



Pre-Budget Submission: 2013-14

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About ANTaR

ANTaR is a national campaigns and advocacy organisation in support of Justice, Rights and Respect for Australia's First Peoples.

Our current national campaigns include Constitutional Recognition and Equality and our Justice Campaign - for action to reduce imprisonment rates and end deaths in custody. We also engage in national advocacy across a range of policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including native title, languages and cultures, economic and community development, remote communities services and infrastructure, health and human rights.

ANTaR has been working with Aboriginal and Torres Strait Islander organisations and leaders on rights and reconciliation issues since 1997. ANTaR is a non-government, not-for-profit, community-based organisation.

Introduction

In this submission, ANTaR outlines key expenditure priorities for the 2013-14 Federal Budget. These recommendations are designed to promote community and economic development, advance human rights and address the disadvantage experienced by many Aboriginal and Torres Strait Islander people and communities.

Where possible, the Federal Government should make multi-year funding commitments to provide certainty for affected Aboriginal and Torres Strait Islander organisations and the communities they assist.

While we have sought to cost the Budget recommendations in this submission, we urge the Government to consult with relevant Aboriginal and Torres Strait Islander peak bodies, organisations and other stakeholders before making final funding decisions.

Overview

In the 2012-13 Budget, the Federal Government invested \$5.2 billion in Aboriginal and Torres Strait Islander programs and initiatives. The bulk of this investment - \$3.4 billion - was targeted to Northern Territory communities through a package of 'Stronger Futures' spending measures in addition to \$1.5 billion for a new remote community employment program.

While the Federal Government will be seeking to restore the budget to surplus after a drop in projected revenue in 2012-13, ANTaR submits that this objective should not jeopardise Government efforts to create a more equal society - in particular, by addressing the disadvantage experienced by many Aboriginal and Torres Strait Islander peoples and responding to the acute need for infrastructure and services in many Aboriginal communities.

While we have not sought to offset all spending recommendations with savings measures, we do advocate for the creation of a Minerals Resource Rent Tax (MRRT) Future Fund for Aboriginal and Torres Strait Islander communities. Such a fund has been supported by a number of Aboriginal and Torres Strait Islander leaders and would recognise the fact that although Aboriginal communities have been more directly affected by mining than other communities, they have failed to receive commensurate benefit.

Despite lower than anticipated revenue in 2012-13, the MRRT is projected to raise \$9.1 billion over the next 4 years. A Regional Infrastructure Fund worth \$6 billion over 2010-11 to 2020-21 (with \$5.6 billion of the fund drawing on the proceeds of the Minerals Resource Rent Tax), has been established to fund infrastructure projects in regional communities. It is vital that remote Aboriginal communities receive their fair share of proceeds from this Fund.

1. Relationships and recognition

This year began with the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples presenting its report to the Federal Government. That report recommended a number of important changes to the Australian Constitution to recognise the First Peoples, remove racially discriminatory provisions and protect future generations from racial discrimination. The Panel also recommended that “there should be a properly resourced public education and awareness program”, supported by legislative change if necessary.¹

In the 2012-13 Budget, \$10 million was allocated to Reconciliation Australia to build community awareness about Constitutional Recognition. A new education and awareness raising entity, ‘You Me Unity’, arising from the work of the Expert Panel, has been established and tasked with this role. This funding is due to expire in June 2014. The extended referendum timeframe means that a longer funding commitment is now required to ensure funding certainty for You Me Unity for the duration of the campaign, including for community education activities supported through its grants programs.

In September 2012, the Australian Government announced that the original referendum timeline was to be delayed until after the 2013 Election. It also announced its intention to introduce an ‘Act of Recognition’ into the Federal Parliament, to enable Parliament to reaffirm its commitment to Constitutional Recognition. A Joint Select Committee has recently been established with bipartisan support, to build support across the Parliament and progress towards a successful referendum.

A key priority in the lead up to a referendum is direct engagement and education for Aboriginal and Torres Strait Islander peoples to raise awareness about voting rights, the electoral process, referenda and constitutional recognition proposals. Current funding for the community campaign does not adequately provide for meaningful engagement with Aboriginal and Torres Strait Islander communities around the country. This is essential to ensure the legitimacy and relevance of the process and to maximise the chances of success. The costs of such engagement are estimated to be high, due to the geographic spread of Aboriginal and Torres Strait Islander communities and the costs associated with remoteness. ANTaR submits that an appropriate Aboriginal and Torres Strait Islander peak or peaks should be funded to implement this engagement, including education, awareness raising and consultation.

It will also be vital in the lead up to a referendum to ensure that the Australian Electoral Commission is adequately supported to deliver outreach services, including assisting Aboriginal and Torres Strait Islander people to enrol to vote before this important and historic referendum. While the Australian Electoral Commission receives about \$3.4 million per annum to deliver the Indigenous Electoral Participation Program (a Closing the Gap initiative), ANTaR submits that current funding levels are not adequate to deliver the breadth and depth of engagement necessary to ensure Aboriginal and Torres Strait Islander people are enrolled to vote and adequately informed about the referendum process. We strongly advocate for funding for this program to be increased through a

¹ Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*, January 2012, recommendation (e).

partnership model between the Australian Electoral Commission and relevant Aboriginal and Torres Strait Islander organisations around the country, to build capacity on the ground to educate and engage with local communities and ensure Australia's First Peoples are ready to have their say when the time comes.

If passed early in 2013, the draft Act of Recognition would sunset in early 2015. At that stage, it is intended to trigger action towards a referendum. This would suggest that a referendum should be held sometime in 2015 or 2016. Funding should be set aside in contingency for the Australian Electoral Commission for a referendum in this timeframe.

The National Congress of Australia's First Peoples has emerged as a leading voice on key issues affecting Aboriginal and Torres Strait Islander peoples around the country since its establishment in 2010, after more than 5 years without a national First Peoples' peak body. The Congress has a critical role to play in engaging its membership and representing Aboriginal and Torres Strait Islander peoples in policy development at the national level. Specifically, the Congress has an important role to play in the coming years as the nation prepares for a referendum on Constitutional Recognition. It has also demonstrated leadership on national justice and health policy issues and in the signing of an engagement framework with Government Agencies. With core funding due to expire at the end of the 2012-13 financial year, the 2013-14 Budget needs to deliver ongoing funding certainty for the National Congress.

Recommendation: Fund relevant Aboriginal and Torres Strait Islander peak bodies to deliver Constitutional Recognition education and awareness-raising initiatives in their communities, to augment You Me Unity's activities.

Current community education funding should be supplemented by specific funds to support direct education, engagement and awareness-raising in Aboriginal and Torres Strait Islander communities around the country.

Cost: \$3 million in 2013-14 (\$6 million over 2 years)

Recommendation: Resource an expanded electoral outreach and education program to raise awareness in Aboriginal and Torres Strait Islander communities about referenda and to encourage electoral enrolment before any referendum on Constitutional Recognition.

