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# **International human rights principles and the Northern Territory National Emergency Response Legislation**

A Briefing Paper

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on behalf of the

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## **Background**

On 15 June 2007, the Northern Territory Government released the report of its Inquiry into the protection of Aboriginal children from sexual abuse, entitled *Little Children Are Sacred*. On 21 June, the then Commonwealth Minister for Families, Community Services and Indigenous Affairs announced that in response to this report, the Commonwealth Government would introduce 'immediate, broad ranging measures to stabilise and protect communities in the crisis area'.<sup>1</sup> These measures included the quarantining of welfare payments, alcohol restrictions on Aboriginal land, health checks for all Aboriginal children, increased policing levels, the acquisition of townships through five-year leases, and the abolition of the permit system in most Aboriginal townships and town camps in the Northern Territory.

On 6 August, the legislation underpinning the Commonwealth Government's response<sup>2</sup> was released to the Opposition and minor parties only 24 hours before it was due to be voted on in the House of Representatives. The legislation was passed with the support of the Opposition. On 9 August, the Senate referred the legislation to its Standing Committee on Legal and Constitutional Affairs for inquiry and report by 12 August. The Senate passed the legislation with support from the Opposition on 17 August. In the short timeframe that Indigenous communities, political leaders and other legal and policy experts had to consider the detail of the legislation, there was significant debate about the relevance of many of the proposed measures to the issue of protecting Indigenous children from sexual abuse, and about whether the measures breached Indigenous peoples' human rights.

There can be no doubt that urgent action is needed in the Northern Territory to combat child sexual abuse and the significant social and economic disadvantage experienced by many Indigenous people. However, this legislation raises significant questions in relation to Australia's international obligations to respect and promote the human rights of Aboriginal and Torres Strait Islander people that should be considered. These obligations are found in a number of the major international human rights treaties to which Australia is a signatory, including the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic,

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<sup>1</sup> <http://www.atsia.gov.au/Media/media07/210607.aspx>

<sup>2</sup> The Northern Territory National Emergency Response Bill 2007 (National Emergency Response Bill); the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Welfare Payment Reform Bill); the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (National Emergency Response and Other Measures Bill); the Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008; and the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008.

Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Convention on the Rights of the Child (CROC). The welfare of children and effective and appropriate policy are best served by consideration of such treaties.

This Issues Paper examines various aspects of the legislation in light of Australia's human rights obligations - in particular, the potential for it to discriminate against and further disadvantage Indigenous people; the lack of consultation with affected Indigenous communities; the Government's characterisation of elements of its response as 'special measures' in human rights terms; the suspension of the *Racial Discrimination Act 1975*; the quarantining of welfare payments and the removal of access to social security appeals processes; the compulsory acquisition of rights, title and interest in Aboriginal land and the payment of 'just terms' compensation.

## **ISSUES**

### **RACIAL DISCRIMINATION**

The former Commonwealth Government regularly invoked Australia's international human rights obligations as justification for this legislation.<sup>3</sup> The Explanatory Memorandum for the National Emergency Response Bill set out the Government's position in relation to Australia's human rights obligations and the legislation:

*The Northern Territory national emergency response announced by the government recognises the importance of prompt and comprehensive action as well as Australia's obligations under international law:*

- *The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.*

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<sup>3</sup> See for example Dr Sue Gordon, Chairperson, Northern Territory Emergency Taskforce, evidence to Standing Committee on Legal and Constitutional Affairs, Senate Hansard, 10 August 2001, p. 35; pp. 77-78; Anthony Field, Legal Services, Department of Families, Community Services and Indigenous Affairs, witness to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p. 13.

- *Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when Governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.*

*The impact of sexual abuse on indigenous children, families and communities is a most serious issue requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties.*

However, many other Indigenous leaders and legal commentators argued that elements of the intervention were discriminatory and in fact breached such obligations, and would not serve to protect children.<sup>4</sup> Olga Havnen, Co-ordinator of the Combined Aboriginal Organisations of the Northern Territory, stated that the 'bulk of the legislative measures go to the heart of winding back the basic citizenship rights and entitlements of Aboriginal people.'<sup>5</sup> The Law Council of Australia stated that the legislation raises 'fundamental and far-reaching issues in relation to racial discrimination, the human rights of Aboriginal people, land rights and 'just terms' compensation'.<sup>6</sup> Amnesty International was of the view that the legislation contained 'discriminatory measures that have no demonstrated role in protecting Indigenous children'.<sup>7</sup>

The principle of non-discrimination on the basis of race is enshrined in articles 2(1) of the ICCPR, 2(2) of ICESCR, and 2(1) of CROC. The UN Human Rights Committee has defined discrimination as:

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<sup>4</sup> Standing Committee on Legal and Constitutional Affairs, *Report on the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p. 13.

