



Submission to the Federal Budget 2011-12

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Pre-Budget Submission for the 2011-12 Federal Budget
by Australians for Native Title and Reconciliation (ANTaR)

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About ANTaR

ANTaR is the pre-eminent non-Indigenous national advocacy organisation dedicated specifically to the rights - and overcoming the disadvantage - of Aboriginal and Torres Strait Islander people. We do this primarily through lobbying, public campaigns and advocacy.

ANTaR's focus is on changing the attitudes and behaviours of non-Indigenous Australians so that the rights and cultures of Aboriginal and Torres Strait Islander people are respected and affirmed across all sections of society.

ANTaR seeks to persuade governments, through advocacy and lobbying, to show genuine leadership and build cross-party commitment to Indigenous policy.

ANTaR works to generate in Australia a moral and legal recognition of, and respect for, the distinctive status of Indigenous Australians as First Peoples.

ANTaR is a non-government, not-for-profit, community-based organisation.

ANTaR campaigns nationally on key issues such as [Close The Gap](#), [constitutional change](#), the [Northern Territory Emergency Response](#), [reducing Aboriginal incarceration](#), [eliminating violence and abuse](#), [racism](#) and other significant Indigenous issues.

ANTaR has been working with Indigenous organisations and leaders on rights and reconciliation issues since 1997.

Introduction

In this submission, ANTaR outlines key priorities for the 2011-12 Federal Budget.

The funding and expenditure recommendations below are designed to address Aboriginal and Torres Strait Islander disadvantage, promote community and economic development and advance human rights.

In the 2010-11 Budget, the Federal Government invested an additional \$639.0 million/5 years to initiatives targeting Aboriginal and Torres Strait Islander peoples. The vast majority of this funding was for continuing and/or expanded programs.¹

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

1. Resetting relationships and respecting rights

The Council for Aboriginal Reconciliation reported in 2000 after a 10 year consultation and community engagement process. The report contained a *Declaration towards Reconciliation* and a *Roadmap for Reconciliation*. Importantly, it recommended changes to our national Constitution to recognise the distinct status, identity and rights of Aboriginal and Torres Strait Islander peoples.

Since then some important progress has been made towards recognising Indigenous rights and the need for justice. The National Apology caused the nation to pause and reflect on Australia's history and offered real hope for a reconciled and just future. The Australian Government also indicated its support for the UN Declaration on the Rights of Indigenous Peoples on 3 April 2009. The Declaration is a comprehensive statement of Australia's existing human rights obligations to Indigenous Australians. Although it does not create new rights, it provides a comprehensive framework for action.

ANTaR has strongly welcomed the cross-party support for a referendum on Constitutional recognition by 2013. We note the recent announcement of an Expert Panel to develop options for reform and consult with the broader Australian community.

To ensure the success of the referendum, broad community engagement is essential. The Expert Panel has received \$11.2 million over two years, drawn from within existing resourcing of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Attorney-General's Department. This funding will support the Panel to fulfill its Terms of Reference, to:

- *lead a broad national consultation and community engagement program to seek the views of a wide spectrum of the community, including from those who live in rural and regional areas;*
- *work closely with organisations, such as the Australian Human Rights Commission, the National Congress of Australia's First Peoples and*

¹ Dr Lesley Russell, *Commonwealth Indigenous Budget Bulletin*, Macroeconomics, July 2010.

Reconciliation Australia who have existing expertise and engagement in relation to the issue and

- *raise awareness about the importance of Indigenous constitutional recognition including by identifying and supporting ambassadors who will generate broad public awareness and discussion.*

The Expert Panel alone cannot achieve the mass community engagement required to ensure success. Civil society organisations and ‘ambassadors’ have a critical role to play in education and awareness raising at a national and local level. The experience of Australians for Reconciliation during the formal decade, as well as basic tenets of agreement making show that this education and awareness raising can and must take place while the final form of the referendum question is deliberated.

Ensuring the voting public’s trust and confidence in supporting any proposed reforms will be directly related to their depth of understanding of the issues before them. Fundamentally, substantial work needs to occur in educating the Australian public in matters concerning the Constitution itself, in order to set the stage for reform. Achieving agreement to change over the next two years will involve helping the public to identify key stakeholders (which will involve a ‘recognition’ of their own place in the Australian populace) as well as the special interests and place of Aboriginal and Torres Strait Islander peoples. It will also involve connecting with the issue, as well as a reform process which must be seen as authentic.

