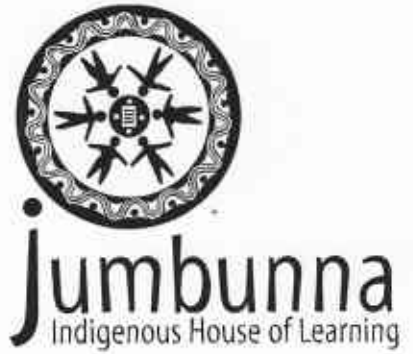




UNIVERSITY OF
TECHNOLOGY SYDNEY



Submission to the Review of the Northern Territory National Emergency Response

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August 2008

18 August 2008

Northern Territory Emergency Response Review Board
Secretariat
GPO Box 7576
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ACT 2610

To Whom It May Concern:

Re: Northern Territory National Emergency Response

1. Thank you for the opportunity to comment on the Northern Territory National Emergency Response ('NTNER').
2. The NTNER was described by the then Howard Government as a response to the report, *Little Children are Sacred*, the report from the Inquiry into the Protection of Aboriginal Children from Sexual Abuse into child sexual abuse in Aboriginal communities in the Northern Territory.
3. Key findings of the report included:
 - Most Aboriginal people are willing and committed to solving problems and helping their children. They are also eager to better educate themselves;
 - Aboriginal people are not the only victims and not the only perpetrators of sexual abuse.
 - Much of the violence and sexual abuse occurring in Territory communities is a reflection of past, current and continuing social problems that have developed over many decades.
 - The combined effects of poor health, alcohol and drug abuse, unemployment, gambling, pornography, poor education and housing, and a general loss of identity and control have contributed to violence and to sexual abuse in many forms.
 - Existing government programs to help Aboriginal people break the cycle of poverty and violence need to work better. There is not enough coordination and communication between government departments

and agencies, and this is causing a breakdown in services and poor crisis intervention. Improvements in health and social services are desperately needed.

- Programs need to have enough funds and resources and be a long-term commitment.
4. We would like to firstly canvass several specific aspects of the Intervention that have caused us concern. Secondly, we would like to highlight underlying problems with the approach taken by the Intervention and then, thirdly, make recommendations.

A. Concerns about the NTNER

5. The Northern Territory National Emergency Response involved a complex and wide-ranging set of mechanisms.
6. We would begin by acknowledging that aspects of the Intervention that are aimed at providing additional policing and health resources to Aboriginal communities in the Northern Territory have been a much overdue injection of basic funding for essential services.
7. We would like to canvass several aspects of the Intervention that have caused us concern, namely:
- a. The lack of consultation about the intervention when it was put in place;
 - b. The suspension of basic procedural rights;
 - c. The quarantining of welfare payments;
 - d. The Abolition of CDEP;
 - e. The Serious Infringement of Property Rights; and
 - f. The Minister's Powers to Intervene in the Operations of Community Organisations.

a. The Lack of Consultation with Aboriginal Communities

8. The implementation of the Northern Territory National Emergency Response was done without any consultation with the communities that were going to be affected by it. Our basic concerns about this are detailed in the article attached as Appendix 1.
9. Our underlying concerns about the lack of consultation are twofold. Firstly, it ignored all of the evidence available at the time about programs actually in place across the Northern Territory, developed through the initiative of Aboriginal people, that dealt effectively specifically with the issues that the NTNER claimed it was addressing. Indicative of this are the programs identified in the document prepared by the Coalition of Aboriginal Organisations and attached as Appendix 2.
10. Secondly, the top-down approach taken by the Intervention that avoids consultation and involvement of Aboriginal communities is contrary to the approach that the research identifies as being crucial to improving the socio-economic status of Aboriginal people. That research, from Australia, the United States and Canada, points to the need to have Aboriginal people centrally involved in the developing of policies that are to be directed towards their community and in designing the programs that are to be rolled out in their community. We deal with this research in more detail later in this submission.
11. We would further note that the first recommendation of *Little Children are Sacred*, the report upon which the NTNER purportedly relied, emphasised the need to properly consult with Aboriginal communities. Recommendation 1 of the report stated:

That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. *It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.* (emphasis added).

b. Lack of Procedural Fairness and Due Process

12. Basic rights to review of administrative decisions, protection against the arbitrary confiscation of property and protection against unlawful discrimination are well recognised within the Australian legal system through a variety of legislation. In fact, most Australians assume that such rights are inherent to democracy. Another sign of a healthy democracy is respect for the contributions made by independent advocacy bodies to public policy.
13. We believe that certain aspects of the Northern Territory National Emergency Response legislation deny legal equality to Aboriginal people in the Northern Territory. In particular it:
- Suspends the protection of the *Racial Discrimination Act 1975 (Cth)*;
 - Denies protection from the Northern Territory anti-discrimination legislation;
 - Prevents appeals to the Social Security Appeals Tribunal;
 - Compromises the integrity of Indigenous property rights; and
 - Threatens the independence of Indigenous community organisations.
14. In particular:
- (a) Sections 132-133 *Northern Territory National Emergency Response Act 2007 (Cth)* deny certain Indigenous people protection against unlawful discrimination;
 - (b) Section 144(ka) *Social Security (Administration) Act 1999 (Cth)* precludes certain individuals from obtaining review from the Social Security Appeals Tribunal;
 - (c) Part four of the *Northern Territory National Emergency Response Act 2007 (2007)* deprived certain Indigenous people of the enjoyment of their property rights; and,
 - (d) Part five of the *Northern Territory National Emergency Response Act 2007 (Cth)* vested extraordinary powers in the Commonwealth Minister for Indigenous Affairs to intervene in the operations of Indigenous community organisations.
15. The above provisions have either no link to, or only a tenuous relationship with, the protection of children from abuse. Furthermore, they vested extraordinary power in the Commonwealth to intervene in the lives of Indigenous people with relative impunity. In the absence of the usual checks and balances, there is a risk that such powers could be

exercised capriciously. Therefore, this submission calls for the above provisions to be repealed.

- **The Loss of Protection against Unlawful Discrimination**

16. Section 5 *Northern Territory National Emergency Response Act 2007* (Cth) provides that the object of the Act is to 'improve the well-being of certain communities in the Northern Territory'. It is not self-evident that the attainment of this worthy, though somewhat imprecise, goal requires the loss of protection against unlawful discrimination for people who are among the most marginalised in Australian society.
17. Subsection 132(1) *Northern Territory National Emergency Response Act 2007* (Cth) provides that the legislation and acts done under the legislation are 'special measures' for the purposes of the *Racial Discrimination Act 1975* (Cth). In essence, a special measure is a form of permissible discrimination because it has the aim of securing the advancement of a disadvantaged group.
18. Section 8 of the *Racial Discrimination Act* allows for 'special measures' as prescribed by Article 1(4) of the *International Convention on the Elimination of All Forms of Racial Discrimination* ('*ICERD*'), which states:

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 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.
19. The Aboriginal and Torres Strait Islander Social Justice Commissioner in the *2007 Social Justice Report* addressed the specific requirements of Article 1(4), namely that the measures provide a benefit, have a sole purpose, are necessary and cease once their

purpose has been reached.¹ The Commissioner concluded that it was not possible to support the contention that all the provisions of the NTNER could be justified as special measures.² We support the Commissioner's conclusion.

20. Similarly, many of the submissions to the Senate Legal and Constitutional Affairs Committee's Inquiry into the NTNER rejected the notion that its provisions were 'special measures'. For example, the Human Rights and Equal Opportunity Commission argued that:

Special measures are generally measures by way of 'affirmative action' or 'positive discrimination'. The exemption in discrimination law made for special measures therefore aims to protect things done to benefit a disadvantaged group from challenge by non-members of the group... Measures that may impact negatively on rights, such as limitations upon the availability of alcohol, may be considered 'special measures' where they are done after consultation with, and generally the consent of, the 'subject' group...³

21. We believe that those criticisms remain valid and that the NTNER cannot be properly categorised as a special measure while it lacks the support of Indigenous communities in the Northern Territory. Further, we consider that the NTNER breaches Australia's obligations under ICERD.
22. The Committee on the Elimination of Racial Discrimination recently on 4 & 5 August 2008 conducted a thematic debate on the obligation of State parties to undertake special measures or positive measures, also known as affirmative action.⁴ The Committee observed that the concept of special measures was a subject that Committee Experts held "particularly dear". Among issues discussed by the Committee were the need for periodic

¹ Aboriginal & Torres Islander Social Justice Commissioner, "Chapter 3: The Northern Territory 'Emergency Response' Intervention – A human rights analysis", *Social Justice Report 2007*, 261-265 at http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/index.html (accessed 12 August 2008)

² *Ibid*, 265

³ Human Rights and Equal Opportunity Commission, Submission to the Senate Legal and Constitutional Committee on the Northern Territory National Emergency Response Legislation (10 August 2007) [20] – [21]; references omitted.

⁴ Committee on the Elimination of Racial Discrimination, "Committee on Elimination of Racial Discrimination Discusses States' Obligation to Undertake Special Measures (5 August 2008) at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/696149E128473FAFC125749C004A5160?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/696149E128473FAFC125749C004A5160?OpenDocument) (accessed 12 August 2008)

assessment and management of special measures; a distinction between permanent and temporary measures; and the harmonisation of terminology with other human rights treaty bodies, with a focus on theories of social justice. These elements are lacking in the blanket assertion that the provisions of the NTNER are special measures.

23. Subsection 132(2) provides that the legislation and acts done under the legislation are excluded from the operation of Part II *Racial Discrimination Act 1975* (Cth).

Likewise, s 133(2) states that acts done under the legislation, 'have effect despite any law of the Northern Territory that deals with discrimination.' Once again, the broad dispensation of statutory protection against unlawful discrimination has no apparent connection to the object of the Act.

24. Furthermore, there is a danger that these provisions may be interpreted as a licence for derogatory behaviour by unscrupulous individuals who play a role in the administration of the NTNER. Conversely, there is the potential for Indigenous people in prescribed areas to fall under the misconception that they no longer have any protection whatsoever against such conduct.

- **The Denial of Access to the Social Security Appeals Tribunal**

25. Those subject to the income management regime do not have recourse to the Social Security Appeals Tribunal.⁵ This is concerning in light of the reality that just over thirty percent of appeals to the Social Security Appeals Tribunal in 2006 were decided in favour of the applicant.⁶ Furthermore, access to independent review of administrative decisions has become one of the hallmarks of Australian democracy. It is unacceptable that Indigenous people are denied the ability to exercise something that for most Australians is an entitlement.

⁵ *Social Security (Administration) Act 1999* (Cth) s 144(ka)

⁶ Australian Government, *Centrelink Annual Report 2005-2006*, 86, quoted by the Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report (2007)* 254.

c. The Quarantining of Welfare Payments

26. As part of the NTNER, the introduction of 'income management regimes' were announced that included a measure described as "linking school attendance to welfare payments". This measure was described by the legislation as a "special measure". Our concerns about this measure are threefold.
27. Firstly, there is no evidence that making welfare payments conditional on school attendance is effective in increasing parental responsibility or reducing child abuse or neglect.
28. Secondly, we have concerns about the manner in which whole communities were subject to income management regimes. Instead of being applied on a case-by-case basis targeting parents who were not meeting their parental obligations, the legislation took a blanket, non-discretionary approach whereby every individual receiving some kind of welfare payment in a prescribed community had their payments quarantined whether their children were attending school, or whether they had direct responsibility for a child or not.
29. Thirdly, the manner in which the policy was rolled out required the suspension of the *Racial Discrimination Act 1975 (Cth)* and also denied a right of appeal to the Social Security Appeals Tribunal.
30. Our concerns about this policy of linking welfare payments to school attendance are explored in much more detail in the paper by Ruth McCausland attached at Appendix 3.

d. The Abolition of CDEP

31. The Community Development Employment Program (CDEP) was established in part because of the understanding that in some parts of Australia there will never be a labour market large enough to provide employment for all members of the community interested

in finding a job. CDEP programs were a mechanism that provided communities with a way to obtain a service or create a business that would not be viable otherwise. For example, CDEP programs engaged in activities as varied as fence painting, building community infrastructure, running an orchard and fishing.

32. Our concerns about the abolition of CDEP are threefold. Firstly, while there was provision of additional jobs in some communities where CDEP was abolished, these have not been created at the same rate of CDEP jobs that have been lost.⁷
33. Secondly, people who lost the CDEP jobs were put onto welfare and this meant that in some communities, people had moved from being in a CDEP funded job where they had some independence and were employed in an activity that contributed to their community to being in a position where they are on welfare benefits that are quarantined. We have concerns about the psychological impact that has on an Aboriginal person.⁸
34. Thirdly, CDEP has not been replaced by any program that recognises that there are a limited number of employment opportunities. There has been no consideration given to other programs that can provide training and skills for community members and provide a mechanism for making a positive contribution to communities who do not have adequate services or infrastructure.

e. The Serious Infringement of Property Rights

35. Several aspects of the Northern Territory National Emergency Response compromise the integrity of Indigenous property rights. Our concerns about the underlying rationale and ideologies for the inclusion of these changes as part of the Northern Territory National Emergency Response package are contained in the article at Appendix 4.

⁷ 'Govt needs to consider human rights in Territory intervention', *7.30 Report*, 31/3/08, <http://www.abc.net.au/7.30/content/2007/s2203948.htm>

⁸ Jon Altman, *Neo-Paternalism and the Destruction of CDEP*, August 2007, 2007/14. <http://www.anu.edu.au/caepr/topical.php#0753>

- **The Arbitrary Confiscation of Property Rights**

36. The Commonwealth's powers to acquire Indigenous lands are contained in Division one and Division two of Part four of the *Northern Territory National Emergency Response Act 2007* (Cth).
37. Subsection 31(1) in Division one provides that leases over certain lands are granted to the Commonwealth. The commencement dates of the leases vary, but all are to end five years after the commencement of s 31.⁹
38. Although the relationship between the Commonwealth and Indigenous land holders is that of lessor and lessee, Indigenous land holders have few of the rights ordinarily enjoyed by lessors at common law and in particular, they lack the power to terminate a lease.¹⁰

- **Leases under the *Special Purposes Leases Act* (NT)**

39. Division two provides for the acquisition of lands that include what have become known as town camps. Titles to the lands that make up the camps are held by Indigenous associations under the *Special Purposes Leases Act* (NT).
40. Section 44 amends provisions of the *Special Purposes Leases Act* (NT), so that references to the Northern Territory Minister or Administrator include references to the Commonwealth Minister.
41. When the Commonwealth intends to resume such land it will have to give only 60 days notice, as opposed to the six months required by s 29 of the *Special Purposes Lease Act* (NT).

⁹ *Northern Territory National Emergency Response Act 2007* (Cth) s 31(2)(b). Section 2 provides that s 31 commenced on 18 August 2007.

¹⁰ *Ibid* s 35(4).

42. The danger inherent in s 44 is the potential for the Commonwealth to exploit its powerful position in order to overwhelm a community that it perceived to be recalcitrant. An example of this scenario was the protracted dispute between the former Minister, Mal Brough, and the Tangentyere Council. In March 2007 Minister Brough offered funds in order to address the lack of housing in the Alice Springs town camps. However, the Commonwealth package was conditional upon the relinquishment of leases over the camps to the Northern Territory.¹¹ The associations were unwilling to accede and subsequent attempts to achieve compromise were unsuccessful.¹² Further consultation between the Commonwealth and the Tangentyere Council was rendered superfluous as a result of s 44. A 30-year lease was recently negotiated between the Commonwealth and the Tangentyere Council.

43. However, the potential for the Commonwealth to impose its will upon Indigenous people remains. At the very least, we see no justification for the short notice period of 60 days to be retained.

- **The Suspension of Procedural Rights under the *Native Title Act 1993* (Cth)**

44. Just as the Commonwealth dispensed with the need for negotiation with Indigenous lessees, it also suspended the procedural rights of native title holders. Native title is dealt with in s 51, which precludes the application of the future act regime in the NTA to s 31 leases and interests vested under s 47. Although many of the procedural rights within the future act regime are meagre, the right to negotiate in subdivision P is potentially valuable to native title holders. Once again, there is no justification for the suspension of the procedural rights of native title holders.

- **Compensation for land yet to be resolved**

45. It is unclear as to whether or not Indigenous people will be entitled to compensation for the loss of their property rights. Subsection 60(1) precludes the application of s 50(2) *Northern*

¹¹ Ibid 232.

¹² Ibid 233.

Territory Self-Government Act 1978 (Cth) from the acquisition of property, with the consequence that compensation on just terms is not required. However, s 60(2) also provides that if an acquisition does attract the operation of s 51(xxxi) of the Constitution, the Commonwealth is liable to pay a 'reasonable amount of compensation'. This double edged approach takes advantage of confusion over whether the Territories power in s 122 of the Constitution is fettered by s 50(xxxi).

46. Many observers, including the Law Council, have argued that the issue is not settled. In its submission to the Senate Inquiry in 2007, the Law Council suggested that:

The application of s 51(xxxi) of the Constitution to provide compensation for an acquisition of property in the Northern Territory is not a foregone conclusion. Under current High Court Authority there is no requirement to pay compensation for an acquisition of property referable only to the s 122 Territories power under the Constitution. The Bill makes it apparent (through reference to the non-application of s 50(2) of the Northern Territory (Self-Government) Act 1978) that the power relied upon for the acquisitions is pursuant to the Commonwealth's S 122 Territories power.

The Law Council notes that the legislation appears to shield the Commonwealth from its obligation to compensate the relevant Land Trust or pay rent, in circumstances where a lease is issued under section 31.¹³

47. In the event that the Commonwealth was required to pay compensation, it is not clear what form the compensation would take. Subsection 61(c) provides that in determining a 'reasonable amount of compensation' a Court must take account of improvements made by the Commonwealth, including the construction of or improvements to buildings and infrastructure.

f. The Minister's Powers to Intervene in the Operations of Community Organisations

48. Part five vests broad powers in the Minister to intervene in the affairs of 'community services entities' in 'business management areas'. Both terms are defined so broadly that

¹³ Law Council of Australia, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs, Northern Territory National Emergency Response Legislation*, 9 August 2007, [68] – [69].

it is likely that part 5 will apply to the majority of Indigenous community organisations responsible for delivering services in the Northern Territory. Part 5 Division 2 empowers the Minister to direct a community services entity to provide a service in a specified way, use its assets in a particular way, or even transfer ownership of its assets to a person or entity determined by the Minister.

49. Part 5 Division 3 also empowers the Minister to appoint an 'observer' to attend a meeting of a community services entity. There are no preconditions for the appointment of an observer and hypothetically, one could be appointed for the ulterior motive of intimidating an organisation that publicly criticised the Government. An observer appointed under Part 5 Division 3 will be entitled to copies of any papers or documents to be considered at the meeting and the minutes of the previous meeting (s. 73(2)). A failure to comply with such requirements may result in a civil penalty (s 74).

B. Underlying Concerns of the Approach Taken by the NTNER

50. We are concerned that the underlying approaches taken by the intervention have been driven by ideological responses to the issues it claims to address and has not been informed by looking at the evidence of what works and what doesn't.

- **The Need for a Research Based Policy Approach**

51. The absence of an evidence-based approach in the NTNER is evident by the failure to develop mechanisms for collecting baseline data by which to objectively assess whether the NTNER is working or not. It is also evident by the failure to recognise and support the programs that have been proven to work and by the failure to properly consult with the Aboriginal communities who are the subject of the intervention.

- **The Need to Focus on Capacity Building**

52. The mechanisms employed in the review do not focus on building skills within the Aboriginal community and they are not conducive to building capacity within Aboriginal communities. The abolition of CDEP has not been replaced by any programs focused on training and skilling Aboriginal people to the same extent and the quarantining of welfare payments is not as effective at building financial literacy as more targeted case managed programs such as the Family Income Management Scheme (FIMS) or by using the existing Centrepay system used by Centrelink, a voluntary automatic bill-payment program.
53. Research findings in Australia¹⁴ and North America¹⁵ are remarkably consistent in identifying the fundamental principles inherent in Indigenous communities that accomplish their own economic, political, social and cultural goals.
54. The research identifies that economic, social and cultural prosperity is achieved where communities exercise genuine decision making control over their internal affairs and utilisation of resources; where they have capable institutions of self-governance that have

¹⁴ M Dodson & D E Smith, "Governance for sustainable development: Strategic issues and principles for Indigenous Australian communities" *Discussion paper No 250/2003*, (CAEPR, Australian National University, 2003) at <http://www.anu.edu.au/caepr/discussion.php> (accessed 12 August 2008). See the findings of the Indigenous Community Governance Project, a collaborative action research project by the Centre for Aboriginal Economic Policy Research (CAEPR) and Reconciliation Australia (RA) http://www.anu.edu.au/caepr/ICGP_home.php (accessed 25 July 2008). See also the findings of the Successful Strategies in Aboriginal Organisations Project at <http://www.australiancollaboration.com.au/research/index.html> (accessed 12 August 2008)

¹⁵ For an overview of the research of the Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management and Policy see Miriam Jorgenson (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson, University of Arizona Press: 2007). For publications of the Harvard Project see <http://www.hks.harvard.edu/hpaied/> (accessed 25 July 2008) and NNI see <http://nni.arizona.edu/> (accessed 25 July 2008). There is dispute as to whether aspects of the Harvard Project's findings are replicable or indeed, desirable in Australia, which arguably relates to the ambiguity between 'community' and 'community organisation' identified by Hunt & Smith. See for example, Patrick Sullivan, "Indigenous Governance: The Harvard Project, Australian Aboriginal Organisations and Cultural Subsidiarity" *Working Paper No 4* (Desert Knowledge CRC, March 2007); Martin Mowbray "Localising Responsibility: The Application of the Harvard Project on American Indian Economic Development to Australia" (2006) 41(1) *Australian Journal of Social Issues* 87-103 and The Australian Collaboration & AIATSIS, *Volume 1: Organising for Success. Policy Report. Successful strategies in Indigenous organisations*, (AIATSIS and Australian Collaboration, 2007), 14-16 downloaded from <http://www.australiancollaboration.com.au/research/index.html> (accessed 12 August 2008). The significance of these critiques is open to question and there may be implications for potential implementation of the research. Nonetheless, an analysis of the findings demonstrates significant correlation of the fundamental foundations of 'successful' communities and organisations.

cultural legitimacy with the community that they serve and where their actions are based on long term systemic strategies with leadership focussed on creating stable political institutions.

55. Thus, the evidence indicates that federal government support would be best focussed on facilitating institutional capacity building, assisting communities to engage in long term strategic planning, supporting visionary leadership, allowing communities to develop their own priorities and assisting them to develop appropriate benchmarks that reflect Indigenous aspirations.

