

# **Jumbunna Indigenous House of Learning Research Unit**

## **Briefing Paper No. 1: Shared Responsibility Agreements 28 February 2005**

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In the lead up to last year's federal election, there was little reference by either of the major parties to Indigenous affairs or strategies to address the ongoing disadvantage and discrimination experienced by Indigenous communities. Beyond the Prime Minister and the Opposition leader tripping over each other to be the first to trumpet the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) as a 'failed social experiment', alternative policy approaches were thin on the ground. Journalists and commentators in the mainstream media seemed to prefer to focus on hostile exchanges between political and Indigenous leaders over whether ATSIC was to blame for all the problems facing Indigenous communities, rather than pursuing a more comprehensive or complex analysis of the causes of or appropriate responses to Indigenous disadvantage.

In late 2004, there was a resurgence of debate about the alarming health, housing, education and employment statistics relating to Aboriginal and Torres Strait Islander peoples, and whose fault or responsibility it is. The focus of debate was primarily on the notion of 'mutual obligation', triggered by dialogue between certain Indigenous leaders and the Prime Minister, and then illustrated by revelations of a 'Shared Responsibility Agreement' between an Aboriginal community in Mulan, Western Australia and the Federal Government. Federal Government Ministers indicated that their main policy approach in Indigenous affairs would be the negotiation of such agreements with individual communities, including through proposed changes to the Community Development Employment Projects (CDEP) scheme. This discussion paper sets out the background to and detail of the debate about 'mutual obligation' and 'Shared

Responsibility Agreements’, and provides an analysis of the implications of this policy approach for Indigenous communities.

## **1. ‘Mutual obligation’**

The notion of ‘mutual obligation’ is not new in Federal Government policy under John Howard as Prime Minister. It has been a constant refrain and underlying philosophy for changes to the welfare system, including in relation to people receiving unemployment, disability or single parent benefits. This policy agenda implies a shift from a rights-based system with entitlements based on governments supporting those unable (though not necessarily unwilling) to support themselves through participation in the workforce, to a system where payments are conditional on a kind of individualised contractual arrangement where the recipient must fulfil certain obligations imposed by government, labelled ‘mutual’ despite the obvious disparity of power and choice between the parties.

The Federal Government’s Indigenous Affairs policy, ‘Indigenous Australians – Opportunity and Responsibility’, reflects this approach. It states that ‘Unconditional welfare will become a thing of the past’, and that one of the main areas of priority for the future is ‘Reducing dependency on passive welfare, and stimulating employment and economic development in Indigenous communities.’ The policy identifies important measures to improve the circumstances of Indigenous Australians as ‘Focusing on individuals by encouraging self-reliance and independence from welfare’ and ‘Increasing opportunities for economic independence by generating more jobs in the private sector,

improving permanent employment outcomes for Community Development Employment Project participants and generating more business opportunities’.

What is new in this debate is the engagement with the Howard Government’s notion of ‘mutual obligation’ by certain senior Indigenous leaders previously critical of the government’s approach. Patrick Dodson, after a meeting with other Indigenous leaders including Noel Pearson, who in particular has been a long-time advocate of the notion of ‘mutual obligation’ as a means of addressing ‘passive welfare’ and its negative impact on Indigenous communities, stated:

We want to reopen the dialogue with the Prime Minister. Such a dialogue would be about clarification and trying to find common ground with him in the social arena. ...

The mutual obligation stuff has a lot of resonance within Aboriginal culture and within Aboriginal notions of kinship. This concept has a grounding within our culture and society.

It is not just a Western concept and this is how we need to see it.

I am sure we can work with John Howard.<sup>1</sup>

On the same day, Noel Pearson stated:

We have to see the Howard prime ministership as an opportunity rather than as a threat to indigenous Australians. ...

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<sup>1</sup> Quoted in Paul Kelly, ‘Black leaders offer new accord’, *The Australian*, 4 December 2004, [http://www.theaustralian.news.com.au/common/story\\_page/0,5744,11582580%255E601,00.html](http://www.theaustralian.news.com.au/common/story_page/0,5744,11582580%255E601,00.html)

There is no argument with the principle of mutual obligation if we are going to get things fixed. The mistake we made in the past was to think indigenous salvation came from legal and political acts. This is part of it. But we must assume responsibility and recognise these things are achieved through social and economic progress.

