UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

Mr Anand Grover

Preliminary observations and recommendations

Canberra, 4 December 2009

Good morning ladies and gentlemen.

It is a great privilege for me to be here and I would like to thank the Government of Australia for inviting me and facilitating the organization of an interesting programme. I would also like to acknowledge the traditional owners of this land, the Ngunnawal people.

During my 12-day mission I visited Canberra, Sydney, Melbourne, Alice Springs, Darwin and Brisbane. I had the pleasure of meeting the Minister of Health and Ageing, the Honourable Nicola Roxon, the Minister for Immigration and Citizenship, the Honourable Chris Evans, the Minister for Indigenous Health, the Honourable Warren Snowdon as well as a number of senior Government officials. Throughout the mission, all levels of Government and other relevant actors were candid, open and constructive. I take this opportunity to thank all those who have given their time and extended co-operation to me. I also had the opportunity to meet with representatives of civil society organizations and communities, academics and health professionals. I would like to warmly thank Dr. Ngaire Brown, Mr. Michael Levy, Professor Ian Anderson and Ms. Elisabeth Evatt, amongst others, for their valuable contributions and insights.

I would also like to thank the United Nations Information Centre for their support and for organizing this press conference.

You will find in the room a short document that explains my responsibilities as the UN Special Rapporteur on the right to health. It also provides some additional background information on the mission itself.

I am an independent expert who reports to and advises the UN Human Rights Council and UN General Assembly. I am not a member of the UN secretariat and I am not paid by the United Nations. As an independent expert, I exercise my professional judgment, and report to the United Nations.

What follows are my preliminary observations and recommendations which will be further developed in the report that I will submit to the United Nations Human Rights Council when it meets in June next year.

The focus of this mission was on two main issues – indigenous health and access to healthcare in

detention establishments, including those for asylum-seekers, refugees and prisoners. I looked at these issues through the prism of the right to health. But that was one of my major challenges as there is no legal right to health in Australia. In addition, Australia is apparently the only developed liberal democracy that does not provide constitutional guarantee for human rights. Nevertheless, Australia's obligations to respect and protect human rights derives from its adherence to the core human rights treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against torture or the Convention on the Rights of the Child.

Australia's failure to incorporate international human rights standards enshrined in treaties to which it is a party into domestic law remains an issue of great concern for me, as those rights need to be enforceable at the national level. I make note of the recent National Human Rights Consultation process, culminating in a report which recommended the increased recognition of human rights within Australia. I urge the Government to take necessary steps to incorporate international human rights standards into domestic legislation, all of which should be justiciable, including economic, social and cultural rights. This would provide an effective remedy to all those whose rights may have been violated.

The health of Australia's refugee and asylum seeker population in detention has been a significant concern for many years, which is why I visited two immigration detention centres – Maribyrnong in Melbourne, and Villawood in Sydney – as well as the Brisbane Immigration Transit Centre.

Some of the Government's policy changes surrounding immigration detention, particularly around frequency of review of detention, are to be commended. The average lengths of time for which individuals are detained have significantly decreased, diminishing the inherent risk of mental illness associated with indefinite detention. Removal of temporary protection visas has also gone some way towards ameliorating uncertainty within this population. Provision of health services in mainland immigration detention centres appears generally satisfactory.

However, I would like to emphasize my overriding concerns regarding the situation of persons in detention centres: the fact that detention remains mandatory, with no maximum limits on duration of stay, and that there are no binding legal standards that must be met in providing services. These factors impact negatively on the status of health of persons in detention.

Moreover, the excising of the Christmas Island under the *Migration Act,* whereby refugee claims are determined by a non-statutory process, means that Island detainees lack the same rights to judicial review as their mainland counterparts.

Although processing time on Christmas Island has decreased, major problems remain concerning the accessibility and appropriateness of the facility. These factors, particularly the logistical difficulties associated with airplane access, make rendering health and other services extremely challenging and present a significant obstacle to ensuring on-going monitoring by non-governmental and independent stakeholders. It is telling that I was unable to visit the island during my Australian mission, as the charter flight schedule would have meant I would have had to stay for four days – this rendered a visit impossible in terms of my schedule, and would represent a major impediment for other professionals, such as legal aid or healthcare workers.