56. The Indigenous Community Governance Project ('ICGP') is a partnership between the Centre for Aboriginal Economic Policy Research ('CAEPR') and Reconciliation Australia, to undertake research on Indigenous community governance with participating Indigenous communities, regional Indigenous organisations, and leaders across Australia.¹⁶ The project seeks to understand the effectiveness of different forms of governance and their consequences for Indigenous policy, service delivery, self-determination and socioeconomic development.¹⁷

57. ICGP's preliminary findings appear to support the principles arising from the research findings of the Harvard Project on American Indian Economic Development over a twenty year period, that governance capacity is a fundamental factor in generating sustained economic development and social outcomes.¹⁸ "Important factors in the link between governance and socioeconomic development outcomes include strong visionary leadership; strong culturally based institutions of governance, sound stable management,

¹⁶ See the findings of the Indigenous Community Governance Project, a collaborative action research project by the Centre for Aboriginal Economic Policy Research (CAEPR) and Reconciliation Australia (RA) http://www.anu.edu.au/caepr/ICGP_home.php (accessed 25 July 2008)

¹⁷ Janet Hunt & Diane Smith, "Building Indigenous community governance in Australia: Preliminary research findings" *Working Paper No 31/2006* (CAEPR, Australian National University: May 2006), Foreword: <http://www.anu.edu.au/caepr/Publications/WP/CAEPRWP31.pdf> (accessed 25 July 2008)

¹⁸ *Ibid*, ix

strategic networking into the wider regional and national economy; having prerequisite social infrastructure in place; and relevant training and mentoring opportunities.”¹⁹

58. In summary, the North American and Australian research has identified that Indigenous skills, abilities, knowledge and leadership are most effectively mobilised and exercised when initiatives are Indigenous-driven, towards Indigenous goals²⁰ that Dodson and Smith describe as exercising 'jurisdiction'.²¹ Where communities exercise genuine decision making control, greater risk and accountability results in community leaders bearing the consequences of their actions and dealing with the consequent approval or disapproval from stakeholders, which in turn fosters better decision making as decision makers learn through experience.²² However, Indigenous jurisdiction and Indigenous driven initiatives are a necessary but not sufficient precondition for success. Effective institutions are also required.

59. Indigenous governance arrangements that have legitimacy with the community have two features.²³ They embody structures and decision making processes that reflect contemporary Indigenous conceptions of what are 'proper' relationships and forms of authority.²⁴ Second, they have the capacity to effectively get things done predictably and reliably, demonstrating accountability to internal and external stakeholders.²⁵

¹⁹ Ibid,

²⁰ Janet Hunt & Diane Smith, "Indigenous Community Governance Project: Year Two Research Findings" *CAEPR Working Paper No 36/2007* (CAEPR, Australian National University: April 2007), 34
<http://www.anu.edu.au/caepr/Publications/WP/CAEPRWP36.pdf> (accessed 25 July 2008)

²¹ M Dodson & D E Smith, "Governance for sustainable development: Strategic issues and principles for Indigenous Australian communities" Discussion paper No 250/2003, 8 at <http://www.anu.edu.au/caepr/discussion.php> (accessed 12 August 2008).

²² Stephen Cornell and Joseph P Kalt, "Two Approaches to the Development of Native Nations: One Works, the Other Doesn't" in Miriam Jorgenson (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson, University of Arizona Press: 2007), 21 (Two Approaches); Stephen Cornell & Joseph P Kalt, "Reloading the Dice: Improving the Chances for Economic Development on American Indian Resources", in Stephen Cornell & Joseph P Kalt (eds) *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (Los Angeles, American Indian Studies Centre UCLA: 1992), 14

²³ Hunt & Smith, above, note 20; Stephen Cornell, "Remaking the Tools of Governance. Colonial legacies, Indigenous solutions" in Miriam Jorgenson (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson, University of Arizona Press: 2007), 71 (Remaking Tools)

²⁴ Hunt & Smith, above note 20, 27

²⁵ Stephen Cornell, "Enhancing Rural Leadership and Institutions: What Can We Learn from American Indian Nations?" (2001) 24(1) *International Regional Science Review* 84, 92-94

60. The research indicates that for Indigenous institutions to operate effectively, they need to be regarded as legitimate in the eyes of the people they purport to serve.²⁶ Importantly, there is significant difference between Indigenous and non-Indigenous notions of 'legitimacy'. While non-Indigenous assessments of legitimacy, especially in respect to organisational governance, focus on "corporate governance, financial and legal compliance, technical and administrative capacity, program accountability, inclusive community representation, the use of individual electoral and decision-making processes and concepts of individual equity", legitimacy for Indigenous people concentrates on "processes, relationships and cultural institutions".²⁷ As Hunt & Smith observe, process is fundamental to legitimacy, such that that the means may be more important than the end.²⁸
61. Vitally, while formal governing institutions must resonate with contemporary Indigenous notions of appropriate form and organisation, this does not mean a return to precolonial systems and traditions.²⁹ Cultural legitimacy is increasingly complicated due to the legacies of colonialism and diverse aims and ambitions within Indigenous constituencies.³⁰ Smith provides the concept of the "process of Indigenous choice" where an Indigenously controlled process of fashioning new governance tools can itself be a source of legitimacy.³¹
62. Other factors include long term strategic thinking that converts reactive to proactive thinking, fosters a systemic approach and engenders a broader societal focus.³²

²⁶ Hunt & Smith, above, note 17, 14

²⁷ *ibid*, 15; Manley A Begay Jr, Stephen Cornell, Miriam Jorgenson & Joseph P Kalt, "Development, Governance, Culture. What are they and what do they have to do with rebuilding Native nations?" in Miriam Jorgenson (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson, University of Arizona Press: 2007), 53 (Development, Governance, Culture)

²⁸ Hunt & Smith, above, note 17, 16

²⁹ Cornell & Kalt, Two Approaches, above note 22, 25

³⁰ Cornell, Remaking Tools, above, note 23, 73

³¹ D E Smith, "From Gove to Governance: Reshaping Indigenous Governance in the Northern Territory", *Discussion Paper No 265/2004*, (CAEPR, Australian National University: December 2004)

<http://www.anu.edu.au/caepr/discussion.php> (accessed 13 August 2008); Cornell, RemakingTools, above, note 23,, 73

³² Cornell & Kalt, Two Approaches, above, note 22, 25-26

Leadership that is focussed on empowering the nation and advancing national objectives is also fundamentally important to promoting development.³³

63. Complementary research conducted by the Australian Institute of Aboriginal and Torres Strait Islander Studies³⁴ at the invitation of the Australian Collaboration, a consortium of community organisations,³⁵ similarly found common themes. The two-year research project: "Successful Strategies in Aboriginal Organisations" investigated initiatives devised by Indigenous organisations that have promoted community wellbeing or overcome disadvantage.³⁶ The study observed that while Indigenous disadvantage was well documented, "inadequate attention had been given to examples of Indigenous creativity and leadership in tackling problems and that a report focusing on such successes would be of considerable value to Indigenous people and Indigenous policy makers".³⁷

64. Themes that emerge of successful organisations include sound governance with training adapted to specific circumstances; efficient and responsive service delivery; strategic planning; internal and external accountability; engagement with the community; clear and transparent vision and objectives and flexibility and responsiveness to change.³⁸ Relationships and partnerships are vital, where Indigenous organisations have a strong intercultural nature.³⁹

- **The Need for Government Responsibility**

³³ Cornell & Kalt, Two Approaches, above, note 22), 26-27; Manley A Begay Jr, Stephen Cornell, Miriam Jorgenson and Nathan Pryor "Rebuilding Native Nations: What do Leaders do?" in Miriam Jorgenson (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (Tucson, University of Arizona Press: 2007), 275ff

³⁴ <http://www.aiatsis.gov.au/>

³⁵ <http://www.australiancollaboration.com.au/>

³⁶ The findings of the study are reported in three volumes at <http://www.australiancollaboration.com.au/research/index.html>. The first two volumes examine and analyse strategies in sixteen Indigenous organisations that have been successful in promoting community wellbeing and overcoming disadvantage. The third volume is concerned with joint management of Indigenous lands of high conservation value.

³⁷ The Australian Collaboration & AIATSIS, *Volume 1: Organising for Success. Policy Report. Successful strategies in Indigenous organisations*, (AIATSIS and Australian Collaboration, 2007), 9 downloaded from <http://www.australiancollaboration.com.au/research/index.html> (accessed 12 August 2008)

³⁸ *ibid*, 17-26

³⁹ *Ibid*, 17-26

65. The ambitious objectives underpinning nation building will, in no small way, rely on the support of government – whether at the federal, state or local level. Devolving jurisdiction to Indigenous communities does not end government responsibility. Instead, its role is transformed from decision maker to facilitator. Supporting the foundational concepts of community building requires vision and fortitude.
66. Once the foundational conditions necessary for community growth and prosperity are understood, the challenge is in how those principles may be implemented in communities where they are not the norm.⁴⁰ The inevitable result from the research is that Indigenous communities will demonstrate diversity in structures, strategies and outcomes, which will be testing for to governments used to devising and implementing generic policy.⁴¹
67. Again, resonant themes emerge from the Australian and North American research as to the appropriate role for government. It is not uncommon for authority given to Indigenous leaders to be restricted to administrative implementation of government set priorities and protocols *within program guidelines*, while the big decisions about priorities and program design will be set elsewhere.⁴² Instead, the research reinforces the role of government as assisting communities to identify and achieve priorities.
68. Based on ICGP research, Hunt and Smith have made a variety of recommendations to foster environments conducive to the achievement of economic and social aspirations of Indigenous communities. These include fully costed service delivery in Indigenous communities; policy frameworks and program guidelines that actively promote Indigenous capacity and authority; greater support, advice, and mentoring for both governing bodies

⁴⁰ Developing strategies for implementation of nation building principles is the mission of such organisations as the Native Nations Institute for Leadership, Management and Policy (NNI) at the University of Arizona.⁴⁰ NNI's central focus, building on the research of the Harvard Project on American Indian Economic Development, is to assist in the building of "capable Native nations that can effectively pursue and ultimately realise their own political, economic, and community development objectives." It provides Native nations with comprehensive, professional training and development programs, including executive education and youth entrepreneur training programs, designed specifically to meet the needs of Indigenous leadership and management, concentrating on strategic and organisational development. See <http://nni.arizona.edu/whoweare/aboutnni.php> (accessed 25 July 2008)

⁴¹ Begay, Cornell, Jorgenson & Kalt, Development, Governance, Culture, above, note 27, 53

⁴² Cornell & Kalt, Two Approaches, above, note 22, 14

and managers in their organisational roles and responsibilities. They identify an urgent need for a nationally coordinated approach to the provision of governance capacity development and training that is targeted, high quality and place-based.⁴³ State and federal government policies, funding arrangements and initiatives are not consistent or coherent and also require urgent review.⁴⁴

- **Implications of the Research for the NTNER**

69. The research findings above are set out in some detail simply to emphasise the complex array of factors that must be incorporated into solutions to intractable problems faced by Indigenous communities. The NTNER does not exhibit the characteristics identified by the research as foundational.

70. To recognise that durable and sustainable solutions are necessary is not to deny the urgent need for fully costed service delivery and health and welfare initiatives that Indigenous communities have requested for decades. However, the research indicates that sustainable solutions require complex cultural considerations concentrating on process. Unfortunately, sustainable and enduring solutions to intractable issues will require timeframes well exceeding electoral cycles.⁴⁵

71. The NTNER has been criticised for its lack of engagement with the communities that it most affected.⁴⁶ Rather than facilitating the exercise of Indigenous jurisdiction, the NTNER sought to remove it. Short term, top down measures were introduced without consultation rather than building on existing successful programs, organisations and leadership and identifying Indigenous priorities.

⁴³ Hunt & Smith, above, note 20., 6, 7, 13, 23, 28, 34, 42

⁴⁴ Hunt & Smith, above, note 20, 36ff

⁴⁵ In formulating strategic planning for Native nations, NNI works in 25 to 50 year timeframes.

⁴⁶ Aboriginal & Torres Islander Social Justice Commissioner, above, note 1

72. The NTNER lacks long term strategic planning, exemplified by confusion as to its aims. While the stated aim was to protect Aboriginal children, the measures were of such breadth that it is not possible to characterise all measures as being directed to that aim. Further, it is not possible to detect a long term or coordinated approach. The NTNER lacks suitable monitoring and evaluation, such that measures of its success are unclear and accountability to Indigenous people lacking.
73. Instead, the former Indigenous affairs minister, Mal Brough, has admitted that the NTNER was planned in 48 hours.⁴⁷ Putting to one side the assertion by the government that immediate and drastic action was necessary,⁴⁸ reflex action does not illustrate a serious attempt to alleviate complex social problems.
74. Again, this is borne out by the evidence. Professor Jon Altman from the Centre for Aboriginal Economic Policy Research has observed that “comparative crisis research suggests that the more radical the reform (income quarantining, abolition of permits, abolition of CDEP, compulsory acquisition of land, grog bans, linking income support to school attendance) the more likely that implementation will be problem ridden and fail. History in Australia also suggests that there can be quite a disjuncture between Canberra and the bush and that crash through approaches rarely succeed.”⁴⁹

- **Breach of International Human Rights Standards**

75. We have concerns that the Northern Territory National Emergency Response breaches several international conventions that Australia has ratified and that set a benchmark for acceptable basic human rights standards. We have identified breach of the Convention on the Rights of the Child, the Convention to Elimination all Forms of Racial Discrimination,

⁴⁷ ABC News, “Intervention created in just 48 hours: Brough” at <http://www.abc.net.au/news/stories/2008/06/16/2275863.htm> (accessed 12 August 2008)

⁴⁸ Media Releases by the former Minister for Families, Community Services and Indigenous Affairs and the Minister Assisting the Prime Minister for Indigenous Affairs, the Hon Mal Brough MP, http://www.facsia.gov.au/internet/Minister3.nsf/content/emergency_21june07.htm

⁴⁹ <http://www.crikey.com.au/NT-Intervention/20080619-Reflections-on-the-NT-Intervention-one-year-on.html>

the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

76. We believe the aspects of the Northern Territory National Emergency Response as detailed above violate the principles of international law as contained in the Convention on the Rights of the Child, namely:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

77. We believe the aspects of the Northern Territory National Emergency Response as detailed above violate the principles of international law as contained in the International Covenant to Eliminate all forms of Racial Discrimination, namely:

Article 2

1. States Parties 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 promoting understanding among all races, and, to this end: (a) Each State Party undertakes to 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;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take 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;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - ...
 - (v) The right to own property alone as well as in association with others;
- (e) Economic, social and cultural rights, in particular:
 - ...
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;

78. We believe the aspects of the Northern Territory National Emergency Response as detailed above violate the principles of international law as contained in the International Covenant of Civil and Political Rights, namely:

Article 1

1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 4

1. 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.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 26

All persons are equal before the law and are entitled without any 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 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

79. We believe the aspects of the Northern Territory National Emergency Response as detailed above violate the principles of international law as contained in the International Covenant of Economic, Social and Cultural Rights, namely:

Article 1

1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

...

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life.

C. Conclusions and Recommendations

80. That recommendation 1 of the Little Children are Sacred Report be implemented, namely,

That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of

Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

81. That the Racial Discrimination Act 1975 (Cth) be applied to the NTNER;
82. That protections under the Northern Territory anti-discrimination legislation be re-introduced to the NTNER;
83. That appeals to the Social Security Reviews Tribunal be allowed for people who are subject to welfare-quarantining and other social security measures employed by the NTNER , state-based legislation;
84. That the provisions that threaten the independence of Indigenous community organisations in Part Five, *Northern Territory National Emergency Response Act 2007* (Cth) be repealed.
85. That s 51 *Northern Territory National Emergency Response Act 2007* (Cth) be repealed and the procedural rights of native title holders under the future act regime in the *Native Title Act 1993* (Cth) be restored.
86. That Part four *Northern Territory National Emergency Response Act 2007* (Cth) be substantially amended in order to address the immense power imbalance between the Commonwealth and Indigenous property holders.
87. That a proper evidence-based analysis be undertaken of the NTNER in a time-frame that allows for the adequate collection of data;
88. That the policy of linking welfare payments to school attendance be properly trialled and evaluated;

89. That the approach of blanket application of welfare quarantining be replaced by a case-by-case approach that includes access to financial literacy programs such as FIMS and Centrepay.
90. That CDEP be re-introduced or a similar program developed that understands that there are only going to be a limited number of jobs in some areas of Australia and that programs like CDEP provide valuable training opportunities as well as being an effective mechanism for providing additional services, infrastructure and opportunities to Aboriginal communities; and,
91. That the NTNER be thoroughly assessed to ensure its compliance with international human rights benchmarks.
92. The government phase out the aspects of the NTNER that have not worked and replace them with alternative mechanisms based on an evidence-based approach;
93. That the Federal Government and the Northern Territory Government commit to meeting their obligations to provide:
 - a. Adequate levels of basic services for health and education, including adequate numbers of doctors, nurses, teachers and teacher's aides.
 - b. Adequate infrastructure for communities, including housing, schools, electricity and sewerage.
 - c. Programs that promote capacity building within Aboriginal communities.

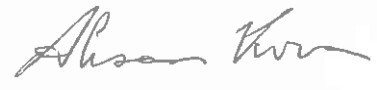
Thank you for the opportunity to make this contribution to the review of the Northern Territory National Emergency Response.



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APPENDIX 1

Larissa Behrendt, "The Emergency we had to have". In J. Altman and M. Hinkson. *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia*. Melbourne: Arena Publications, 2007.

The Emergency We Had to Have

Larissa Behrendt

IT WAS THE NATIONAL EMERGENCY that was sitting neglected for over thirty years. In the wake of decades of reports, each with in-depth analysis of the issues and complex blueprints to address the immediate and underlying causes, the Federal Government announced that it was finally going to prioritise the issue of endemic violence in some Aboriginal communities, relying on the recently commissioned report, *Little Children are Sacred*, by Pat Anderson and Rex Wild.¹

For a federal government that has been much quicker to blame the NT Government for its neglect of law and order issues, or Aboriginal culture itself, the change in priorities was a remarkable turnaround. So remarkable that the initial reaction of many Aboriginal people was cautiously supportive of the Commonwealth's intention to finally act, though a healthy cynicism about the timing and proposed means of action remained.

As the details of the intervention plan emerged, one of the first things that became apparent was that the intervention strategy made no reference to the *Little Children are Sacred* report on which it purported to rely. It has followed none of its recommendations. *Little Children are Sacred* specifically noted in its first recommendation that consultation with and the involvement of Aboriginal people in developing responses to child sexual abuse is critical, especially in the establishment of 'dry' areas and in dealing with substance abuse. In relation to these issues, experience and research all point to a crucial need to involve communities intimately to ensure success.

It is telling that the Federal Government saw fit to consult with Noel Pearson in Cape York before announcing its emergency, but did not consult with the leaders or communities in the Northern Territory who were going to be subjected to this punitive action. Indigenous community leaders in the Northern Territory raised concerns about lack of consultation and respect, noting that whenever a national emergency is called in the wake of a cyclone, the Prime Minister flies in to speak to

those affected; at no time was this courtesy extended in this instance. Apart from any protocols and niceties, evidence-based research clearly shows that the most effective way to develop policies and implement programs in Indigenous communities is to have those communities integrally involved in formulating them. It is not just a matter of good manners; it is a matter of effective practice and policy making. The top-down, paternalistic imposition of half-baked policy ideas is a recipe for failure.

Other practical concerns have been raised about the interventions said to target child sexual abuse. Why are welfare payments being tied to school attendance when there are not enough teachers and classrooms in the Northern Territory to cater for all Indigenous students? Why were mandatory physical examinations of children proposed when this not only breaches the rights to privacy and overrides the need for parental consent, but there are not enough doctors on the ground to perform such examinations or provide effective follow-up? Where are the health and counselling services needed to deal with such problems? Why aren't community medical services — which have been crying out for more resources for decades — being funded? Why is the government focusing on proposals that offer no proof of positive outcomes, and why is it not providing adequate resources to the programs and strategies we do know work?

Beyond the practicalities of purely interventionist approaches are some larger questions about the strategies employed in this intervention. Why are issues related to Indigenous control of land being tied to child sexual abuse? The other fundamental criticism concerns changes to the permit system and the intention to compulsorily acquire land. Even the Northern Territory Police Association has stated that the repeal of this system will make it harder to monitor the movements of people and therefore harder to stop drugs, alcohol and paedophiles from entering vulnerable Aboriginal communities. The change seems to be much more about opening up Aboriginal land to non-Aboriginal interests, an approach that accords with the Howard Government's attitude towards Aboriginal communal land holdings and his philosophical position generally.

The proposal to compulsorily acquire townships not only raises questions about how this could possibly assist in dealing with child sexual abuse, it also provides insight into why the timing of the intervention raised so many questions amongst those who follow Indigenous affairs in the Northern Territory. Only a week before the

intervention was announced, Minister Brough had presented a proposal to the Central Land Council offering to address basic housing repairs in exchange for the lease back of their land for ninety-nine years. The Council rejected his offer, saying that the people concerned did not want to sacrifice their control over land, especially for basic infrastructure, which should not be bartered for by government. Brough was publicly and politically humiliated; then, suddenly, there was an emergency in the Northern Territory and the compulsory acquisition of land over which Aboriginal communities had not wanted to relinquish control was part of the imposed package.

Another crucial issue raised in *Little Children are Sacred*, but overlooked completely in the Federal Government's intervention, is the underfunding of basic Indigenous health services and housing needs. In the lead-up to the last election, Access Economics estimated that basic Indigenous health needs were underfunded by \$450 million a year. Housing needs in the Northern Territory have been estimated to be underfunded by as much as \$2.3 billion. Yet nothing in the intervention seeks to address these underlying issues of disadvantage. This is a profound flaw in the response package because it means that the whole approach is predicated on dealing with the symptoms, rather than the causes of dysfunction in Aboriginal communities. Research and reports into the high instance of violence and abuse in some Aboriginal communities consistently point to the fact that cyclical and chronic poverty, including poor health and poor living conditions, contribute to the breakdown of the social fabric in communities.

The other issue overlooked in the raft of changes proposed in the intervention is the finding of the *Little Children are Sacred* report that a large number of perpetrators of abuse of Aboriginal children are not Aboriginal. Nothing in the intervention attempts to deal with non-Aboriginal perpetrators, instead seeming to work on the assumption that the problem is entirely one within Aboriginal communities.

In the face of a myriad of growing concerns and questions, the rhetoric has been powerful: 'It's all about the children.' And with this mantra, anyone — no matter their colour or their on-the-ground experience — who dared ask questions about either the motivation or the mechanisms employed was deemed to be part of the problem. This insulting and disempowering tactic is designed to silence those who are going to be

most affected by the interventions. Aboriginal people have every right to ask questions of a government that has had over a decade to deal with issues of disadvantage within Aboriginal communities. They have every right to be sceptical about a government that has given them failed policies like 'practical reconciliation' and 'shared responsibility agreements', and now says 'trust us, we have the answers, we will succeed.'

In many ways, the NT intervention is a textbook example of why government policies continue to fail Aboriginal people: the policy approach is ideologically driven rather than making reference to the considerable research on what actually works on the ground; the rhetoric of acting in the best interests of Aboriginal people, or children, masks a broader policy agenda unrelated to the ostensible focus of policy; the approach is paternalistic and top-down rather than collaborative.

