent crime should include the full and effective participation of Indigenous people in developing and implementing solutions. Indigenous courts and diversionary programs and Indigenous justice groups are important mechanisms for Indigenous participation in the justice system. Justice models such as family group conferencing, circle sentencing and Indigenous courts have been trialled in Western Australia, South Australia, Queensland, Victoria and New South Wales. Indigenous courts form an important function in asserting the authority of Indigenous people within their own communities and in giving Indigenous people control over their own affairs.

Just as different states and territories have their own approaches to justice including their own courts and legislations, so too do Indigenous communities. Across Australia there are a number of Indigenous models and approaches to the development and implementation of whole-of-community law and order measures. Community Justice Groups are one form of community governance and dispute resolution that draws on traditionally-based principles of justice. They seek to restore social order by curbing anti-social behaviour and by creating a positive and supportive environment.

Community Justice Groups operate within the existing legal framework and focus on matters such as family-related dispute settlement, crime prevention and community development projects. They provide a co-ordination point with government and community agencies and provide information and advice to the judiciary, to Community Corrections Boards and to other government decision making bodies.

Community Justice Groups have no statutory authority in that they are not able to enforce their decisions. The source of authority for the group is based on the collective and personal authority of group members deriving from the place of individuals within kinship systems and the personal respect they are accorded by others.

More information on the principles for partnerships between Indigenous Peoples, governments and civil society is available online at:

[http://www.hreoc.gov.au/Social\\_Justice/conference/engaging\\_communities/index.html](http://www.hreoc.gov.au/Social_Justice/conference/engaging_communities/index.html)