It is suggested that funding should support a partnership between the Australian Electoral Commission and Aboriginal and Torres Strait Islander organisations to build their capacity to engage and educate local communities about electoral enrolment and referenda.

Cost: \$3.4 million in 2013-14 (\$6.8 million over 2 years)²

² It is proposed that this funding be in addition to current funding of \$3.4 million per annum, to achieve a doubling in funding for the Indigenous Electoral Participation Program during the period in the lead up to an intended referendum on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples.

Recommendation: Provide ongoing funding certainty to the National Congress of Australia's First Peoples

As the national peak representative body for Aboriginal and Torres Strait Islander peoples, the National Congress has an essential role to play in representing Australia's First peoples at the national level.

Cost: \$10 million in 2013-14 (recurrent)

2. Safe, healthy and sustainable remote communities

National remote communities funding

In addition to the specific spending priorities identified in this section, there are a number of recommendations throughout the paper that would deliver benefits to remote Aboriginal and Torres Strait Islander communities, particularly those related to education and language learning.

Food security

At present, some of the most disadvantaged Australians are paying the most for fresh and nutritious food.

While there has been some action in the Northern Territory to increase the availability of fresh and nutritious food through the community stores licensing scheme (expanded in the 2012-13 Budget), this scheme is not designed to address affordability and is limited to the Northern Territory.

A remote fresh food transport subsidy would be a direct, equitable and cost-effective way to increase affordability and achieve better health outcomes. Such a scheme could be modeled on a similar Canadian program, Nutrition North America (formerly the Food Mail Program), with the Canadian Government providing a transport subsidy to food providers in remote, isolated regions. Under the scheme, funding is based on the total weight of fresh food products shipped to eligible communities, who must then pass on the savings to consumers. The program receives \$60 million (CA) per year.³

Recommendation: Introduce a fresh food tax and transport subsidy to improve access to affordable, healthy food for remote communities.

Estimated cost is approximate and would depend on the final model adopted.

\$50 million per annum in 2013-14 (recurrent)

³ Nutrition North Canada, http://www.nutritionnorthcanada.ca/mr/faq_trns-eng.asp, accessed on 20.12.2012.

Governance in remote communities

The remote service delivery National Partnership Agreement (NPA) includes a focus on capacity building and leadership training in communities. Despite this, the Coordinator-General reported in 2011 that 'across the board there is very little emphasis on developing the capacity of community organisations, which is a key objective of the National Partnership'.⁴ While it would seem that efforts have been made since this time to build capacity, this remains a key priority.

While the 2012-13 Budget included \$427.4 million for 'Governance and Leadership' within the Northern Territory 'Stronger Futures' package, this funding is to employ Indigenous Engagement Officers and continue funding of interpreter services. While it will support Government engagement with NT communities, it will do little to strengthen leadership and governance and build the capacity *within* communities.

If sustainable positive changes are to be seen in remote communities, resources must be provided to support Aboriginal and Torres Strait Islander governance.

Recommendation: Build governance capacity in remote communities

Funding should support community governance training and support for remote organisations, informed by the findings of the Indigenous Governance Research Project by Reconciliation Australia.⁵

\$30 million in 2013-14/ (\$50 million over 2 years)

Specific funding for Northern Territory communities

The 2012-13 Budget included \$3.4 billion over 10 years for Northern Territory remote communities under the Stronger Futures package and \$1.5 billion over 10 years for a new Remote Jobs and Communities Program.

The ten-year Stronger Futures package included:

- \$714 million for health (including dental and allied health care, alcohol and other drug services, hearing checks and follow up and oral health);
- \$695 million for community safety (including remote policing, community night patrols, legal assistance services and tackling alcohol abuse);
- \$583 million for education (including funds to retain 200 teaching positions, professional teacher development, schools nutrition program, teacher housing and the School Enrolment and Attendance Measure);
- \$442 million for family safety and wellbeing (including playgroups, home and parenting groups, youth workers, safe houses etc);
- \$40.9 million to expand the community store licensing scheme;

⁴ Coordinator General for Remote Indigenous Communities, Six monthly report, September 2010-March 2011 at 18.

⁵ Research publications are available at:
<http://www.reconciliation.org.au/home/projects/indigenous-governance/indigenous-governance-research-project>

- \$206 million for homelands and outstations (includes funding for basic and municipal services but not housing);
- \$427 million to employ more Indigenous Engagement Officers and continue to fund the NT Interpreter service; and
- \$283.5 million to improve remote housing and remove asbestos.

The \$1.5 billion Remote Jobs and Communities Program consolidates four existing programs and replaces them with a single jobs provider and also includes a new Remote Youth Development and Leadership Corps, a \$508 million Participation Account to help job seekers develop their skills and \$240 million over 5 years Community Development Fund to support large community development and community capacity building.

The 2012-13 Budget included funding for the 2012-13 financial year only, with funding for the remaining 9 years of the 10-year funding period to be negotiated as part of a new National Partnership Agreement (NPA) on Stronger Futures in the Northern Territory. It is understood that the new NPA was agreed just prior to the NT Elections, but detail regarding implementation plans is not yet available.

In responding to these announcements, ANTaR welcomed the significant long-term investment in remote Northern Territory communities, though raised concern about the continuation of a number of disempowering policies. In this submission we identify some gaps in the ten-year funding program that should be prioritised for expenditure in 2013-14.

Housing for remote communities, including homelands

The Australian Government has committed \$5.5 billion over ten years (to 2018) under the National Partnership on Remote Indigenous Housing, which is designed to address:

- a) significant overcrowding
- b) homelessness
- c) poor housing condition; and
- d) the severe housing shortage in remote Indigenous communities.

The COAG funding agreement includes targets of 4200 new houses and around 4800 refurbishments. The NPA was renegotiated in 2009 to provide greater incentives and increased penalties for states who do not achieve targets. As at 30 June 2012, the Government reports that more than 1,400 new houses have been delivered and around 4,700 refurbishments completed. The NPA now includes the SIHIP program, a five-year joint Federal and Northern Territory Government funding program focusing on housing infrastructure in remote communities and town camps in the Northern Territory. SIHIP funding of \$1.7 billion aims to deliver 934 new houses, rebuild 415 houses and refurbish 2500 houses for 73 Indigenous communities and town camps across the NT, with funding to expire in 2013.

Although some progress has been made towards addressing housing needs through the NPA, only a limited number of communities are currently scheduled to receive new housing and homeland communities have been excluded from any further new housing.

ANTaR seeks a bipartisan commitment to sustained investment in NT communities to meet housing needs, recognising that these needs will grow even more acute as the Aboriginal population grows. There is also a critical need for ongoing funding for the maintenance of existing housing stock. Without such funding, the deterioration in housing stock will present health and safety risks to residents and result in capital depreciation.

Recent reforms have severely undermined the Aboriginal community-housing sector. In its *Stronger Futures* Policy Statement, the Federal Government highlights its agenda to develop national community housing standards. It is now vital that the NT Aboriginal community housing sector is supported to increase its capacity to meet these standards and resume its important role in managing Aboriginal community housing.