<sup>5</sup> Quoted on Difference of Opinion, ABC TV, 18 October 2007, <http://www.abc.net.au/tv/differenceofopinion/content/2007/s2060320.htm>

<sup>6</sup> Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 52, p. 3.

<sup>7</sup> Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 39, p. 4.

...any distinction, exclusion, restriction or preference... which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, by all persons, on an equal footing, of all rights and freedoms.<sup>8</sup>

Article 26 of ICCPR sets out that:

All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2 of CERD states that governments who are signatories to the Convention 'condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms', and should 'engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation as well as taking 'effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists'.

The UN CERD Committee has also specifically stated that governments should 'ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity'.<sup>9</sup>

### **Lack of consultation**

There has been particular criticism of the Government's lack of consultation with or participation of Indigenous people in the development of the legislation. It could be argued that this is in contravention to Australia's international human rights obligations. Article 1 of the ICCPR states that:

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<sup>8</sup> UN Human Rights Committee, *General Comment 18: Non-Discrimination*, 136, UN Doc HRI/GEN/1/Rev.5 (2001).

<sup>9</sup> UN Committee on the Elimination of Racial Discrimination, *General Recommendation No. 23: Indigenous Peoples*, UN Doc A/52/18 (1997), 4.

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The CERD Committee has stated that governments should:

ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.<sup>10</sup>

Such participation and informed consent is crucial from the perspective of both principle and practice. A response to the legislation by the Combined Aboriginal Organisations of the Northern Territory stated that:

Consultation and engagement with community leaders is crucial to ensure that policy is informed by knowledge of local conditions, priorities are properly set and mistakes are avoided in implementation.

Further, if the 'emergency measures' are implemented without community consent and ownership, there is a risk that the problems (eg alcohol addiction) will be driven underground and that initiatives to help prevent child sexual abuse and family violence will be resisted.<sup>11</sup>

Potentially discriminatory aspects of the legislation were consistently justified by the former Government in terms of the situation in the Northern Territory being a crisis or emergency. Addressing the rates of child sexual abuse of Indigenous children in the Northern Territory should indeed be a matter of urgent national priority, as it should have been in past decades when raised consistently by Indigenous women and other advocates. However, such urgency should not lead to measures adopted in haste that may in fact exacerbate the problem in the longer term.

International law can be of assistance in this context. Article 4(1) of the ICCPR specifically sets

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<sup>10</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples, UN Doc A/52/18 (1997), 4.

<sup>11</sup> Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, 10 July 2007, <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>

out considerations for governments in such circumstances:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

The Senate Committee received advice from a former consultant to the UN on emergency interventions on how a response would be formulated in such circumstances:

In an emergency setting, the first thing a UN agency would do... is to ensure proper consultation on the ground. That is done within the first 24 to 48 hours and it is quite extensive. They then sit down with the communities to find out what supports and services they need. They set up safe houses and ensure that there are safe places for children to play. The international community ensures that there is safe and proper housing, water and access to medical services. ...

The biggest lesson learnt from all interventions internationally is that they always fail when they do not involve and empower the local communities to take part in the interventions that are taking place. If you look across the world at the operations that have been successful in resource-poor communities, the fundamental thing that crosses through all those interventions has been the giving of ownership, empowerment and control to the people themselves to ensure children are protected and families and communities are safe.<sup>12</sup>

### **Special Measures**

There has been significant debate about the Government's characterisation of elements of the legislation as 'special measures' in human rights terms. Article 1(4) of CERD states that:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be

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<sup>12</sup> Andrew Johnson, evidence to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, p. 62.

necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

This notion of special measures has been incorporated into the *Racial Discrimination Act 1975 (Cth)*. The characterisation of the Northern Territory Emergency Response legislation as a special measure seeks to portray as lawful and to the benefit of Indigenous people measures that would otherwise be considered discriminatory. Special measures are generally understood in terms of 'affirmative action' or 'positive discrimination', and its exemption in discrimination law aims to protect things done to benefit a disadvantaged group from challenge by non-members of the group.<sup>13</sup> The Law Council of Australia notes that it is established jurisprudence that the sole purpose of special measures must be securing adequate advancement of the beneficiaries in order that they may enjoy and exercise human rights and fundamental freedoms equally with others.<sup>14</sup>

Consultation and consent are concepts crucial to the characterisation of a particular approach as a special measure. The Human Rights and Equal Opportunity Commission (HREOC) has stated that measures that may impact negatively on rights, such as limitations on the availability of alcohol, may be considered special measures where they are done after consultation with and generally with the consent of Indigenous people.<sup>15</sup> However, measures taken with neither consultation nor consent cannot meaningfully be said to be for the 'advancement' of a particular group as is required by the definition of special measures - and in the context of Indigenous people, is contrary to their right to self-determination as well as undermining their dignity.<sup>16</sup> In order to justify the legislation as 'special measures', the President of HREOC has stated there

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<sup>13</sup> Human Rights and Equal Opportunity Commission, Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 67, p. 4.

<sup>14</sup> Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 52, p. 5.

<sup>15</sup> Human Rights and Equal Opportunity Commission, Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 67, p. 4.

<sup>16</sup> *Ibid.*



should have been comprehensive consultation beforehand and significant input from the communities concerned.<sup>17</sup>

The Aboriginal and Torres Strait Islander Social Justice Commissioner has also noted in regards to the intervention that:

One of the specific elements of a special measure is that it can only be in force for the duration, until the objective has been reached. One of the concerns is that there are no benchmarks, no baseline data, so that we can, in human rights terms, look at progressive realisation—that is that, over a period of time, we can see that there has been some advancement. Unless there is any mechanism in place to measure that, it will not happen.<sup>18</sup>

In terms of this legislation, it is unclear how its success or failure of its objectives and measures will be adequately evaluated. In particular, there is no requirement in the legislation that policy makers, bureaucrats and others involved in the operationalisation of the legislation keep the ultimate advancement of Indigenous peoples' human rights in mind.

### **Suspension of the *Racial Discrimination Act***

Despite a stated commitment to implementing Australia's human rights obligations, the former Commonwealth Government explicitly set out that measures undertaken as part of the Northern Territory Emergency Response legislation were exempt from the operation of Part II of the RDA and from Northern Territory anti-discrimination legislation.

A representative of FACSIA gave evidence to the Senate Committee Inquiry regarding the Government's reasoning for exempting the legislation from the RDA:

The exclusion from part II of the RDA is limited to the five years of the emergency response and is necessary so that the special measures in the emergency response can be implemented without delay and without uncertainty. This is to allow the special measures to address the crisis in the communities in the Northern Territory and to build social and economic structures in those communities. The special measures are seen as measures to protect children in a way which is consistent with Australia's international

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<sup>17</sup> John Von Doussa, President of Human Rights and Equal Opportunity Commission, evidence to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p. 42.

<sup>18</sup> Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, evidence to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p. 45.

obligations under human rights treaties.<sup>19</sup>

The Labor party did propose an amendment to the legislation in the House of Representatives to remove the exemption of the RDA, with the Opposition leader stating that he believed the integrity of the RDA should be observed.<sup>20</sup> However, he also stated that he had received advice that the legislation did not contravene the RDA.<sup>21</sup>

In its submission to the Senate Committee, the Law Council of Australia stated that the inclusion of a provision specifically excluding the operation of the RDA was utterly unacceptable, and placed Australia:

in direct and unashamed contravention of its obligations under relevant international instruments, most relevantly the United Nations Charter and the International Convention on the Elimination of All Forms of Racial Discrimination.

The Law Council notes the claim by both the Government, and by the Leader of the Opposition in the House of Representatives on 6 August 2007, that the proposed legislation is consistent with the RDA. The Law Council rejects this assertion entirely. If such claim were correct, the Government and its advisers would not have considered it necessary to suspend the operation of the RDA.<sup>22</sup>

The President of HREOC noted:

It seems to us that that requirement of the RDA could have been met by appropriate consultations and consent. Again, consent has not been obtained in advance, which the act would anticipate, but consent after the event would be better than no consent. That seems to us to be a problem. The other side-effect is that... it has the effect of exempting acts done in the course of the administration of this legislation, so that any discriminatory act by a bureaucrat or someone else in the administration of otherwise justifiable

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<sup>19</sup> Anthony Field, FACSIA, evidence to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p. 13.