The intervention is also a textbook example of the continuing vulnerabilities of Aboriginal people in a legal framework that provides no baseline human rights protections. The framers of our Constitution believed that decision making about rights protections — which ones to recognise and the extent to which we protect them — were matters for the parliament (and now increasingly for the Executive). They discussed the inclusion of rights within the Constitution itself and rejected this option, preferring instead to leave our founding document silent on these matters. A non-discrimination clause was discussed but was rejected because it was believed that entrenched rights provisions were unnecessary, and it was considered desirable to ensure that the Australian states had the power to continue to enact laws that discriminated against people on the basis of their race, particularly Aboriginal people. It is a telling legacy that the first pieces of legislation passed by the new Australian Parliament were laws that entrenched the White Australia policy.

This legacy remains, despite the attempt to change the place of Aboriginal people in Australia in the 1967 Referendum. Perhaps because of the focus on 'citizenship rights' in the decades leading up to the referendum, and because of the rhetoric of equality for Aboriginal people used in the 'yes' campaign, it was inevitable that there would be a mistaken perception that the constitutional change allowed Aboriginal people to become citizens or attained the right to vote. The referendum did neither. Instead, it allowed for Indigenous people to be included in

the Census and it gave Federal Parliament the power to make laws in relation to Indigenous people.

Those who advocated a 'yes' vote thought that the changes to section 51(xxvi) (the 'races power') of the Constitution — allowing the Federal Government to make laws for Indigenous people — was going to usher in an era of non-discrimination for Indigenous people. There was an expectation that the granting of additional powers to the Federal Government to make laws for Indigenous people would see that power used benevolently. As aspects of the Northern Territory intervention demonstrate, this has not necessarily been the case.

As the government's proposed intervention moved towards legislation, community leaders and representatives, particularly the Coalition of Aboriginal Organisations, worked tirelessly to develop an alternative policy response and to lobby parliamentarians to amend the harshest aspects of the legislation. With little time to analyse the 500-plus pages of legislation in the time made available, Indigenous people from the Northern Territory — and their supporters around the country — raised further concerns when it became apparent that the legislation specifically sought to take away the protection of the *Racial Discrimination Act 1975* and to subvert the rule of law by trying to prescribe the actions in the Northern Territory as 'special measures' for the purposes of the Act.

Only the Greens and Democrats, together with some NT Labor parliamentarians, gave adequate scrutiny to the Bill. The Labor Party had quickly given its in-principle assent to the intervention when it was first announced, and so was now limited as to the objections it could raise. As Opposition party, it did not question any aspects of the plan that anyone with knowledge of Indigenous affairs can see are patently flawed. Their acquiescence to the Howard–Brough plan without consideration of the details highlights how highly politically charged the arena of Indigenous affairs has become on the eve of a federal election.

Can we expect any change under a Rudd government? Some observers have rightly commented that the legislation contains plenty of things that should have provoked the Labor Party, especially the proposed changes to the permit system, to the *Aboriginal Land Rights (Northern Territory) Act 1976*, and the attempt to subvert and override the *Racial Discrimination Act*. But Kevin Rudd and his colleagues did not blink, concerned as they were not to be drawn into making an Indigenous issue a wedge issue.

While some will admire Rudd's political astuteness in outsmarting Howard's usual pre-election tricks, the Aboriginal people in the Northern Territory are going to be paying a high price for this amoral politicking.

For Aboriginal people in the Northern Territory, there are few avenues for challenging the intervention and the legislation that supports it. Other than a test case on the way the government is trying to use the *Racial Discrimination Act*, there is no legal redress for what is government policy, especially in an area where the courts are traditionally reluctant to tread. And, as those who lobbied so hard in Canberra to seek to delay the passing of the legislation or to at least have it amended found out, while the government holds control of both houses of parliament, there are few opportunities to influence or temper a government which is seeking to implement a hidden agenda by stealth.

It would seem that the best chance Aboriginal people in the Northern Territory have of changing some of the worst aspects of this legislation is to put pressure on an incoming Rudd government to undo the policies it so expediently supported to avoid an election wedge issue. Whatever the outcome of the next election, it seems it will fall to the minor parties, particularly the Greens, to maintain the pressure on whoever has control of the lower house to monitor the impact of the intervention legislation and its associated strategies.

Just as it is highly unlikely that another government will have the balance of power in both houses of parliament — and the extraordinary power that comes with such a position — in the near future, it is highly likely that Aboriginal communities across the Northern Territory will have to weather the effects of this misguided paternalistic policy imposed on them in their 'own best interests'. And those communities are most likely to stay and weather the intervention despite their concerns and protests, because they have fought so hard to stay on the land of their ancestors. It will take more than Howard, Brough and misguided policy to make them abandon their country.

ENDNOTE

1. Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Darwin, Northern Territory Government, 2007.

APPENDIX 2

Council of Aboriginal Organisations report

A proposed *Emergency Response and Development Plan* to protect Aboriginal children in the Northern Territory

A preliminary response to the Australian Government's proposals

By the Combined Aboriginal Organisations of the Northern Territory

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Summary

The following proposals to protect children in Northern Territory Aboriginal communities have been developed by the Combined Aboriginal Organisations (representing Aboriginal organisations in Darwin, Alice Springs, Tennant Creek and Katherine) and community sector organisations from across the country.

A comprehensive approach to child protection in an emergency context gives priority to protection from immediate physical or emotional harm, but must go further. It should also address community safety and access to essential services including housing, health care and education. A failure to also commit to addressing these underlying issues will ensure the current risk factors contributing to existing child abuse and neglect will remain.

We propose a two stage response to the problems of child abuse in remote Aboriginal communities:

1. An emergency response over the next 3-6 months, on which agreement can be reached quickly between Governments and community leaders.
2. A more comprehensive plan and costed financial commitment that addresses the underlying issues within specific timeframes and has bipartisan political support. This plan would include specific objectives, timeframes and mechanisms that ensure transparency and ongoing independent rigorous evaluation. The performance of both governments and Aboriginal organisations would be included. This would also involve thorough planning and negotiation to ensure that the correct strategies are adopted, the substantial resources required are efficiently used, and funding is stable and predictable over the longer term. This plan should be developed and negotiated under a partnership approach with the targeted communities during the current emergency response phase and be implemented as soon as is practicable.

These stages are not mutually exclusive. During the emergency response phase, the emphasis must shift from immediate child endangerment goals to the underlying and wider child protection goals of health, housing, education and ongoing community safety. Funding must be organised so that short term needs are met and long term development funding is also available. In these ways the emergency measures provide a foundation for stable long term investment that results in longer term solutions. Otherwise it is likely that the emergency measures will have little or no long term impact.

The response must be informed and led by local Aboriginal communities. It is only by strengthening the capacity of families and communities to protect and nurture children that the problems will be resolved. Aboriginal ownership and control of land and access to communities are important in this regard.

The response should build on the knowledge base already available to Government, starting with the recommendations of the *Little Children are Sacred* Report.

1. Guiding principles

- Relationships with Aboriginal communities must be built on trust and mutual respect. All initiatives must be negotiated with the relevant communities.
- Cultural awareness and appropriateness
- Actions should draw from and strengthen governance and community capacity
- Build on the knowledge base already there in communities and in Government
- Flexibility and responsiveness to local needs rather than a 'one size fits all' approach
- Aboriginal communities are entitled to receive the same benefits and services, and their children to the same protections that are available to other Australians.

2. Emergency Response

Objectives

- Act in conjunction with local community representatives and services to reduce the immediate risks to children and to plan and commence investment in the services and governance systems required to address the underlying causes
- Establish systems of planning, service delivery, and monitoring and evaluation at the Territory-wide and community level that are based on partnerships between the two Governments and Aboriginal community representatives and services.
- Together with community representatives, assess the nature and scope of the problems and capabilities (strengths) within each community, both in terms of the direct risks to children (e.g. violence, overcrowded housing, and alcohol or substance abuse), and contributing factors (such as joblessness). Most of this information is available from previous reports, administrative data, and from local communities and there is no need to collect it yet again.

Priority actions – July to September 2007

Priority Actions in this period include:

- Consultations with all local communities to establish the scope and nature of risks to children, community needs including key service gaps, the resources available locally, and to establish bodies to coordinate the Emergency Response at the local level (see below).
- Recruitment and training of suitably skilled, culturally aware child protection staff and police, in consultation with local community representatives on the understanding that these positions will be filled permanently as soon as practicable.
- Where the capacity exists within communities or external agencies approved by them, funding to be provided for community controlled child safety services such as safe houses, night patrols and Aboriginal Community Police.
- Introduction of tougher restrictions on sale of alcohol outside the communities (including take away trade).
- Establishment of emergency treatment and rehabilitation services, where possible controlled by local communities, for people affected by the alcohol restrictions.
- Recruitment and training of voluntary and paid medical staff to assist Aboriginal Medical Services and clinics to assess the health and health service needs of aboriginal children where their parents seek such assistance, using the auspices of the Aboriginal Medical Service Alliance of the Northern Territory to assist with selection and training, including cultural awareness training.

- Funding and recruitment to commence for community based family support and foster care services
- Recruitment and training of appropriately qualified teachers and Aboriginal Education Workers to schools to fill gaps in schools on a priority basis.
- Construction on a priority basis of multipurpose family centres
- Where local communities agree, establish community justice groups to assist the authorities with education and administration on the law (e.g. night patrols, court support for victims)
- Commence extension of financial services (especially savings accounts) and financial education to Aboriginal communities and fund local community organisations to assist residents to use these facilities as well as the Centrepay system.
- Finance and establish school meals programs in communities, paid for in part by parents.
- Commit funds to a major upgrade and repairs and maintenance program along with construction of new housing on communities on a priority basis, and commence training of local Aboriginal people in home construction and maintenance.

3. Long Term Development plan – community capacity and governance

Objectives

- The Development Plan is a fully costed plan of action by the Australian and Northern Territory Governments with set goals and measurable targets to be achieved within fixed time frames.

Actions

The Plan should be developed in full negotiation with the relevant Aboriginal community organisations during the Emergency Response stage. It should include such actions as:

- the progressive roll-out of new housing built mainly by workers drawn from the communities,
- more effective employment development and assistance programs,
- expansion of school infrastructure and better training and career development for teachers and Aboriginal Education Workers.

Action in these areas should commence now, but will take more time to roll out than the Emergency Response. The Plan would also continue and build on the initiatives commenced during the Emergency Response phase.

Coordination and funding

- The Australian and NT Governments should jointly develop the Plan in consultation with Aboriginal community organisations. This work should be led by the Department of Prime Minister and Cabinet.
- It should provide adequate and stable funding for the services and infrastructure required to protect Aboriginal children in the communities, including special funding arrangements and components of mainstream funding programs.
- A permanent monitoring and evaluation body should be established after the Emergency Response phase.
- Aboriginal communities and services should continue to be fully resourced to engage with Government in the development and implementation of the Plan.

4. Planning and coordination for services in communities

A national lead agency is needed to oversight, co-ordinate and monitor co-ordination plan for the necessary for services and supports for communities in the Northern Territory to ensure that children are protected. The lead agency needs to take overall responsibility for the development and resourcing of the Emergency Response and Development Phases. The lead agency should be accountable to Parliament to: ensure negotiations with Aboriginal communities are conducted in fair, open and transparent manner; to improve standard setting, monitoring and advocacy ; establish and strengthen capacity and financial resources needed; establish training and vetting processes; to establish or improving access to services; develop and monitor a plan to address gaps in child protection including the provision of essential services in Aboriginal communities.

Governments should establish sector leads in each of the following sectors: *child safety, community safety and services, health, education, housing and infrastructure*. These should generally be drawn from relevant Australian and Territory Government Departments. They should work closely with Aboriginal community organisations and prioritize the use of Aboriginal owned and controlled service providers. Their tasks would include developing clear targets and timelines for access to basic services, mapping community needs, service gaps, and the resources and capabilities of local regional and national actors, strengthening response capabilities (especially human resources), establishing links with other sectors to enhance the resources available, applying benchmarks to measure performance (in conjunction with the monitoring and evaluation body described below), and acting as a provider of last resort.

Sector leads should negotiate with representatives of Aboriginal communities, and consult with the providers of relevant services (child safety, police, community, health and education services), over the provision of services in each community as part of the Emergency Response. Regular community meetings should be organised and resourced to inform the community of proposed actions, progress, and to assist in local planning. Communities must be properly resourced (including appropriate fulltime paid staff) to engage with the Emergency Response.

Monitoring and Evaluation

An independent monitoring and evaluation body should be established to report on the scope and nature of the problems identified, actions taken at local and Territory wide level, and their effectiveness and contribution to long term planning and solutions. This body should include Aboriginal community as well as Australian and NT Government representatives, and independent experts.

Introduction

Three weeks ago, the Australian Government responded to the report of the Northern Territory Board of Inquiry into Protection of Aboriginal Children: *Little Children are Sacred*. The Government announced a package of 12 'emergency' measures. This short paper comments on the likely effectiveness of the proposals and puts forward a set of practical immediate measures and long term reform proposals to address the problem. These draw upon the experience of Aboriginal communities and service providers on the ground, and some of the many reports detailing problems in Aboriginal communities in the Northern Territory and elsewhere, including the *Little Children are Sacred* Report and reports from organisations such as the Secretariat of National Aboriginal Islander Child Care (SNAICC), the Human Rights and Equal Opportunity Commission (HREOC), and the Centre for Aboriginal Economic Policy Research (CAEPR).

These proposals have been developed by the Combined Aboriginal Organisations (representing Aboriginal organisations in Darwin, Alice Springs, Tennant Creek and Katherine) and community sector organisations from across the country. It proposes a two tiered response to the problems of child abuse in remote Aboriginal communities:

- An Emergency Response' on which agreement can be reached quickly between Governments and community leaders.
- This would include such actions as more resources for communities, police, child protection and health services to protect the victims of violence and abuse (such as safe houses, night patrols, and Aboriginal Community Police), tougher restrictions on sale of alcohol outside the communities (including take away trade), community based family support, improved access to mediation, treatment and rehabilitation services, and better access to primary health care and education services.
- A Long Term Development Plan' to improve the capacities and services in Aboriginal communities to continue the work commenced in the Emergency Response and to combat the underlying risk factors for Aboriginal children.

This requires more thorough planning and negotiation to ensure that the right strategy is adopted, the substantial resources required are efficiently used, and funding is stable and predictable over the longer term.

This would include such actions as the progressive roll-out of new housing built mainly by workers drawn from the communities, more effective employment development and assistance programs, and an expansion of school infrastructure and better training and career development for teachers and Aboriginal and Islander Education Workers. Consultations to develop this Plan should commence during the Emergency Response phase, but the delivery of these services will take more time.

From Emergency Response to Development Plan

Australian Government proposals:

- The Australian Government to acquire five year leases over townships and to resume leases on town camps, and appoint administrators to manage all government programs.
- Emergency measures include introduction of police from interstate, medical checks for children, alcohol bans, and quarantining of social security payments.

Comment:

The serious nature of Aboriginal child abuse and family violence in the Northern Territory demands an emergency response. However, in developing this response governments must show confidence and faith in Aboriginal communities to take ownership of these problems and support them to protect and nurture their children over the long term. This has been the expressed desire of Aboriginal communities. 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 (e.g. alcohol addiction) will be driven underground and that initiatives to help prevent child sexual abuse and family violence will be resisted.

More fundamentally, a Government 'takeover' of community administration risks undermining local community leadership and initiative that is essential to resolve the problems of child abuse and neglect, alcohol misuse, joblessness and inadequate services. Strategies to resolve these problems are more likely to succeed if local Aboriginal governance and the capacity of communities to pursue their own solutions are strengthened. This does not preclude or excuse Governments from providing and administering services such as schools and health care, but it means that any 'takeover' of Aboriginal controlled services would be counterproductive.

The *Little Children are Sacred* Report states that many communities said that the Board of Inquiry's meetings with them were the first opportunity they had been given to comprehensively discuss these issues with Government. However, there is broad agreement over many of the changes that are necessary (including safe places and better support for victims). To consult properly over these measures need not take long and it would improve the effectiveness of implementation.

Many of the Government's 'emergency' measures to stop child sexual abuse extend well beyond an immediate response to the problem. The resolution of wider problems such as joblessness, poor housing, and the destruction of family, culture and community cohesion is part of any effective strategy to stop child sexual abuse and violence in the communities. However, these long standing and deeply entrenched problems cannot be resolved by a set of 'emergency measures' imposed from above.

In particular, proposals to take control of Aboriginal land (through five year leases, administrators, and removal of the permit system controlling access to lands) are likely to weaken the communities' capacity to deal with these problems. There is no evidence to suggest that these measures would contribute to resolving them (see 'notes on proposed changes to land tenure' below).

In addition to an Emergency Response, a longer term community capacity and service Development Plan is needed to establish the basic services and facilities that are lacking in the communities, to build job opportunities and proper housing, and to strengthen community governance so that the communities themselves can take the lead in addressing their problems. It is vital that the Governments and the communities work together to get these medium to long term strategies right from the outset, to avoid the demoralising cycle of 'stop-start' policy making and frequent changes of direction that have characterised Aboriginal affairs for many years.

Proposed actions:

1. The Australian and Northern Territory Governments should urgently consult with Aboriginal community representatives on an **Emergency Response** over the next 3-6 months to address problems identified in the *Little Children are Sacred* Report. Implementation of these measures should follow meetings with the each community to ensure that it is be responsive to local needs, circumstances and views.
2. During the Emergency Response stage, the two Governments should negotiate with Aboriginal community representatives over a Community Capacity and Service **Development Plan** to commence on completion of the Emergency Response phase. The Plan should be fully costed, include appropriate goals and targets for the provision of services, and extend over at least a five year period.
3. Systems of Government funding for community services should be redesigned to enable the communities to focus on effective service delivery rather than compliance with a multitude of funding agreements, 'red tape' and compliance mechanisms. Funding should be sustained and predictable – a succession of temporary or pilot schemes should be avoided.
4. Government funding programs should be streamlined and pooled, with less emphasis on detailed 'inputs'. While targets should be set for access to basic services, communities should be able to adapt program funding (such as family support and alcohol rehabilitation services) to meet local needs. Some progress has been made along these lines with the funding of health services through the Primary Health Care Access Program.
5. An independent audit should be undertaken of the services that Aboriginal community organisations are providing and the costs of their delivery. This should include assessment of funding adequacy and cost-shifting by Governments, to better align both mainstream and Aboriginal-specific funding with service provision.
6. Aboriginal groups and incorporated organisations should receive sustained governance support and training, including the statutory implications and obligations of incorporation, and locally workable options for asset and funds management.
7. A national, sector-wide 'human resource development strategy' is required to build the Aboriginal workforce needed for community and regional governance.
8. Community organisations and Government service providers should be supported to develop mechanisms to share knowledge on 'what works' at the local level and to evaluate the quality and effectiveness of their services.

Safety for children and families

Australian Government proposal:

- As an emergency measure, police to be brought in from the AFP and interstate police forces to supplement the Northern Territory police presence in communities.

Comment:

A comprehensive approach to child protection in an emergency context gives priority to protection from immediate physical or emotional harm, but must go further. It should also address community safety and access to essential services including housing, health care and education. A lack of any of these elements is a risk factor contributing to child abuse.

Effective child abuse prevention and child protection occurs where local community agencies, police and child protection staff work in a collaborative and coordinated manner. Working in a three way partnership that sees the safety of children as paramount is the most effective and sustainable way to remove risk of abuse from a child's life. This approach minimises the need to remove children from their families and takes account of the already overburdened out of home care system in the Northern Territory. Significantly it alleviates rather than exacerbating community concerns about child removal encouraging a culture of reporting child abuse as opposed to staying silent.

The emergency measures announced by the Australian Government lack insight into effective child protection interventions and in effect seek to strengthen only one partner in the three way partnership - the Northern Territory police. Whilst the allocation of increased police resources for Aboriginal communities is a priority, other key elements of the child protection system also require immediate additional resources. Only by providing additional resources for Police, local Aboriginal agencies and statutory child protection staff to all play their part in child protection interventions will we see a significant improvement in how abuse is reported and dealt with.

A permanent police presence is needed so that police can work effectively with the communities and other authorities. However, the quality and effectiveness of policing is more important than increased numbers of police on the ground. Effective policing in Aboriginal communities requires local knowledge and cultural awareness, and an ability to work collaboratively with other services including child and family welfare services, health services, schools and child protection services. There is also a need for specialised training in domestic violence and child abuse. Police brought in from outside the Territory will in most cases lack the necessary local/cultural knowledge and networks.

Policing against child abuse, domestic violence, and alcohol and drug abuse will be more effective if the police have the trust and consent of the communities. Many Aboriginal people are fearful of police, especially the risk that children may be taken away. To ensure that incidents are reported, this fear must be overcome.

Programs are already in place in many communities that provide an immediate response to issues of safety – for example night patrols and the Safe Families Program run by Tangentyere Council in Alice Springs - but these have been grossly under funded.

There are many reports and evidence of what works in the Northern Territory and elsewhere and the main elements of these are:

- long term investment
- local control.
- trusting Aboriginal families and communities to look after their own children.

- re-engaging men.

Communities have varying capacity to respond and it is important to identify, support and extend those capacities over time. At present a significant issue in the Northern Territory, relative to other jurisdictions, is the limited role afforded to and level of capacity of local Aboriginal agencies to work along side police and child protection staff in responding to abuse. Experience in Canada, the United States and New Zealand demonstrates that building that capacity is best managed and coordinated through a long term process that delegates responsibility for child protection as capacity increases. There is a case for an independent statutory authority to coordinate the ongoing development of child protection services in the Northern Territory and the monitoring of service standards and outcomes for children. Such a model has been established in Canadian Province of Manitoba with significant improvements achieved in terms of child abuse reporting and prevention.

There is certainly an immediate opportunity to tap into the capacity for communities to assist police and the courts in the administration of justice. Examples include night patrols, safe houses, community justice groups, and mediation services (e.g. to separate offenders from their families while rehabilitation and treatment take place).

It is also vital that police work closely with the child protection authority (FACS), schools and health clinics. This requires the establishment of good working relationships between individual staff and officers over time.

It should be recognised that improved policing is only one element of an effective immediate response to ensure that children and families are safe from violence and sexual abuse.

It must also be recognised that the criminal justice system is failing Aboriginal communities. Offenders are simply removed from their communities for a period of time, receive little or no rehabilitation, and may re-offend when they return. A transition program from prison back to community would reduce recidivism and associated family trauma.

An urgent priority for the Northern Territory is to fund a Territory wide network of Aboriginal child and family welfare services to provide detailed input and advice on child protection matters. It is imperative that this function is seen as distinct from the provision of alternative care and other types of family support services.

Proposed actions:

To ensure that abuse and violence are reported and the victims are properly supported:

9. Additional resources must be provided for the effective delivery of child protection services including:
 - funding for recruiting of additional child protection staff with staff seconded from other states and territories
 - expanding specialist non-government agency programs to advise on child protection issues, support children at risk and provide safe living arrangements for children that cannot remain with family
 - additional Northern Territory police.
10. Police should be stationed permanently in the communities where they can establish the long term relationships and networks essential to their work. More Aboriginal police and Community Police Officers should be trained and appointed, and police should be trained and supported to work collaboratively with the local communities, child protection authorities, schools and health services.