Research conducted in 2010 on local community views of shire reforms and related issues noted that, with housing responsibility transferred to Territory Housing, community residents were no longer engaged in decision making on housing, tenancy related issues or rent models.⁶ The disempowerment of local Aboriginal communities and organisations as a result of housing reforms must be addressed in the next stage of the Government's remote communities strategy through a focus on capacity building.

Additional Federal and Northern Territory Government funding for essential and municipal services to homelands and outstations is welcome, but there remains an acute need for housing construction and repairs, compounded by the Federal Government housing funding moratorium since 2008. The Remote Services Delivery National Partnership Agreement (NPA) gives funding and service delivery priority to communities with significant populations and those deemed 'more economically sustainable', to the exclusion of smaller communities (particularly homelands). This is systematically depriving smaller communities of funding and service delivery improvements. Under the current Memorandum of Understanding (MOU) between the Federal and NT Governments, all Federal funding for housing on homelands ceased in July 2008, with NT Government housing funding targeted to larger towns and providing only very limited resources to homelands for repairs and maintenance. The agreement identifies priorities for additional funding, with main urban centres at the top of the list, and outstations and homelands as 'third order priorities', with the added condition that 'no Australian Government funding will be provided to construct housing on outstations/homelands'. This is despite significant unmet need, a growing population and existing housing being left to deteriorate despite significant past investment.⁷ Homelands also miss out on funding under the National Indigenous Reform Agreement (NIRA).

⁶ Central Land Council (CLC), 2010, *The governance role of local boards: A scoping study from six communities* at 52.

⁷ Greg Marks, 2008, *Submission 30* to Senate Select Committee on Regional and Remote Indigenous Communities at 6.

Recommendation: Provide ongoing and sustained investment in housing infrastructure in remote communities, including homelands

Safe, affordable and culturally appropriate housing is a key factor in creating healthy and safe communities. To address historic underinvestment, this must be a priority area of expenditure over the next decade.

\$400 million in 2013-14 (\$2 billion/ 5 years)

Recommendation: Support Aboriginal community-housing organisations to strengthen governance and achieve compliance with national housing standards

Funding should provide organisations with governance and administration support in order to meet national standards.

\$10 million in 2013-14

Capital funding for schools

Additional investment in education in the NT in the 2012-13 Federal Budget did not include a capital component. The need for school infrastructure in remote communities remains acute. A healthy and safe school environment is an essential foundation for learning.

Recommendation: Invest in NT remote community schools infrastructure to fund necessary capital works (new buildings, classrooms, repairs, maintenance)

Current infrastructure is inadequate to meet the needs of currently enrolled students, let alone the needs of all eligible students, and must be improved as part of efforts to improve attendance.

\$200 million in 2013-14 (\$500 million over 2 years)

Support for community alcohol management plans

Under changes to the Northern Territory Emergency Response, communities can now apply for an exemption from alcohol restrictions where they have developed their own responses to the issue. However, no resources have been provided to enable communities to make this case, or to support the kinds of culturally appropriate and accessible alcohol treatment programs likely to be effective.⁸ Alcohol management plans developed by communities themselves have the best chance of reducing alcohol abuse and related family and community dysfunction. It is time to put communities back in the driving seat of alcohol management.

⁸ Aboriginal and Torres Strait Islander Legal Services and Aboriginal Peaks Organisations NT, 'The future of the Northern Territory Intervention – Issues Paper', November 2010.

ANTaR suggests that the alcohol and other drug recommendations below could be partially offset by the imposition of a graduated tailored volumetric tax on all alcohol purchases, as recommended by the National Indigenous Drug and Alcohol Committee.⁹

Recommendation: Adequately resource communities to develop appropriate and effective solutions to alcohol misuse

Provide resources to enable communities to develop community alcohol solutions and to support culturally appropriate and accessible alcohol treatment programs.¹⁰

Cost: \$10 million in 2013-14 (\$40 million / 4 years)

3. Education: early childhood services and languages programs

Early childhood services

Through COAG, the Federal, State and Territory governments have agreed to ensure access to early childhood education for all Indigenous four years olds in remote communities by 2013.

In the 2010-11 Budget, the Australian Government allocated \$59.4 million over 4 years through the Budget Based Funded (BBF) Quality Measure' to improve the quality of centre-based long day care BBF services. These 'non-mainstream' services include Aboriginal and Torres Strait Islander child-care services. The funding is targeted towards:

- improving the quality of the buildings from which BBF services operate
- improving the qualifications of staff working in BBF services
- supporting services to strengthen their governance and administrative capacity.¹¹

This funding must as a priority be extended to provide the same level of support to other BBF services, including crèches, mobile outreach, playgroups and Out of School Hours care services.

A BBF review is currently underway and we echo SNAICC's call for the development of a coherent model that supports the core principles of Aboriginal and Torres Strait Islander early childhood education and care services, recognizing their community development goals and providing proper funding through a transparent formula for

⁹ National Indigenous Drug and Alcohol Committee, *Addressing harmful alcohol use amongst Indigenous Australians*, accessed on 20.12.12 at http://www.nidac.org.au/index.php?option=com_content&view=article&id=91%3Aaddressing-harmful-alcohol-use-amongst-indigenous-australians&catid=37%3Apublications-and-reports&Itemid=63.

¹⁰ Aboriginal and Torres Strait Islander Legal Services and Aboriginal Peaks Organisations NT, 'The future of the Northern Territory Intervention – Issues Paper', November 2010.

¹¹ Information obtained from the Department of Education, Employment and Workplace Relations website at <http://deewr.gov.au/non-mainstream-child-care-services>, accessed on 20.12.12.

allocation to all BBF services. Until such a model is developed and funded, we advocate for BBF program funding to be increased.

Recommendation: Extend the Budget Based Funding Quality Measure to support all BBF services

Funding should support infrastructure, workforce development and governance for BBF services not currently eligible for such funding, including crèches, mobile outreach, play groups and Out of School Hours care services.

Cost: \$ 20 million in 2013-14

Recommendation: Increase funding to the Budget Based Funding Program for 'non-mainstream' child-care services

80% of services funded by this program are Aboriginal and Torres Strait Islander services and additional funding is necessary to meet current needs. The funding model should be reconsidered as part of the current BBF review.

Cost: \$30 million 2013-14

Preserving and revitalising Aboriginal and Torres Strait Islander languages

Aboriginal and Torres Strait Islander languages provide speakers with a connection to their culture and their past, as well as a sense of identity and belonging. However, many Aboriginal and Torres Strait Islander languages are critically endangered. Whereas over 250 Aboriginal and Torres Strait Islander languages were spoken on the Australian continent at the time of colonisation, only 18 or fewer languages are currently considered strong. Over 100 languages are at advanced stages of loss.¹² Indigenous languages continue to disappear in Australia at one of the fastest rates in the world.