<sup>20</sup> Kevin Rudd, *House of Representatives Hansard*, 7 August 2007, p. 109.

<sup>21</sup> Kevin Rudd, *House of Representatives Hansard*, 7 August 2007, p. 109.

<sup>22</sup> Standing Committee on Legal and Constitutional Affairs, *Report on the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, pp. 13-14.

provisions will be outside the scope of the act.<sup>23</sup>

Questions have also been raised regarding whether the Government's re-defining of 'special measures' according to its own legislative criteria may be stepping outside of the international understandings regarding what constitutes a 'special measure.'<sup>24</sup> Given that the RDA has depended on international law for its constitutional validity, it has been proposed that severing that link by introducing a new meaning of 'special measures' may lead to unintended consequences.<sup>25</sup>

### **Quarantining of welfare payments**

Also characterised as a special measure under the legislation has been the quarantining of half of the welfare payments of all Indigenous people in prescribed areas in the Northern Territory. The legislative measures introduced a new concept into social security legislation – the Income Management Regime – and enable the Government to divert people's social security and family assistance payments for spending on food, rent or other essential items. The Government's rationale for the application of its Income Management Regime to all members of a prescribed community and not just those with responsibility to care for children has been described as follows:

The primary purpose of the income management regime as it applies [in] the Northern Territory is, in those prescribed areas, to have an income management approach to all government welfare payments going into a community, to ensure that the flow of government assistance into the community is able to be managed as a whole to encourage expenditure on those services and goods that will lead to better outcomes for the children in those communities.<sup>26</sup>

The legislation also links the payment of family assistance benefits to school attendance, and removes the right of Indigenous people to appeal to the Administrative Appeals Tribunal and the Social Security Appeals Tribunal in relation to decisions made under the introduced measures. The former Government stated that the decision was made to remove access to external review

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<sup>23</sup> John Von Doussa, President of Human Rights and Equal Opportunity Commission, evidence to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p. 42.

<sup>24</sup> Parliamentary Library, *Northern Territory National Emergency Response Bills 2007 - Interim Bills Digest*, 7 August 2007, p. 11.

<sup>25</sup> Parliamentary Library, *Northern Territory National Emergency Response Bills 2007 - Interim Bills Digest*, 7 August 2007, p. 11.

<sup>26</sup> David Hazlehurst, Group Manager, FACSIA, evidence to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p. 18.

mechanisms because it would take too long and would consequently undermine the timing of the emergency response. However, the Welfare Rights Network has stated that this:

sets a very dangerous precedent to strip away this protection for an entire group of Australians based solely on where they live. These decisions could have huge implications for families. ...

It is difficult to accept the Government's rationale as to why Indigenous communities in the Northern Territory are to be denied access to independent review of decisions relating to the quarantining of welfare payments when other Australians in other parts of the country will be able to exercise their full appeal rights.<sup>27</sup>

The Australian Council of Social Services (ACOSS) has characterised the measures under the legislation as 'unfair and discriminatory' in their application to entire Indigenous communities.<sup>28</sup> ACOSS has also noted that amounts withheld from payments are not kept in trust for the recipients and can be withheld for up to 12 months after the cessation of Income Management, and that the requirement for the majority of activity tested income support recipients to participate continuously in Work for the Dole is discriminatory and unreasonable, and unlikely to improve their employment prospects.<sup>29</sup>

Article 9 of ICESCR states that signatories to the Convention should 'recognize the right of everyone to social security, including social insurance'. International human rights law does not prescribe social security payment levels, however the ICESCR Committee has stated that governments should 'cover all the risks involved in the loss of means of subsistence beyond a person's control'.<sup>30</sup>

The blanket application of the Income Management Regime to all people in a prescribed area, regardless of how they spend their money or how well they care for their children – or indeed regardless of whether they care for children at all – raises significant questions of racial

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<sup>27</sup> Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 44, p. 2.

<sup>28</sup> Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 97, p. 10.

<sup>29</sup> *Ibid*, p. 9.

<sup>30</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment 6: The Economic, Social and Cultural Rights of Older Persons*, 43, UN Doc. HRI/GEN/1/Rev.5 (2001)

discrimination. Any Indigenous person who spends a night in a prescribed area can become subject to the Income Management Regime and have half of their welfare payments quarantined.

