

Aboriginal and Torres Strait Islander peoples

Disproportionate levels of disadvantage

Suggested Question

What action has Australia taken to address the disproportionate levels at which Aboriginal and Torres Strait Islander peoples experience disadvantage?

Background

In all social indicators, Aboriginal and Torres Strait Islander peoples rate as among the most disadvantaged peoples in Australia. Aboriginal and Torres Strait Islander peoples rate far worse than non-Aboriginal and Torres Strait Islander peoples in education, employment, health, standard of living and incidence of family violence. They are also grossly over-represented in the child protection and criminal justice systems. The disparity is so great that the life expectancy of Aboriginal and Torres Strait Islander peoples is 12 years less for males and 10 years less for females than the corresponding rates for their non-Aboriginal and Torres Strait Islander counterparts. The Australian Government's response to the levels of disadvantage faced by Aboriginal and Torres Strait Islander peoples has been the "Closing the Gap" strategy. Due to lack of consultation with Aboriginal and Torres Strait Islander communities, ill-conceived program design and ineffective execution, the strategy has resulted in little change on the ground for Aboriginal and Torres Strait Islander peoples.

Proposed Recommendation

That Australia work with Aboriginal and Torres Strait Islander communities in the design of "Closing the Gap" initiatives so that solutions are locally driven and controlled, thus providing pathways for self-determination and a higher chance of sustainability of outcomes.

Northern Territory Emergency Response

Suggested Question

What action has Australia taken to address the discriminatory nature of the Northern Territory Emergency Response?

Background

The Northern Territory Emergency Response (NTER) was introduced to address reported child abuse in the Northern Territory (NT), yet actively discriminates against Aboriginal and Torres Strait Islander peoples and involves the suspension of the *Racial Discrimination Act 1975* (Cth). The NTER is comprised of a comprehensive suite of measures of extraordinary scope and gravity that impact upon almost every aspect of the lives of Aboriginal and Torres Strait Islander peoples in the NT. The measures range from those that impact upon Aboriginal and Torres Strait Islander peoples individually, including income quarantining, liquor restrictions and other discriminatory policies that bring Aboriginal and Torres Strait Islander peoples into contact with the criminal justice system, control of Aboriginal and Torres Strait Islander organisations, assets and land by government employees, and the undermining of land rights and the rights of traditional owners. The NTER violates the rights of Aboriginal and Torres Strait Islander peoples to be free from racial discrimination and does not allow collective self-determination, social security, freedom, dignity, individual autonomy in regards to family and other matters, privacy, land tenure and property, due process and cultural integrity. The NTER applies across whole Aboriginal communities despite individual behaviour and therefore racially vilifies and stigmatises Aboriginal and Torres Strait Islander peoples. Despite recent amendments to widen the application of compulsory welfare quarantining to non-Aboriginal and Torres Strait Islander communities in the NT, the NTER still disproportionately affects Aboriginal and Torres Strait Islander peoples due to the high population of Aboriginal peoples in the NT and high incidence of welfare dependence. The discrimination

evident in the NTER forms part of a wider framework of systemic racism against Aboriginal and Torres Strait Islander peoples.

Proposed Recommendation

That Australia (1) roll back the NTER in consultation with Aboriginal and Torres Strait Islander peoples; (2) initiate a process of constitutional reform to recognise and better protect the rights of Aboriginal and Torres Strait Islander peoples, including freedom from discrimination and equality before the law; (3) review all policies and legislation in order to identify and eliminate structural discrimination against Aboriginal and Torres Strait Islander peoples; and (4) grant Aboriginal and Torres Strait Islander Legal Services and other representative bodies the standing to commence legal proceedings on behalf of aggrieved Aboriginal and Torres Strait Islander peoples collectively.

Overrepresentation in the criminal justice system

Suggested Question

What action has Australia taken to address the over-representation of Aboriginal and Torres Strait Islander peoples within the criminal justice system?

Background

Aboriginal and Torres Strait Islander peoples in Australia are substantially over-represented in the criminal justice system. This is caused by an interplay of complex historical and contemporary factors including dispossession of land, structural disadvantage, systemic racism, intergenerational poverty and trauma, over-policing, substance misuse and mental illness, tough-on-crime policies and the chronic under-funding of Aboriginal and Torres Strait Islander legal and interpreter services.

Proposed Recommendation

That Australia (1) implement justice reinvestment strategies, increased therapeutic jurisprudence and restorative justice approaches; incorporate targets to reduce the high involvement of Aboriginal and Torres Strait Islander peoples in the criminal justice system into the “Closing the Gap” strategy; (2) increase the use of non-custodial sentencing options; and

(3) abolish mandatory sentencing laws and policies.

Conditions of incarceration

Suggested Question

What action has Australia taken to ensure adequate conditions for incarcerated Aboriginal and Torres Strait Islander peoples?

Background

Many Australian detention facilities, particularly in regional and remote areas, are dirty, overcrowded, lack air-conditioning, do not provide Aboriginal and Torres Strait Islander peoples in custody with access to culturally appropriate healing or rehabilitation programs, and place juveniles at risk of abuse by failing to always separate them from adults whilst in custody. Many detained persons receive inadequate medical and mental health care, which contributes to the ongoing incidence of deaths in custody. Prisoner transportation is also concerning because of the geographical expanse of Australia and remoteness of many Aboriginal and Torres Strait Islander communities. Detained persons are transported over hundreds of kilometres, amidst high temperatures, in vehicles that are not appropriately air-conditioned or monitored. Of all states and territories, only Western Australia has an Inspector of Custodial Services to provide an independent, expert and fair inspection service that gives up-to-date reports and advice about custodial facilities and services.