It will also involve generating rapport and empathy between stakeholders through understanding of different interests as well as the more technical legal issues involved. Australians will need to have revealed to them the potential opportunities and implications successful reform will offer, before finally achieving their commitment. This work must start soon, and will take skill and considerable resourcing to be effective. Over and above the hard work that needs to happen at the community level, a structured mass media education campaign over the next two and half years will need coordination, planning, research, a team of creative designers and the purchase of significant media time. Essentially, it will involve not only the government, but other, independent, reputable and trusted parties in order to generate and maintain public faith in the process and forestall pushback from non-supportive interests.

During the formal process up until 2000, there was direct funding to the states for the work of the Australians for Reconciliation; coordinated by PM & C who worked closely with the Council for Aboriginal Reconciliation. Since that time numerous efforts have been made to achieve funding for state organisations and support for local coordination of reconciliation activity. Reconciliation Australia does not directly support the work of the state organisations, nor local groups. However a high level of state based activity is essential if we are to succeed in achieving a majority of states voting Yes in the referendum.

Recognition at this level is a critical step towards restitution and healing essential for this country. ANTaR strongly believes that spending on consultation, negotiation and education regarding the reforms to the Constitution should come from mainstream spending and should not in any way be either in fact or be perceived to have been drawn from Indigenous specific budgets.

Legislation is currently before Parliament to establish a human rights legislative scrutiny system, including the establishment of Joint Committee with power to examine bills or Acts for compatibility with human rights. In our submission to the Senate Legal and

Constitutional Affairs Committee Inquiry into the relevant bills in July 2010, ANTaR recommended that the Joint Committee's role should be expanded to include reviewing the findings of UN treaty bodies and special procedures of the UN Human Rights Council (such as special rapporteurs, working groups and under the Universal Periodic Review process). We also argued that, in order to discharge its functions effectively, the Joint Committee needed to be adequately resourced. We noted that the Explanatory Memorandum for the main bill indicates that the items have no financial impact on Government revenue and expressed concern that, without substantial resources, the Committee would be unable to properly perform its functions including conducting research and consulting with independent experts.

Recommendation 1: Increase resources to Reconciliation Australia, the Australian Human Rights Commission, the National Congress of Australia's First Peoples and state based reconciliation organisations to enable effective participation in the Constitutional recognition process and to plan, design and implement public education and engagement activities, in particular, the resourcing of an independent coordinating secretariat empowered and resourced to coopt the skills to design and promote awareness raising and education regarding proposed reforms.

It would be valuable to establish an independent secretariat that oversees and distributes resources to the design and coordination of a comprehensive public awareness raising and education campaign.

Cost: \$10 million/2 years

Recommendation 2: Resource broad community engagement and education initiatives to promote understanding and support for Constitutional recognition

A Constitutional education and reconciliation education grants program should be resourced to support a range of non-government agencies to engage in community education and engagement initiatives on the national and local level. The grants pool should be available to a range of civil society and community organisations and groups at the national and local level.

Cost: \$40 million/2 years

Recommendation 3: Adequately resource the Human Rights (Parliamentary Scrutiny) Joint Committee

It is important that adequate resources are provided to ensure this new Joint Committee is supported by an experienced and suitably skilled secretariat. ANTaR understands it is planned that this important new Committee will be resourced from within the existing Joint House funding allocation, possibly involving taking over some roles from the existing Senate Scrutiny of Bills Committee. However, we believe to do its job properly, this Committee will need to have access to staff who are highly specialised in the application and current interpretations of international law. Additional resourcing to enable the employment of suitably skilled staff is essential if this important government initiative is to operate effectively from the outset.

Cost: \$ 100 000 in 2011-12 (recurrent)

2. Creating safe and sustainable Northern Territory communities

ANTaR believes that ongoing action to make children, families and communities safe must be a national priority. However, we insist that this must be done in partnership with Aboriginal communities and in a way which builds the capacity of communities to respond to the specific challenges each community faces and respects human rights.

Funding for Northern Territory Emergency Response (NTER) measures has been continued by the Federal Government under the 'Closing the Gap in the Northern Territory' National Partnership Agreement (some \$247.9 million in 2010-11, with a total Commonwealth contribution of \$807.4 million/3 years).

In the last Federal Budget, \$46 million over 3 years was allocated to the establishment of a 'Remote Service Delivery National Partnership Flexible Funding Pool', to support projects identified through Local Implementation Plans that cannot be funded from existing programs.