The legislation also links welfare payments to school attendance. However, there is much room for discretion regarding how inadequate school attendance is measured, and how it will be monitored and reported. This leaves significant scope for inconsistent and discriminatory decisions to be made, with little recourse for those Indigenous people adversely affected. Article 17 of the ICCPR sets out individuals' rights to privacy, which may also be raised by the sharing of information between government agencies and school authorities.

The President of HREOC has noted that the discriminatory impact of these measures will very much depend on the way in which the legislation is explained, the background information that is available to the communities, the discussion that occurs with them and the way in which it is administered in individual cases.<sup>31</sup>

### **COMPULSORY ACQUISITION OF LAND**

The legislation gives the Commonwealth Government significant powers over Aboriginal land in the Northern Territory. These include the compulsory acquisition and control of specified Aboriginal land and community areas through renewable five year leases over specified land, Ministerial powers over town camps and local councils, and the ability for the Government to terminate rights, title and other interests in the land or to sublease and licence their interest in the land. Justification for the leases was given by the then Minister in his Second Reading Speech as giving the Government 'the unconditional access to land and assets required to facilitate the early repair of buildings and infrastructure'.

The lack of consultation with Aboriginal communities regarding the compulsory acquisition of their land has been a particularly controversial element of the legislation, and raises fundamental questions regarding whether Indigenous people are being treated differently on the grounds of race by this legislation. So too does the outstanding question of whether the legislation requires the Government to pay 'just terms' compensation as a result of that compulsory acquisition.<sup>32</sup>

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<sup>31</sup> John Von Doussa, President of Human Rights and Equal Opportunity Commission, evidence to Standing Committee on Legal and Constitutional Affairs, Senate Hansard, 10 August 2007, p. 42.

<sup>31</sup> Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, evidence to Standing Committee on Legal and Constitutional Affairs, Senate Hansard, 10 August 2007, p. 46.

<sup>32</sup> Standing Committee on Legal and Constitutional Affairs, *Report on the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, pp. 19-22.

These measures evoke debate about Indigenous peoples' right to self-determination (Article 1 of ICCPR and ICESCR) and again, Australia's obligations under CERD. The CERD Committee has stated that governments should 'recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands.'<sup>33</sup> Articles 2 and 26 of the ICCPR, article 2 of ICESCR, articles 2 and 5 of CERD are also relevant in relation to the measures that mean that the rights of native title holders not protected in the same way as other non-Indigenous property rights. A submission on this matter from the Gilbert + Tobin Centre of Public Law to the Senate Committee Inquiry states:

A non-Aboriginal property holder in the Northern Territory whose property rights are taken away by government has access to a statutory compensation regime. Why not accord the same respect to Aboriginal property rights in this instance? Why should traditional owners have to climb over numerous additional legal obstacles to obtain compensation, by proving that a constitutional 'acquisition of property' has occurred? This relegates Aboriginal property rights to a lower level of legal protection. Whether intentional or not, it has the effect of capitalising upon numerous complexities and doubts surrounding the meaning of section 51(xxxi), to the advantage of the Commonwealth and to the disadvantage of Aboriginal people whose sole valuable asset is frequently their property rights.<sup>34</sup>

There were no recommendations relating to land mentioned in the *Little Children are Sacred* report. In a report for Oxfam, Jon Altman of the Centre for Aboriginal Economic Policy Research found no evidence of any direct link between the compulsory acquisition of five year leases over prescribed townships and the problems of child abuse and dysfunction in Aboriginal communities in the Northern Territory. Furthermore the Government has provided no evidence that this measure will assist in addressing overcrowding and other housing problems that have been associated with child abuse.<sup>35</sup>

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<sup>33</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples, UN Doc A/52/18 (1997), 5.

<sup>34</sup> Sean Brennan and Talia Epstein, Gilbert + Tobin Centre of Public Law, Submission to the Standing Committee on Legal and Constitutional Affairs, *the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, p. 2.

<sup>35</sup> Jon Altman, *The 'National Emergency' and Land Rights Reform: Separating fact from fiction* An assessment of the proposed amendments to the Aboriginal Land Rights (Northern Territory) Act 1976: Briefing paper for Oxfam Australia, 7 August 2007, p. 14.