Proposed Recommendation

That Australia (1) ensure adequate medical care and living conditions are guaranteed for all people in detention, including during their transportation; (2) reform death in custody investigations so they are carried out by an independent body; (3) introduce legislation that requires governments to act on Coronial recommendations; and (4) ratify and implement the Optional Protocol to the UN Convention against Torture to ensure effective, independent monitoring and oversight of places of detention.

Access to justice

Suggested Question

What action has Australia taken to ensure adequate access to justice for Aboriginal and Torres Strait Islander peoples?

Background

Aboriginal and Torres Strait Islander Legal Services (ATSILS) are the preferred and sometimes only legal aid option for many Aboriginal and Torres Strait Islander peoples, many of whom experience language and cultural barriers, low levels of numeracy and literacy and distrust of the justice system. Despite Aboriginal and Torres Strait Islander incarceration rates increasing at an alarming rate over the past decade and the subsequent increase in demand for the ATSILS services, the amount of real funding provided has been declining.

Aboriginal and Torres Strait Islander women and children remain chronically disadvantaged in terms of their access to justice, especially in regards to situations of family violence. Family Violence Prevention Legal Services (FVPLS) are legal aid providers specialising in family violence mainly in regional and remote areas because of a lack funding to service urban areas where large proportions of Aboriginal and Torres Strait Islander peoples reside. The high incidence of family violence against Aboriginal and Torres Strait Islander women combined means that often the FVPLS are the only culturally appropriate legal assistance option available to Aboriginal and Torres Strait Islander women.

Proposed Recommendation

That Australia (1) ensure that the funding of the ATSILS and FVPLS is proportionally increased to equal that of mainstream legal aid services, for longer funding periods and for a broader range of areas including representation of Aboriginal and Torres Strait Islander peoples at coronial inquests and human rights law; (2) implement initiatives, in consultation with Aboriginal and Torres Strait Islander communities, to reduce the high incidence of family violence; and (3) provide adequate resources for the establishment and ongoing delivery of a national Aboriginal and Torres Strait Islander interpreter service.

Stolen Generations and Stolen Wages

Suggested Question

What action has Australia taken to provide compensation to victims of the Stolen Generations and Stolen Wages?

Background

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. The impact of this trauma has also passed on to successive generations with members of the Stolen Generations having few past role models of parenting to draw on which can often result in a tragic cycle whereby their children are also removed by child protection agencies.

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. 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.

The Federal Government has refused to compensate the Stolen Generations and their families and has failed to establish a national scheme for the repayment of Stolen Wages.

Proposed Recommendation

That Australia immediately implement a national compensation scheme for members of the Stolen Generations and, where they are deceased, their descendants, and a national scheme for the return of all Stolen Wages to living victims and, where they are deceased, their descendants.

Child abuse, neglect and poverty

Suggested Question

What action has Australia taken to reduce the high incidence of child abuse, neglect and poverty amongst Aboriginal and Torres Strait Islander children?

Background

Aboriginal and Torres Strait Islander children are more than five times more likely to be the subject of child protection substantiations than non-Aboriginal and Torres Strait Islander children, which often leads to juvenile and adult involvement in the criminal justice system. It is widely accepted that there is a close link between child abuse and neglect and the broader issues of poverty, in all indicators of which Aboriginal and Torres Strait Islander peoples rate as the most disadvantaged peoples in Australia.

Proposed Recommendation

That Australia (1) implement a holistic approach to child protection incorporating a public health and prevention model to reduce the over-representation of Aboriginal and Torres Strait Islander children in the system and address the underlying causes of child abuse and neglect; and (2) adhere to the Indigenous Child Placement Principles at all levels of government and provide clarification of the definitions for compliance.

Declaration on the Rights of Indigenous Peoples

Suggested Question

How does Australia provide for the human rights contained within the Declaration on the Rights of Indigenous Peoples?

Background

Aboriginal and Torres Strait Islander peoples have and continue to suffer:

- systemic discrimination at all levels;
- land dispossession with little chance of achieving effective redress;
- less access to housing, education, employment and health care; and
- limited opportunities for self-determination, participation in decision-making in matters directly affecting their communities, and maintenance of their distinct political, legal, economic, social and cultural institutions.

Proposed Recommendation

That Australia adopt the Declaration on the Rights of Indigenous Peoples as the framework for engagement with Aboriginal and Torres Strait Islander peoples, and commit to obtaining the free, prior and informed consent of Aboriginal and Torres Strait Islander peoples in the development of policy that directly affects them.

Native title land

Suggested Question

What action has Australia taken to address the discriminatory aspects of the Native Title system to ensure recognition, protection and enjoyment of the rights of Aboriginal and Torres Strait Islander Peoples to access and control traditional lands and take part in cultural life?

Background

The strict requirement of the *Native Title Act 1993* of continuous connection with the land since colonisation is incompatible with the UN Declaration on the Rights of Indigenous Peoples, whilst other discriminatory aspects of the native title system remain in place. For example, reforms to the *Native Title Act* create 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. Australian law does not recognise traditional owner groups who have revitalised their traditions in recent years as native title holders, and Australian laws regularly presume a distinction between “Aboriginal cultural heritage” and the rights to take natural resources. Traditional owners understand “culture” to encompass much more than what is found in current legal definitions, and there is an essential link between the exercise of Aboriginal and Torres Strait Islander culture and self-determination.

Proposed Recommendation

That Australia reform the onerous standards and burdens of recognition for native title which deny Aboriginal and Torres Strait Islander peoples the right to access and control their traditional lands and take part in cultural life; and ensure that all forms of cultural heritage be protected in effective Australian laws.