In late 2010, the Aboriginal Peak Organisations of the NT released an issues paper calling for some immediate changes to the NTER including the replacement of compulsory income management with a voluntary system of trigger-based and case-by-case income management and the resourcing of communities to develop appropriate and effective alcohol misuse solutions. ANTaR supports these recommendations. We also believe that the Government needs to be engaging in longer-term community development policy and budget planning with communities.

Under changes to the NTER, 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.²

² Aboriginal and Torres Strait Islander Legal Services and Aboriginal Peaks Organisations NT, 'The future of the Northern Territory Intervention – Issues Paper', November 2010.

The Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010 reported in October last year and made a series of recommendations to promote the safety and wellbeing of the Northern Territory's children. While most of these recommendations were directed to the Northern Territory Government, a number were directed to, or could have implications for, the Commonwealth Government. These included recommendations:

- That an **Aboriginal Child Care Agency or Agencies** be developed in stages, and that such an agency or agencies is funded by Government with a major role in child safety and wellbeing, with consultation to determine how the Aboriginal community should be represented. Alternatively, the agency functions may be developed as part of an existing Aboriginal controlled organisation. (4.2);
- That the Northern Territory Government explores with the Commonwealth the (trial) development (or expansion of) existing **infrastructure in remote areas** (e.g. women's safe houses, day care centres, health clinics) to provide on-community therapeutic residential options for mothers and small children where the latter have been identified as being at risk of removal into foster care because of 'failure-to thrive', neglect, or otherwise inadequate parenting. The trial of such options would need to include the development of a therapeutic intervention model and staffing /supervision options. (6.2)

At present, there are no Aboriginal community-controlled child-care services in the Northern Territory. The Board of Inquiry highlighted the need for such an agency to be established. In its submission to the 2010 Budget, the Secretariat of National Aboriginal and Islander Child Care (SNAICC) recommended that the Commonwealth establish two Aboriginal and Torres Strait Islander community-controlled services in the Territory with a mechanism to support governance across the key regional Aboriginal user groups. ANTaR supports this recommendation.

Recommendation 4: Adequately resource communities to develop appropriate and effective solutions to alcohol misuse

Provide resources to enable communities to develop and advocate for community alcohol solutions and to support culturally appropriate and accessible alcohol treatment programs.³

Cost: \$40 million / 4 years

Recommendation 5: Invest in infrastructure to support on-community therapeutic residential options for mothers and small children at risk

As per the Board of Inquiry recommendation 6.2, invest in remote community infrastructure to meet the needs of mothers and children at risk of removal.

\$Cost: \$20 million / 4 years

Recommendation 6: Expand and support the Aboriginal and Torres Strait Islander Child Care Agencies

³ Aboriginal and Torres Strait Islander Legal Services and Aboriginal Peaks Organisations NT, 'The future of the Northern Territory Intervention – Issues Paper', November 2010.

Establish two new Aboriginal and Torres Strait Islander community---controlled child and family welfare services in the Northern Territory to provide Aboriginal and Torres Strait Islander Child Care Agency (AICCA) functions, including supporting the out-of-home Care placement of children.

Cost: \$16 million/ 3 years⁴

3. Protecting rights to land, culture and language

The potential of native title rights to deliver social, cultural, spiritual and economic benefits to Indigenous peoples has not been fulfilled. This is partly due to the litigious nature of the native title system, which involves long delays and high costs, the limitations on the uses of native title land and the lack of resourcing to PBCs.

ANTaR supports moves towards negotiated native title outcomes. However, we believe that governments have a key role to play in creating a level negotiating field to enable fair and equitable outcomes to be achieved.

ANTaR, along with many native title stakeholders, has consistently advocated for additional resources for NTRBs and PBCs in response to clear evidence of chronic under-funding. 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.

Prescribed Bodies Corporate (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. The 'dire situation' facing PBCs was highlighted in evidence given to the 2006 Joint Parliamentary Inquiry on Native Title and the Aboriginal and Torres Strait Islander Land Account:

The Jidi Jidi Aboriginal Corporation (a PBC) stated that 'because our Corporation has no staff, no resources and no income, we cannot protect the native title that we fought so hard for'. The Kimberley Land Council also commented that particularly in remote communities, PBCs without any funding base 'struggle to put in place even basic facilities such as a telephone or a fax machine, let alone being able to develop the specialist skills required for effective and ongoing land management. As the chairman of one Kimberley PBC put it, "I may be the chairman, but we can't afford a chair"⁵.