11. The Australian and Northern Territory governments should jointly fund the establishment and operation of a Joint Child Protection Specialist Advice and Support Program across the Northern Territory. In establishing this program, the Northern Territory Government should consult with Aboriginal communities and existing Aboriginal community based services with knowledge and experience in child welfare and protection

On effective model is the Victorian Lakidjeka program which established teams of Aboriginal workers across the state to provide specialist advice and support on the protective needs of children who have been notified to the Department. ACSASS receives immediate notice of any child protection notifications involving, or thought to involve, Aboriginal children through a central intake service. ACSASS caseworkers attend investigations and work in partnership along side Department child protection workers. Their role is to assess the family's capacity to address the protective concerns, coordinate assistance to the family in this regard and provide advice on the best options to remove risk from children – not children from risk.

12. The Northern Territory Government should establish an independent statutory Aboriginal Child and Family Services Authority through legislation. (The Manitoba Child and Family Services Act 2002 provides a good model).

This authority should have functions including:

- the development of culturally appropriate standards for services, practices and procedures across the continuum of child protection and welfare services
- issuing mandates to government and non-government organisations to provide child protection and welfare services for particular Aboriginal communities
- monitoring of compliance with the Aboriginal Child Placement Principle and all other relevant standards for out of home care
- funding and coordinating capacity building of the Aboriginal non-government services sector to facilitate the transfer of all mandates to Aboriginal community organisations within ten years of the authority being established
- reporting to the Northern Territory parliament on
 - new measures required to secure the protection and well being of Aboriginal and Torres Strait Islander children in the Northern Territory
 - ongoing child protection reforms
 - the annual performance of mandated child protection services (government and non-government) in terms of their effectiveness in preventing and responding to child abuse

Ongoing funding should immediately be extended to any Australian Government funded programs and services focused on prevention of child abuse and neglect, family violence and community safety, Aboriginal early childhood, family support and parenting where grants and pilot programs are due to run out within the next 12 months.

13. Communities should be resourced and trained to provide safety and support for victims, including local safe houses, night patrols, sexual assault referral centres (for medical assessment, treatment and personal support) and removal of perpetrators from the immediate area (for example to sobering up facilities).

Community hubs, such as the Yarrenyty-Arltere Learning Centre at Larapinta Town Camp in Alice Springs, should be resourced to facilitate the delivery of health,

education and social programs.

14. Governments should actively encourage, support and resource the development of community-based and community-owned Aboriginal family violence intervention and treatment programs.
15. Community justice groups should be established in the communities to assist in the administration of the law in regard to child abuse and violence, and alcohol and drug abuse.

Successful models include the Law and Justice Committees in Walpiri communities, which were instrumental in establishing night patrols and safe houses in those communities.

16. Court processes should be reformed so that they are less traumatic for victims.
17. Sexual abuse of children by persons from outside the communities should be targeted by the authorities, as well as abuse by other community members. This should include appropriate background checks for people providing services in the communities.
18. Alternatives to incarceration which focus on rehabilitation and reintegration into communities should be established wherever possible and appropriate. One model is the use of weekend detention within communities.

To help break the cycle of violence and abuse within families:

19. Where it is safe to do so, victims, perpetrators, and their families should be assisted within the community through family support mediation and behavioural reform programs, to prevent the problems from recurring and reduce the levels of imprisonment of Aboriginal people. A whole of community approach is more likely to work than 'treatment' of individuals or families in isolation.

For example, the Hollow Water program, which is used with sexual abuse cases in Manitoba Aboriginal communities in Canada, works with the victim, the perpetrator, and their families over a number of years. It is widely viewed as a successful example of an Aboriginal-controlled sexual abuse treatment program, with only two clients re-offending over a 10 year period.

20. Culturally appropriate education programs about child sexual abuse and family violence should be introduced in all communities.
21. Age-specific programs for Aboriginal children and young people should be developed to discuss and explore a wide range of 'sensitive' topics, from self-identity, emotions and positive relationships through to sexual issues and rights.

Alcohol

Australian Government proposal:

- A minimum 6 month ban on alcohol in the communities, apart from approved canteens.

Comment:

Alcohol is a factor in a very high number of welfare and criminal justice interventions in Aboriginal families. It is associated with incapacity to care for children, violence, lack of money for food and other essentials, stealing, poor health and many other problems. Given that alcohol has been identified as such a critical problem for some time, many programs have already been tried and implemented and many programs such as the Northern Territory Governments Alcohol Framework aimed at supply, harm and demand reduction are continuing.

The Australian Governments proposal is not new or comprehensive. Nearly all communities are 'dry' already, following long standing campaigns by local community leaders. Some communities also run successful wet canteens, and others have tried and abandoned the idea. Canteens have been successful where the circumstances and governance capacity of communities have allowed that success.

The main problem in most communities is the availability of alcohol in the towns and other settlements outside the communities. Restrictions on alcohol are more likely to be effective if they build on the work the community leaders have already done. But the communities need help to stem the flow of alcohol from sites off the communities. The proposed removal of the 'permit system' for access to the communities is likely to undermine community efforts to stem illicit trade in alcohol and other drugs – this issue is highlighted in the Land Tenure section below.

Although it is necessary, a more intensive crack-down on alcohol abuse could also have negative consequences that should be addressed. People addicted to alcohol would need timely access to rehabilitation services. Communities would have to be adequately resourced and supported to prevent the growth of illicit trade in alcohol. Strategies are also needed to prevent and treat addictions to other drugs, to which some may turn if they cannot obtain alcohol.

Strategies that simply lead to higher levels of incarceration of Aboriginal people should be avoided. Local alcohol rehabilitation and treatment services are needed to prevent perpetrators from re-offending and cycling in and out of the prison system. These services should adopt a 'whole of community' approach, rather than simply treating individuals.

While removal of alcohol and other drugs of addiction is an essential part of any strategy to reduce child abuse, it should be recognised that abuse of alcohol and other drugs is a coping strategy for deeper problems such as entrenched joblessness and the destruction of family and culture. The underlying causes must also be addressed.

Proposed actions:

Community based strategies to restrict consumption of alcohol and other drugs of addiction should be supported and strengthened by:

22. Extending these strategies to the minority of communities that have not yet implemented them.

23. Restricting access to alcohol outside the communities, especially take away trade, including through tougher restrictions on new hotel licenses in areas close to the communities, and a 'buy back' of existing licenses by Government where necessary.
24. A program should be trialed to identify and remedy problematic liquor sales practices. This should use a combination of education, negotiation, and sanctions to inculcate a culture of responsible serving by all outlets to all segments of the population. For this purpose, data should be collected identifying the last premises where an individual drank or purchased alcohol before being involved in any alcohol-related incident.
25. Retaining the 'permit system' to restrict access to Aboriginal communities by those engaged in illicit trade in alcohol and other drugs so that the restrictions are not circumvented.
26. Providing resources and training for community based rehabilitation services and prevention initiatives.
27. Adopting a rigorous social assessment process for any application for a remote community wet canteen which includes assessment of the circumstances of individual communities, and ensuring that wet canteens are not promoted to alleviate alcohol problems within the major town.
28. Continued implementation of the Northern Territory Governments Alcohol Framework
29. Supporting the development and expansion of culturally appropriate and comprehensive youth programs to offer young people active and healthy alternatives to drug and alcohol abuse.

The Mooditj program is one model that has worked and is the result of an extensive consultation and development process. It is a grass roots program that's been built on solid consultation with a wide range of Aboriginal communities. To ensure the program is sustainable, training workshops are held and participants have included social workers, police officers, teachers, Aboriginal Elders, health workers and community members. Training local community members to deliver the program helps build community capacity.

Social security payments

Australian Government proposal:

- Reduce social security payments for Aboriginal people in the communities who are long term recipients (over 2 years) by 50% for 12 months, with the remainder to be paid in-kind.

Comment:

This will adversely affect the majority of people on the communities who are not involved in child abuse. It may, for example, include pensioners. The outcomes would be to arbitrarily deprive many people of income and undermine community support for initiatives to end child sexual abuse. It may also have adverse effects on the local economy if the only stores at which food vouchers or cards can be used are located outside the communities. It is unlikely that it would achieve the Government's stated objective of reducing alcohol consumption in the communities in a sustained way.

Withdrawal or 'quarantining' of income support payments is not a 'magic bullet' to resolve deep seated problems such as child abuse and neglect, alcohol and drug use, and joblessness.

It is not widely understood that conditions are already attached to social security payments, including job search, training, and working on CDEP (where payments are converted into a wage to work on local projects and services). In any consideration given to extending the obligations attached to social security payments, the communities affected should be properly consulted first, and the following principles should be followed:

- Is it fair?
For example:
Is it reasonable to require people to meet the proposed conditions in order to receive social security payments?
Is it fair to apply the conditions to one group in the community and not to others?
Is the proposed process of decision-making and implementation fair?
- Will it work?
Will attaching further conditions to payments meet the stated objective? For example, withholding social security from parents when their children miss school is likely to be less effective than initiatives to improve the quality and attractiveness of schooling (see below).
- The least intrusive alternatives should be tried first.
For example, to assist families to budget Tangentyere Council encourages and supports people to use the existing Centrepay system to pay rent and bills. Over 800 people voluntarily use the Centrepay system to have part of their payments each week in the form of food vouchers.
- How will it be administered?
For example, who decides whether the conditions have been met and are they the appropriate people to do so?
- What supports will be put in place?
For example, financial literacy training to assist people to manage their money.
- Are there any unintended consequences?
For example, restrictions on cash payments may be circumvented if 'vouchers' or 'cards' used to purchased goods in stores are traded.

Proposed actions:

30. Greater use should be made of existing systems to protect people's money and discourage the diversion of social security benefits on alcohol or gambling, including the Centrepay system and direct deduction of rent payments.
31. Access to financial services, including savings accounts and ATMs, and to financial counselling and training, should be progressively extended to people in Aboriginal communities in the Northern Territory.

Education

Australian Government proposal:

- Reduce social security payments for Aboriginal people in the communities whose children miss school without good reason by 50% (and 100% in the case of family tax benefits). There are suggestions that this proposal could extend beyond Aboriginal communities in the Northern Territory.
- Meals to be provided in schools at the parents' expense.

Comment:

Penalising parents when their children don't attend school is unlikely to resolve the problem. In Aboriginal communities, extended family members share the responsibility for raising children with biological parents, so an exclusive focus on parents is not culturally appropriate. In any event, parents may not be the main influence over whether their children attend school, especially where non attendance has occurred for some time or where there are problems at school, such as bullying or poor quality schooling.

The official evaluation by Department of Employment and Workplace Relations (DEWR) of the 'Halls Creek trial' (in Western Australia), in which the threat of withdrawal of income support was used in an attempt to reduce local truancy rates, raises some problems with this approach. It notes that:

*'In an environment where children make up their own minds each day as to whether to go to school or not, the significance of the parent as a 'method of engagement' for the children declines and the role of the school – particularly in terms of teacher quality and school culture – increases.'*⁴

Many Aboriginal children find the school environment unsupportive or uninspiring. Some programs that focus on these problems, such as the Clontarf Program, have been extraordinarily successful. When this program was implemented with Aboriginal boys in Alice Springs, it raised attendance rates to 92%. The program used participation in sport and behaviour modification techniques to motivate boys to stay at school. Other success stories, based on effective school leadership and close cooperation with communities, include Cherbourg in Queensland, and Yirkala and Yipirinya and Barunga in the Territory.

More broadly, there are serious weaknesses in education facilities in Aboriginal communities in the Northern Territory, including lack of access to schools (especially secondary schools) in many communities, and an inadequate supply of classrooms and teachers in others (for example Wadeye). 94% of Aboriginal communities in the Northern Territory have no preschool, 56% have no secondary school and 27% have a loCAL primary school more than 50km away.

Teachers are inadequately trained, prepared and supported to work in the communities, especially with regard to cultural awareness and how to support children in distress. Consequently, there is a high turnover of teachers on the communities. There is a lack of Aboriginal and Islander Education Workers (especially important in communities where English is not the first language). There is a lack of staff dedicated fulltime to working with families to improve attendance, and inadequate access to preschool education or play centres. The Northern Territory Government's *Learning Lessons* Report and the *Little Children are Sacred* Report recommended action to address these weaknesses. This includes provision of meals at school, funded in part by parents.

⁴ DEWR 2006, *Evaluation report, Halls Creek Engaging Families Trial*.

The Northern Territory Government conservatively estimates that an additional \$60 million a year is required over the next 10 years to provide teachers and facilities for growing Aboriginal communities in the Territory. As well as additional resources, a long term vision and plan to improve education for Aboriginal people is required, one that is developed with the communities. The Centre for Aboriginal Economic Policy Research estimates that if all students in remote communities in the Territory attended school, an extra \$79 million per year would be required to expand the number of teachers and other resources, together with \$295 million for infrastructure including teacher housing.

Much work has been done at an international level to develop minimum standards for education in emergencies. For example, the Interagency Network for Education in Emergencies (INEE), has developed a set of minimum standards with the following components²:

- **Participation:** Emergency-affected community members actively participate in assessing, planning, implementing, monitoring and evaluating the education programme.
- **Resources:** Local community resources are identified, mobilised and used to implement education programmes and other learning opportunities.
- **Initial assessment:** A timely education assessment of the emergency situation is conducted in a holistic and participatory manner.
- **Response strategy:** A framework for an education response is developed, including a clear description of the problem and a documented strategy for action.
- **Monitoring:** All relevant stakeholders regularly monitor the activities of the education response and the evolving education needs of the affected population.
- **Evaluation:** There is a systematic and impartial evaluation of the education response in order to improve practice and enhance accountability.

Proposed actions:

32. Consultations should immediately be undertaken to develop an agreed model for ensuring that family tax benefit payments are paid to the carer of the a child and not necessarily the parents
33. Successful models to encourage greater engagement in schooling by Aboriginal children, such as the Clontarf Program, should be extended to more communities.
34. Primary and secondary schooling through to Year 12 should be readily accessible to children and young people in Aboriginal communities. The Northern Territory and Australian Governments should commit to a five year plan, including detailed costings, providing for a systematic upgrade and expansion of education services across remote communities in the Northern Territory.
35. The Australian and Northern Territory Governments should invest in effective training (especially cultural training) and improved career structures for teachers with expertise in teaching Aboriginal students, Aboriginal teachers and managers, Aboriginal and Islander Education Workers, and school infrastructure, to raise the standard and cultural safety of schools in and near the communities.
36. As well as the mainstream education curriculum, Aboriginal students should have access to education based on their own languages, cultures and heritage.
37. Home school liaison officers should be appointed in every community and strategies developed to track students as they move between remote communities.

² See <http://ineesite.org/page.asp?pid=1240>.

38. **Preschool and remedial programs should be available to all children.**
39. **Schools should be resourced to ensure that students who experience trauma are identified, counselled and supported, and to connect with local family support and child protection services.**
40. **A universal school meals program should be introduced, delivered by the communities and partly funded by parents.**
41. **Adult education programs should be available to Aboriginal communities to tertiary level, with priority to critical community needs.**

Health and community support services

Australian Government proposal:

- Medical examinations of all children in Aboriginal communities in the Northern Territory, together with unspecified follow up treatment.
- There are no other specific proposals to extend or improve health and community services as part of the proposed 'emergency response'.

Comment:

There is widespread concern within the communities about the possibility of compulsory medical checks for children, especially potentially invasive checks for sexual abuse. Statements from Australian Government Ministers are ambiguous on this important issue, indicating that the medical checks for children will be voluntary but also raising the prospect that parents may have to agree to them in order to continue to receive social security payments

These health checks are likely to reveal multiple health problems, which require medical treatment, counselling, and community education. It is not clear whether provision has been made for this follow up treatment and support, but given the paucity of primary health care and other support services in the communities this poses a major challenge and would have to be carefully planned. As with the introduction of police from outside the Territory, medical staff brought in on a temporary basis who lack specialised training (especially cultural awareness) are likely to be less effective than a permanent increase in locally provided and controlled services. For example, Aboriginal controlled health services affiliated with ACHHO have considerable experience in assessing sexual abuse in ways that are culturally safe and less traumatic for children.

The overall health status of the Aboriginal community is a national disgrace, with a 17 year mortality gap and much higher incidences of obesity, hypertension, high cholesterol, cardiovascular disease, diabetes and renal failure among Aboriginal people compared to non-Aboriginal people. Aboriginal children under 2 years in the Top End of the Northern Territory have a malnutrition rate of 20% and Aboriginal children are more likely to be admitted with skin diseases, infectious and parasitic diseases, endocrine, nutritional and metabolic disease than other Australian children.

99% of all Aboriginal communities in the Northern Territory have no substance abuse service and 99% have no dental service. Only 54% have state funded primary care services and 47% have an Aboriginal primary health care service more than 50km distance away.

The Australian Medical Association estimated recently that a minimum of \$460 million in extra funding for Aboriginal health services is needed per year nationwide. If 20% of this is required in the Northern Territory alone, then approximately \$90 million per year is required in the Territory.

The cost of bringing health hardware (housing, water, sewerage) to an acceptable minimum standard in Aboriginal communities has been estimated at \$3.5 billion. If 20% of this is required in the Northern Territory alone, then approximately \$700 million is required in the Territory.

It is critical to work with communities, families and children in a manner which builds upon and extends their existing strengths. Services and programs must avoid undermining the

role of families as the main source of nurturing and guidance for children. Aboriginal and Torres Strait Islander cultures and child rearing practices should also be used as a key resource for building children's resilience, self esteem, sense of identity and self-confidence.

One of the most significant and frequent problems identified by Aboriginal people is trauma and grief. The impact on health and mental health and well-being is extensive. The impact of trauma and grief relates to the history of invasion, the ongoing impact of colonisation, loss of land and culture, high rates of premature mortality, high levels of incarceration, high levels of family separations, particularly those consequent upon the forced separation of children and parents, and also Aboriginal deaths in custody. Domestic violence, sexual and physical abuse, and a whole range of other traumas also contribute.

The responsibility of parents, families, individuals and communities has been raised and is relevant, but Aboriginal peoples would also demand that Australian and Territory and State Governments take responsibility for providing Aboriginal people, no matter where they live, with the health standards and conditions enjoyed by other Australians. An example is where the Northern Territory Government has not provided medical services to Aboriginal Territorians but has left it to the Aboriginal controlled health organisations which are federally funded.

Proposed actions:

42. Applicants who wish to assist in the Federal Government's response to the *Little Children are Sacred* Report should ideally come from the Aboriginal community controlled health sector so they would be sensitive to, and respectful of, Aboriginal social and cultural values. The Aboriginal Medical Service Alliance Northern Territory, the peak Aboriginal health body in the Northern Territory, should receive expressions of interest from the health professionals wishing to assist in the Federal Government's response, so they can coordinate the massive—and highly skilled—workforce that is necessary to meet the health demands of Aboriginal people in remote communities.
43. Undertake coherent planning with communities about what is needed to tackle immediate, preventative and long term issues at the same time.
44. Develop a comprehensive long term strategy to build a strong and equitable core service platform in Aboriginal communities, to address the underlying risk factors for child sexual abuse and to develop functional communities in which children are safe. Through this strategy, address the delivery of core educational and primary health care services to Aboriginal people including home visitation and early years services.
45. Expand and strengthen comprehensive primary health care for Aboriginal people, for example through expansion of the Primary Health Care Access Program (PHCAP) and initiatives such as the establishment of multi-disciplinary health teams to provide family focused health care.
46. Expand programs that provide nutritious foods, at affordable prices, to Aboriginal communities such as the Outback Stores Program.
47. Develop and fund community based cultural revival and parenting programs which assert the proper place of children in Aboriginal culture.
48. Actively pursue the provision of new services, and better resource existing services, for the counselling, healing, education, treatment and short term crisis accommodation of Aboriginal men in regional town centres and remote communities.

49. Establish an ongoing program of professional development focussed on issues of child abuse and child neglect for government and non government staff who have contact with Aboriginal children. These programs should be designed and implemented in consultation with Aboriginal communities and services, take account of the historical practices of child removal and take a holistic community based approach to child welfare and protection.
50. Facilitate and fund a network of Aboriginal family support services and programs, which are universally accessible and focussed on primary prevention of family conflict, breakdown, family violence, child abuse and child neglect.
51. Social and Emotional Wellbeing Centres which can provide trauma and grief treatment should be established within primary health care services to specifically address the issues of dealing with past trauma such as child abuse as well as healing the current effects of violence.

One such model for trauma and grief treatment, the We Al-li program, utilises the concept of a healing circle using Dadirri – an "inner depth listening and quiet still awareness"; workshops such as "lifting the blankets", and "recreating the circle" (Atkinson, 1994). Another model is provided by the Sacred Site Within Healing Centre in Adelaide, based on the belief that Aboriginal peoples' unresolved grief is a major contributing factor to the range of social and health issues which exist in Aboriginal communities today.

52. Effective foster care programs should be established and funded for all Aboriginal communities in the Northern Territory.
53. The expansion of Multi-functional Aboriginal Children's Services (MACS) should be considered as a model for a range of Aboriginal managed programs for Aboriginal children including long day care, occasional care, play groups, after school care, vacation care, transport and support and information for parents, and as a hub for other family services.
54. Planning mechanisms should be introduced at the state, territory or national levels to assess the effects of demographic change in Aboriginal communities, especially projected growth in the numbers of children and young people, on future demand for services. In the absence of such planning, and appropriate adjustments to funding and workforce planning, levels of unmet need for services such as schools, preschool services, and child health services will continue to rise.

Housing

Australian Government proposal:

- Introduce market based rents for community housing with 'normalised tenancy arrangements', and 'improve housing stock'.

Comment:

The issues of land tenure and housing management are not linked, and must be considered separately.

On 1st July 2008 the NT Government have stated they will no longer be providing housing management funds to indigenous community housing organisations (ICHO's). From this date onwards, all housing management services in remote community townships and town camp communities will be done through Territory Housing. Territory Housing has indicated all residents will be charged market based rents and will sign Territory Housing tenancy agreements. Given this fact, it is difficult to understand how obtaining 5 year leases over community townships and resuming Town Camp leases can be justified, when it is clear that these systems will be introduced across the board irrespective of changes to land tenure.

Poor housing management services by either an ICHO or by a mainstream public housing provider such as Territory Housing cannot be used as justification for changes to land ownership. If a public housing funding provider is not happy with the services provided with their funds, then they should either enhance the capacity of that provider, or seek an alternate provider. The federal government has been in the process across all other states of introducing the Indigenous Housing Management Improvement System (IHMIS), which involves a critical assessment of ICHO's, and the introduction of an accreditation system. Successful ICHO's were to be given a green light to proceed, those with room to improve an orange light and a list of practices, policies and performance outcomes to improve, and those failing ICHO's a red light with no accreditation and funding reallocated to an alternate provider. Many communities currently charge market based rents, and operate 'normalised tenancy arrangements'. Where these systems are operating well those community housing organisations should be strengthened and supported.

