

**Address by Aboriginal and Torres Strait Islander
Social Justice Commissioner, Tom Calma**

Delivered by Jackie Huggins AM

**Queensland Centre for Domestic and
Family Violence Research Conference**

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I would normally begin my speech with an acknowledgement of the traditional owners – but today I need to first express my thanks to Jackie for stepping in to give me voice.

I am sorry I can't be with you to deliver the speech in person, but I am sure that Jackie's delivery will outshine anything I could do in my present state of ill-health. Over to you Jackie!

Welcome

Let me first acknowledge the Yuibera people, the traditional owners of the land where we meet today, and pay my respects to their Elders.

I would also like to congratulate the Queensland Centre for Domestic and Family Violence for taking the initiative to organise a conference that is designed to showcase the good things that are happening on the ground in Indigenous communities to address family violence.

In response to questions about what needs to be done in this area – I have developed a ten point plan¹ and one of the points is about the need to support the community organisations that are making a difference. They are often operating under great financial insecurity with a skeleton staff – but we would be in truly dire straits if you ceased to operate!

So thank you all for making the time to come and listen to each other and to learn from your collective knowledge and expertise.

¹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues: An overview paper of research and findings by the Human Rights and Equal Opportunity Commission*, 2001-2006, HREOC, Sydney, 2006, available at http://www.humanrights.gov.au/social_justice/familyviolence/index.html accessed 29 April 2007.

Overview of speech

Today, I have been asked to provide a human rights perspective on family violence and child sexual assault in Indigenous communities.

This is an important perspective that is often glossed over or misunderstood in context of family violence discussions.

We all know that violence against women and children is wrong – we all know there are criminal laws against it.

But few of us appreciate the intricacies of the international human rights laws that specifically address family violence. They provide very clear legal guidelines and set out enforceable legal obligations that governments around the world have freely agreed to uphold when they ratify instruments like:

- **Convention on the Elimination of Discrimination Against Women (CEDAW)**; or the
- **Convention on the Rights of the Child**, as Australia has done.

I will turn to these laws in a little more detail shortly.

Today I also want to briefly talk about the need for governments to take a much more **holistic and integrated approach** to how they address social problems in Indigenous communities across Australia, and why it is that I believe that grassroots Indigenous organisations need to form the backbone of these social development responses.

In closing, I will outline a new project that the federal government has funded my Office to undertake which is designed to address the need for more human rights education and training in Indigenous communities.

First – I want to briefly outline my statutory role and how it is that I and my predecessors have developed a human rights based approach to dealing with family violence in Indigenous communities in Australia.

Functions of the SJC and how they relate to family violence

In July 2004, I took up my appointment as the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Human Rights and Equal Opportunity Commission or HREOC. This role was created in

1992 to provide an ongoing monitoring agency for the human rights of Indigenous Australians.

I undertake this role in a number of ways. In particular, I am required to report annually to the Federal Parliament on the status of enjoyment and exercise of human rights by Indigenous Australians. I do this through the *Social Justice* and *Native Title Reports*.

But my statutory powers also allow me to:

- undertake original research on critical issues,
- hold a national human rights inquiry,
- make submissions to parliamentary inquiries, and
- develop educational programs for schools.

And it is as a result of exercising these powers that Social Justice Commissioners have developed a body of legal and policy recommendations for government to assist in tackling community violence and other social problems.²

One of the first major pieces of work that exposed Indigenous family violence was the national inquiry into the forcible removal of Aboriginal and Torres Strait Islander children from their families – the *Bringing Them Home Report* – which is ten years old this month.

That inquiry found that one in five people who were fostered and one in ten people who were institutionalised reported sexual abuse. It started to expose the consequences of generations of child removal, which has deeply scarred our communities. We are still dealing with its fall out, and many of our people are yet to find ways of resolving their suppressed grief and trauma.

But the simple answer is that we must. Whether it's learning how to be a loving and nurturing parent, or giving up the drugs or alcohol that some of us use to mask the pain, or whether it's a matter of addressing anger and self-esteem issues – we need to take those steps – and we need to be supported to go through that process of healing.

² See for example: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, Chapter 5: Addressing Family Violence in Indigenous Communities, HREOC, Sydney, 2004, available at http://www.humanrights.gov.au/social_justice/sjreport03/data/chap5.html accessed 29 April 2007; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues: An overview paper of research and findings by the Human Rights and Equal Opportunity Commission*, 2001-2006, HREOC, Sydney, 2006, available at http://www.humanrights.gov.au/social_justice/familyviolence/index.html accessed 29 April 2007.

The point that I want to make here was summed up best by my predecessor, Dr William Jonas in 2003 in a submission that he made to the *Northern Territory Law Reform Committee Inquiry into Aboriginal Customary Law in the Northern Territory*. He wrote:

... there is currently a crisis in Indigenous communities. It is reflected in all too familiar statistics about the over-representation of Indigenous men, women and children in criminal justice processes and the care and protection system; as well as in health statistics and rates of violence.