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

⁴ Recommendation drawn from SNAICC, Federal Election Briefing Paper 2010, accessed at: <http://www.snaicc.asn.au/uploads/rsfil/00400.pdf>

⁵ At [5.68] on page 77.

Commissioner five years ago in his 2005 *Social Justice Report*.⁶ NTRBs currently receive very limited funding. 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.

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.⁷

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.⁸

The Office of Indigenous Policy Coordination (OIPC) within the Department of FaHCSIA currently provides resources to representative bodies. Since 1 July 2010, funding has been provided on a triennial basis. NTRBs received an increase in funding of \$62 million over 3 years in the 2009-10 Budget. In 2009-10, NTRBs received a total of \$67.3 million from the Commonwealth Government, projected to increase to approximately \$86 million for the 2013-14 financial year.

⁶ Reports cited by the Social Justice Commissioner in his 2005 *Social Justice Report* include: G Parker & o'rs, *Review of Native Title Representative Bodies*, ATSIIC, Canberra, 1995; Senatore Brennan Rashid & Corrs Chambers Westgarth, *Review of Native Title Representative Bodies*, ATSIIC, 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.

⁷ 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.

⁸ 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.

The Love-Rashid report in 1999 recommended a funding increase from \$47 million in 1997-8 to \$80.7 million in 1999-00, \$81 million in 2000-01 and \$85 million in 2001-02 to enable representative bodies to discharge their statutory functions.⁹ This represents an increase of more than 70%. As noted above, current funding is closer to \$70 million, but taking growth and indexation into account, ANTaR recommends an increase of between 30-40% above current funding levels as justifiable and necessary, particularly in light of the increased role that NTRBs will be required to play under reforms to the native title agreement-making process, discussed below.

The Federal Government is seeking to improve governance and accountability in the native title system to produce sustainable outcomes from native title agreement-making. NTRBs and PBCs have a critical role to play in achieving these outcomes but cannot do so on current funding levels. The Federal Government should consider adequate and sustainable funding for NTRBs and PBCs as an integral part of its native title reform agenda.

Recommendation 7: Additional funding for Native Title Representative Bodies (NTRBs)

Provide additional resources to Native Title Representative Bodies to ensure they are adequately resourced to represent Indigenous peoples in native title negotiations.

Cost: \$33 million in 2011-12/ \$34 million in 2012-13¹⁰

Recommendation 8: Increase resources for Prescribed Bodies Corporate (PBCs).

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

Cost: \$16 million in 2011-12¹¹/ \$16 million in 2012-13

Recommendation 9: 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.

Cost: \$100,000 in 2011-12 (recurrent)

⁹ Love-Rashid report, quoted in 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 para [3.36] on page 37.

¹⁰ Figures based on a 40% increase in projected funding for the relevant financial years.

¹¹ Calculated on the basis of the 80 PBCs receiving an average initial establishment grant of \$100,000, plus \$100,000 in core funding in 2011-12, increasing to \$200,000 in 2012-13.

4. Justice reinvestment: a new approach to crime prevention that makes economic and social sense

Nationally, some \$3 billion is spent on imprisonment each year.¹² The majority of prisoners are serving short-term sentences and come from highly disadvantaged areas, with poor education and social backgrounds.¹³ Aboriginal and Torres Strait Islander people are 'amongst the most imprisoned people in the world'¹⁴ 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 Indigenous incarceration rates are increasing, not decreasing. Despite the high cost of imprisonment – at \$1309 per prisoner per week – recidivism rates are high (at about 73% for Indigenous offenders). A 10% reduction in the Indigenous prison population is estimated to result in savings of more than \$10 million per year.¹⁵

It is time for a radical rethink of our approach to Indigenous offending.

Justice Reinvestment is based on the principle that prevention pays dividends. Successfully trialled in the US and UK, it works by diverting a portion of the funds that 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 Indigenous prisoners, communities with predominant or significant Indigenous populations are likely to benefit from a justice reinvestment approach. In her recent article on the application of justice reinvestment to Australian communities, Melanie Schwartz highlights the high costs of imprisoning people from Indigenous 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.¹⁶ 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

¹² Steering Committee for the Review of Government Service Provision, Parliament of Australia, *Report on Government Services* (2010) 8.3.

¹³ Eileen Baldry, 'Recidivism and the Role of Social Factors Post-Release' (2007) 81 *Precedent* 5.

¹⁴ Harry Blagg, 'Restorative Visions in Aboriginal Australia' (2001) 44(1) *Criminal Justice Matters* 15.