You don't need to tell a parent who works that they need to wash their kid's face or feed their stomach.

Various other leaders and commentators responded to Dodson and Pearson's comments.

Paul Kelly of *The Australian* heralded the new joint position of Dodson and Pearson as representing 'probably the most sweeping rethink since the 1967 referendum and it embodies the application of Howard's values to indigenous affairs. Within the Government it is described as a revolution.'<sup>2</sup>

However Larissa Behrendt stressed the importance of analysing the seductive rhetoric of government spin, and cautioned how easily the likening of the term 'mutual obligation' to notions of Aboriginal reciprocity could be taken out of context to support the Government's agenda.<sup>3</sup>

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<sup>2</sup> Paul Kelly, 'A new indigenous politics', *The Australian*, 8 December, 2004, [http://www.theaustralian.news.com.au/common/story\\_page/0,5744,11622161%255E12250,00.html](http://www.theaustralian.news.com.au/common/story_page/0,5744,11622161%255E12250,00.html)

<sup>3</sup> Larissa Behrendt, 'Nothing mutual about denying Aborigines a voice', *The Sydney Morning Herald*, 8 December 2004, <http://www.smh.com.au/news/Opinion/Nothing-mutual-about-denying-Aborigines-a-voice/2004/12/07/1102182295283.html>

## **2. Petrol bowsers and washing kids' faces**

In the wake of this debate, the Opposition released a draft 'Shared Responsibility Agreement' under negotiation between the Mulan Aboriginal community in a remote area of Western Australia and the Federal and Western Australian Governments. The draft agreement stated that in return for the community committing to certain hygiene measures to address health problems, the government would contribute \$172,000 for petrol bowsers in the community. As part of the agreement, the WA Government would undertake to monitor and review the adequacy of health services in the area, where trachoma rates have been described as the worst in the world. The draft Agreement sets out a series of responsibilities for the Mulan community, including starting and keeping up a program to make sure kids shower every day and wash their face every day; ensuring that rubbish bins are emptied twice a week; ensuring that the rubbish tip is properly managed; and monitoring and reporting on the extent to which the community, family and individual commitments set out in this agreement.

The rationale for the draft Agreement is stated as:

1. Installation of fuel bowsers will strengthen the Mulan community economy through fuel sales and associated tourism income streams and enhance economic development opportunities.
2. Implementation of strategies to reduce the incidence of trachoma, secondary skin infections and worm infestations will result in improved community

health and a reduction in health costs and medical evacuation costs attributable to the Mulan community.

Mulan's Aboriginal Corporation administrator, Mark Sewell, was quoted in the media as saying that the community itself came up with the idea, and approached the government:

There was two separate things. We wanted to improve kids' health and wanted to get fuel sales here as well. And we just felt that, you know, perhaps to show Government that we really mean business, we sort of put it down as an agreement where we'd work on the kids' health if the Government could help us with the fuel bowsers.<sup>4</sup>

The Federal Aboriginal Affairs Minister, Amanda Vanstone, stated that it was:

an example of how we want to work in all the communities, sitting down with them, talking about what they want, talking about what they can do in exchange, working with the State Governments, working out a partnership agreement about where we can go from here.<sup>5</sup>

If this agreement goes ahead, and it works, what could anyone complain about? A community gets what it wants – a petrol bowser – that gives them a chance for a bit of economic development, people might stop and get petrol, they can put a store there and don't have to drive themselves 70 kilometres away to get petrol and then back again. And the kids get better health outcomes. Who could complain about that?<sup>6</sup>

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<sup>4</sup> Quoted on 'Mulan deal a return to native welfare days: Dodson', ABC Radio PM, 9 December 2004, <http://www.abc.net.au/pm/content/2004/s1261745.htm>

<sup>5</sup> *ibid.*

<sup>6</sup> 'Government makes 'shared responsibility' deal with WA Indigenous community', *The World Today*, ABC Radio, 9 December 2004, <http://www.abc.net.au/worldtoday/content/2004/s1261373.htm>



Labor's indigenous affairs spokesperson, Kim Carr, referred to the agreement as patronising and coercive. He stated that:

the Government is telling indigenous Australians that, to obtain basic services, they must meet conditions not imposed on others...