The health of Australia's prison population was also an issue of concern to me. I had the opportunity to visit two prisons during my time in Australia: Long Bay, in Sydney, and Alice Springs Correctional

Centre. There are clearly positive initiatives in place in both – for example, establishment of a tertiary prison hospital in the former, and the Elders Visiting Program in the latter – however they share many challenges. These include adequate provision of primary health care, resourcing of health promotion projects, and provision of appropriate services to a population of Aboriginal and Torres Strait Islanders disproportionately represented in prisons. I would recommend that the Government invests additional funds with a view to ensuring sustainable delivery of primary healthcare services.

Individuals with mental illnesses are overrepresented in all types of custody. The deinstitutionalization of mental health services over recent times is a welcome development in healthcare, but inadequate resourcing of alternative services has resulted in a shift of individuals with mental illnesses to the nation's prisons.

Indigenous populations are also vastly overrepresented in the prison population. There is a triad of vulnerability that I have observed, consisting of incarceration, mental illness, and being of Indigenous descent. Aboriginal and Torres Strait Islanders with mental illnesses who become involved in the justice system invariably experience negative health outcomes. A vicious cycle appears to be occurring whereby this population is, in effect, criminalized. This is exacerbated by issues of dual diagnosis: that is, drug and alcohol problems coexisting with mental illness. As such, diversion programs, sentencing policies and criminal laws must all be considered when broadly assessing the health of Aboriginal and Torres Strait Islander populations, as incarceration has wide-ranging detrimental health effects.

Whilst Aboriginal and Torres Strait Islanders are overrepresented in the prisoner population, they are underrepresented in the prison staff cohort; this should be addressed through targeted programs that recruit and engage Aboriginal and Torres Strait Islander health workers and correctional staff in a culturally appropriate manner. Additionally, there needs to be an increased and proactive focus on health promotion activities as well harm reduction interventions, such as needle and syringe exchange programmes, to address the preventive health needs of inmates of all cultural backgrounds.

Knowing Australia to be a developed, prosperous country, I was moved by the stories told to me by indigenous communities, the living conditions I saw, and the extent of preventable disease and health-related disability I witnessed among those of Aboriginal and Torres Strait Islander descent. The right of a significant proportion of Australia's indigenous populations to the highest attainable standard of physical and mental health is being violated. Basic needs, such as adequate housing, safe drinking water and sanitation and access to education are not being met. Unresolved issue surrounding native titles and land rights continue to have a detrimental impact. Communities are not benefitting from the equal access to primary healthcare facilities which are at times inaccessible or inappropriate. This is sometimes due to lack of transportation and communication infrastructure, but more often due to direct discrimination and culturally inappropriate services being provided. Institutions and processes, particularly those linked to tertiary care, and staff are not adequately supported to address the specific needs and vulnerabilities of the indigenous communities they serve. Such inequities are incompatible with basic principles of the right to health including equality and non-discrimination.

Decades of neglect, racism and discrimination have stigmatized and disempowered these populations, impeding equal access to basic services, leaving them on the margins of the Australian society. Since the official recognition of Aboriginals as citizens in 1967 there have been improvements made, but more remains to be done. Certainly, Australia's support of the United Nations Declaration on the Rights of

Indigenous Peoples and the apology to the Stolen Generations were commendable, but there is much more to be done. Progress cannot be made on this important issue without respectful and open dialogue and cooperation among all parties. I would like to strongly encourage this dialogue in the quest for truth and reconciliation about difficult issues concerning colonization and consequent disempowerment of the Aboriginal and Torres Strait Islander populations.

Including the indigenous population in policy and decision–making processes is necessary to build relationships which would ensure genuine protection of their interests, while securing their respective cultural identities and self-determination, and restoring respect and dignity. I note that the Government has signaled an intention to establish the National Congress of Australia's First Peoples, which represents one mechanism by which this engagement could occur. However, I would stress the importance of legislative guarantees, or other such mechanisms, to ensure that the opinions of any such body *must* be taken into account.

Initiatives such as this are a welcome development, and represent major progress – but other initiatives in recent times have proved not as successful. The Northern Territory Emergency Response has unfortunately undermined some of this progress in efforts towards reconciliation, as communities describe the NTER as paternalistic, disempowering and racially motivated. It exposed the weaknesses in protection of the Aboriginal and Torres Strait Islander populations, and highlights the need for entrenched Constitutional protection for them.