¹⁵ 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.

¹⁶ 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.

development loans' to consolidate debt or support home ownership.¹⁷ In December 2009, the Senate Legal and Constitutional Affairs References Committee recommended that 'the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.'¹⁸

While over time, Justice Reinvestment is likely to be revenue-neutral then saving (reusing existing funds, and, in the longer term, reducing incarceration costs), some initial funding is required for pilot programs and feasibility studies.

The inadequacy of funding to Indigenous legal services 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:

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.¹⁹

Responding to this need, the 2009 Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice recommended that:

The committee recommends that the Australian Government increase the level of funding for Indigenous legal services with a view to sufficiently resourcing this sector of the legal aid system to meet the needs of Indigenous peoples, including appropriate loadings for extra service delivery costs.²⁰

This was consistent with previous recommendations of the 2004 *Access to Justice* report.

Some 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.

In the 2010-11 Budget, the Federal Government delivered an additional \$34.9 million/ 4 years for Indigenous 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,

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

¹⁸ Legal and Constitutional Affairs Committee, Parliament of Australia, *Access to Justice* (2009) Recommendation 21.

¹⁹ 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.

²⁰ Senate Standing Committee on Legal and Constitutional Affairs, *Access to justice*, 2009, accessed at:

http://www.aph.gov.au/senate/committee/legcon_ctte/access_to_justice/report/b04.htm

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.

Recommendation 10: Fund Justice Reinvestment funding and scoping study

Fund scoping and feasibility study on Justice Reinvestment in Australia to partner with Aboriginal and Torres Strait Islander stakeholders in determining applicability and informing design of appropriate model for the Australian context, based on comparisons with overseas experiences. The approach taken in the USA involves

policymakers establishing a small, high-level, interbranch, bicameral, and bipartisan team of elected and appointed officials to work with criminal justice policy experts. These experts then consult with a broad range of stakeholders in the jurisdiction, which may include prosecutors; public defenders; judges; corrections and law enforcement officials; service providers and community leaders; victims and their advocates; people who have been incarcerated; and health, housing, human service, education, and workforce professionals.²¹

An incarceration-mapping exercise should also be conducted to identify potential trial sites with high concentrations of offenders.

Cost: \$2 million in 2011-12, \$4 million in 2012-13

Recommendation 11: 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).²²

ANTaR suggests 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 2012-13 year.

Cost: \$5 million in 2011-12, \$10 million in 2012-13

²¹ Further details at the Justice Reinvestment: A Project of the Council of State Governments Justice Centre website. <http://www.justicereinvestment.org/strategy> (accessed 25 Jan 2011)

²² 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 on 27 Jan 2011.

Recommendation 12: Increase funding to Aboriginal and Torres Strait Islander legal services (ATSILS)

Increase funding to Aboriginal and Torres Strait Islanders Legal Services, in accordance with recommendation 27 of the 2009 Senate Legal and Constitutional Affairs Committee *Access to Justice* report.

Cost: \$68 million/4 years²³

5. Supporting Indigenous economic development

COAG has committed to halving the employment gap between Indigenous and non-Indigenous Australians by 2018.

The Government released its draft Indigenous Economic Development Strategy in May last year, with submissions closing on 17 December 2010. While ANTaR welcomed the potential for an overarching strategy to improve policy coordination and outcomes across a range of departments, sectors, programs and initiatives, we expressed concern that no new additional funding will be available for the implementation of this Strategy apart from funds already allocated to initiatives within it. This precludes the implementation of any additional initiatives recommended by the consultation process. ANTaR recommends the creation of an Indigenous Economic Development Strategy funding pool to support the development of innovative community and economic development initiatives.

Maximising the benefits obtained by Indigenous peoples from native title and Aboriginal land should be a key priority for governments. While agreement-making has the potential to deliver substantial benefits to communities, reform is needed to clarify the ways in which native title rights can be used to support economic development.

As a result of recent changes to the Community Development Employment Program (CDEP), the program is no longer available in urban, regional and remote areas assessed to have established economies. Although the program continues in some remote areas, since 1 July 2009, new participants receive payment for work in the form of income support payments rather than wages, are denied the incentive to work additional hours and earn on average \$100 less per week.

The creation of more than 1500 full funded government service delivery positions to replace CDEP positions is a welcome first step. Government procurement policies to encourage corporate social responsibility in relation to Indigenous employment and training and the use of Indigenous suppliers will also make a positive difference. However the gap between abolished CDEP positions and new jobs created is significant, meaning many people have been disadvantaged by the changes.