No, we don't support it, and we want to know whether or not there's been informed consent. We want to know what real choices have been made available to the local community, and we want to know what the Commonwealth's obligations are, because if you're talking mutual obligation, it's got to be a two-way street. And public infrastructure is as basic a question as personal hygiene.<sup>7</sup>

Democrats Senator Aden Ridgeway said that dealing solely with behavioural issues does nothing to counter high unemployment or poverty: 'In this system the Government gives with one hand and slaps with the other... [it has the] potential to turn into blackmail with the Government withholding essential resources until communities fall into line'.<sup>8</sup>

Former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Dodson was reported as saying the Mulan agreement was not fair or mutual:

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<sup>7</sup> *ibid.*

<sup>8</sup> Mark Coultan and Mark Metherell, 'A new deal for indigenous Australia', *The Sydney Morning Herald*, December 11 2004. <http://www.smh.com.au/news/National/A-new-deal-for-indigenous-Australia/2004/12/10/1102625532962.html>

What are the obligations from government, what are they doing? All the obligation seems to be on the community. There's nothing really mutual about this -- I wonder if it is a free informed choice by the people... My fundamental objection to this approach is it's racially discriminatory.<sup>9</sup>

Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner Tom Calma was quoted as stating that as long as the community had initiated the agreement and had given 'informed and prior consent', the SRA did not breach racial discrimination legislation.<sup>10</sup>

The only Aboriginal member of Western Australia's Parliament, the Member for the Kimberley, Carol Martin, attacked the plan, saying that she was 'offended that people need to sit up and beg'.<sup>11</sup> She said that 'the problems have been there for many years, but they've always been about not having enough funds, not having the right infrastructure, not having the right services, not having employment.'<sup>12</sup>

Following their initial support of working with the Commonwealth Government with a shared commitment to 'mutual obligation', Indigenous leaders Pat Dodson and Noel Pearson spoke out with renewed caution after the revelations of the Mulan agreement. They wrote:

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<sup>9</sup> Quoted in Patricia Karvelas and Amanda Banks, 'We are just saving our kids', *The Australian*, 10 December 2004,

[http://theaustralian.news.com.au/common/story\\_page/0,5744,11645024%255E601,00.html](http://theaustralian.news.com.au/common/story_page/0,5744,11645024%255E601,00.html)

<sup>10</sup> Quoted in Michelle Grattan, 'Mulan hygiene deal OK on rights: commissioner', *The Age*, 11 December 2004, <http://www.theage.com.au/news/National/Mulan-hygiene-deal-OK-on-rights-commissioner/2004/12/10/1102625532519.html>

<sup>11</sup> Quoted on 'MP says Mulan needs services, not 'shared responsibility'', *The World Today*, ABC Radio, 9 December 2004, <http://www.abc.net.au/worldtoday/content/2004/s1261467.htm>

<sup>12</sup> *ibid.*

Government and indigenous communities who no longer wish to sit on their hands while blindness is caused by trachoma, kidney failure is caused by scabies and deafness is caused by unresolved ear infections, should be supported. But they also need to think carefully about how they institute mutual obligation through ‘shared responsibility agreements’. ...

The mutual obligation agreement struck with the Aboriginal community at Mulan in Western Australia has been supported by the community’s leadership, and should therefore be supported by the wider Australian community. However, the Federal Government and other community leaders who are considering mutual obligation, might bear in mind our advice.

The aim must be to normalise obligations between Aboriginal parents and their children, between family members, and between individuals and their communities.

First, we need to ask how mutual obligation or, in Aboriginal terms, ‘reciprocity’, works normally in functional societies. We believe that mutual obligation is a natural principle of human society, where people give and take, where they enjoy rights and exercise responsibilities in a more-or-less balanced way. ...

One of the unanswered problems with the Mulan agreement is: what is the logical connection between the obligations that the government wants the community to commit to, and the incentives that it is offering in return? It is hard to see the natural connection between children's hygiene and the more convenient provision of petrol.