Ultimately one thing that these statistics reflect is the breakdown of Indigenous community and family structures.

They indicate the deterioration of traditional, customary law processes for regulating the behaviour in communities. This is due in part to the intervention of the formal legal system through removal from country, historical lack of recognition of customary law processes as an integral component of the operation of Aboriginal families and societies...

Dr Jonas' point – and one that I think is particularly relevant if we are serious about taking a human rights based approach to family violence in Indigenous communities - is that everything is connected.

Not only are our rights to practice our cultures woven into our land rights and our right to the highest attainable standard of health, they are indivisible from our right to live in human dignity, with adequate housing, access to quality education, and the right to work in just and favourable conditions.

The elements of a human rights based approach to family violence

A human rights framework provides governments with the minimum legal standards that they are required to deliver domestically. These standards must be applied equally and to all people, at all times.

So when Australia ratified the **International Covenant on Civil and Political Rights** back in the 1950s, our government took on a legal obligation to protect the rights of Indigenous Australians to maintain and practice our cultures and languages.

When we ratified the **Convention on the Elimination of Discrimination Against Women (or CEDAW)** in the 1980s, we took on further obligations to guarantee all women in Australia equal treatment with men, including before the law.

Importantly, in the context of violence against women, CEDAW requires that the Australian Government takes *action* to protect women against violence of any kind – whether it is in the family, the workplace or another area of social life. This is an obvious way of giving meaning to every woman’s right to a life lived in freedom and without fear of violence.

Internationally, children’s rights are recognised through the **Convention on the Rights of the Child** which Australia has also ratified and provides clear guidance on what governments must do to protect children from all forms of violence.

One of the most important legal principles contained in this convention is the requirement that government decision-making is always guided by what is in **the best interests of the child**. When it comes to applying this principle in the context of violence against children in our communities, we should be ensuring that:

- We look to remove the perpetrator, not the victim,
- We only remove children from their families when their safety, welfare and wellbeing within their family, is compromised, and
- If state and territory authorities remove Indigenous children from their families it is essential that the **Aboriginal and Torres Strait Islander Child Placement Principles** contained in care and protection legislation are followed, because it is these principles that protect the rights of Indigenous children and young people.

A human rights framework also provides clarity for governments on how to resolve what might appear to be clashes between different sets of human rights laws – such as cultural rights and women’s rights.

Again, this is something that has been the topic of heated public debate in Australia. Some people – a very small minority – have sought to use Aboriginal customary law as a justification for sexual violence against women and children. This is a point of view that I and many Indigenous leaders have loudly condemned and repudiated.

The international human rights framework recognises that throughout the world there are traditional, religious and cultural practices that have been used to justify the subordination of women and violations of their human rights. But governments are required to ensure that certain human rights,

such as cultural rights, are not exercised in a manner that violates other fundamental rights, like:

- the right to life,
- the right to life free from torture or inhuman and degrading treatment, and
- the requirement that men and women provide their free and informed consent when entering into marriage.

This is why I have consistently argued, in the most strident terms possible, that Aboriginal customary law *must* be applied consistently with other human rights standards. At no stage does customary law override the rights of women and children to be safe and to live free from violence.

Why a holistic and integrated response to Indigenous family violence is needed

So if we accept the need to work within this human rights framework, as the Australian Government has, we need to adopt the framework in its entirety – not just the bits that suit our politics of the day – or are perceived as popular with sectors of the population.

When it comes to addressing family violence in Indigenous communities, this means governments can and indeed *must* develop a **holistic and truly integrated approach**.

As I mentioned earlier, we know that the social problems confronting our communities are inter-related. It therefore *makes sense* to develop programs and services that are capable of addressing multiple problems simultaneously

Not only is this more cost-effective – it is more likely to break the patterns of behaviour that cause social dysfunction and violence in our communities.

For example – when you start to question why Indigenous women constitute the fastest growing prison population in Australia, the fact that most of them have suffered sexual assault as children, and most have experienced family violence either as a child or as an adult, is an important starting point for policy development.

It is not surprising that the kinds of pre-and post-release programs that are needed to develop the capacity and empower Indigenous women to break the cycle of poverty and re-offending are centred around three areas – all of which are relevant to tackling family violence – namely:

- access to adequate and safe **housing**;
- ongoing access to **healing programs** that are grounded in Aboriginal customary law and reaffirm cultural identity; and
- access to programs that help women **reconnect with their families** and reintegrate into the broader community.

But my research and work with Indigenous organisations who are trying to provide these kinds of programs and services show that government support in the form of secure funding is often *not* forthcoming. Some of the most effective and most sought-after services get de-funded and either have to cut back on what they do, or cease operating altogether.³

I understand that very similar problems confront and confound Indigenous family violence service providers.