Further, these measures alone will not achieve the COAG employment target nor build a strong economic future for Indigenous Australians. Governments must continue to invest

²³ 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.

in opportunities for flexible, incentive-based employment and social enterprise development in regional and remote areas.

Recommendation 13: Funding for new initiatives under the Indigenous Economic Development Strategy

Create an Indigenous Economic Development Strategy funding pool to support the development of new and innovative community and economic development initiatives under the overarching strategy.

Cost: \$100 million in 2011-12

Recommendation 14: Increase the number of fully-funded services positions to replace CDEP positions

Increase the number of fully-funded municipal services positions for Indigenous Australians to replace former CDEP positions, in cooperation with local community-led organisations and state and local governments.

Cost: \$90 million in 2011-2012/ \$100 million in 2012-13²⁴

6. Investing in community-controlled health services to Close the Gap and create jobs

The 10-17 year life expectancy gap between Indigenous 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 Indigenous health equality since 2007. More than 135,000 Australians have pledged support to Close the Gap.

In March 2008, the Prime Minister, the federal Opposition Leader and key Government Ministers signed the *Close the Gap Statement of Intent* with Indigenous health leaders. In doing so, they committed to developing a plan for Indigenous health equality within a generation and to working in partnership with Aboriginal and Torres Strait Islander peoples and their representatives. In 2007, COAG agreed a range of 'closing the gap' targets, and some \$1.6 billion has been committed through COAG to close the gap in Indigenous health outcomes. However, the Government has not yet delivered on its commitment to develop a comprehensive, evidence-based implementation plan.

In the 2010-11 Budget papers, the Federal Government estimated that it will spend \$711.0 million on Indigenous health in 2010-11. As Lesley Russell notes, this amounts to less than 2% of total Commonwealth spending on health. With the Indigenous population comprising some 2.5% of the total population and carrying a vastly disproportionate burden of disease, this figure falls significantly short of the need.

²⁴ Recommendation drawn from ACOSS Budget Priority Statement 2010-11.

Although the Federal Government has allocated \$7.3 billion to the national health care reforms, none of this funding has been specifically targeted at Indigenous health. As NACCHO wrote in their submission to the National Health and Hospitals Reform Commission in March 2009:

Capacity building in a framework that supports existing ACCHSs and a movement towards greater community participation (and ultimately towards control) of other Aboriginal primary health care services will require capital and recurrent funding and workforce strategies to train, recruit and retain staff including measures to address the vast salary disparities which currently prevent staff recruitment within ACCHSs.

NACCHO then identifies the requirements of a capacity building framework, including:

- *'resourcing based on the model of the Primary Health Care Access Program (PHCAP);*
- *a systematic approach towards defining the core deliverables for Aboriginal primary health care services (ie what funding would buy with an acceptable per capita benchmark funding allocation) is needed;*
- *pooling of all Aboriginal-specific primary health care funds currently being directed to State Governments, Divisions of General Practice and other private health care providers;*
- *ACCHSs funding to be based on a weighted population basis, according to need. (A resource allocation formula that reflects the actual cost of ACCHSs providing the agreed core services at particular locations must be agreed to by NACCHO and Affiliates).'*

Increased investment in the Aboriginal community-controlled health sector would produce significant social and economic benefits for Aboriginal communities. The National Aboriginal Community Controlled Health Organisation (NACCHO), it is the 'single greatest non-government employer of Aboriginal people in Australia, with 70% of workers in 128 services nationally being Aboriginal employees' (this amounts to 2,500 full-time equivalent (FTE) staff, including over 700 Aboriginal Health Workers, 180 FTE doctors, and 230 nurses, spread across both urban and remote areas). However, the sector needs a substantial increase in resources to enable it to meet the needs of the Aboriginal and Torres Strait Islander population. Increased investment would also generate employment opportunities for local Aboriginal people, often in communities where there are few other employment options.

Recommendation 15: The Federal Government should enhance the capacity of Aboriginal Community Controlled Health organisations to deliver culturally appropriate services

Barriers to closing the Gap that could be addressed would include improved service infrastructure such as new clinics, medical equipment and transport capacity to make these facilities accessible. There is also a strong need to enable competitive wages and salaries for people working in this field to redress shortfalls and improve retention rates.