The Federal Government must restrain its bureaucrats from playing at social engineering, otherwise the important principle of mutual obligation will be discredited - and that would be a

tragedy.<sup>13</sup>

The agreement was reported in the media on the day of the first meeting of the National Indigenous Council. Speaking at the end of the first meeting, chairwoman Sue Gordon said such deals were good if local communities were supportive of them:

I don't view anything which is going to benefit Aboriginal people -- which Aboriginal people themselves put up -- as being paternalistic, because it's not being imposed (on) Aboriginal people. ... Rather, it's Aboriginal people saying this is what they want to do as a shared responsibility.<sup>14</sup>

The Liberal member for the West Australian seat of Kalgoorlie, Barry Haase, stated:

We don't get to say to the government we want to live on co-ordinates of XYZ in the middle of nowhere... If you wish to have an address that doesn't exist with no infrastructure and you demand the taxpayer provide, then there ought to be some requirements placed on you.<sup>15</sup>

The Prime Minister did not provide detail regarding how such agreements would be enforced. He was quoted as suggesting a 'commonsense reaction' had to apply if there were breaches, and that it would be 'foolish' to specify the detail of that in advance:<sup>16</sup>

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<sup>13</sup> Pat Dodson and Noel Pearson, 'The dangers of mutual obligation', *The Age*, 15 December 2004, <http://www.theage.com.au/articles/2004/12/14/1102787075763.html>

<sup>14</sup> Quoted in Patricia Karvelas and Amanda Banks, 'We are just saving our kids', *The Australian*, 10 December 2004, [http://theaustralian.news.com.au/common/story\\_page/0.5744.11645024%255E601.00.html](http://theaustralian.news.com.au/common/story_page/0.5744.11645024%255E601.00.html)

<sup>15</sup> Quoted in Patricia Karvelas and Amanda Banks, 'We are just saving our kids', *The Australian*, 10 December 2004, [http://theaustralian.news.com.au/common/story\\_page/0.5744.11645024%255E601.00.html](http://theaustralian.news.com.au/common/story_page/0.5744.11645024%255E601.00.html)

<sup>16</sup> *ibid.*

Obviously we can't have a situation where you enter into a deal and it becomes known that, whether the deal is honoured or not, the benefits will still flow. But equally, every circumstance is a little different. It's just not possible to say in black and white, well, if this deal is not honoured, sometime in the future we're going to do this or that.<sup>17</sup>

The Prime Minister stated that he was certain that 'there is a new attitude' towards Aboriginal issues, including an endorsement of the concept of mutual obligation.<sup>18</sup> He stated that he believed the agreement would 'resonate throughout the Australian community as a very commonsense way to go, and Health Minister Tony Abbott predicted 'dozens and, ultimately, hundreds and thousands of agreements like this' would be signed.<sup>19</sup>

This debate amongst Indigenous leaders and politicians triggered reflection and commentary not just on the merits of this agreement, but on the history and future of government policy on Indigenous affairs.

*The Sydney Morning Herald* editorial of 10 December, entitled 'At the core of self-determination', stated:

Certainly, it is the sort of mutual obligation arrangement the Government would not contemplate for mainstream non-Indigenous Australia. But problems in remote Aboriginal Australia are very different from those elsewhere. They call for innovation.

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<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

<sup>19</sup> Meaghan Shaw, 'Hygiene pact stymies race accord', *The Age*, 10 December 2004, <http://www.theage.com.au/news/National/Hopes-for-race-accord-dashed/2004/12/09/1102182431225.html#>

We may not know whether Mulan, a community of 150 on the edge of the Great Sandy Desert, can rid itself of diseases such as trachoma. But it should by now be obvious to all that for all the hand-wringing and the billions of dollars spent on Aboriginal welfare, past policies have been demonstrable and tragic failures.

Critics of the Mulan agreement want to ignore this fundamental reality. Many have invested emotionally in the idea that physical resources alone can remedy the Aboriginal plight.

As important an ingredient as appropriate financial help is, these critics do not want to acknowledge that their form of paternalism does more harm than good to Aborigines, that the hand-out mentality drains Aboriginal communities of self-reliance, self-esteem and self-sufficiency.

*The Australian* editorial on the same day, 'Defending the real rights of Aborigines', stated:

If Kim Carr really wants to help indigenous Australians living in remote impoverished communities he will shut up until he has a constructive contribution to make to the debate on the Howard Government's mutual obligation plan. ...

