

Social Justice and Native Title Reports 2009

Australian Human Rights Commission

Recently retired Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma released his sixth and final Social Justice and Native Title Reports on 22 January 2010.

The reports recognise a marked shift in the Indigenous policy landscape since the National Apology to the Stolen Generations and suggest a more inclusive and promising future for Aboriginal and Torres Strait Islander peoples.

The Social Justice Report 2009 focusses on three themes: justice reinvestment to reduce Indigenous over-representation in the criminal justice system; the protection of Indigenous languages; and sustaining Aboriginal homeland communities.

The first theme outlines a convincing argument for an alternative to incarceration offered by the 'justice reinvestment' model, which diverts a portion of the funds planned for prison expenditure to local communities where there is a high concentration of offenders.

The second theme provides vital reading for anyone interested in the perilous state of Indigenous languages in Australia and argues that without intervention, Indigenous language knowledge will cease to exist in Australia in the next 10 to 30 years.

The final theme of the Social Justice Report 2009 highlights the importance of 'Homelands' in providing social, spiritual, cultural, health and economic benefits to residents. It outlines how policies that fail to support the ongoing

development of Homelands will lead to social and economic problems in rural townships that could further entrench Indigenous disadvantage and poverty.

The Native Title Report 2009 comprehensively reviews developments in native title law and policy from 1 July 2008 to 30 June 2009 and considers principles and standards that should underpin cultural change in the native title system. For example, the Australian Government introduced amendments to the *Native Title Act* to encourage broader negotiated agreements. Also, the Victorian Government unveiled an important new settlement framework.



Tom Calma launched the Social Justice and Native Title Reports on January 22, 2010

The Report argues for significant improvements to be made to the native title system if we are to close the gap between Indigenous and non-Indigenous Australians and to achieve reconciliation.

In his final Report, Ex-Commissioner Calma outlines principles and standards that should be used to guide a new

approach to native title and explains how the native title system ought to be viewed in the context of broader reforms to promote and protect the rights of Aboriginal and Torres Strait Islander peoples.

In the Report, three significant cases concerning native title and land rights are explored. These cases raise issues that affect the human rights of Aboriginal and Torres Strait Islander people, including whether:

- aspects of the Northern Territory intervention are constitutionally valid (*Wurridjal*);
- a mining company had negotiated in good faith with traditional owners (*FMG Pilbara Pty Ltd v Cox*);
- a mining lease should be granted over a site that is particularly significant to the Martu People (Western Desert Lands Aboriginal Corporation (*Jamukurnu – Yapalikunu*) / *Western Australia / Holocene Pty Ltd*).

The Report makes 27 recommendations for reform of the native title system concerning several key areas, including:

- considering ways to formally recognise traditional owners
- amending the *Native Title Act* to shift the burden of proof in a native title claim
- encouraging states and territories to adopt more flexible approaches to connection evidence
- improving access to land tenure information
- streamlining the role of non-government respondents in native title claims
- promoting broader and more flexible native title settlement packages
- increasing the quality and quantity of anthropologists and other experts working in the native title system.

The Social Justice 2009 Report can be accessed online at:
www.humanrights.gov.au/social_justice/sj_report/sjreport09/index.html

and the Native title Report 2009 at :
www.humanrights.gov.au/social_justice/nt_report/ntreport09/index.html