The need for an integrated regional planning approaches

Some Indigenous family violence service providers in Queensland were recently canvassed about their experience of working in this field in preparation for this conference.⁴ Their observations and suggestions support **integrated and coordinated regional approaches** to addressing family violence that focus on the safety of victims. Such an approach could assist communities to:

- prepare regional action plans to address violence,
- pool their resources, and allow for more efficient use of those resources; and
- develop composite violence programs that provide a more holistic approach to community violence.

The comments from family violence service providers also suggest that there is support in the QLD family violence service sector for a whole-of-government approach – provided that certain conditions are met. For

³ For example, Yulawari Nurai in NSW is an accommodation facility/healing centre for Aboriginal women exiting the NSW prison system, which is widely regarded as a good practice model in this area. Despite its successes, Yulawirri Nurai has consistently struggled to secure adequate funding since its establishment.

⁴ Joann Schmider, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 25 April 2007, p1.

example, services that respect and encourage Indigenous ‘ways of knowing, being and doing’ need to be supported, because they are the kinds of services that Indigenous clients are more likely to want to use, and to benefit from.⁵

In other words, there is potential for the whole-of-government focus of the federal government’s new arrangements in Indigenous affairs to assist and facilitate grassroots Indigenous organisations working in the family violence area.

In particular, it would appear that Indigenous Coordination Centres (or ICCs) could play a very important facilitation role. They are tasked with assessing Indigenous need across the region, coordinating service delivery and developing regional priority plans.

However, my research shows that the regional priority plans that ICCs are developing are internally focussed on how the ICC organises its business – rather than being constructed around engagement with the Indigenous communities and our priorities. This unwillingness to effectively engage with Indigenous peoples at the regional level is a fundamental flaw in the government’s new arrangements in Indigenous affairs.

It is also inconsistent with a human rights based approach to development, which recognises people as key actors in their own development, rather than passive recipients of commodities and services.

Another important and related point that emerged from the QLD survey results was the need for government agencies to **foster and support grassroots initiatives that communities have instigated**. Rather than governments either standing back and waiting for ‘solutions’ to present themselves, or stepping in to ‘instruct’ communities on what to do, governments need to back community initiatives – particularly where they relate to child safety and protection.

A couple of related points that warrant mention here are firstly, the need for more effort to be put into establishing services or outreach services in remote communities to ensure that women and children can access them. Ideally these would be integrated into mental health, substance abuse and family violence services.

⁵ Joann Schmider, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 25 April 2007, p1.

Secondly, **we should not forget our men – nor stereotype them as abusers.** Family violence is fundamentally an issue of gender inequality. We need strong leadership from women, but we also need the support of Indigenous men if we are to make progress in stamping out violence. Indigenous men need to model appropriate behaviour, challenge violence, and stand up against it.

And thirdly and most importantly, we need to focus our efforts to work with Aboriginal and Torres Strait Islander communities to educate people about violence; and educate children about being safe from violence and abuse.

HREOC's community legal education project

That brings me to the community legal education project that HREOC is embarking on with funding from, and in collaboration with, the federal Attorney General's Department.

This project aims, in addition to providing an appreciation of the western legal system, to develop an understanding within Indigenous communities that customary law cannot override legal and human rights - especially the rights of women, youth and children to be free from violence and sexual abuse.

The proposal is one of the key initiatives that came out of the intergovernmental Summit on Violence and Child Abuse in Indigenous Communities that was held in 2006.

In addition to developing education resources that are accessible and meaningful to Indigenous communities, the project will allow us to develop 'train the trainer' education programs. This will allow 'educators' to work in about 15 different pilot communities and to tailor the teaching style and resources to the needs of their particular community.

One of the key objectives of the project is develop and support existing networks of Indigenous women and youth in addressing family violence and abuse.

Another goal is for staff working at the community level with Indigenous organisations to support and foster strong leadership on customary law and human rights issues: Elders, women and youth will be supported and encouraged to speak out about family violence and to recognise that

family violence is inconsistent with customary law, the mainstream legal system and human rights.

These are ambitious goals – but **we must start to challenge the cycle of violence** and provide better support to those organisations and individuals who are already working to this end.

Otherwise we run the very real risk of depriving our children of their capacity to reach their full potential – and of subjecting them and their children to abuse that is wholly preventable.

Governments also bear a range of responsibilities – but in particular they need to be proactive and to provide leadership to address family violence. Punitive and victim blaming strategies are not adequate responses to address family violence. Partnerships, involvement and listening to Indigenous peoples are essential prerequisites for sustainable outcomes.

An important and urgent first step is the development of a plan of action that sets bold targets that can be monitored over the short, medium and long term. It goes without saying that governments need to adequately fund the associated programs and services so they meet their targets and allow every Indigenous person to live their life free from violence and abuse.

This is our cultural and our human right.

Thank you.