Three years after the launch of the Federal Government's strategy for preserving Aboriginal and Torres Strait Islander languages, *Indigenous Languages – A National Approach 2009*, much remains to be done to arrest the decline of Aboriginal and Torres Strait Islander languages in Australia. The House of Representatives Inquiry into Language Learning in Indigenous Communities reported in 2012, highlighting the crisis of Aboriginal and Torres Strait Islander languages, and called for urgent action from Governments to arrest their decline by protecting, preserving and revitalising languages.

Bilingual education

In September 2012, the House Standing Committee on Aboriginal and Torres Strait Islander Affairs released the 'Our Land Our Languages' report, finding that there was "convincing evidence" for bilingual education, supported by national and international studies and organisations including the World Bank and UNESCO. It stated that, "the research demonstrates that educational outcomes for students are higher when the

¹² Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2009*, Chapter 3, Australian Human Rights Commission: Sydney, 2010. See also Australian Institute of Aboriginal and Torres Strait Islander Studies and the Federation of Aboriginal and Torres Strait Islander Languages, *National Indigenous Languages Survey Report 2005*.

mother tongue or first language is incorporated into early education.”¹³ In doing so, it highlighted the “dual benefits of first language learning in schools”, including “improved English/dominant language competency.”¹⁴

Reflecting on the current level of support for Indigenous language learning, the Committee noted that ‘there is only ad hoc support for Indigenous language learning in primary and secondary schools’ and stated that it was “convinced that the evidence demonstrates that bilingual and multilingual students can deliver higher educational outcomes with the right programs and supports in place.”¹⁵

The Committee recommended that “the Commonwealth Government work with state and territory governments to provide adequately resourced bilingual school education programs for Indigenous communities from the earliest years of learning, where the child’s first language is an Indigenous language (traditional or contact).” ANTaR strongly supports this recommendation.

Additional Federal Government education funding for Northern Territory remote communities in 2011-13 did not include specific support for bilingual education programs. These programs have suffered as a result of Northern Territory policy and funding changes, with the previous Northern Territory Government’s ‘Compulsory Teaching in English for the First Four Hours policy’ undermining bilingual education models between 2008-12. This policy was withdrawn in July 2012, but a renewed focus on strengthening bilingual education models is now needed.

Recommendation: Fund bilingual education programs for Aboriginal and Torres Strait Islander communities from the early years through a joint funding agreement with relevant State and Territory Governments

Funding should be directed to communities with a large proportion of children whose first language is an Aboriginal or Torres Strait Islander language (traditional or contact).

**Total cost (COAG): \$50 million in 2013-14
(Federal Government component dependent on terms of agreement with State and Territory Governments)**

English as an Additional Language or Dialect (EAL/D) teachers in remote communities

The *Our Land Our Languages* report backed bilingual teaching, complemented by EAL/D teaching strategies.¹⁶ Additional resources are needed in order to meet the high level of need for EAL/D teaching.

¹³ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Our Land Our Languages*, para 4.154 on page 118.

¹⁴ Ibid, Para 4.155 at 119

¹⁵ Ibid, Para 4.157 at 119

¹⁶ Ibid at 110.

Recommendation: Increase the number of teachers with EAL/D training in remote community schools.

English is a second, third or fourth language for many Aboriginal children in remote NT communities. It is therefore vital to increase the EAL/D teacher workforce in order to improve English literacy and numeracy.

\$10 million 2013-14 (\$30 million over 2 years)

Funding for language revitalisation programs

At the Federal level, the Office of the Arts administers funding for Aboriginal and Torres Strait Islander language programs through the *Maintenance of Indigenous Language and Records Program* ("MILR"). States and Territory governments have separate, and often fragmented, approaches towards funding for such programs.

In absolute terms, funding levels are inadequate given the precarious position of many Aboriginal and Torres Strait Islander languages.

The Office of the Arts budget for MILR programs in 2012-13 is \$9.9 million, with applications exceeding \$21 million. This is a consistent trend, with applications far exceeding the budget for the last three funding rounds.¹⁷

Recommendation: Increase funding for the Maintenance of Indigenous Languages and Records Program

Increase funding for the Maintenance of Indigenous Languages and Records Program to account for current and anticipated demand.

\$21 million in 2013-14/ (\$47 million over 2 years)¹⁸

¹⁷ See *Our Land Our Languages*, page 65 and <http://www.arts.gov.au/sites/default/files/pdfs/milr-funding-2011-12.pdf>.

¹⁸ 2013-14 figures use the level of applications in the 2012-13 funding round as a proxy for demand, with a 25% increase for 2014-15 to account for increases in demand, assuming that the Inquiry and related government initiatives increase momentum for language revitalisation programs.

4. Native title

4.1 Native title reform

There were a number of important native title developments in 2012-13 including:

- A renewed push for major native title reform on the 20th anniversary of the Mabo decision;
- Government announcement of reforms to good faith requirements, historical extinguishment and a range of other procedural reforms;
- The introduction by the Greens of a second Native Title Amendment Bill to effect reforms to the burden of proof, rights to commercial use and a range of other issues;
- Institutional reforms related to the respective roles of the Federal Court and the National Native Title Tribunal (with redirected funding of \$24.4 million announced in the 2012-13 Budget); and
- The Carbon Farming Initiative.

ANTaR strongly believes that the *Native Title Act 1993* (Cth) remains in need of reform in order to address significant obstacles it creates to Aboriginal and Torres Strait Islander peoples' realisation of land rights.

ANTaR supports the recommendation of the Aboriginal and Torres Strait Islander Social Justice Commissioner for an independent inquiry into the native title system to explore options for reform and better align the system with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Federal Government should commission and fund such an inquiry within the forthcoming Federal budget. While a Senate Inquiry into the Government's native title amendment legislation is currently underway, ANTaR submits that its limited focus will not enable a comprehensive inquiry across the breadth of the native title system.

Recommendation: Funding for an independent inquiry into the reform of the native title system

Commission and provide sufficient resources and funding for an independent inquiry, led by an appropriately qualified panel of experts, to consider reforms to the *Native Title Act 1993* (Cth), related legislation, regulations and procedures, to remove barriers to the fair and equitable recognition of native title claims, and to reflect the principles of the UN Declaration on the Rights of Indigenous Peoples.

\$1.56 million in 2013-14¹⁹

¹⁹ Costs have been estimated by using the midpoint of the costs of the Independent Inquiry into Australian Media (\$1.4 million, as announced in the 2011-12 Mid Year Economic and Financial Outlook) and the Commission of Inquiry into the Queensland Floods (\$1 million, announced in the 2011-12 Federal Budget), with a 30% contingency to account for the increased complexity of an inquiry into the native title system, and the need to conduct more extensive regional and remote consultations.

4.2 Native Title Representative Bodies and Prescribed Bodies Corporate

Native Title Representative Bodies (“NTRBs”)²⁰ and Prescribed Bodies Corporate (“PBCs”)²¹ are central to the recognition, management and administration of native title claims.²¹

NTRBs currently receive very limited funding and there is currently no specific Commonwealth Government funding provided directly to PBCs, though some limited funding has been provided on an emergency basis from time to time.