Cost: \$450 million / 4 years²⁵

7. Service and infrastructure priorities

Safe, appropriate and affordable housing and quality education are key building blocks for health and economic participation. The Australian Institute of Health and Welfare has estimated that an additional 20,000 dwellings are needed to meet the immediate housing needs of Indigenous households nationally.²⁶ In the NT alone, the unmet need for Indigenous housing is estimated at more than \$2.0 billion.²⁷ Indigenous households are currently disadvantaged in all sectors of the housing market, from home ownership, private, public and community rental accommodation and are over-represented among the homeless population.²⁸

While ANTaR has welcomed recent additional investment in Indigenous housing in remote communities (for example, the \$672.million to the Strategic Indigenous Housing and Infrastructure Program or SIHIP), we are concerned that this investment falls well short of meeting the need, and is limited to remote communities. SIHIP will provide new housing to only 16 larger communities in the NT, with the other 53 prescribed communities only receiving housing upgrades and other people living outside prescribed communities.

We are also concerned that the direction of Indigenous housing reforms has largely taken control of this housing out of Indigenous hands. While mainstream national affordable housing policies are currently focused on expanding the mainstream community housing sector, the Indigenous housing agenda is moving in the opposite direction. Governments have increasingly transferred management of Indigenous housing from Indigenous community providers to state government departments. Between 2001 and 2006 the number of Indigenous community housing organisations reduced by 20%.²⁹

ANTaR believes the current policy of tying funding to Indigenous Community Housing Organisations (ICHOs) to a requirement for them to come under the control of State Government housing agencies is detrimental to the interests of Indigenous people and is leading directly to a decline in the quality of Aboriginal housing and the capacity of the Indigenous community housing sector. This policy inconsistency is inequitable and contrary to the principles of the Closing the Gap strategy. Consistent with these concerns, ANTaR supports the key recommendations of National Shelter's August 2010 Indigenous housing policy statement, *A way forward for Housing Indigenous Peoples in Australia*.

²⁵ Based on assessment made by ACOSS, Recommendation 12, Budget Priority Statement 2010-11

²⁶ From Australian Institute of Health and Welfare, *Indigenous housing needs 2009: A multi-measure needs model*, 2009.

²⁷ Lesley Russell at 25.

²⁸ National Shelter, *A way forward for Housing Indigenous Peoples in Australia – National Shelter Policy Statement*, August 2010.

²⁹ National Shelter, *A way forward for Housing Indigenous Peoples in Australia – National Shelter Policy Statement*, August 2010.

Many Indigenous people continue to miss out on a quality education. Education challenges are greatest in remote Australia. Many remote Aboriginal schools in the Northern Territory lack access to full-time teachers and basic school infrastructure.³⁰ There is also a clear lack of early childhood services. ANTaR notes evidence which indicates that Multifunctional Aboriginal Children's Services (MACS) are a popular choice with many Indigenous families due to a number of unique features, including:

- Affordability;
- Majority Aboriginal or Torres Strait Islander staff (approximately 65% of all MACS staff);
- Range of early childhood programs;
- Multifunctional, holistic approach; and
- Range of health programs.³¹

We share SNAICC's concern about the inadequacy of current funding to MACS

Recommendation 16: Build the capacity of the Indigenous community housing sector nationally.

There is clearly still a dramatic level of unmet need in the quantum and quality of housing for Indigenous Australians. Many billions of dollars of extra spending is needed to address this chronic problem. Quantifying this amount is problematic and ANTaR is not making a funding recommendation for this area. Instead we simply request the government to ensure that funding for this area continues to grow, and as an absolute minimum is not subject to cuts in the current context of the government's commitment to return the Budget to surplus in 2012-13.

However, as a minimum, we ask the government to untie funding to ICHOs from a requirement to be subject to the policies and administration of State government housing departments. This would free up some funds to at least enable repairs and maintenance of existing stock managed by those ICHOs.

Cost: \$50 million

Recommendation 17: Rebuild and restore the 33 Multifunctional Aboriginal Children's Services (MACS)³²

Rebuild and restore operation of the Multifunctional Aboriginal Children's Services (MACS) through a one-off capital upgrade, a 30% increase in recurrent funding to meet the projected costs of new standards and recurrent funding to be indexed annually.

**Cost: \$33 million (\$1 million upgrade for each of the 33 MACS)
+ \$3 million per year (30% increase in recurrent funding)**³³

³⁰ For example, http://www.culturalsurvival.org.au/docs/Case%20Study_Unequal%20Schools.pdf

³¹ SNAICC, page 17.

³² SNAICC, Federal Election Briefing Paper 2010.