Centralised public housing management of remote community housing is destined to fail without a true partnership with 'community'. There is no capacity or corporate knowledge within the existing Territory Housing Department alone to manage housing in remote communities. Territory Housing has proved itself in regional centres such as Alice Springs to have little or no understanding of complex cultural considerations that must be considered with any tenancy management system. Town Camp communities in Alice Springs are full of people who have 'failed' their Territory Housing tenancies. If this model were to be rolled out across the NT, where would everyone who will become evicted from their public housing live? This model will establish a new wave of fringe 'bush camps' being established on the edge of town centres, and we will be back where we were at the beginning of the town camp movement 30 years ago.

Territory Housing has no appreciation of the shift over the past 10 years in current housing management models in indigenous communities towards 'housing for Health' environmental health principles. Most effective ICHO's focus their limited resources on improvements to the Critical Healthy Living Practises (CHLP's), adopted by FACSIA through their 'National Indigenous Housing Guide' including; electrical safety, ensuring people can have a shower, they can wash their clothes and bedding, that all waste water is removed safely etc. Housing management models must remain focused on improving

peoples' health, rather than on looking after the asset, as in the case of Territory Housing. Funding for housing service providers must be firmly focused on quantitative improvements to environmental health, and a quantitative evidence based system must be established to ensure that residents are afforded these basic rights to a healthy living environment.

Over the last 30 years there seems to have been 2 major policy strategies regarding the delivery of services to indigenous communities. The first being characterised in the 1970s by the domination of government agency control that dictated seemingly all aspects of indigenous life on communities (the government only model). The second being dominant from the 1980s and characterised by community control and self governance (the community only model). Time has shown that for the most part both models have been problematic and this 'either/or' approach has failed to deliver successful and sustainable outcomes for indigenous people.

Unfortunately, there now seems to be a tendency by some state housing agencies and the Australian Government who feel that community control has failed to deliver adequate housing outcomes to simply revert to the other 'extreme' of complete government control, yet again. This is the 'circular development' model that people who have been around in indigenous affairs for a long time often see over and over again, and will not produce the improvements in housing management assumed by the Federal Government, and expected by the tax paying public.

Rather than continue this circular approach, a framework for a restructure of housing services across remote communities must be based on a collaborative, community/government partnership where mandatory requirements and government expectations can be achieved while appropriate service delivery and direct community involvement in decision making is encouraged and supported.

The main problem with housing in Aboriginal communities in the Northern Territory, and its main contribution to child sexual abuse, is overcrowding. It is common for 20-30 people to live in a single building, without a capacity to stop perpetrators from gaining access to different parts of the house.

There is an estimated shortfall of at least 4,000 homes, which the Northern Territory Government conservatively estimates would cost \$1.4 billion to provide³. The construction of these homes could provide jobs for many community members, if they are trained in advance. This would also help resolve shortages of skilled construction workers in rural and remote areas.

Proposed actions:

55. The federal government to immediately introduce the Indigenous Housing Management Improvement System (IHMIS) across the NT, to assess the effectiveness of all Indigenous Community Housing Organisations (ICHO's) and make recommendations for either improvements in service delivery or a reallocation of funds.
56. A need for significant increases in the provision of safe and healthy living environments through a focus on the improvement of Critical Healthy Living Practices (CHLP's). This to be aided by the introduction of a quantitative system to assess all housing providers' (including Territory Housing and ICHO's) performance against the environmental health based CHLP's.

³ Given average population growth of 2% per year, this would rise to around \$1.7 billion after 10 years.

57. An improvement in informed reporting across the ICHO and Territory Housing sector covering CHLP's, tenancy records, staff performance and management, and repairs and maintenance.
58. An increase in resident participation focussing on tenant/landlord rights and responsibilities, rent/arrears/damage payments, information and consultation.
59. The introduction of a framework for a restructure of housing services across remote communities, based on a collaborative, community/government partnership where mandatory requirements and government expectations can be achieved while appropriate service delivery and direct community involvement in decision making is encouraged and supported.
60. The Australian and Northern Territory Governments should commit to a substantial investment in new housing stock and renovations in Aboriginal communities over the next 10 years to sharply reduce levels of overcrowding and substandard housing.
61. Governments should consult with each community over the nature, location, and priorities for housing investment, to ensure that resources are not wasted on inappropriate housing.
62. Priority should be given to training and employment of local Aboriginal people in the construction and renovation of homes on the communities.

Employment

Australian Government proposals:

Following separate policy announcements with regard to Aboriginal employment, the Government is implementing major changes to employment programs and income support for jobless people in remote communities including:

- Progressive removal of 'remote area exemptions' from Newstart Allowance activity requirements, so that recipients must engage with Job Network and other mainstream services, and either train or seek employment.
- Dismantling of CDEP programs in regions where mainstream jobs exist, and replacing them with job placement, training and work experience programs such as STEP which are increasingly 'outsourced' to mainstream employment service providers.
- Converting around 825 of the 30,000 'CDEP jobs' into mainstream jobs in land management and local health and community services through various funding programs.

Comment:

Lack of stable employment is a major underlying cause of poverty and social disintegration in Aboriginal and other communities. In the Northern Territory, only 38% of Aboriginal people of workforce age are employed, and 16% of the labour force is unemployed. In 2005, of the 12,800 Aboriginal people who had jobs, 8,000 were employed in the Community Development Employment Program (CDEP) program in which people work for little more than their social security payments. Employment levels are particularly low for young Aboriginal people, despite the fact that most leave school early. Many young Aboriginal people who are out of work do not even receive social security payments, reinforcing the point that simply restricting access to social security is no 'magic bullet' to resolve the social problems in Aboriginal communities.

However, there is no easy solution since stable employment is still scarce for people with limited education and skills in rural and remote areas. Around 70% of Aboriginal people in the Northern Territory live in areas where mainstream jobs are scarce. There is no evidence to suggest that moving people into larger communities would improve their job prospects.

More Aboriginal people in remote communities would have meaningful employment on mainstream wages if services in the communities were properly funded, rather than through CDEP or voluntary effort alone. In this regard, the Government's initiative in this year's Budget to convert 100 community ranger positions from CDEP jobs to mainstream employment is welcome. Much more could be done to improve service and provide employment opportunities at the same time. Employment of local Aboriginal people to overcome the housing shortages in their communities is another option that should be pursued.

More business development opportunities could also be opened up for Aboriginal people. For example there are already around 5,000 Aboriginal arts practitioners in the Northern Territory and they could be trained and supported to expand their operations. There may also be employment opportunities in carbon abatement and commercial wildlife harvesting.

A small number of Aboriginal people in remote communities are employed in mining and related industries. These opportunities are more likely to be opened up and sustained where respectful partnerships exist between the communities and the companies

concerned. Where mining and other companies require access to Aboriginal lands to carry out their business, it is reasonable for the communities to require them to train and employ local Aboriginal people on these projects.

It is not realistic to expect that, even where mainstream job opportunities exist locally, most Aboriginal people will be able to fill them immediately. Many jobless people in rural and remote Aboriginal communities need considerable support before they can sustain a job. Research suggests that simply intensifying job search through tighter activity requirement will make little difference to employment outcomes.⁴ Unemployed Aboriginal people are more likely to succeed if supported intensively by employment services based in their own communities, but in many areas these are being supplanted by mainstream employment services.

Proposed actions:

63. The development of a stable paid workforce within the communities should be supported through adequate and sustained funding of services including management of traditional lands, employment of local Aboriginal people to improve housing in the communities, support for local business and employment development initiatives, obligations and support for mainstream employers such as mining companies to employ local Aboriginal people rather than 'fly in-fly out' arrangements, and by assisting community members to live in areas where jobs exist but return regularly to their communities.
64. The CDEP or a similar program should be available in the communities to provide purposeful work on useful community projects for people who otherwise lack it. However, the program should be reformed so that it encourages and supports people to progress towards mainstream employment. In particular, substantial training and mainstream work experience components should be built into the program. Those who are already have the skills to operate local community service programs should be employed through mainstream funding arrangements rather than CDEP.
65. Funding arrangements for employment services operating in the communities should acknowledge the benefits of local community control and involvement, the 'distance from employment' of many of their clients, and their need for ongoing support (including mentoring) to sustain jobs once they obtain them.

⁴ Gray & Hunter 2005, *Indigenous job search success*, CAEPR.

Land Tenure and Permits

Australian Government proposal:

- Acquire communities over 100 people (on Aboriginal land and Community Living Areas) through five year leases including payment of compensation.
- Scrap the permit system for access to Aboriginal land for community 'common areas', main roads and airstrips.

Comment:

The 97 recommendations in the Anderson and Wild child abuse report make no mention of land tenure or permits.

For its part, the Australian Government has not provided any justification for linking land tenure measures with interventions aimed at preventing child sex abuse. It has indicated that community acquisition is necessary for parallel measures such as changes to housing arrangements and governance of communities. This is simply not the case

The Land Rights Act already provides a clear and efficient mechanism for granting leases and there is no evidence to suggest that service provision in Aboriginal communities has been stymied by tenure arrangements. One argument that has been made in the past by both the NT and Australian overnments is that a change in tenure from communal title is needed in order to secure public housing stock, and provide for private home ownership. This is already possible under s.19 of the ALRA and negotiations between the Central Land Council and the NT Government to facilitate new community housing arrangements are underway. Other housing management issues are outlined below.

The Australian Government's intention to compulsorily acquire 5 year leases over Aboriginal communities is problematic for many reasons:

- The proposal undermines and disempowers community residents, existing community governance arrangements and institutions, and traditional landowners.
- Unless it is handled sensitively it has the capacity to cause conflict between community residents and traditional landowners.
- What happens to existing leases and other tenure arrangements within the community? Are these leases and other tenures acquired as well? What happens to the assets on those leases?
- What will be the terms of the Australian Government lease to ensure it can be used appropriately by residents for private and community space?

Apart from these significant problems, before leases could take effect, communities would need to be surveyed and cleared for sacred sites. As well, a mechanism would need to be developed to compensate traditional owners for loss of their rights over community land.

At the conclusion of the proposed 5 years, similar problems would arise when the land reverts to being Aboriginal land – any leases and other tenures created in the interim period would need to be accommodated.

With regard to scrapping permits for communities, the Australian government has not provided any explanation of why free access to communities will not undermine the strict alcohol prohibitions proposed. Police already face significant problems with controlling grog runners and unscrupulous dealers who target remote communities. But without the requirement for permits to access private Aboriginal land, more grog runners and shonky art dealers are likely. Remote police use permits as an important policing tool.

More broadly, Minister Brough's permits review argued that permits contribute to criminal behaviour and hinder economic development. But there is simply no evidence that 'open' communities are better off than communities on Aboriginal land where access is regulated by permits. To imply that the permit system is responsible for disadvantage is simplistic and wrong. Many reports have shown the real barriers to a better future are poor education, poor health, poor infrastructure and poor opportunities.

Aboriginal people are entitled to a system on their own land which allows access but maintains privacy and protects sacred sites. The system allows media access for news of the day and court hearings. The system is free.

Where Aboriginal people have identified a need for more open access, such as the art centres and heritage precincts in Yuendumu and Hermannsburg, permits have been lifted to visit those places. Thousands of tourists visit them each year.

The Australian Government has not provided proper justification for acquiring communities and scrapping the permits system in communities. It has not given a clear guarantee that communities will be returned after 5 years or that traditional owners will be entitled to a "just terms" formula for compensation for loss of their property rights.

Proposed actions:

66. Maintain the permits system on all Aboriginal land.
67. Abolish the proposal to acquire 5 year leases over communities on Aboriginal land and Community Living Areas.
68. Use existing provisions in Land Rights Act to grant head leases to provide for public housing on Aboriginal land. A standard housing head lease could be developed.

APPENDIX 3

Ruth McCausland, Issues paper on Welfare reform and school attendance



UNIVERSITY OF
TECHNOLOGY SYDNEY



Jumbunna
Indigenous House of Learning

***Linking welfare payments to school
attendance in Indigenous communities:
an analysis***

An Issues Paper
By Ruth McCausland
Jumbunna Indigenous House of Learning
University of Technology Sydney
July 2008

INTRODUCTION

Making the welfare payments of Indigenous people conditional on measures such as their children's school attendance is becoming an increasingly popular policy measure in Australia. The stated aims of such an approach include ensuring that money is spent on essentials such as food, clothing and housing, and increasing children's participation in school. The former Coalition Federal Government supported the introduction of such schemes - most publicly, as part of its intervention in the Northern Territory. The Rudd Labor Government has continued this policy approach, with Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, confirming support for three 'income management' models in Western Australia, Queensland and the Northern Territory. Though such schemes have been regularly characterised as trials, there has been little public information or discussion about their underpinning policy rationale.

This approach marks an unprecedented new phase in welfare policy in Australia. This Issues Paper will set out the increasing influence of the concept of mutual obligation in Australia and its particular application to Indigenous policy. It canvasses the current trials linking welfare payments to school attendance and outlines what evaluations have indicated about such schemes to date. It then provides an analysis of key concerns about the approach - namely its lack of basis in evidence; the fact that measures introduced under such schemes do not necessarily serve the overall aims; that there are particular human rights implications in such an approach. It also points to the reality that the resources and attention focused on such schemes combined with the ongoing issue of chronic under-resourcing in Indigenous policy generally are unlikely to advance the Government's goal to 'close the gap' for Indigenous communities.

BACKGROUND

Mutual obligation and Australian policy

The strategy of making welfare payments conditional on school attendance has emerged from a social policy environment where mutual obligation has become a primary philosophical approach. Underpinning mutual obligation is the idea that people receiving welfare payments from the government should 'give something back' to society. It implies a shift from an entitlements-based system of government financial support for those raising children or those unable (though not necessarily unwilling) to participate in the paid workforce, to a system where such payments are conditional on a kind of individualised contractual arrangement in which the recipient must fulfil certain behavioural or other obligations imposed by government.

Mutual obligation may well be the Howard Government's major legacy to Australian social policy.¹ Under Howard, conditions were placed on the welfare payments of some recipients - first young people receiving unemployment benefits under Work for the Dole programs, then people on parenting and disability pensions, and then all recipients in certain Indigenous communities under the Northern Territory intervention. When introducing the legislation to support the Northern Territory intervention in August 2007, then Minister Mal Brough stated that the government's aim was to 'extend the principle of mutual obligation beyond participation in the workforce to a range of behaviours that address, either directly or indirectly, the welfare and development of children'.² The proposed outcomes of such trials in Indigenous communities were to 'promote engagement in the real economy, reduce passive welfare and rebuild social norms'.³

Changes to social security and family assistance legislation⁴ passed to support the intervention introduced the concept of 'income management regimes' (IMRs) allowing for the diversion of all or a part of an individual's welfare payment into a managed account so that it is only available for spending on items or services defined as 'priority' needs, including food, clothing, housing, household utilities, basic household items, health, childcare, education and training. This is managed through the issuing of a card that stores the monetary value of the quarantined funds, which can then be used at designated stores. The introduction of IMRs gives governments unprecedented new control over individuals' welfare payments. While the capacity to divert a part of an individual's welfare payments to pay debts, bills or child support payments has existed for some time, previously welfare payments were considered inalienable legal entitlements.

These changes enable Centrelink to place *any* welfare recipient on income management based on certain triggers, which are: where an individual lives in a prescribed community in the Northern Territory, where an individual is subject to the jurisdiction of the Queensland Commission,⁵ where a child protection officer makes a recommendation to Centrelink that an individual's child is at risk of neglect or abuse, and where a person or a person's partner has a child who does not meet school enrolment and attendance requirements. Under the changes to the legislation, unsatisfactory school attendance can now be identified by either

¹ Valerie Braithwaite, Moira Gatens and Deborah Mitchell, 'If mutual obligation is the answer, what is the question?', *Australian Journal of Social Issues*, Volume 37 (3), August 2007, p. 225.

² Second reading speech, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007*, House of Representatives Hansard, 7 August 2007, p. 7.

³ *ibid.*

⁴ *Social Security Administration Act 1991; Social Security (Administration) Act 1999; A New Tax System (Family Assistance) Act 1999 A New Tax System (Family Assistance)(Administration) Act 1999; Income Tax Assessment Act 1936; and Veteran's Entitlements Act 1986.*

⁵ The establishment of the Queensland Commission will be discussed in more detail below.

Centrelink or state education authorities, and result in the principal carer having 50% of their income support and 100% of their family assistance payment quarantined for an initial period of 12 months. The principal carer will also have mandatory deductions from their welfare payments to cover the cost of their children's breakfast and lunch at school. Despite being couched in terms of protection of children, IMRs were applied to people in prescribed communities in the Northern Territory irrespective of whether they had neglected or abused their children, or even if they had direct responsibility for children at all.

The significant and broad-reaching changes in the Northern Territory also included the abolition of the Community Development Employment Projects (CDEP) scheme. Since the 1970s, CDEP had provided funding to Indigenous community-controlled organisations for community development, income support and enterprise assistance in lieu of its participants directly receiving unemployment benefits. Those 7500 CDEP participants in the Northern Territory were to be moved either into 'real jobs' or onto welfare payments – and therefore also being subject to IMRs.

The Labor Government has continued support for many of the Indigenous policy measures of the previous Government, including making welfare payments conditional.⁶ In an address to the National Press Club early in her term as Minister, Jenny Macklin stated that the government would be working with Indigenous Australians in a partnership of 'respect and mutual responsibility' with policy based on a 'thorough, forensic analysis of all the facts and all the evidence.'⁷ Minister Macklin announced that Labor would be supporting three different income management models already planned for the Northern Territory, Cape York and the Kimberleys, 'to give us the evidence we need to find out what works.'⁸ She has described such trials as designed to 'combat poor parenting and community behaviours'.⁹

⁶ Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Building stronger Indigenous communities', *Media Release*, 10 December 2007, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/indigenous_communities_10dec07.htm

⁷ Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Closing the Gap: Building an Indigenous Future' Address to the National Press Club, 27 February 2008, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_the_gap_27feb08.htm

⁸ Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Out of the chaos', speech to the Melbourne Institute Economic and Social Outlook Conference – Melbourne, 27 March 2008, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/out_of_the_chaos_27mar08.htm

⁹ Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Closing the Gap: Building an Indigenous Future' Address to the National Press Club, 27 February 2008,

The IMR scheme has continued to be rolled out across the Northern Territory in line with the former Government's plans, however the legislative provision to link welfare payments to school attendance was not utilised until the first anniversary of the Intervention. Minister Macklin then announced a new three year trial linking school attendance with welfare payments for all parents in six communities in the Northern Territory – Hermannsburg, Katherine, the Katherine town camps, Wallace Rockhole, Wadeye and the Tiwi Islands – to begin at the beginning of the 2009 school year.¹⁰ She also indicated that sites for two other pilot sites in metropolitan locations outside the NT would be announced soon. Despite its trial status, the Minister stated that: 'Encouraging income support recipients to send their children to school through the new measures will go some way to help turn around poor school enrolment and attendance.'¹¹

Such a policy approach has strong echoes of new paternalist thinkers such as influential US academic Lawrence Mead. In Mead's view, certain social and moral norms and values should be required of those receiving welfare payments: 'These measures assume the people concerned need assistance but they also need direction if they are to live constructively.'¹² Anna Yeatman, an Australian proponent of new paternalism, has described 'the obligation to make an active contribution to society' being set against 'passive welfare dependency'.¹³ Supporters of mutual obligation underpinning welfare policy argue that it is a condition of 'active citizenship' and that the unemployed should not be simply entitled to government assistance.¹⁴

Critics of mutual obligation describe it as 'selective paternalism' in the way that it treats some Australians as capable of taking responsibility for their own welfare, and others not. It is argued that implicit in the approach is the assumption that policy makers are more 'rational' and 'moral' than welfare recipients, who are by

http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_the_gap_27feb08.htm

¹⁰ Jenny Macklin, 'NT trials to boost school attendance', Joint Media Release with Marion Scrymgour, Northern Territory Deputy Chief Minister and Minister for Indigenous Policy, 20 June 2008,

http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/boost_school_attendance_20june08.htm

¹¹ Stephanie Peatling, 'Truants' parents to lose welfare', Sydney Morning Herald, 21 June 2008, <http://www.smh.com.au/news/national/truants-parents-to-lose-welfare/2008/06/20/1213770924117.htm>

¹² 'The rise of paternalism' in Lawrence Mead (ed) *The new paternalism: supervisory approaches to poverty*, Brookings Institution Press, Washington, DC, 1997, p. 2.

¹³ Anna Yeatman, 'Mutual obligation: what kind of contract is this?', in Peter Saunders (ed) *Reforming the Australian Welfare State*, Australian Institute of Family Studies, Melbourne, 2000, 156.

¹⁴ Jeremy Moss, 'The Ethics and Politics of Mutual Obligation', *Australian Journal of Social Issues*, November 2000, p. 1.

implication incapable of looking after their own interests or those of their families.¹⁵ Judith Bessant has observed that it shows a lack of understanding about the real causes of disadvantage at best, and at worst, is indicative of a political strategy designed to divert attention away from the ineffectiveness of government policy and programs.¹⁶ Catholic Social Services Australia has recently identified a number of major problems with mutual obligation-based welfare policy in this country – namely that it stigmatises rather than supports recipients of income support; it is punitive and focused on deterring claims rather than assisting recipients to meet their obligations; it frames welfare reliance as if it were a law and order issue with a focus on enforcement; and it in fact *removes* responsibility from individuals, families and communities.¹⁷

Noel Pearson of the Cape York Institute has been a strong proponent of the view that the introduction of welfare payments without a requirement to give anything back in return has led to an undermining of Aboriginal notions of reciprocity and in turn, powerlessness and dysfunction.¹⁸ In 2005, during a visit to Cape York by then Treasurer Peter Costello, Pearson was quoted as saying: 'We need a much more effective way of re-allocating responsibility for that income away from deadbeats to people who are actually taking the responsibility.'¹⁹ At a conference organised by the Cape York Institute in 2007 entitled *Strong Foundations: Rebuilding social norms in Indigenous communities*, Lawrence Mead spoke about the importance of 'self-command', stating that 'the solution to the Aborigines is that they must first be bound before they can be free.'²⁰

Pearson's characterisation of 'passive welfare' has had significant influence on Australian Government rhetoric and policy, both under the leadership of John Howard and now Kevin Rudd. In the Cape York Institute's May 2007 report *From Hand Out to Hand Up*, one of the key recommendations was that obligations be attached to welfare payments through legislative amendments to relevant Commonwealth legislation, including that each adult who receives welfare payments with respect to a child should be required to ensure that the child

¹⁵ Catholic Social Services Australia, 'The Obligation is Mutual: Discussion paper on mutual obligation', October 2007, p. 10. This discussion paper makes the point that recipients of the home owners grant, drought relief and Family Tax Benefit are assumed to be responsible, while those receiving payments such as Newstart Allowance or the single Parenting Payment are increasingly treated as though they are incompetent.