The Mulan model of mutual obligation may set a valuable precedent for a nation-wide approach to prevent another generation of kids being cursed with unnecessary disease. But it has incurred Senator Carr's ideological ire. Yesterday he called the proposal 'coercive and patronising'. And fellow travellers agree. ACT Chief Minister John Stanhope says it is discriminatory 'flawed thinking'. Indigenous politicians, like Senator Aden Ridgeway and the discredited chairman of ATSIC Geoff Clark, have also attacked the proposal. Mr Clark says it is 'completely over the top' that the Aborigines can only receive basic rights and services 'with a gun at their head'. There is

talk of apartheid, and inflammatory comments that the deal is akin to encouraging petrol sniffing. Offensive nonsense. Such objections are based in an old-fashioned ideology that emphasises abstract rights and is born of an obsession with the dispossession of indigenous Australians in times past. They come from the age of freedom marches, when indigenous rights were still to be won, times when black Australians did not have their right to vote enshrined in law and where what was effectively apartheid was practised in country towns. But the ideological issues now being pursued, such as an apology for the stolen generation, and anger over Aboriginal deaths in custody, are very much second order issues in the struggle to improve the health of all Aborigines.

...

For the people of Mulan, the choice is clear – the community can have a local fuel supply as well as improved health for their children. Or they can take Senator Carr's path of ideological purity. It is not a choice parents who love their kids could ever have any trouble making. Yesterday a Mulan community spokesman said they had come up with the idea of linking the bowsers to agreed behaviour standards in the first place, and as such felt neither blackmailed nor compromised. And understandably so. A report in April revealed 60 per cent of children between five and nine in Mulan suffer from trachoma. For 10 to 16-year-olds, an appalling 82 per cent are afflicted with the disease.

That the circumstances of too many indigenous Australians in remote communities is a national disgrace is beyond debate. But decades of experience demonstrate that exonerating Aborigines from taking responsibility for their own circumstances, and spending ever-more taxpayer money on public service programs will not fix the crisis in black health, education and family welfare. ...

*The Age* coverage of the issue was quite different. Its headlines said: 'Hopes for race accord dashed' and 'Rules unfair, say proud Mulan people'.<sup>20</sup> The journalist quoted in this article was reporting from Mulan, and had spoken to elders in the community who

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<sup>20</sup> Steve Pennells, 'Rules unfair, say proud Mulan people', *The Age*, 10 December 2004. <http://www.theage.com.au/news/National/Rules-unfair-say-proud-Mulan-people/2004/12/09/1102182430767.html>

were not supportive of the agreement, saying they felt it was unfair. They said: ‘We are a proud people, everyone is well looked after. ... Look around, this is a clean place, a proud place.’<sup>21</sup>

The same journalist attended a community gathering while in Mulan, and wrote in an article in *The West Australian* that: ‘Several of the community’s elders clearly had no idea about the terms of the deal’. He also stated that some people in the community are scared to speak against the agreement:

Several of the women who were at the gathering on Thursday night were too afraid to talk yesterday. Two of the elders said they feared the Government would take away the Walmajurru land – where Mulan now sits – if they spoke out.

That view spread quickly through the community, where many are illiterate, have no access to the media and have little understanding of political processes.<sup>22</sup>

The article by the same journalist in *The Age* stated that:

Despite the conditions attached to the funds, no one appeared in charge of policing them. Indeed, most of the measures imposed on the community were already well in place.

There also appears to be nothing in the paperwork that specifies what will happen if the

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<sup>21</sup> May Stundi, quoted in Steve Pennells, ‘Rules unfair, say proud Mulan people’, *The Age*, 10 December 2004, <http://www.theage.com.au/news/National/Rules-unfair-say-proud-Mulan-people/2004/12/09/1102182430767.html>

<sup>22</sup> Steve Pennells, *The West Australian*, 11 December 2004.



community doesn't comply.<sup>23</sup>

*The Age* also reported that the rate of trachoma in the community's children was actually less than a third of its level a year ago, making the conditions attached to the government funding of the petrol bowser hard to understand.<sup>24</sup> This story explored the complexities behind the community signing up to such an agreement through providing different viewpoints within the community itself. It also provided background detail to the negotiation of the agreement that shed a different light on its characterisation by political leaders and in media representations as 'community initiated'.