³³ Calculation based on \$10 million funding for the 33 MACS in the 2010-11 year. Figure derived from \$20.7 total funding for the 33 MACS plus 36 creches.

8. Sorry is the first step: reparations 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 Indigenous population into the wider community.

Link-Up and Bringing Them Home case worker and counsellor services are part of a suite of measures the Federal Government provides in recurrent funding by way of reparations due to the Stolen Generations. In the 2007-8 financial year an additional \$15.7M/4 years was committed to Link-Up and Bringing Them Home counsellor services. ANTaR believes it is essential that these increased levels of support are sustained, particularly towards improving the levels of support to Stolen Generations who have been reunited with their families, including graveside reunions.

Research indicates that Aboriginal people removed from their families suffer from poorer outcomes across a range of socio-economic indicators. As a result, the Stolen Generations survivors, who number between 20 000 and 30 000, require a range of specific, targeted services and supports that comprehensively address their needs, as well as broader efforts to close the gap in Indigenous life expectancy and health status.

For example, many Stolen Generations are now elderly, however, for many the thought of being re-institutionalised in aged care facilities is terrifying, having been removed to state institutions as small children. The need to develop appropriate solutions that meet the needs of these Elders was outlined in the Stolen Generations Working Partnership announced on 26 May 2010.³⁴ It is essential now for this working partnership to be implemented in all aspects of policy and program delivery to the Stolen Generations. This cannot be done effectively without extra funding.

Increased education and awareness amongst service providers of the needs of Stolen Generations has long been recognized as necessary. At the launch of the Apology calligraphy on 26 May 2008, where he reiterated the government's commitment to the ongoing healing of the Stolen Generations, Prime Minister Rudd committed that the Department of Health and Ageing, with advice from Stolen Generations, "will develop a training program for mainstream health services to improve their ability to care for the Stolen Generations, their families and others who were affected. As part of improving access to services, we will develop information materials to promote options for care available to members of the Stolen Generation". Stolen Generations organisations recognize that the Working Partnership is an essential first step of this process, however there has been no further development evident of appropriate educational resources

Without the dedicated work of the National Sorry Day Committee and the Stolen Generations Alliance over the past decade it is doubtful a national Apology would have

³⁴ Stolen Generations Working Partnership
<http://www.fahcsia.gov.au/sa/indigenous/pubs/stolengenerations/Pages/StolenGenerationsWorkingPartnership.aspx>.

ever been achieved. Particularly, due to the valuable work each organisation does in educating the Australian public and advocating for justice for Stolen Generations. These organisations play a critical role in raising public awareness so that such violations can never happen again, as well as bringing to light the importance of just compensation. This work has been provided with only very basic financial support by the Australian government. It is the obligation of the national government that these organisations are adequately resourced.

In our 2010 Federal Election Priorities Statement, ANTaR called on all parties to commit to progressing the priority issues set down in the Stolen Generations' Working Partnership announced on 26 May 2010; and to the full implementation of the *Bringing them home* report's recommendations through a comprehensive government response developed in partnership with Stolen Generations groups, as well as Link-Ups and other service providers including restitution, rehabilitation and compensation. The Stolen Generations Working Partnership recognises that Stolen Generations have the capacity to develop their own solutions such as in the critical area of appropriate aged care.

Recommendation 18: 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. Without extra resourcing, it is virtually impossible for the SGWP to address the priorities which have been outlined by the government.

Cost: \$6 million / 3 years

Recommendation 19: Establish a national Stolen Generations reparations scheme

Payment of reparations is the responsibility of the states, as well as the federal government. 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 which hear claims by people from states which 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 outlined by the Public Interest Advocacy Centre.³⁵

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.

³⁵ 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 (27 Jan 2011)

Cost: \$20 million 2011-12

Recommendation 20: Adequately support Stolen Generations peak organisations.

Each organisation plays a unique role and has operated largely on a volunteer basis for many, years. To be effective, this work requires essential physical and human resources. ANTaR supports the increased resourcing of the National Sorry Day Committee and Stolen Generations Alliance. Recent small increases to these organisations need to be made ongoing.

Cost: \$120K pa per organisation (recurrent)

Recommendation 21: Augmentation of funding to Link-Up and Bringing Them Home case work and counselling services

Further to recurrent funding, additional ongoing resources be provided to Link Up and Bringing Them Home programs toward the follow up and care of Stolen Generations survivors who have been reunited with their families, including covering costs for funerals and burials, and assistance with family tracing.

Cost: \$30M over four years