Indeed, for more than a decade now, increased funding for NTRBs and PBCs has been consistently recommended by a range of reports and reviews from Government agencies, Commonwealth Parliamentary Committees, State Governments and industry groups – a point made by the Aboriginal and Torres Strait Islander Social Justice Commissioner seven years ago in his 2005 *Social Justice Report*.²²

In 2006, the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account found that:

Evidence to the inquiry indicated that NTRBs are central to the native title process and as such inadequate resourcing of these bodies can have a significant impact on the extent of progress being made in native title processes. Most importantly, insufficient resources prevent NTRBs being active players in the native title process, thereby creating backlogs and causing significant delays.²³

²⁰ NTRBs represent native title groups and have a range of functions including researching and preparing native title applications, assisting native title groups in mediations, negotiations, consultations, proceedings and dispute resolution and entering Indigenous Land Use Agreements (ILUAs) on behalf of native title holders.

²¹ PBCs hold in trust or manage native title on behalf of native title holders. They have statutory duties and obligations under the *Aboriginal Councils and Associations Act 1976* and provide a variety of functions including administrative functions.

²² Reports cited by the Social Justice Commissioner in his 2005 *Social Justice Report* include: G Parker & o’rs, *Review of Native Title Representative Bodies*, ATSIC, Canberra, 1995; Senatore Brennan Rashid & Corrs Chambers Westgarth, *Review of Native Title Representative Bodies*, ATSIC, March 1999; Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Report on the Effectiveness of the National Native Title Tribunal*, December 2003, paras 4.19-4.44 and recommendation 6. See also the House of Representatives Standing Committee on Industry and Resources report, *Inquiry into resources exploration impediments*, August 2003, paras 7.42-7.51 and recommendation 19; and Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Report on Indigenous Land Use Agreements*, September 2001, para 6.83 and recommendation 4, *Ministerial Inquiry into Greenfields Exploration in Western Australia*, Western Australian Government report November 2002, recommendations 8-12; and *Technical Taskforce on Mineral Tenements and Land Title Applications*, Government of Western Australia, November 2001, pp103-106. More recently, see the Minerals Council of Australia 2010-11 Pre-Budget Submission at 43 and the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account, *Report on the operation of Native Title Representative Bodies*, March 2006.

²³ Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account, *Report on the operation of Native Title Representative Bodies*, March 2006 at [3.20] at page 34.

The Committee also recognised the chronic under-funding of PBCs, concluding that:

The Committee considers that PBCs need to be adequately funded and resourced so that they can fulfil their important role in the native title system. Currently, many PBCs are unable to function effectively because of a lack of financial assistance from the Commonwealth. The Committee believes that the Commonwealth should examine appropriate ways of resourcing the core functions of PBCs. The Committee does not have a view as to whether this assistance should be provided directly to the PBC or via NTRBs.²⁴

The Office of Indigenous Policy Coordination (OIPC) within the Department of FaHCSIA currently provides resources to representative bodies. In 2009-10, the Commonwealth Government allocated an additional \$50.1 million to the Department of Families, Communities, Housing and Indigenous Affairs for the native title system, in addition to \$73 million included in forward estimates. This included \$69.3 million in funding for NTRBs and other native title service providers. In 2011-12, this amount increased to \$84.3 million, and was projected to increase to \$87 million and \$88.6 million in 2012-13 and 2013-14 respectively. Taking growth and indexation into account, ANTaR recommends an increase of 30% above current funding levels as justifiable and necessary, having regard to the central role of NTRBs in native title agreement-making.

Recommendation: Additional funding for Native Title Representative Bodies (NTRBs)

Provide additional resources to Native Title Representative Bodies to ensure they are adequately resourced to represent Aboriginal and Torres Strait Islander peoples in native title negotiations.

\$27 million in 2013-14 (recurrent)²⁵

Recommendation: Increase resources for Prescribed Bodies Corporate (PBCs).

Provide core operational funding for PBCs on a needs basis, ensuring resources to enable PBCs to fulfil their responsibilities to manage their lands.

\$16 million in 2013-14 (\$32 million over 2 years)²⁶

Recommendation: Increase funding for the National Native Title Council.

The NNTC is a network alliance of member Native Title Representative Bodies (NTRB) and Native Title Service Providers (NTS) located across Australia. Additional funding would enable the NNTC to increase engagement with key and potential stakeholders, advocacy and lobbying activities and technical and structural policy advice.

\$100,000 in 2013-14 (recurrent)

²⁴ Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account, *Report on the operation of Native Title Representative Bodies*, March 2006 at [5.82] on page 80.

²⁵ Figures based on a 30% increase in projected funding for the relevant financial year.

²⁶ Calculated on the basis of the 80 PBCs receiving \$200,000 in core funding in each of 2013-14 and 2014-15.

5. Towards a fairer justice system

Nationally, some \$3 billion is spent on imprisonment each year.²⁷ The majority of prisoners serve short-term sentences and come from highly disadvantaged areas, with poor education and social backgrounds.²⁸ Aboriginal and Torres Strait Islander people are 'amongst the most imprisoned people in the world'²⁹ at a rate 13 times higher than non-Indigenous adults and juveniles 28 times more likely to be detained than their non-Indigenous counterparts.

Recent trends show that Aboriginal and Torres Strait Islander incarceration rates are increasing. A recent Australian Bureau of Statistics Report found that imprisonment rates for Aboriginal and Torres Strait Islander women increased by a staggering 20% between 2011 and 2012.³⁰ Despite the high cost of imprisonment – at \$1309 per prisoner per week – recidivism rates are high (at about 73% for Aboriginal and Torres Strait Islander offenders). A 10% reduction in the Aboriginal and Torres Strait Islander prison population is estimated to result in savings of more than \$10 million per year.³¹

It is time for a radical rethink of our approach to Aboriginal and Torres Strait Islander imprisonment. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs confirmed this in its report, *Doing Time: Time for Doing*, released in 2011. This report described the over-representation of Aboriginal and Torres Strait Islander peoples in prison as a 'national tragedy' and made 40 recommendations across a broad range of areas designed to reduce youth contact with the criminal justice system. The report's first and overarching recommendation was that the Commonwealth Government should develop a National Partnership Agreement dedicated to the Safe Communities Building Block for presentation to COAG – a recommendation echoed by the National Congress of Australia's First Peoples' National Justice Policy.³² The Committee then recommended a range of policy and program responses ranging from holistic youth and family services, sporting programs, accommodation, alcohol and other drug programs, hearing tests and criminal justice reforms. The Committee also expressed its support for the principles of Justice Reinvestment and recommended that 'governments focus their efforts on early intervention and diversionary programs and that further research be conducted to investigate the Justice Reinvestment approach in Australia.'