¹⁶ Bessant, J., 'Civil conscription or reciprocal obligation: the ethics of 'work-for-the-dole'', *Australian Journal of Social Issues*, 35, p. 28.

¹⁷ Catholic Social Services Australia, 'The Obligation is Mutual: Discussion paper on mutual obligation', October 2007, pp. 4-5.

¹⁸ Noel Pearson, *Our right to take responsibility*, Noel Pearson and Associates, Cairns, 2000.

¹⁹ Quoted in Michael Harvey, 'Welfare payouts facing the chop', *Herald Sun*, July 22 2005, <http://www.news.com.au/heraldsun/story/0,21985,16008230-662,00.html>

²⁰ Lawrence Mead, conference paper to *Strong Foundations: Rebuilding social norms in Indigenous communities*, June 25 & 26 2007, Cairns, <http://www.cyi.org.au/conference/lawrencemead.aspx>

maintains a 100 percent school attendance record, with exemptions for illness or mobility-related absence.²¹ The report also recommended that if individuals were found to have breached their obligations then all or part of their welfare payments should be redirected to conditional income management.²²

Linking welfare payments to school attendance

The notion of making parents' welfare payments conditional on their children's school attendance is new to Australian social policy. However there are versions of this approach that have been implemented over recent decades in the United States. State governments (who have responsibility for welfare programs in the US) began experimenting with programs linking families' welfare payments to their children's satisfactory school attendance in the 1980s. There were significant welfare changes undertaken by the Clinton Administration in 1996 that aimed to move people from welfare to work, with a particular focus on parents with dependent children. States were given the power to introduce Individual Responsibility Agreements whereby welfare recipients must fulfil certain obligations to receive payments, such as their children regularly attending school.²³ By 1999, 40 states had exercised the discretion open to them under the Federal Personal Responsibility and Work Opportunity Reconciliation Act 1996 to require school attendance as a condition of welfare cash assistance.²⁴

Despite the apparent popularity of this measure, there is a dearth of careful evaluation of the assumptions and effects of such a policy approach. In 2005 Campbell and Wright published the first significant study of evaluations conducted of seven programs in the 1980s and 1990s that linked families' welfare payments to their children's satisfactory school attendance.²⁵ Their study found that of the three programs that instituted sanctions without simultaneously expanding case management services, none was found to improve attendance or other intended outcomes.²⁶ Evaluations found that geographic location was a better predictor of attendance than welfare status, and that illness rather than truancy was the major cause of absence – a finding which undercut the idea that sanctions alone are likely to alter attendance patterns.²⁷ By contrast, the study found that the four programs that combined sanctions with case management, supportive services and positive financial incentives (such as bonuses for good

²¹ Cape York Institute, *From Hand Out to Hand Up*, May 2007, p. 8
http://www.cyi.org.au/WEBSITE%20uploads/Welfare%20Reform%20Attachments/From%20Hand%20Out%20to%20Hand%20Up_Welfare%20Reform%20Report.pdf

²² *ibid.*, p. 9. The Cape York model is discussed in more detail later in this paper.

²³ Jodie Levin-Epstein, 'The IRA: Individual Responsibility Agreements and TANF Family Life Obligations', Centre for Law and Social Policy, August 1998.

²⁴ David Campbell and Joan Wright, 'Rethinking Welfare School-Attendance Policies', *Social Service Review*, March 2005, Volume 79, No. 1, p. 2.

²⁵ *Ibid.*.

²⁶ *Ibid.*, p. 4.

²⁷ *Ibid.*

attendance or graduation) reported limited but positive results.²⁸ Evaluations showed that it was the case management, not the sanction, that was the most critical variable.²⁹ However, even in these cases, the reported gains were usually observed in the percentage of program participants enrolled in school rather than in improved rates of attendance, graduation or long-term economic well-being.³⁰

Overall, the study found that the evidence suggests that programs linking welfare payments to school attendance are based on assumptions of questionable validity, including the fact that they implicitly define the problem as one of parental or student negligence.³¹ Evaluations surveyed found that such programs spend disproportionate resources monitoring attendance rather than confronting the underlying problems associated with poverty.³² A common feature of successful programs to improve school attendance and achievement was that of a creative collaboration, which intentionally builds bridges between public agencies and the community, often by engaging parents or community-based organisations.³³ The benefits of meaningfully involving parents are cited in the experience of many successful school-community partnerships.³⁴

The relevance of such a study to Australia and to Indigenous communities in particular is debatable. However, it does appear that Australian policy is being influenced by new paternalist approaches adapted from the United States, so the evidence that does exist bears reflecting on. The Cape York Institute, for example, in *From Hand Out to Hand Up* refers to the US and other South American examples as precedents for its recommendations for conditional welfare payments in Indigenous communities in Australia.

Developing countries in South America have used measures such as Conditional Cash Transfers (CCTs) in which families receive cash benefits in return for children enrolling in school. These schemes, such as the Oportunidades in Mexico, are designed to reduce poverty, increase school enrolment and decrease the use of child labour in countries without a national welfare system. Such schemes are often reliant upon funding or loans provided by the World

²⁸ Ibid.

²⁹ Ibid, p. 5.

³⁰ Ibid, p. 4.

³¹ Ibid, p. 20.

³² Ibid, p. 21.

³³ Ibid, p. 2.

³⁴ Lousie Adler and Sid Gardner (eds), *The Politics of Linking Schools and Social Services*, Falmer Press, Washington DC, 1994; Richard J Murnane and Frank Levy, *Teaching the New Basic Skills: Principles for Educating Children to Thrive in a Changing Economy*, Free Press, New York, 1996; Gene I Maeroff, *Altered Destinies: Making Life Better for Schoolchildren in Need*, St Martin's, New York, 1998, quoted in David Campbell and Joan Wright, 'Rethinking Welfare School-Attendance Policies', *Social Service Review*, March 2005, Volume 79, No. 1, p. 22.

Bank or International Monetary Fund.³⁵ The effectiveness of such schemes is questionable, with a study of the effect of cash transfers on child learning in Mexico finding no substantial difference between those involved in CCT transfers and those not.³⁶

However, both the US and South American schemes make school attendance a condition for *eligibility* for a payment, rather than determining how a proportion of that payment will be spent once eligibility is determined. These shifts in Australian policy are unprecedented in their attempts to control how welfare recipients spend their money. There are no policies in the US or any other developed country that allow governments to withhold welfare entitlements in a separate account and dictate its specific use.

An Australian example

In Australia, the only independent evaluation that is publicly available of a scheme linking welfare payments to school attendance in Indigenous communities in Australia is that of a voluntary trial in Halls Creek in 2006.³⁷ An earlier trial had involved Centrelink cancelling parents' payments if they did not attend an interview to discuss their children's truancy. Media reports stated that the scheme had boosted attendance from around 50% to 90%,³⁸ although this was never independently evaluated. After complaints about the legality of the arrangement, a further voluntary trial was undertaken in which the participation of parents in job-oriented activities and their children in school was encouraged with intensive assistance.³⁹

The Halls Creek *Engaging Families* trial, operating from February to July 2006, aimed to increase participation in job-oriented activities among parents with children at Halls Creek school; and to encourage those parents to try to make their children attend school regularly, without the threat of sanction. The

³⁵ Emmanuel Skoufias and Vincenzo Di Maro, 'Conditional Cash Transfers, Adult Work Incentives and Poverty', World Bank Policy Research Working Paper, August 2006.

³⁶ Sudhansu Handa and Benjamin Davis, 'The Experience of Conditional Cash Transfers in Latin America and the Caribbean', *Development Policy Review*, Volume 24(5), 2006, p. 528.

³⁷ Department of Employment and Workplace Relations, Halls Creek *Engaging Families* Trial, February–July 2006: Evaluation Report, September 2006, <http://mediacentre.dewr.gov.au/NR/rdonlyres/2B10D46E-592B-4531-B149-A5B91E69A13E/0/KA265HallsCreekEngagingFamiliesReport4October.pdf>

³⁸ 'Welfare tied to school attendance', 1 December, 2005, PM, ABC Radio, <http://www.abc.net.au/pm/content/2005/s1521206.htm>

³⁹ It is interesting to note that at the time the Halls Creek Trial was made voluntary, then Opposition Indigenous Affairs Minister Chris Evans stated that: 'The new approach reflects Labor's view that positive incentives and a holistic, community-driven response will achieve better outcomes. ... We want evidence-based approaches that deliver sustainable results. This way Indigenous parents and families are supported and empowered to take control, instead of feeling singled out by harsh penalties': *Media Statement*, 5 February 2006, <http://www.alp.org.au/media/0206/msfscfscialoos060.php>

evaluation of this trial, conducted for the Department of Employment and Workplace Relations by Professor Robyn Penman, found that the school attendance of the children did not improve over the course of the trial. Three contributing factors were noted:

- *Lack of parental insistence that children get to school in the morning.* All parents that the evaluation team spoke to said they wanted their children to go to school, however many of them felt quite powerless and helpless in enforcing this, particularly those with children over 12 years.
- *Teacher quality.* According to the Halls Creek principal, differences within the school between class attendance rates were at least partly due to variations in teacher quality. One teacher showed a 20% greater attendance rate than some of the other teachers
- *Bullying and teasing.*⁴⁰

It was found that the voluntary method used in the Halls Creek Engaging Families trial worked some of the time when very high levels of support were provided.⁴¹ However the evaluators noted that it

became apparent that the parents of Indigenous children are not the only 'lever' or 'method of engagement' that can be used to get the children to attend school. The evidence pointed to the pivotal role that teachers and the school 'culture' itself plays in a community where children decide their own time use patterns from a very early age.⁴²

The evaluation also found that poor or good attendance didn't necessarily run in families, and that in one family with five school age children, attendance levels ranged from 14 to 88%.⁴³ The evaluation report noted that

Other programs at other schools have also had a significant impact. The key to improvement is to create an education environment in which students want to remain. In other words, the students need to be engaged. The main means for doing this is with high quality teachers and a strong leadership culture within the school.⁴⁴

The evaluation report also noted that the housing situation in Halls Creek is unlikely to provide an environment where families can be 'school ready'.⁴⁵

⁴⁰ Department of Employment and Workplace Relations, Halls Creek *Engaging Families* Trial, February–July 2006: Evaluation Report, September 2006, <http://mediacentre.dewr.gov.au/NR/rdonlyres/2B10D46E-592B-4531-B149-A5B91E69A13E/0/KA265HallsCreekEngagingFamiliesReport4October.pdf>, p. 29.

⁴¹ Ibid, p. 32.

⁴² Ibid, p. 3.

⁴³ Ibid, p. 28.

⁴⁴ Ibid, p. 12.

⁴⁵ Ibid, p. 34.

The conditionality of welfare payments and connection to school attendance has been announced as part of a range of measures to address child abuse and neglect in each of the three trials in the Northern Territory, Queensland and Western Australia.

Northern Territory

Following the publication of the *Little Children Are Sacred* report⁴⁶ in June 2007, the then Minister for Families, Community Services and Indigenous Affairs announced that in response to the 'national emergency confronting the welfare of Aboriginal children in the Northern Territory', the Australian Government would introduce 'immediate, broad ranging measures to stabilise and protect communities in the crisis area'.⁴⁷ Amongst the measures announced were that the Government would be 'enforcing school attendance by linking income support and family assistance payments to school attendance for all people living on Aboriginal land and providing meals for children at school at parents' cost'.⁴⁸

Legislative changes designed to support the Federal Government's intervention in the Northern Territory were passed with unprecedented haste. On 6 August, the legislation underpinning the Commonwealth Government's intervention in the Northern Territory⁴⁹ 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. More than half of the initial allocation (\$320.8 million) for the Northern Territory Emergency Response (NTER) was for departmental expenditure and capital expenses to meet the costs of increased personnel, staff accommodation, infrastructure upgrades and improved IT capacity. \$52.2 million was allocated to income management measures, although it was estimated that it would cost \$88 million to administer the income management system in the 2007-08 year alone.⁵⁰ No funding commitments were made by the former Government beyond 2007-08.

⁴⁶ Pat Anderson and Rex Wild, Ampe Akelyernemane Meke Mekarle: 'Little Children Are Sacred', Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007, http://www.nt.gov.au/dcm/inquiry/saac/pdf/bipacsa_final_report.pdf

⁴⁷ <http://www.atsia.gov.au/Media/media07/210607.aspx>

⁴⁸ *ibid.*

⁴⁹ 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.

⁵⁰ Senate Standing Committee on Legal and Constitutional Affairs, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the*

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. 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. Of particular concern to many Indigenous, human rights and welfare experts was that measures undertaken as part of the NTER were made exempt from the *Racial Discrimination Act 1975* and the Government's characterisation of elements of the legislation as 'special measures' in human rights terms.⁵¹ The quarantining of half of the welfare payments of all people in prescribed areas in the Northern Territory – overwhelmingly Indigenous people - was characterised as a special measure in the legislation.

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 was described in terms of being able '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'.⁵² According to Centrelink, IMRs in the Northern Territory will be in place for a period of twelve months, subject to the Minister's discretion.⁵³ The current practice is that after deductions such as child support payments and government debt repayments, half the regular fortnightly welfare payments, and all of any advances and lump sum payments, will be quarantined. Income management applies to all people in prescribed communities receiving welfare payments, and obligations apply even

Northern Territory National Emergency Response, p. 78.

http://www.aph.gov.au/Senate/Committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/report/report.pdf

⁵¹ 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>, 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, Australian Council of Social Services, 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.

⁵² David Hazlehurst, Group Manager, FACSIA, evidence to the Standing Committee on Legal and Constitutional Affairs, *Committee Hansard*, 10 August 2007, p.. 18.

⁵³ Centrelink, *Income Management for the Northern Territory Response Factsheet*, [http://www.centrelink.gov.au/internet/internet.nsf/filestores/ah1549_0802/\\$file/ah1549_0802en.pdf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/ah1549_0802/$file/ah1549_0802en.pdf)

if people move out of those areas.

Submissions to the Senate Legal and Constitutional Committee inquiry on the Northern Territory National Emergency Response Legislation in August 2007 raised a number of concerns about the proposed approach. The Australian Council of Social Services (ACOSS) characterised the measures under the legislation as 'unfair and discriminatory' in their application to entire Indigenous communities, and stated that it would not change the way people behave at a fundamental level and could in fact contribute to existing problems.⁵⁴ ACOSS also noted that amounts withheld from payments were not to be kept in trust for the recipients and could be withheld for up to 12 months, 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.⁵⁵ The Human Rights and Equal Opportunity Commission pointed out that quarantining measures designed to encourage school attendance may disproportionately impact on families in areas without adequate schools and teachers.⁵⁶ Others noted the lack of clarity around how the approach would deal with the non-nuclear nature of Indigenous families and their high mobility, and the serious questions that arise regarding Centrelink's capacity to deal with the proposed measures.⁵⁷

In evidence to the Senate Inquiry, David Ross, Director of the Central Land Council, pointed out that the government had to be realistic about the effects of introducing a measure such as linking welfare payments to school attendance as a solution to endemic problems:

If tomorrow every Aboriginal kid in the Northern Territory turns up at school... there are not enough classrooms, there are not enough desks, there are not enough chairs and there is nowhere near the amount of teachers that are needed. It is not going to happen. You have all of these problems. So, to start quarantining people's money up front and removing the CDEP – you are going to put this log jam in place. This needs to be done properly.⁵⁸

⁵⁴ Submission to the Senate Standing Committee on Legal and Constitutional Affairs, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, Submission 97.

⁵⁵ *Ibid*, p. 9.

⁵⁶ HREOC, Submission to Senate Standing Committee on Legal and Constitutional Affairs, *Submission 67*, pp 11-12.

⁵⁷ Bill Fogarty and Marisa Paterson, *Constructive Engagement: Impacts, Limitations and Possibilities during a National Emergency Intervention*, consultants to Bawinanga Aboriginal Corporation, August 2007

http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/submissions/sub03.pdf

⁵⁸ David Ross, verbal submission to Senate Standing Committee on Legal and Constitutional Affairs, Hansard, 10 August 2007, p. 51.

The Australian Education Union (AEU) noted that it was unclear who would be responsible for collecting the data, and raised concerns that the perception that teachers were involved in the quarantining of welfare would have serious effects on the relationship between the school and the community.⁵⁹

The abolition of CDEP in the Northern Territory by the former government was also critiqued for its movement of thousands of Indigenous people onto welfare payments in order that they could be subject to income quarantining.⁶⁰ Set up in the 1970s to provide work for unemployed Indigenous people in community-managed activities that assist them to acquire skills which benefit the community, develop business enterprises and/or lead to unsubsidised employment, CDEP had been the target of accusations that it was another form of 'passive welfare'. However proponents of CDEP argued that the scheme has always been based on active work participation, and in many small communities remote from labour markets and commercial opportunities, CDEP participation is the only source of employment and income.⁶¹ The AEU also noted that the abolition of CDEP would have a major effect on the education system, in terms of the loss of funding for many assistant Indigenous teachers, particularly in smaller schools in very remote areas.⁶² The Rudd Government has reversed the decision to abolish CDEP in the Northern Territory. It has committed to restoring the scheme in the 25 prescribed communities and 5 town camp regions where it had been abolished from 1 July 2008, and released *Increasing Indigenous economic opportunity – A discussion paper on the future of the CDEP and Indigenous Employment Programs*.⁶³

The NTER legislation also removed 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 mechanisms because it would take too long and would consequently undermine the timing of the emergency response. The Welfare Rights Network, amongst others, argued that the removal of appeal rights 'adversely discriminates' against people living in prescribed areas in the Northern Territory, and 'sets a very dangerous precedent to strip away this protection for an entire group of Australians based solely on where they live'.⁶⁴

⁵⁹ Australian Education Union, 'Education is the key: An education future for Indigenous communities in the Northern Territory, 9 September 2007, p. 13.

⁶⁰ Jon Altman, 'Neo-Paternalism and the Destruction of CDEP', Centre for Aboriginal Economic Policy Research Topical Issues No. 14/17.

⁶¹ Ibid.

⁶² Australian Education Union, 'Education is the key: An education future for Indigenous communities in the Northern Territory, 9 September 2007, p. 15.

⁶³ http://www.indigenous.gov.au/economic_opp.htm

⁶⁴ Welfare Rights Network, Submission to Standing Committee on Legal and Constitutional Affairs, *Submission 44*, p. 2.

The June 2008 report of the Northern Territory Emergency Response Taskforce reported that at the 11th of June, income management was in place in 52 communities, associated outstations and seven camp regions, affecting 13,309 people, with implementation expected in all communities by late August 2008.⁶⁵ The Taskforce noted that women in many communities have indicated their support for income management, on the grounds that it ensures money is available for food and other necessities for children, reduces the opportunities for humbugging, and provides a basis for developing household budgeting skills.⁶⁶

On the anniversary of the intervention, Minister Macklin released a report which stated that there had been 'early indications from store operators that shopping habits are changing, with community people buying more fresh fruit and vegetables, dairy goods, frozen vegetables and meat'.⁶⁷ This change was widely quoted by government representatives and reported in the media. The basis of this evidence was phone interviews with a sample of twenty community store managers between February and May 2008, with analysis based on the operators' subjective observations of the situation within their communities, and did not include any examination of financial records or direct field reports.⁶⁸

Commentators reported complaints about bureaucratic bungling, and the unfair targeting of functioning families and the elderly.⁶⁹ It was also reported that school attendance remains patchy at best – 'some schools where quarantining has been introduced show a spike in attendance, while others have registered steep falls as families move to Alice Springs in search of work, medical services and to avoid the tougher alcohol bans'.⁷⁰

A source in the Northern Territory informed online media outlet Crikey in June that the cost of income management alone is currently running at \$3000 per person per annum to manage average welfare payments of around \$10 000 per recipient. A progress report leaked to Crikey indicated that over 1700 people had been transitioned off CDEP before the Government reversed the decision, and only 667 of them were then employed in Australian and Northern Territory

⁶⁵ Northern Territory Emergency Response Taskforce, *Final Report to Government*, June 2008, p. 8 http://www.facs.gov.au/nter/docs/reports/nter_taskforce_report.pdf

⁶⁶ *ibid.*, p. 1.

⁶⁷ Australian Government, *Northern Territory Emergency Response: One Year On*, 20 June 2008, http://www.facs.gov.au/nter/docs/reports/nter_review.pdf

⁶⁸ Northern Territory National Emergency Response, 'Stores Post Licensing Monitoring Report – Early Indications of Impact of Income Management in Community Stores – First 20 stores', p. 3 http://www.facsia.gov.au/nter/docs/reports/nter_stores_post_report.pdf

⁶⁹ Russell Skelton, 'The intervention we had to have', *Sydney Morning Herald*, 21 June 2008, <http://www.smh.com.au/news/national/the-intervention-we-had-to-have/2008/06/20/1213770924226.html>

⁷⁰ *ibid.*

government jobs; the majority were on welfare payments.⁷¹ The leaked documents also suggested that the annual wages of federal public servants working on the Intervention would be in excess of \$90 million.

As noted above, on the anniversary of the intervention Minister Macklin announced a new \$17.6 million trial over three years, whereby parents who fail to enrol their children or get them to school regularly would have their income support payments suspended until they fulfil their obligations. Full back-pay is to be provided if parents who lose their entitlements meet their responsibilities within a 13 week period. Under the trial, schools will be responsible for providing attendance figures to Centrelink. The Government's jurisdiction in the Northern Territory enables it to introduce such a scheme unilaterally, whereas trialling the approach in the elsewhere requires State Government involvement, as in those schemes set out below.

Queensland

Noel Pearson has been a strong proponent of conditional welfare, and has had significant impact on policy in this area. In December 2005 his Cape York Institute approached the Australian Government with a proposal to develop a new approach to welfare in collaboration with four Cape York communities.⁷² The Australian Government provided funding of \$3 million to the Institute in the 2006-07 Budget to support the initial research and design of the approach.⁷³

In March 2006, well before the *Little Children are Sacred* report and the Government's response, it was reported that the Federal Government was considering a proposal by Cape York leader Noel Pearson to cut welfare payments to Indigenous parents in remote communities who do not send their children to school. Indigenous Affairs Minister Mal Brough was quoted as saying:

It's about saying, how can we ensure that the kids are well-fed, that the children have good health and that they can have the same sort of opportunities that every other Australian has the right to enjoy? They currently don't have that because sitting down and doing nothing has been an option that has been allowed to prevail.

'If you've grown up in a community where violence is the norm, where substance abuse is the norm and not going to school is the norm, how do you know any different? We need to change that. It's the welfare payment, when there is no obligation upon the community or the individual, and then being misused that is actually destroying the lives of young Indigenous kids.'⁷⁴

⁷¹ Sophie Black, 'NT intervention leak: a year on, it's a shambles', *Crikey*, 18 June 2008, <http://www.crikey.com.au/nt-intervention/20080618-NT-intervention-documents.html>

⁷² FAHCSIA, Welfare Payment Reform: Cape York Trials, http://www.facsia.gov.au/internet/facsinternet.nsf/family/welfare_cape_york.htm

⁷³ *ibid.*

⁷⁴ 'Govt mulls linking welfare to schools attendance', ABC News online, 10 March 2006, <http://www.abc.net.au/news/stories/2006/03/10/1588755.htm>

On 18 September 2006 it was reported that the Federal Government was considering quarantining 100 per cent of the welfare payments of Aboriginal parents who do not send their children to school.