Furthermore, the NTER failed to meet basic standards of a rights-based approach to health, such as the development of a transparent plan with clear benchmarks and indicators, participation, the meaningful engagement of communities and the establishment of mechanisms for monitoring and accountability.. Some aspects of the NTER have been considered beneficial; notably, that it sent a message of unprecedented political and financial commitment to address the rights and needs of indigenous communities. Income management aspects of the intervention were described favourably by some, but as disempowering by most – and my attention was drawn to similar initiatives in other States that have been implemented on a voluntary basis with success. The specific approach regrettably undermined existing health structures and the ongoing efforts of service providers in the Northern Territory, rather than strengthening their role in providing the solution. Overall, the NTER has undermined Aboriginals' and Torres Strait Islanders' self-determination and progress made to date by the communities themselves in addressing their own health needs and therefore has presented an obstacle to continuing further significant improvements in the health outcomes of these communities.

As the intervention initially stood, it was inherently flawed, and some of the measures imposed were in direct breach of Australia's international human rights obligations. I welcome the Government's decision to reinstate the *Racial Discrimination Act* in the Northern Territory, but it is of utmost importance that such changes are accompanied by the immediate implementation of appropriate measures. This would bring future programmes and policies in line with the change. In this context, I welcome the current government's recognition of some of the NTER's limitations, and its efforts to address these through an extensive consultation and review process.

In order to realize the right to the highest attainable standard of physical and mental health for indigenous communities, there is a need for significant, ongoing commitment and investment in a combination of both symbolic and practical measures to empower communities of Australians of Aboriginal and Torres

Strait Islander descent. I welcome the recent, unprecedented investment of $1.6 billion for indigenous health, the government's support for an Aboriginal and Torres Straits Islanders' Healing Foundation and the announcement of a new co-operative framework between community-controlled health services and the Federal and Territory governments, with a view to increasing indigenous peoples' control over planning, development and delivery of primary health care. This approach further enhances the commitments Australian Governments have already made in order to achieve indigenous health equality within a generation.

It is of utmost importance that sufficient funding is allocated to Aboriginal community controlled health services which have a proven record of delivering health services to Aboriginals and Torres Strait Islanders. Where mainstream services provide care to indigenous communities, capacity and cultural competence needs to be upgraded. Communication between tertiary and primary care providers in particular must be improved, and outreach services tailored to provide acceptable services to these populations. Leaders within the Aboriginal and Torres Strait Islander community have a vital role to play in policy and decision making and in increasing participation of their own community members in healthcare services.

In accordance with a rights-based approach I would like to highlight the need for a long-term national plan of action with clear targets, benchmarks and indicators to evaluate progress and guide State and Commonwealth priorities and actions. Such a plan would necessarily include addressing underlying determinants of health (such as adequate housing and access to safe water and sanitation), social determinants of health, as well as racism. Undivided support and implementation of the Close the Gap Campaign is crucial to ensuring capacity building and empowerment of indigenous communities to take a leadership role in realizing the right to health for all Australians. Barriers at the institutional level, including those influencing policies, allocation of finances and the level of human rights protections currently impede the achievement of equality and non-discrimination, and require action.

I visited hospitals in Alice Springs and Darwin and was impressed by the dedication of health professionals despite the lack of adequate means to address obstacles in realizing the right to health of their patients. Throughout the world, health professionals are often first to witness the effects of torture, trauma or substance use. They are also the key players in monitoring, documenting and achieving redress for human rights abuses. Although ethics training is a component of current programmes, regrettably, human rights training is not included in the curricula for health professionals in Australia. The practice of health professionals has a bearing upon the various aspects of the enjoyment of the right to health such as confidentiality, consent and access to treatment. Lack of human rights training may result in violations of patients' human rights. I therefore call upon the Government to include obligatory human rights training in the curricula for health professionals.

During my mission, I met many people of good will and incredible commitment, genuinely concerned about the human rights of all Australians. However, this mission has confirmed for me that the realization of the right to health of some Australians, especially those in detention and Aboriginal and Torres Strait Islanders remains a significant challenge to the nation. Guaranteeing human rights protections through supportive legal and policy frameworks alongside practical, targeted interventions that place empowerment and meaningful community engagement at their centre are necessary to ensure the right to health for all Australians.