Justice Reinvestment is based on the principle that prevention pays dividends. Successfully trialed in the US and UK, it works by diverting a portion of the funds that

²⁷ Steering Committee for the Review of Government Service Provision, Parliament of Australia, *Report on Government Services* (2010) 8.3.

²⁸ Eileen Baldry, 'Recidivism and the Role of Social Factors Post-Release' (2007) 81 *Precedent* 5.

²⁹ Harry Blagg, 'Restorative Visions in Aboriginal Australia' (2001) 44(1) *Criminal Justice Matters* 15.

³⁰ Australian Bureau of Statistics, 4517.0 - Prisoners in Australia, 2012.

³¹ Donald Weatherburn et al, 'Prison Populations and Correctional Outlays: The Effect of Reducing Re-Imprisonment' (Report on Contemporary Issues in Crime and Justice No 138, NSW Bureau of Crime Statistics and Research, December 2009) 1.

³² National Congress of Australia's First Peoples, National Justice Policy, accessed on 18 December 2012 at <http://nationalcongress.com.au/wp-content/uploads/2012/10/CongressJusticePolicyCommentDraft.pdf>.

would normally go to imprisonment to local communities where there is a high concentration of offenders to address the underlying causes of offending.

With a high proportion of Aboriginal and Torres Strait Islander prisoners, communities with predominant or significant Aboriginal and Torres Strait Islander populations are likely to benefit from a Justice Reinvestment approach. In an article on the application of Justice Reinvestment to Australian communities, Melanie Schwartz highlights the high costs of imprisoning people from Aboriginal and Torres Strait Islander communities – money that is diverted away from, rather than to, communities. She cites the example of Papunya, which had a prison population of 72 adults in 2007-8 (some 23% of the adult population) with a total corrections cost of approximately \$3.5 million per year for a community with less than 400 people.³³ The potential benefits to the community of a diversion of a proportion of this funding into capacity building, infrastructure and services are clear.

Justice Reinvestment is an ‘inherently flexible strategy’, with ‘programs falling within Justice Reinvestment as diverse as investments in education, job training, health, parole support, housing or rehabilitation’ and extending to micro-finance schemes and ‘family development loans’ to consolidate debt or support home ownership.³⁴ The model would need to be adapted to an Aboriginal community context, including incorporating community development principles and involving Elders in the justice process and providing culturally relevant case management programs to support rehabilitation and reintegration. While over time, Justice Reinvestment is likely to be revenue-neutral and ultimately saving (reusing existing funds, and, in the longer term, reducing incarceration costs), some initial funding is required for pilot programs and feasibility studies.

The Federal Government has agreed to ratify the Optional Protocol on the Convention Against Torture (OPCAT), and proposed a model for progressive implementation. The Optional Protocol provides for a system of regular visits to places of detention by a national body or bodies (the ‘national preventive mechanism’) and also by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Australian Government has been working with State and Territory Governments to take the necessary steps towards ratification. In its National Impact Assessment, the Australian Government stated the reasons for proposed ratification in the following terms:

“Analysis since 2004 has shown ... that there are varying levels of oversight both between different types of detention, and between jurisdictions. There are also some gaps in monitoring – the key area of significance being detention in police detention facilities – which could be addressed by implementing the Optional Protocol ... Implementation of the Optional Protocol should minimise instances giving rise to concerns about the treatment and welfare of people detained in prisons and other places of detention in Australia. In addition to the human rights benefits, monitoring pursuant to the Optional Protocol has the potential to minimise the costs of addressing such instances, including avoiding some costs

³³ Melanie Schwarz, ‘Building Communities, not Prisons: Justice Reinvestment and Indigenous Over-Imprisonment’, Vol 14, No. 1, *Australian Indigenous Law Review* 2010 at 2-17, page 5.

³⁴ *Ibid.*

*of litigation and compensation payments.*³⁵

Under Article 18, states parties must ensure adequate resources for the National Preventative Mechanism to perform its functions, including regular and independent inspections of places of detention, regular examination of the treatment of persons detained and reporting. Australia has indicated that it will seek to delay its obligations under the Optional Protocol in relation to the National Preventative Mechanism for three years. It notes that:

“Australia’s inspection systems, while substantial, do not fully meet the Optional Protocol requirements. It is anticipated that implementation will involve designating a range of existing inspection regimes at the jurisdictional level, utilising a cooperative approach between the Commonwealth and the States and Territories.”

The Australian Government has proposed a National Preventative Mechanism comprised of existing bodies with, where necessary, modified powers and responsibilities. It has noted that reliance on existing bodies would minimise costs, and signaled that “individual jurisdictions should bear their own costs because of their responsibility for the welfare of the relevant detainee population”.³⁶ However, ANTaR submits that the Australian Government has a lead role to play in ensuring Australia’s full implementation and observance of OPCAT, and advocates earliest possible implementation.

It is also clear that current levels of resourcing for relevant bodies will not be adequate to meet the additional obligations imposed by OPCAT for regular independent monitoring. Western Australia and NSW are the only states with a funded designated prisons inspectorate body. The West Australian Office of the Inspector of Custodial Facilities currently receives funding of \$3 million/ year to support 19.2 FTE staff, who inspect about 18 premises once every 3 years and conduct liaison visits at least 3 times a year (often more) to all facilities and services³⁷. A NSW Inspector of Custodial Facilities has been established in 2012, and will report on each prison at least every five years and each juvenile detention centre at least every three years.

With more than 270 deaths in custody since the Royal Commission into Aboriginal Deaths in Custody in 1991, it is clear that the system is not working, and major changes and resources are needed to prevent further deaths. ANTaR therefore recommends joint Commonwealth/State funding for a well-resourced, robust and effective national preventative mechanism.

The inadequacy of funding to Aboriginal and Torres Strait Islander Legal Services (ATSILS) has a direct impact on individuals’ experiences of the criminal justice process and the outcomes of that process. As Cunneen and Schwartz argue in their 2008 article on funding for ATSILS:

³⁵ Australian Government, ‘National Interest Analysis [2012] ATNIA 6, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, accessed on 18 December 2012 at www.aph.gov.au.

³⁶ Ibid at para 34.

³⁷ Office of the Inspector of Custodial Services, Annual Report 2011-12, accessed on 18 December 2012 at <http://www.custodialinspector.wa.gov.au/go/publications-and-resources/annual-reports>.

The issue of adequacy of legal representation for Indigenous people goes to the heart of access, equity and the rule of law. It represents the ability of Indigenous people to use the legal system (both criminal and civil) to a level enjoyed by other Australians. Further, given the significant over-representation of Indigenous people in the criminal justice system, one might expect a level of funding to ATSILS to represent a serious commitment to remedying where possible this problem.³⁸

In the 2010-11 Budget, the Federal Government delivered an additional \$34.9 million/ 4 years for Aboriginal and Torres Strait Islander legal services (an average increase of \$8.7 million per year). While extremely welcome, the ATSILS remain grossly under-resourced, lagging significantly behind the resource levels of mainstream legal aid service providers. As a consequence, Aboriginal and Torres Strait Islander peoples receive a lesser level of service in the many places in which ATSIL services are the only services available.