In May 2007, the Cape York Institute published *From Hand Out to Hand Up*, which made a series of recommendations designed to 'rebuild social norms in the Cape York Peninsula' using the 'potentially powerful mechanism' of 'linking welfare payments to community members acting in the best interests of children in the community'.⁷⁵ The Institute recommended that a State statutory authority consisting of a senior legal officer and local elders be empowered to enforce four obligations, attached to welfare payments through legislative amendments to relevant Commonwealth legislation:

- *Each adult who receives welfare payments with respect to a child should be required to ensure that the child maintains a 100 percent school attendance record.* The obligation is breached when the child records three unexplained absences per school year (including temporary absences). There are exemptions for illness or mobility-related absence.
- *All adults must not cause or allow children to be neglected or abused.* The obligation is breached by the parents or legal guardians of a child who are the subject of an investigation by the Department of Child Safety. Additionally, any other adult(s) named in an investigation or report can also be found to have breached their obligation.
- *All adults must not commit drug, alcohol, gambling or family violence offences.* The obligation is breached where an individual is convicted by a court of breaching a relevant community by-law or State law. The obligation can also be invoked where an individual is charged and a referral is made by a Magistrate as part of a bail condition.
- *All adults must abide by conditions related to their tenancy in public housing.* The obligation is breached when any signatory to an agreement: uses the premises for illegal purposes; causes or permits a nuisance; interferes with the peace, comfort or privacy of neighbours; damages the premises; or fails to pay rent.⁷⁶

The Institute recommended that a new statutory authority – the Family Responsibilities Commission (FRC) – be established and empowered to make determinations as to whether a breach of the obligations has occurred and determine the appropriate sanctions for a breach. The options of the FRC if it determines that an individual has breached his or her obligations are to:

⁷⁵ Cape York Institute, *From Hand Out to Hand Up*, May 2007, p. 8, <http://www.cyi.org.au/WEBSITE%20uploads/Welfare%20Reform%20Attachments/From%20Hand%20Out%20to%20Hand%20Up%20Welfare%20Reform%20Report.pdf>

⁷⁶ *ibid.*, p. 9.

- Issue a warning to the individual.
- Direct individuals to attend support services on either a voluntary or compulsory basis.
- Determine that all or part of the welfare payments to which an individual is entitled should be redirected to conditional income management (which would result in the individual losing discretion over the expenditure of their welfare payments for a defined period).
- Determine that all or part of the welfare payments to which an individual is entitled should be redirected to another adult who is caring for the individual's children.⁷⁷

As noted above, part of the Northern Territory response legislation included provision for a Queensland Commission to make welfare payments conditional. Individuals in Cape York will be put on IMRs through the Commission rather than under the other provisions in social security legislation.

In December 2007, the new Rudd Government together with the Queensland Government committed to support a four-year trial of the Institute's proposed approach in four communities in Cape York - Hope Vale, Coen, Mossman Gorge and Aurukun.⁷⁸ The aims of the trial were stated to be the promotion of engagement in the real economy, the reduction of passive welfare and the rebuilding of social norms, particularly as they affect the wellbeing of children. Federal Government initiatives announced to accompany the trial included the rolling out of a literacy program, changes to ABSTUDY to allow eligible students to study at boarding school, the creation of 40 public service jobs by converting some CDEP positions, funding for case managers to support people referred to the Commission and to purchase specialist services for families, as well as for income management services.⁷⁹

On 22 April 2008, Minister Macklin announced that the Australian Government was also introducing measures extending the income management regime to CDEP participants in Cape York who 'aren't meeting their parental and community responsibilities'.⁸⁰ The trial began on 1 July.⁸¹ Minister Macklin was quoted as saying that it was the start of a long-term approach: 'It's going to go for

⁷⁷ Ibid, pp. 9-10.

⁷⁸ FAHCSIA, Welfare Payment Reform: Cape York Trials, http://www.fahcsia.gov.au/internet/fahcsia.nsf/family/welfare_cape_york.htm

⁷⁹ Ibid.

⁸⁰ Jenny Macklin, 'Cape York Welfare Reform Trial', Media release, 22 April 2008, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/cape_york_welfare_22apr08.htm

⁸¹ Jenny Macklin, Cape York Welfare Reform Trial to begin, Media release, 1 July 2008, http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/cape_york_welfare_1jul08.htm

four years. There is a lot of money being invested,' she said. 'It's all about the wellbeing of children. We want to make sure that we learn from this trial and anything that comes out of it, of course, we will be looking to expand elsewhere if it works.'⁸²

Western Australia

In her address to the National Press Club on 27 February 2008, Minister Jenny Macklin made reference to the findings of the Coroner's report into the deaths of 22 Kimberley men and women.⁸³ In response to those findings of high rates of child abuse and neglect and community dysfunction, she announced that the Federal Government would partner with the Western Australian Government so that child protection officers would be able to request Centrelink to require that welfare recipients could be subject to income management.⁸⁴ The changes to social security and family assistance legislation that accompanied the Northern Territory intervention enabled the application of the unsatisfactory school attendance or child protection provisions to welfare recipients in Western Australia.

This trial in the Kimberleys will be the first time these powers have been used beyond the application of IMRs to whole communities in the Northern Territory. It appears that the IMRs in the Kimberleys will be similar to those implemented in the Northern Territory, although the proportion of the payment to be diverted is yet to be publicly announced.

On 28 March 2008, Minister Macklin announced that for the first time, non-Indigenous people in Western Australia would also be subject to a scheme where child protection officers could recommend to Centrelink that welfare payments be managed on behalf of parents suspected of negligence or abuse.⁸⁵ The Government has indicated that it plans to extend such measures nationally as part of its National Child Protection Framework.

New South Wales

In March 2008, it was reported that the Federal Government would undertake a six month trial in Walgett, a predominantly Indigenous town in NSW, monitoring school attendance data to ensure education and family tax benefits were only

⁸² 'Queensland puts conditions on Indigenous welfare', ABC Online, 1 July 2008, <http://www.abc.net.au/news/stories/2008/07/01/2291418.htm>

⁸³ http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_the_gap_27feb08.htm

⁸⁴ *ibid.*

⁸⁵ Quoted in Stephanie Peatling, Joel Gibson and Tim Dick, 'Black scheme for whites', Sydney Morning Herald, 28 February 2008, <http://www.smh.com.au/news/national/black-scheme-for-whites-in-wa/2008/02/27/1203788443638.html>

being paid for children attending school.⁸⁶ Supported by the State Government, there was an indication that the trial would be extended throughout north-western NSW if considered successful.⁸⁷

ISSUES

The problems of child abuse and neglect and poorer educational outcomes for Indigenous children are well-documented and should undeniably be a matter of great urgency and sincerity for Australian governments. Despite many Indigenous people and others working in the area raising these issues for many years, it has only been relatively recently that the issue has been a significant focus of national government policy. It is crucial then that any new measures introduced and significant resources assigned are designed to be effective and sustainable in the long term. Unfortunately the Federal Government's current approach raises some key concerns.

Lack of evidence base

As set out above, legislative changes accompanying the Northern Territory intervention have given Australian governments significantly increased control over how welfare recipients can spend their payments. Making the welfare payments of Indigenous parents conditional on their children's satisfactory school attendance marks a new phase in the implementation of mutual obligation in Australian social policy. There is no precedent in Australia or internationally for an approach that allows governments to withhold certain people's welfare entitlements in a separate account and dictate its specific use. It follows that there is no research that supports this approach as an effective measure to make parents more responsible, or to improve children's lives in the long term. This appears to sit in stark contrast to Jenny Macklin's assertion that her Government's Indigenous policy-making would be based on a 'thorough, forensic analysis of all the facts and all the evidence'.

Measures such as making parents' welfare payments conditional on their children's school attendance have a seductive simplicity. The aims of making parents spend their money on food, clothing and other essential items for their families and increasing children's school attendance are laudable. Yet the new paternalism of mutual obligation subtly shifts responsibility for problems to Indigenous people themselves, and proposes that the solution is for governments to force people to behave more 'constructively'. Many people – Indigenous and non-Indigenous – have become weary of being told that the causes of disadvantage and dysfunction in Indigenous communities are complex and long-standing and require responses in the same vein. The coercion and paternalism of past policy eras has a revived appeal for some people who despair at the

⁸⁶ Reported by Joel Gibson, 'Town ties welfare pay to truancy', Sydney Morning Herald, 7 March 2008.

⁸⁷ Ibid.

levels of violence and hopelessness in some Indigenous communities. And in the short term in the Northern Territory, there are some indications that making welfare payments conditional may lead to increased purchasing of healthy food and increased school attendance in some areas.

However, there has been scant public information or debate regarding the policy assumptions – and indeed psychological assumptions – behind such an approach. The legislation introducing IMRs was passed with virtually no capacity for public consultation or scrutiny, despite its broad-ranging impact. The Government has regularly characterised these schemes as trials, and have indicated that in the case of the Northern Territory at least, there will be a comprehensive evaluation after 12 months. Yet there is little indication of how the effectiveness of these trials will be measured, beyond the numbers of people subject to IMRs and about the kind of food bought. There are significant bureaucratic and practical hurdles associated with accurately recording rates of school attendance and money spent on food and other essentials. Even if these are overcome, and there is viable data that suggests there has been an increase in school attendance and money spent appropriately, is this necessarily indicative of greater parental responsibility or child well-being? Will there be consideration of the long-term viability of such measures? At what stage will the strategy have been deemed to be successful (or not), and IMRs cease to be applied to various individuals and communities? What if there have been negative impacts of such measures? The Government's premature lauding of the approach as a success elides these more complex but crucial questions.

Whilst being critical of the former Federal Government's failure to apologise to the stolen generations and antagonism to Indigenous rights, the Rudd Government has otherwise adopted much of its predecessor's policy approach in Indigenous affairs. It has appeared to uncritically adopt the assumptions of mutual obligation, even though the approach does not appear to have been effective for addressing disadvantage and discrimination experienced by Indigenous communities in the past. For example, an evaluation report commissioned by the previous Federal Government indicated that in 80 Shared Responsibility Agreements (SRAs) it entered with Indigenous communities, it was governments rather than communities that were not meeting their commitments.⁸⁸ And while SRAs promised much in terms of heralding a new relationship between governments and Indigenous communities, they manifested as little more than one off contractual arrangements for Indigenous communities to access extra government funding – sometimes for what were arguably citizenship entitlements in exchange for disproportionate and unreasonable commitments to behavioural change.

⁸⁸ Morgan Disney & Associates, 'Implementation Review: *Don't lets lose another good idea*', Report for the Department of Families, Community Services and Indigenous Affairs, July 2007.
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The Government's support for the welfare/school attendance policy nexus seems to be inspired to a great degree by the views of Noel Pearson. Pearson's model of conditional welfare seems largely based on the ideology of new paternalism and his personal experience as a Cape York leader. Whatever the merits or genuineness of Pearson's beliefs, the rigour and viability of his pilot model being rolled out in a blanket approach across the country deserves scrutiny. The international precedents cited by the Cape York Institute's *From Hand Out to Hand Up* are based on significantly different models that relate to eligibility to welfare payments rather than controlling its expenditure, or on attempting to modify behaviour through positive incentives rather than through negative reinforcement. In any case, the evidence regarding the efficacy of such measures is equivocal at best.

Income Management

Indigenous advocates and others with significant experience in Indigenous affairs have criticised the approach, both in terms of its focus and its resource priorities. Olga Havnen, Head of Indigenous Strategy Development at the Australian Red Cross and Co-ordinator of the Combined Aboriginal Organisations of the Northern Territory has stated that:

Regrettably there is little evidence those involved in driving the 'reform agenda' of the Emergency Intervention had any real commitment to delivering positive, sustainable change, much less any interest in an evidence-based approach to the solutions that would fundamentally make a difference to the lives of Aboriginal people.

If Government had been inclined to engage with community organisations we could have advised them of sensible alternatives – we could and would have pointed out to them that addressing social problems such as alcohol abuse, gambling, child neglect, can not and will not be solved by 'top down', punitive approaches, at extraordinary cost – what will the expenditure of \$88 million for administration and 300 new Centrelink jobs will actually achieve and who will be held accountable?

Instead, these valuable and necessary resources could have gone into expanding the Centrepay regime, financial literacy and budgeting programs, family and children's services, programs to really combat alcohol abuse and more importantly, programs to re-engage our young men – to provide them with a future not only for themselves, but foster pride and responsibility as sons, brothers, uncles, fathers... \$88 million would have gone such a long way indeed.⁸⁹

In terms of assisting Indigenous people to manage their income effectively, there is evidence in a number of cases that alternative programs have been trialled in Aboriginal communities, often with substantial success.⁹⁰ For example, Tangentyere Council near Alice Springs has supported over 800 Aboriginal

⁸⁹ Olga Havnen, 'The Northern Territory Emergency Intervention', Dame Roma Mitchell Memorial Address, 13 March 2008, http://www.liv.asn.au/media/speeches/20080313_dameroma.html

⁹⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission, 2008.

people to use voluntarily use a system known as Centrepay to pay bills and rent, in which a part of people's welfare payment comes in the form of food vouchers and allows participants to exercise choice and control over their money.⁹¹

A report prepared for the Bawinanga Aboriginal Corporation (BAC) regarding the changes to the income management scheme noted that the BAC has already been offering successful financial services such as savings schemes, bill payment arrangements, organizing finance and loans, and advice. However, they note that the fundamental difference between their services and those introduced by the Government is their voluntary nature.⁹² They also note that Indigenous people face additional challenges in managing their income due to the complex nature of family structures and living arrangements, and that it is unclear how the Australian government's plan will deal with the high mobility and non-nuclear nature of Indigenous families.⁹³

As noted earlier, the Government and some media commentators have focused on indications that there are already positive outcomes from the introduction of IMRs – namely an increase in spending on healthy food and other essentials, and that women are now less subject to 'humbugging' for their welfare payments. However, other commentators have suggested that such results are 'not due to the enforced income control, but because services – such as banking and Centrelink, that other Australians take for granted – asked for over many years, are being made available'.⁹⁴

Fundamentally, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, has noted that the irony of the income management system is that it fosters a passive system of policy development and service delivery while at the same time criticising Indigenous people for being passive recipients of government services. Implementation of a system that divests Aboriginal people of any power to make choices to govern their own financial affairs is severely out of step with principles of both self-determination, and self-responsibility.⁹⁵ Other commentators have noted that when you take

⁹¹ 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, p. 16.

⁹² PIA Consultants, *Constructive Engagement: Impacts, Limitations and Possibilities during a National Emergency Intervention*, Report prepared for the Bawinanga Aboriginal Corporation, August 2007, p. 23,

http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/2004-07/nt_emergency/submissions/sub03.pdf

⁹³ Ibid.

⁹⁴ Jane Vadiveloo, 'With respect, Aborigines can find solutions', *The Age*, 30 June 2008, <http://www.theage.com.au/opinion/with-respect-aborigines-can-find-solutions-20080629-2ytm.html>

⁹⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission, 2008, p. 278.

responsibility away from people, remove choice and leave them with no control over their lives, you in fact 'feed the foundation of alcoholism and abuse'.⁹⁶

Dr Jon Altman of the Centre for Aboriginal Economic Policy Research at ANU has predicted that instituting quarantining regimes will be expensive and ineffective according to international evidence.⁹⁷ He notes that a paternalistic state project of assimilation has been tried before, some 40 years ago, and failed, and is now being tried again under a different paradigm of neoliberalism and will fail again.⁹⁸

School attendance

The research shows that there is a range of reasons for low school attendance. Lack of parental engagement or support for education undoubtedly plays a significant role in truancy. However it is clearly not sufficient to focus primarily on attempting to force parents to modify their behaviour. The Western Australian Aboriginal Child Health Survey noted that contemporary media portrayals of school attendance, and particularly absenteeism, present stereotypes largely based on blame – when children do not attend, and particularly when they are truant, the blame for this is directed at the parent, at children and at the school. Neither existing data nor the Survey's own research supported the view that school attendance is merely a matter of someone's responsibility.⁹⁹ Rather, low school attendance may represent a disengagement that arises from frustration and a lowering of self-esteem as a result of poor performance, or a lack of identification with educational values and expectations, or perhaps a failure of the school ethos to respect and validate cultural and self identity and to supply experiences that are relevant to life's circumstances.¹⁰⁰ Like many areas of Indigenous policy, there is a lack of consistent methodology for data collection in relation to low school attendance.¹⁰¹ In linking the payments to welfare recipients to their children's school attendance, the legislation leaves much room for discretion regarding how inadequate school attendance is measured, and how it will be monitored and reported.

⁹⁶ Jane Vadeloo, 'With respect, Aborigines can find solutions', *The Age*, 30 June 2008, <http://www.theage.com.au/opinion/with-respect-aborigines-can-find-solutions-20080629-2ytm.html>

⁹⁷ Jon Altman, 'The Howard Government's Northern Territory Intervention: Are Neo-Paternalism and Indigenous Development Compatible?', Centre for Aboriginal Economic Policy Research, Topical Issue No. 16/2007, p. 10.

⁹⁸ *Ibid*, p. 16.

⁹⁹ SR Zubrick, SR Silburn, JA De Maio, C Shepherd, JA Griffin, RB Dalby, FG Mitrou, DM Lawrence, C Hayward, G Pearson, H Milroy, J Milroy, A Cox, *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2006, p. 115.

¹⁰⁰ *Ibid*, 116.

¹⁰¹ J Gray and Q Beresford, 'Aboriginal non-attendance at school: Revisiting the debate', *Australian Educational Researcher* 29, 2002, pp. 27-42.

The impact of a legacy of exclusion from services that other Australians take for granted cannot be underestimated in relation to socio-economic disadvantage. Existing evidence suggests that the reasons for poor school attendance by Aboriginal children include low socio-economic status, low parental achievement domestic violence, child abuse and drug and alcohol abuse.¹⁰² The Western Australian Aboriginal Child Health Survey found that factors associated with poor attendance at school included a lower level of education of carers, trouble getting enough sleep, emotional or behavioural issues, speaking Aboriginal English or an Aboriginal language at home, having a primary carer who had been arrested or charged with an offence, and having a parent separated from their natural family.¹⁰³

There is strong evidence that poor health has a powerful impact on whether or not Indigenous children attend school and on their ability to learn and participate in school activities.¹⁰⁴ The National Aboriginal Community Controlled Health Organisation's (NACCHO) Ear Trial and School Attendance Project found that during the trial period, children with chronic suppurative otitis media (CSOM) or 'runny ears' attended school only 69% of the days available compared with 88% of other children in the same schools.¹⁰⁵ A study in the Northern Territory showed that Indigenous children who had low attendance rates were more likely than those with high attendance rates to have ear disease and associated hearing loss.¹⁰⁶ The evidence also suggests that poor nutrition is another significant health issue affecting many Indigenous school students, and that children with poor diets are often lethargic or disruptive in the classroom and are more likely to be absent from school.¹⁰⁷ One significant legacy of institutional racism for

¹⁰² See for example CJ Bourke, K Rigby, J Burden, *Better practice in school attendance: improving the school attendance of Indigenous students*, Commonwealth Department of Education, Training and Youth Affairs, 2000; RG Schwab, *Why only one in three? The complex reasons for low Indigenous school retention*, Centre for Aboriginal Economic Policy Research Monograph No 16/1999; House of Representatives Standing Committee on Employment, Education and Training, *Truancy and Exclusion from school*, Commonwealth Government, 1996.

¹⁰³ SR Zubrick, SR Silburn, JA De Maio, C Shepherd, JA Griffin, RB Dalby, FG Mitrou, DM Lawrence, C Hayward, G Pearson, H Milroy, J Milroy, A Cox, *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2006.

¹⁰⁴ MCEETYA (Ministerial Council on Education, Employment, Training and Youth Affairs) Taskforce on Indigenous Education 2001, *Discussion Paper: Solid Foundations: Health and Education Partnership for Indigenous Children aged 0 to 8 Years*, MCEETYA, Carlton.

¹⁰⁵ NACCHO 2003, *NACCHO Ear Trial and School Attendance Project*, NACCHO, Canberra

¹⁰⁶ Collins, B 1999, *Learning Lessons: An Independent Review of Indigenous Education in the Northern Territory*, Northern Territory Department of Education, Darwin.

¹⁰⁷ Senate Employment, Workplace Relations, Small Business and Education Committee (SEWRSBEC) 2000, *Katu Kalpa — Report on the Inquiry into the effectiveness of education and training programs for Indigenous Australians*, the Parliament of the Commonwealth of Australia, viewed 17 February 2005,

http://www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/1999-

Indigenous people is that of intergenerational poverty, which is known to affect the participation in and successful experience of education.¹⁰⁸

There is evidence regarding effective strategies in increasing school attendance for Indigenous students. The general principles that underpinned the most successful strategies included home visits and community liaison, emphasis on personal contact with consistent follow up where absence occurred, personal planning and goal-setting.¹⁰⁹ There are significant existing resources on case studies of what has been shown to work in improving attendance and outcomes for Indigenous students.¹¹⁰

The Federal Government's own commissioned evaluation report on the Halls Creek trial noted that programs at other schools have had a significant positive impact on attendance, with the key to improvement being to create an education environment that students want to be part of. The main means for doing this was stated to be with high quality teachers and a strong leadership culture within the school.

These findings support the work of Chris Sarra in Queensland, whose research and experience highlights the crucial role of teachers and the school culture in assisting Indigenous children to reach their educational potential.¹¹¹ As school principal, Sarra worked closely with the community to build a strong relationship and a shared set of community values and expectations for children attending the school. In a recent speech to the National Press Club, Sarra set out five fundamental strategies that should underpin attempts to improve the educational outcomes of Indigenous students: acknowledging, embracing and developing a positive sense of Aboriginal identity in schools; acknowledging and embracing Aboriginal leadership in schools and school communities; 'high expectations' leadership to ensure 'high expectations' classrooms, with 'high expectations' teacher / student relationships; innovative and dynamic school models in

[02/indiged/report/contents.htm](http://www.whatworks.edu.au/02/indiged/report/contents.htm)

¹⁰⁸ For example, see Boyd Hunter, 'Three nations, not one: indigenous and other Australian poverty', CAEPR Working Paper No. 1/1999, <http://www.anu.edu.au/caepr/Publications/WP/CAEPRWP01.pdf>

¹⁰⁹ Strategic Results Project National Coordination and Evaluation Team, *What has worked (and will again)*, Australian Curriculum Studies Association and National Curriculum Services, 2000; D McRae, G Ainsworth, J Cumming, P Hughes, T Mackay, K Price, M Rowland, J Warhurst, D Woods, V Zbar, *What works? Explorations in improving outcomes for Indigenous Students*, Australian Curriculum Studies Association and National Curriculum Services, 2000, quoted in SR Zubrick, SR Silburn, JA De Maio, C Shepherd, JA Griffin, RB Dalby, FG Mitrou, DM Lawrence, C Hayward, G Pearson, H Milroy, J Milroy, A Cox, *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2006, p. 142.