The *Doing Time* report recommended that the Commonwealth Government increase funding for Aboriginal and Torres Strait Islander Legal Services to achieve parity per case load with Legal Aid Commission funding in the 2012-13 Budget, with appropriate loadings to cover additional costs in service delivery to regional and remote areas.³⁹ In its response to the Report, the Federal Government rejected this approach to funding, arguing that it was not possible to make comparisons between Legal Aid and ATSILS funding and that more evidence was needed about the extent and nature of unmet need for Aboriginal and Torres Strait Islander legal assistance. Although not rejecting the usefulness of additional evidence to more accurately measure unmet need, ANTaR argues that the inadequacy of funding to the ATSILS has been known for a long time, and the subject of findings and recommendations in a series of reports. A decision to increase funding should therefore not be delayed by a desire to seek further evidence.

Various attempts have been made to quantify the funding shortfall. In evidence to the 2009 Senate Inquiry, the Law Council of Australia suggested that the ATSILS had experienced a 40% decrease in real funding since 1997, without taking unmet and increased need into account. The Australian Human Rights Commission estimated the funding shortfall to be \$25.6 million per year.

Recommendation: Fund a National Partnership Agreement dedicated to the Safe Communities Building Block for inclusion in the Closing the Gap strategy.

Funding is required to support the implementation of policies and programs under the Agreement, which should include programs and services recommended in the *Doing Time* report.

\$300 million in 2013-14/ (\$700 million over 2 years)

³⁸ Professor Chris Cunneen and Melanie Schwartz, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of equity and access, (2008) 32 *Criminal Law Journal* 38 at 39.

³⁹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous youth in the criminal justice system*, June 2011, recommendation 26.

Recommendation: Fund Justice Reinvestment feasibility and scoping study

Fund scoping and feasibility study on Justice Reinvestment in Australia. This study should be conducted in partnership with Aboriginal and Torres Strait Islander stakeholders to determine applicability and inform the design of an appropriate model for the Australian context, based on comparisons with overseas experiences. An incarceration-mapping exercise should also be conducted to identify potential trial sites with high concentrations of offenders.

\$2 million in 2013-14 (\$4 million over 2 years)

Recommendation: Fund pilot Justice Reinvestment projects

Fund pilot Justice Reinvestment projects in targeted communities, with a view to rolling-out the scheme more broadly informed by evidence from these pilots. As this approach has yet to be applied in an Australian context, let alone in the context of Aboriginal or Torres Strait Islander communities, it is difficult to estimate cost. As an example, an analysis for the state of Wisconsin in the USA (with a population approaching 6 million people) suggests a reinvestment total of \$30 million per year (with net savings of \$212 million and growing).⁴⁰

ANTaR suggests that four or five pilot projects targeting identified communities in remote, rural, regional and metropolitan areas would provide a good basis for pilot projects. Determining what types of programs to (re)invest in would take some time, as they vary from place to place, and would be dependant on the views of stakeholders at community level. Properly planning the roll out of these pilot programs would mean that they would be unlikely to all be fully operational until the 2014-15 financial year.

\$5 million in 2013-14 (\$15 million over 2 years)

Recommendation: In partnership with State and Territory Governments, adequately resource an Optional Protocol to the Convention Against Torture (OPCAT) national preventative mechanism that ensures regular, independent inspections of all places of detention.

Additional resources are necessary to enable Australia to fulfill its obligations under the OPCAT. Costs should be shared between Federal and State Governments to ensure a good practice model to ensure regular, robust and independent inspections.

Cost: \$ 30 million per annum (Federal Government component = \$10 million p.a.)⁴¹

⁴⁰ Justice Reinvestment in Wisconsin: "Analyses & Policy Options to Reduce Spending on Corrections and Increase Public Safety, Page 11. Accessed at: http://www.justicereinvestment.org/files/Wisconsin_Analyses_and_Policy_Options.pdf.

⁴¹ Based on costs of the Western Australian Inspectorate, with additional funding for Federal places of detention and suggested contributions of one-third Commonwealth and two-third States and Territories, with WA and NSW already funding inspectorates in their jurisdictions.

Recommendation: Increase funding to Aboriginal and Torres Strait Islander legal services (ATSILS)

Increase funding to Aboriginal and Torres Strait Islanders Legal Services to meet unmet need for legal services and ensure equal access to legal representation.

Cost: \$17 million in 2013-14 (\$68 million/4 years)⁴²

6. Maintaining the commitment to close the health gap

The 10-17 year life expectancy gap between Aboriginal and Torres Strait Islander and non-Indigenous Australians is a stark indicator of Aboriginal and Torres Strait Islander health inequality.

ANTaR has worked with the Close the Gap campaign coalition to achieve Aboriginal and Torres Strait Islander health equality since 2007. More than 185,000 Australians have pledged support to Close the Gap.

In 2007, COAG agreed a range of 'closing the gap' targets, and some \$1.6 billion has been committed through COAG under the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes. This Agreement is due to expire on 30 June 2013 and certainty is needed about funding after that date. There are also consultations under way to develop a long-term (10 years or longer) national Aboriginal and Torres Strait Islander health plan.

The Commonwealth component of the *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes* funds:

- chronic disease management (\$470 million);
- primary health care workforce (\$171 million); and
- targeted action to reduce risk factors (\$161 million).

State and Territory funding supports anti-smoking programs, allied health services and public hospital care.

Funding under the NPA is complemented by primary health care funding provided by the Department of Health and Ageing and other agencies, which should be maintained and should support the implementation of the new national plan.

ANTaR strongly supports the Close The Gap Campaign Steering Group recommendation for ongoing funding to be included in the 2013-14 Budget. We also endorse its recommendation that 'a new mechanism be developed to determine the appropriate Aboriginal and Torres Strait Islander share of mainstream health programs on a basis which reflects both the population size and an index of need, and how the money so identified might best be spent to achieve optimal outcomes.'

In addition, we highlight the need for national Aboriginal and Torres Strait Islander health peaks and research bodies to have funding security, and are concerned by reports that ongoing funding has to date not been committed to the National Association of Community Controlled Organisations or to the Lowitja Institute, Australia's only national

⁴² Derived from AHRC suggested shortfall of \$25.6 million per year, less the \$8.7 million per year funding boost provided in the 2010-11 Federal Budget.

research body committed to Aboriginal and Torres Strait Islander health. Funding for the Lowitja Institute expires on June 30, 2014.

Recommendation: Maintain the *National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes* for 2013-14 at current level and pattern.

This funding level and pattern should be maintained until the new health plan is finalised, at which time the distribution of funding should be reviewed to align with the plan. An ongoing COAG funding agreement should be negotiated with State and Territory Governments. The Federal Government proportion of spending is costed below, based on current funding levels of \$805.5 million/four years.

Cost: \$200 million in 2013-14 (\$800 million/4 years)⁴³

7. Sorry is the first step: reparations and resources for the Stolen Generations

The 1997 *Bringing them home* report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families found that between 1 in 10 and 3 in 10 Aboriginal and Torres Strait Islander children were forcibly removed from their families and communities in the period from 1910 to 1970. This removal occurred as the result of official laws and policies aimed at assimilating the Aboriginal and Torres Strait Islander population into the wider community.

There is growing evidence to show those Aboriginal and Torres Strait Islander people "having experienced removal themselves or of their direct family are less happy, have lower general mental health and vitality and are 38 per cent more likely to display high psychological stress on the Kessler scale" (Dockery, 2012, p. 293) ; i.e., of a gap within the gap experienced by Aboriginal and Torres Strait Islander people generally⁴⁴, with such disadvantage stemming from the impact of their experiences of removal.⁴⁵

In 2012, FaHCSIA commissioned an analysis of the National Aboriginal and Torres Strait Islander Social Survey (NATSISS) 2008 to better understand the Stolen Generations population. It cautiously estimated a population of 17,800 'first removed' survivors. This represents 9.8% of the Aboriginal and Torres Strait Islander population over 30 years in 2008 - the age cut-off used to more clearly identify those respondents who have been removed in the institutional context of the Stolen Generations. It also again showed those removed as having poorer outcomes across a range of socio-economic indicators including educational level achieved, employment status, whether they have been

⁴³ Information about current funding levels is available at:

<http://www.health.gov.au/internet/main/publishing.nsf/Content/health-oatsih-ctg-package>

⁴⁴ Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSI) (2006). Agenda Item 6, 'Bringing Them Home Reporting Framework'.

⁴⁵ Dockery, M. (2012). Do traditional culture and identity promote the wellbeing of Indigenous Australians? Evidence from the 2008 NATISS, in B. Hunter & N. Biddle (eds) *Survey analysis for Indigenous policy in Australia: Social Science Perspectives* [pp. 281-305]. Canberra: CAEPR.

arrested in the last 5 years and are more likely to self assess their health as poor.⁴⁶

These outcomes require a range of specific, targeted services and supports that comprehensively address identified needs, in addition to broader efforts to close the gap. Targeting Stolen Generations populations has challenges with 18 % currently living in remote locations, with 82% are in major cities and regional areas. Further, some may choose not to identify.

On compensation, the 2011 NSDC scorecard noted, '[s]eeking justice through monetary compensation for the harm incurred under past forced removal policies remains a priority for many members of the Stolen Generations'⁴⁷ and noted the Federal Government's disappointing unwillingness to date to provide monetary compensation and its failure to show "much needed leadership" on this issue.⁴⁸ Payment of reparations should be a joint state and Federal Government responsibility. The Tasmanian government has already acted in this regard. However, the Federal Government has the capacity to lead the states on this issue, including via the establishment of a Stolen Generations Reparations Tribunal to hear claims by people from states that have not established adequate schemes for redress. In addition, the Federal Government has direct responsibility for members of the Stolen Generations from the Northern Territory. The cost of the operations of a Tribunal and the providing of reparations could be met with the establishment of a Stolen Generations Fund, as proposed by the Public Interest Advocacy Centre in 2009.⁴⁹

The need to develop solutions to the ongoing needs of Stolen Generations was outlined in the Stolen Generations Working Partnership (SGWP).⁵⁰ It is essential this partnership continue to be implemented. This cannot be done effectively without extra funding. For example:

- The need to ensure that "the Social and Emotional Wellbeing Framework is a core part of the new Health Equality Plan" and "party to the same budget cycle process";
- The need for improvements to Link-Up Services and the delivery of Social and Emotional Wellbeing Counseling;
- The need for comprehensive Stolen Generations cultural competence training for health and welfare workers; and
- The need for additional support to meet funeral expenses for members of the

⁴⁶ Thapa, P, Cherian, B, & Shah, Q. (2012). *The Stolen Generations: Data Perspectives from the National Aboriginal and Torres Strait Islander Social Survey, 2008*. Presentation at the Stolen Generations Working Partnership Forum April 2 & 3, Canberra.

⁴⁷ National Sorry Day Committee, *Stolen Generations Scorecard – 6 month update*, November 2011.

⁴⁸ Ibid.

⁴⁹ *Restoring Identity: Final Report of the Moving Forward consultation project*. Public Interest Advocacy Centre, 2009. Accessible at http://www.piac.asn.au/sites/default/files/publications/extras/RI_report_final.pdf.

⁵⁰ *Stolen Generations Working Partnership* <http://www.fahcsia.gov.au/sa/indigenous/pubs/stolengenerations/Pages/StolenGenerationsWorkingPartnership.aspx>

Stolen Generations.⁵¹

Link-Up and Bringing Them Home case worker and counsellor services were part of a suite of measures the Federal Government provided in recurrent funding by way of reparations due to the Stolen Generations. ANTaR welcomed additional funding of \$54.4 million / 5 years in the 2011-12 Budget for the continuation of Stolen Generations services under the rebadged Social and Emotional Wellbeing Program. It is critical this support for family reunification and social and emotional wellbeing and mental health support continues.

Representative organisations such as the National Sorry Day Committee and the National Stolen Generations Alliance play a critical role in maintaining public awareness of the need for comprehensive reparations for Stolen Generations, bringing to light the importance of just compensation and the need for the ongoing education of the general public, especially school children through the new national history curriculum. This work has been provided up until recently with only very basic financial support by the Australian government. Whilst the sector continues to build capacity and is thus able to continue to contribute to the SGWP, this is only possible through secure and regular resourcing.

Recommendation: Adequately resource the implementation of the Stolen Generations Working Partnership.

Translating the SGWP into action requires that it be integrated into the policy and program development processes. The effective participation of Stolen Generations in these processes will require resourcing, as will the monitoring and evaluation of partnership processes overall.

\$2 million in 2013-14 (\$4 million / 2 years)

Recommendation: Establish a national Stolen Generations reparations scheme

ANTaR believes an initial establishment payment of \$20 million to establish the Fund would be sufficient to enable the Tribunal to commence operations. The Fund could be reimbursed and/or topped up by further payments from states, church and other organisations found to have been involved in forcible removal practices including the abuse of children in their care. Such a Tribunal could also assist governments in partnership with Stolen Generations NGOs in considering appropriate additional entitlements to health and social services in recognition of the particular needs of this population group.

\$20 million 2013-14

⁵¹ NSDC, *Stolen Generations Working Partnership Scorecard 2012: The progress of the SGWP from May 2011 to May 2012*, accessed at <http://www.nsd.org.au/documents/item/52> on 18 December 2012.

Recommendation: Adequately support Stolen Generations organisations.

The National Sorry Day Committee and the National Stolen Generations Alliance play a unique role and have operated largely on a volunteer basis for many years. Secure and ongoing resourcing is needed for both organisations to increase their capacity.

\$500,000 p.a. recurrent