¹¹⁰ See <http://www.whatworks.edu.au/>

¹¹¹ Chris Sarra, *Young, Black and Deadly: Strategies for improving outcomes for Indigenous students*, Australian College of Educators Quality Teaching Series, Paper No. 5, 2003,

complex social and cultural contexts; and innovative and dynamic school staffing models, especially for community schools.¹¹²

It is not just attendance that should be the primary focus of government policy, but also the quality and content of the education. The Western Australian Aboriginal Child Health Survey showed that while there is a clear relationship between attendance at school and academic performance, the disparity in attendance rates between Aboriginal and non-Aboriginal children accounts for only a proportion of the gap in levels of academic performance.¹¹³ Improving the attendance rates should of course be a priority, but it is only part of the story.

In fact, research indicates that students are more likely to attend school when they perceive school as a positive, caring place where they and their parents feel valued and welcome; they have a positive and supportive relationship with their teachers; they find schooling interesting and relevant – such as the curriculum being contextually and culturally relevant and aligned with Indigenous learning styles; they see the connection between school and post-school education and employment opportunities that align with their individual aspirations; teachers have experience teaching in a cross-cultural and bilingual situation; teachers place reasonable demands on students and do not cap student potential or motivation by setting a low performance expectation; and Indigenous parents and communities are involved with the school and the teaching process.¹¹⁴ Rather than taking a punitive approach, evidence suggests that it is better to encourage and involve parents – many of whom may not have had a positive experience with school themselves.

¹¹² Chris Sarra, 'The Way Forward: Indigenous children of the education revolution', Address to the National Press Club, 26 May 2008,

http://www.abc.net.au/news/opinion/speeches/files/20080526_SARRA.pdf

¹¹³ SR Zubrick, SR Silburn, JA De Maio, C Shepherd, JA Griffin, RB Dalby, FG Mitrou, DM Lawrence, C Hayward, G Pearson, H Milroy, J Milroy, A Cox, *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2006, p. 164.

¹¹⁴ SR Zubrick, SR Silburn, JA De Maio, C Shepherd, JA Griffin, RB Dalby, FG Mitrou, DM Lawrence, C Hayward, G Pearson, H Milroy, J Milroy, A Cox, *The Western Australian Aboriginal Child Health Survey: Improving the Educational Experiences of Aboriginal Children and Young People*, Curtin University of Technology and Telethon Institute for Child Health Research, 2006, p. 124 and CJ Bourke, K Rigby, J Burden, *Better practice in school attendance: improving the school attendance of Indigenous students*, Commonwealth Department of Education, Training and Youth Affairs, 2000, pp. 16-17, summarised in *Our Children, Our Future: Achieving Improved Primary and Secondary Education Outcomes for Indigenous Students*, A report published in collaboration by the AMP Foundation, Effective Philanthropy and Social Ventures Australia, May 2008, http://www.socialventures.com.au/files/pdf/Our%20Children,%20Our%20Future_final%20report.pdf

It is also important to note that the figures suggest that there are potentially 7000 Aboriginal children in the Northern Territory who are missing out on schooling at least in part because of a lack of basic infrastructure.¹¹⁵ The Combined Aboriginal Organisations of the NT report that 94% of Indigenous communities in NT have no preschool; 56% have no secondary school; and 27% have a local primary school that is more than 50kms away.¹¹⁶ Lack of adequate resources remains a critical factor,¹¹⁷ and is discussed in more detail below.

Measures not addressing aims

A key indicator of whether a policy strategy is well-designed and therefore more likely to be effective, is whether its aims are connected to its measures in a realistic and sustainable way. The aim of income quarantining is regularly stated to be to promote socially responsible behaviour, particularly in relation to the care and education of children. However, the reality of the measures it proposes to achieve this is that they take responsibility away from Indigenous people for managing their own finances and decision-making in the interest of families and places it back in the hands of administrators such as government officials and store managers. And it does so in the absence of sufficient resources and strategies to provide information or support to people to enable them to overcome drug or alcohol addiction and to become better parents. In the case of the blanket application in the Northern Territory, the approach actually punishes people who may have been spending their welfare payments in the interests of children.

Making Indigenous people's welfare payments conditional on factors such as their children's school attendance is based on the questionable proposition that passive welfare has led to learned helplessness and dependence, whereas active welfare and mutual obligation will create self-reliant, self-governing communities and good citizens.¹¹⁸ Presumably the experience of navigating complex bureaucratic systems is to be the main means of achieving this. The approach attempts to modify behaviour through negative reinforcement on a group scale, which is arguably bad psychology as well as bad policy.

As well as diverting focus from what is known about the contributing factors to poor school attendance – poor health, overcrowded housing, lack of employment

¹¹⁵ Australian Education Union, *Education is the key: An education future for Indigenous communities in the Northern Territory*, 2007, p. 4.

¹¹⁶ *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>

¹¹⁷ Australian Education Union, *Education is the key: An education future for Indigenous communities in the Northern Territory*, 2007, p. 6.

¹¹⁸ Ruth McCausland and Marc Levy, 'Indigenous Policy and Mutual Obligation: Shared or Shifting Responsibility Agreements?', *Australian Journal of Social Issues*, Vol.41 No.3 Spring 2006, p. 281.

prospects, etc – at a fundamental level this approach does not actually encourage responsibility in parents. It is based on the notion that welfare recipients should be blamed for their predicament and punitive measures taken to force them to behave in particular ways, rather than supported to manage their obligations and become more functional. In reality, it removes responsibility from individuals, families and communities. In the way it may constrain people's capacity to save and manage their own affairs, as well as exacerbating stress in families and driving people away from services that could be assisting them for fear of sanctions, it may in fact not meet the fundamental test of public policy: first, do no harm.

Human rights concerns

There are significant human rights concerns raised by making the welfare payments of Indigenous people conditional on factors such as their child's satisfactory school attendance. At the outset, targeting Indigenous people in particular – and in the case of the Northern Territory, suspending the application of the Racial Discrimination Act – in such a punitive way without seeking to adequately address the underlying issues of disadvantage raises important questions regarding systemic discrimination.

The quarantining of half of the welfare payments of all Indigenous people in prescribed areas in the Northern Territory was characterised as a 'special measure' under the intervention legislation. However, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, has argued that to be characterised as such, such restrictive measures must be able to be argued to be beneficial to those they are impacting on, and to have been developed through consultation and have community consent, and that this has not been the case in regards to the NT intervention measures.¹¹⁹ 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 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 removed 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 mechanisms because it would take too long and would consequently undermine the timing of the emergency response. However, Commissioner Calma has found that legislative changes made to support the NT intervention

¹¹⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission, 2008, p. 265.

denies people the right to seek a review by the Social Security Review Tribunal of decisions that relate to income management are discriminatory and breaches Australia's obligations under the International Convention on the Elimination of all forms of Racial Discrimination.¹²⁰

The income management measures also raise significant concerns with respect to the right to social security, as set out in Article 9 of the International Covenant on Economic, Social and Cultural Rights. Specifically, international law sets out that the right to social security is to be enjoyed without discrimination, including on the basis of race; that benefits should be provided in cash or kind – and that the form that benefits take should be guided by the principle of human dignity and the right to non-discrimination; that beneficiaries of social security schemes must be able to participate in the administration of the system and it must provide for a right of appeal, amongst other principles.¹²¹

The Aboriginal and Torres Strait Islander Social Justice Commissioner has noted that controlling how a person spends their money is a drastic interference into the way a person manages his or her life and family, and human rights require a proportionate response to a problem. In his view, this means that governments are obliged to consider less intrusive or voluntary option as a first response before moving to options as broad-reaching as compulsory income management.¹²² The Commissioner has also noted that the income management scheme as set forth in the NT intervention legislation presupposes that children in the Northern Territory could access ordinary educational opportunities if they so wished, whereas research into the socio-economic conditions of many Aboriginal communities strongly indicates that this is not the case.¹²³

In linking welfare payments to school attendance, 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.

Chronic under-resourcing

Beyond the debate regarding the merits of schemes linking welfare payments to school attendance as a means to make parents more responsible and improve opportunities for children, lies the ongoing issue of under-resourcing by

¹²⁰ Ibid.

¹²¹ Ibid, pp. 275-276.

¹²² Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2007*, Human Rights and Equal Opportunity Commission, 2008, p. 278.

¹²³ Ibid.

governments in addressing Indigenous disadvantage. The simplistic, short-term and resource-intensive approach of making welfare payments conditional draws attention and funding away from longer term strategies that seek to address endemic problems such as poor health, housing and education that contribute to Indigenous disadvantage.

Professor Jon Altman has estimated that more than \$4 billion over five years would be needed to address Indigenous disadvantage in the Northern Territory alone.¹²⁴ In relation to education, he notes that if an extra 2000 students currently not enrolled in schools in the Northern Territory did start attending, an extra recurrent allocation of \$79 million per annum would be needed as well as a one-off allocation of \$295 million for extra school infrastructure and teacher housing - coming to an extra \$690 million over five years for remote communities only.¹²⁵ Evidence suggests that ongoing, long-term funding for Indigenous programs is an important means of addressing entrenched disadvantage. The 2008-2009 budget contained a number of one-off grants, for example, \$400 000 for early childhood programs.

Despite the Government's stated commitment to 'close the gap' between Indigenous and non-Indigenous Australians, their funding commitment and policy priorities suggest otherwise. The 2008-09 Budget provides additional funding of \$718.7 million for Indigenous issues over five years, some of which had already been announced in the 2007-08 February Additional Estimates. Despite the fact that only 11 percent of the Indigenous population live in the Northern Territory, the majority of the funding allocated in the budget (\$426.6 million over five years) is provided for activities in the Northern Territory, including \$320.9 million in 2008-09 for activities that are part of the Northern Territory Emergency Response.¹²⁶ In total, new and re-directed funding for Indigenous measures following the 2007 election and the 2008-09 Budget is \$1.2 billion over five years. Just over half of this (\$637.4 million) is specifically for the NTER.¹²⁷

Funding for income management in the 2008-09 Budget is \$63.7 million, for the introduction of an income management debit card, licensing arrangements for community stores to ensure they are providing adequate food supply and improved services, and financial education and training to help families manage their finances.¹²⁸ The bureaucratic involvement and associated costs of income management, not to mention monitoring and reporting of school attendance,

¹²⁴ Jon Altman, 'Stabilise, normalise and exit = \$4 billion', Centre for Aboriginal Economic Policy Research, Topical Issue No. 8/2007, p. 2

http://www.anu.edu.au/caepr/Publications/topical/Altman_Costing.pdf

¹²⁵ *ibid.*

¹²⁶ Lesley Russell, *Commonwealth Indigenous Budget Bulletin*, macroeconomics.com.au, p. 9

<http://www.macroeconomics.com.au/pdfs/commonwealthindigenousbudgetbulletin-june2008.pdf>

¹²⁷ *ibid.*

¹²⁸ *ibid.*

makes it an incredibly resource intensive approach. Given the Government's focus on it at the expense of other approaches that evidence shows could be more effective, as well as its questionable policy rationale, this policy should be subject to serious challenge and debate.

Conclusion

There can be no doubt that revelations of shocking abuse and neglect of Indigenous children – any children – must be responded to by governments with urgency and sincerity. Their safety and wellbeing is a matter we should all be concerned with and vigilant about. For this reason, it is crucial that measures undertaken now are based on evidence about what does work, that are genuinely likely to address the problems they aim to, that is part of a realistic and holistic response, and that do not compound existing problems. Quarantining welfare payments is an extraordinarily expensive and inevitably ineffective shortcut to increasing Indigenous children's participation in education. Most importantly, it is diverting attention from what is known about what actually does work in getting children to want to stay at school and giving them opportunities in life that their parents didn't have.

APPENDIX 4

Nicole Watson and Patricia Turner, "The Trojan Horse". In J. Altman and M. Hinkson. *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia*. Melbourne: Arena Publications, 2007.

The Trojan Horse

Pat Turner and Nicole Watson

We believe that this government is using child sexual abuse as the Trojan horse to resume total control of our lands ... That's why the Prime Minister called it a national emergency. You know, because in the national interest, he can move on the Northern Territory land rights act. Right? We're not stupid. We didn't come down in the last shower. We were there at the beginning.¹

ACCORDING TO FOLKLORE, the ancient Greeks were able to defeat their enemies, the Trojans, by bestowing a gigantic wooden horse upon them. Custom required the general of a defeated army to give his horse to his opponent. Believing that the Greeks had retreated, the Trojans celebrated their victory. As the Trojans indulged in drunken revelry, their enemies emerged from the horse, killing the Trojan men and enslaving the women and children. On 21 June 2007, this legendary tactic resurfaced in a place thousands of kilometres away from the ancient city of Troy: Canberra.

After eleven years of waging war on Indigenous self-determination, the Howard Government bore its own version of the mythical horse. With great pomp, the Prime Minister and Minister for Indigenous Affairs announced before the nation's press their plan to address the 'national emergency in relation to the abuse of children in Indigenous communities in the Northern Territory'.² Among the proposed interventions were compulsory acquisition of Aboriginal townships and the winding back of the permit system.³

The announcement was buttressed by media coverage of the *Little Children are Sacred* report, which had been publicly released by the NT Government Chief Minister, Clare Martin, on 15 June 2007.⁴ In the heat of the media glare, there was little room for the maxim 'innocent until proven guilty', or the search for a connection between land tenure and child abuse.

According to legend, the Greeks used a spy, Sinon, to coax their adversaries into accepting the wooden horse. In the present version, this role is being performed by a number of Indigenous individuals and institutions from outside the Northern Territory who have recommended that, for various reasons, including the need to 'fix' the housing crisis, the *Aboriginal Land Rights (Northern Territory) Act* should be amended.

We will not make endless comparisons here between the plight of the Trojans and Indigenous people, however interesting that exercise might be, but rather unpack several important distinctions. Unlike the Trojans, Indigenous people have not bought the ruse. We neither accept the Howard Government's 'gift', nor celebrate the apparent end of our battle with those who oppose our land rights. And as distinct from the Trojans, we will endure to see our enemy fall.

The following is divided into two parts. Part one will attempt to explain why moves to wind back Indigenous land rights must and will be resisted. Part two will penetrate the exterior of the Trojan horse by analysing the Howard Government's track record in opposing Indigenous attempts to gain recognition of land rights and native title.

The Importance of Land

For Indigenous people, land is the source of our identity, social organisation, economy and spirituality; in essence, our life-force. We have consistently argued that our recovery from colonisation hinges upon the existence of an autonomous land base. In recent times, these arguments have found support in public health research that indicates a link between improved health outcomes and land rights.⁵ This research seems to confirm what generations of our leaders have always known. After all, the demand for land rights has been the most enduring theme of the Indigenous political struggle: from the fearless Pemulwuy to the indomitable Gurindji strikers.

The story of the Gurindji strikers exemplifies the incredible lengths to which Indigenous people will go to reclaim their lands. Immediately prior to the famous strike, the Gurindji people were employed on the Wave Hill station in the Northern Territory by the British consortium Vestey's. Like other Indigenous pastoral workers of their era, they were excluded from the *Cattle Station Industry (Northern Territory) Award 1951*.⁶

On 22 August 1966, Vincent Lingiari demanded a fair wage.⁷ When Vestey's manager refused his request, the Gurindji people declared an immediate strike. Although it was sparked by an industrial dispute, its primary goal was repatriation of traditional lands. Spanning more than seven years, the strike drove the issue of Indigenous dispossession into the public consciousness.

The tenacity of the Gurindji strikers would later resound in the decade-long litigation pursued by Eddie Mabo and his fellow plaintiffs against the state of Queensland. In recent years it has surfaced in those who labour over one hurdle after another in to gain recognition under the *Native Title Act 1993*. A case in point is the Noongar community. Justice Wilcox of the Federal Court recognised their native title in late 2006, after years of wallowing in the court system.⁸ In spite of the widely held belief that the interests of all other property holders were unlikely to be affected by the judgement, both the Commonwealth and the state of Western Australia appealed against the decision.

What would drive the likes of Vincent Lingiari, Eddie Mabo and, more recently, the Noongar people to take on hostile and seemingly omnipotent governments and corporations? We do not pretend that there is any such thing as one coherent Indigenous viewpoint. However, we do believe that these people all shared a conviction that the futures of their families were inextricably tied to gaining rights over their traditional lands.

Just as we have responsibilities to future generations, Indigenous people are obliged to protect the legacies of former generations, none more so than lands were fought for tooth and nail. Therefore, it is unsurprising that Indigenous people around the country have reacted strongly against the Federal Government's proposal to seize control over Aboriginal townships and dismantle the permit system. Our people are veterans when it comes to David and Goliath battles, and just as we outlived the likes of Lord Vestey, we will be fighting long after the demise of the Howard Government.

The Howard Government's Track Record

In the minds of many Indigenous people, the divisive Wik debate found resonance in the announcement of 21 June. Just over ten years before, Tim Fisher had pledged to deliver 'bucket loads of extinguishment' to

the rights promised under *Mabo*. His promise was realised with the *Native Title Amendment Act 1998*, which, among other things, validated mining leases granted by state governments that deliberately failed to comply with the *Native Title Act 1993*. When the High Court determined that pastoral leases did not necessarily extinguish native title, those mining leases were potentially invalid. However, rather than revealing the shoddy risk management of state governments, such ramifications were painted as the result of judicial activism and Indigenous greed.

The *Native Title Amendment Act 1998* also introduced an onerous re-recognition process for native title representative bodies and heightened their reporting requirements. At the same time, the eligibility criteria for those who sought to oppose native title claims were eased, arguably encouraging litigious behaviour. The Commonwealth itself has taken a litigious approach to native title claims and at times has been downright unethical. Who could forget the false claims made by Phillip Ruddock in the wake of the Single Noongar Claim? The day after the Federal Court recognised the Noongar community's meagre native title, the Attorney-General argued that the decision would result in the loss of public access to beaches and parklands, an assertion that was without legal foundation.⁹

As the *Native Title Act 1993* was being watered down, John Reeves QC produced his review of the *Aboriginal Land Rights (Northern Territory) Act 1976*, arguing for the abolition of the permit system.¹⁰ Reeves' recommendations were firmly resisted by Indigenous communities, academics and former members of the Fraser Government.¹¹ His approach was also rejected in a strongly bipartisan report from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.¹² In the course of its inquiry into the Reeves review, the Committee received evidence that the permit system was overwhelmingly supported by Aboriginal people in the Northern Territory,¹³ as well as non-Indigenous organisations, including mining companies.¹⁴ The crucial need to respect the self-determination of Aboriginal people in the Northern Territory was reflected in the Committee's first recommendation:

The *Aboriginal Land Rights (Northern Territory) Act 1976* ... [will] not be amended without:

- Traditional Aboriginal owners in the Northern Territory first

- understanding the nature and purpose of any amendments and as a group giving their consent; and
- Any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views.¹⁵

The Federal Government is obliged to formally respond to a report of a parliamentary committee within three months of the report being tabled in Parliament. However, the Howard Government is yet to formally respond to this report, with the consequence that its recommendations have never been subject to robust debate. However, comments made by the chairman of the committee and former Liberal Party MP, Lou Lieberman, have retained their currency:

Coming from the coalition government and as a member of the Liberal Party, it is not difficult for me to get passionate about the need for parliaments and political parties of all persuasions to start off any dialogue about public policy or review of public policy on the basis that you respect the rights of people to their hard-won property which has come from hard work, sacrifice and toil and, in the Aboriginals' case, having had to fight through the courts after having gone through royal commissions to get a legal title to some of the land that they had been dispossessed of. The core value for us was that, if we are being asked to recommend changes to the *Aboriginal Land Rights (Northern Territory) Act*, we are going to be recommending changes, but we are going to be recommending changes that respect the fact that this land under the control of the land councils, land trusts and the Aboriginal people is owned by them now. It is not government land any longer. It is owned by them.¹⁶

Last year the Commonwealth conveniently forgot Lieberman's plea to treat Aboriginal freehold landowners with respect. The *Aboriginal Land Rights (Northern Territory) Amendment Bill 2006* was passed into law on 17 August, a week before the fortieth anniversary of the Gurindji Strike. The Bill represented the most dramatic reform of the legislation since its enactment. However, the Community Affairs Committee that was responsible for scrutinising the Bill had such a tight reporting timeframe

that it could only hold one public hearing for the entire Northern Territory.

Nevertheless, the amendments did provide a pathway to enable the Federal Government to achieve its leasing objectives without further watering down the *Aboriginal Land Rights (Northern Territory) Act 1976*. In particular, Section 20B created the Office of the Executive Director of Township Leasing.¹⁷ Provided that due process is adhered to in negotiations with traditional owners, lands can be subleased to governments to enable the setting up of service hubs that could maintain and deliver the full range of public services so desperately needed in the majority of remote communities in the Northern Territory.

Conclusion

Like a power drill, each attack made by the Howard Government on the rights of Indigenous landowners removes a layer of timber from the Trojan horse until, finally, the enemy within is exposed. In this chapter, we have made it clear that unlike the Trojans, Indigenous people have not bought the ruse. However, there is another important distinction: the conclusion to our battle is yet to be determined.

Reconciliation is one possible ending, but only if Indigenous landholders are treated with respect. That the Howard Government is apparently incapable of doing this was poignantly driven home last year when Minister Brough declined an invitation to attend the celebrations marking the fortieth anniversary of the Gurindji Strike, a slight that was the equivalent of refusing to acknowledge ANZAC Day.¹⁸ The minister's snub was regrettable on so many levels, not least of which was the possibility that he may actually have learnt from our warriors. In spite of incredible hardships, their eloquence resounded in a letter to the former Governor-General, Lord Casey, in 1967:

Our people have lived here from time immemorial and our culture, myths, dreaming and sacred places have evolved in this land. Many of our forefathers were killed in the early days while trying to retain it. Therefore we feel that morally the land is ours and should be returned to us. Our very name, Aboriginal, acknowledges our prior claim. We have never ceased to say amongst ourselves that Vestey's should go away and leave us to our land.¹⁹

Forty years later, it is time for our enemies to find the courage to come out of the Trojan horse and offer friendship, just as one of their greatest leaders once poured dirt into the hands of one of ours. From friendship comes understanding, respect and accommodation of difference. Our people's property rights cannot be allowed to wither on the vine of contempt for communal title harboured by the Howard Government. It is time for them to stop the land grab and concentrate on finally delivering the full range of services that we Indigenous Australians have the right to as citizens in our own land.

ENDNOTES

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14. *Unlocking the Future*, pp. 115–16.
15. *Unlocking the Future*, p. xvii.
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18. L. Murdoch, 'Celebrating the 1966 Wave Hill Walk-Off', *The Age*, 17 July 2006, <www.kooriweb.org/foley/news/2006/july/age17jul06b.html>, accessed 25 July 2007.
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