### **3. History of Mulan negotiations**

What was rarely reported was that Mulan Aboriginal Corporation administrator Mark Sewell said that earlier requests for funding from the government for a new petrol bowser had come to nothing,<sup>25</sup> and that he approached the government about entering into a Shared Responsibility Agreement after receiving advice that it might lead to such funding. He was also quoted by *The Age* as stating that the community were 'doing a lot of these things already. We just wanted to lift our game.'<sup>26</sup>

An article in *The Australian* on 10 December confirms that this was the case. 'Routine routs eye disease' reported that eighteen months ago, the school in Mulan had introduced

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<sup>23</sup> Steve Pennells, 'Rules unfair, say proud Mulan people', *The Age*, 10 December 2004, <http://www.theage.com.au/news/National/Rules-unfair-say-proud-Mulan-people/2004/12/09/1102182430767.html>

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

a twice-daily face-washing program. Before that time, four out of five Mulan children aged 10 to 16 were infected with *Chlamydia trachomatis* bacterium, which is the most common cause of preventable blindness in the world. When health workers screened the Mulan children last month they found the incidence of trachoma had dropped to a seven-year low of 16 per cent.<sup>27</sup> ‘We explain to the kids why they need to do it and they understand – it’s become a habit’, school principal Rachel Smith said.<sup>28</sup>

However, as quoted above, in *The Australian* editorial that day, the pre-program rates of trachoma were referred to as a rationale for community initiation of the agreement.

This face-washing program was introduced well before the Shared Responsibility Agreement with the Government. As Mark Sewell stated, ‘It was nothing to do with government for the first several months – it was just community people talking about things that were not happening and changes they wanted to make’.<sup>29</sup> A written action plan emerged as a means to encourage people to use community infrastructure and health resources and to take responsibility for personal hygiene.<sup>30</sup>

Mr Sewell said that he approached Wayne Gibbons, then employed in ATSISS and now in the Federal Office of Indigenous Policy Coordination, who suggested the community propose an incentive to advance the action plan, in line with Government policy regarding ‘mutual obligation’.<sup>31</sup> Mr Sewell then said replacing the community’s corroded fuel bowsers was an ideal incentive. This would remove the need for the 90km round trip

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<sup>27</sup> Amanda Banks and Paige Taylor, ‘Routine routs eye disease’, *The Australian*, 10 December 2004.

<sup>28</sup> *ibid.*

<sup>29</sup> Quoted in Amanda Banks and Paige Taylor, ‘Routine routs eye disease’, *The Australian*, 10 December 2004.

<sup>30</sup> Amanda Banks and Paige Taylor, ‘Routine routs eye disease’, *The Australian*, 10 December 2004.

<sup>31</sup> *ibid.*

to the closest bowzers at the community of Balgo, and make it easier for people to drive to a nearby lake where children could swim and elders hunt.<sup>32</sup>

Appearing before the Senate Select Committee on the Administration of Indigenous Affairs, Wayne Gibbons had the following exchange with Senators on the Committee:

ADEN RIDGEWAY: Is it fair or reasonable, for example, that on one hand the Government is seen to be discharging its responsibilities or its obligations to the community by the provision of two petrol pumps, and the community is left with the need to change its behaviour in order to reduce instances of trachoma?

WAYNE GIBBONS: In the case of the petrol pump, they met with their medical assistants, their nurse, resident nurse, who'd been concerned for some time, I understand, about, as had the community, about the problem of trachoma.

It's a highly infectious disease, notwithstanding the treatment available, there were still problems in that community and they wanted to tackle that, which is completely understandable. And they proposed the measures that formed that Shared Responsibility Agreement.

We didn't suggest they tackle that area particularly. They went away and thought about it, they took advice, and they proposed that to us. [...]

KIM CARR: It is not bottom-up at all, it's top down. It's a carrot and stick approach that you are using, to secure behavioural change.

WAYNE GIBBONS: I've several times explained the approach is a bottom-up construction of an

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<sup>32</sup> *ibid.*

investment strategy, community by community, around a concept of shared responsibility that embraces mutual obligation. That is the Government's policy and that is what we are implementing.<sup>33</sup>

The Mulan agreement has been described as the ‘first example of Howard’s push to work on improving living standards of Aborigines, and pushing the debate away from treaties, reconciliation and land rights’.<sup>34</sup> However, the Mulan agreement is not the first Shared Responsibility Agreement. There have been a number of agreements negotiated as part of a series of Council of Australian Governments trials.

#### **4. COAG Trials**

In 2000, the Council of Australian Governments (COAG) agreed that all governments would work together to improve the social and economic wellbeing of Indigenous people and communities.<sup>35</sup> The COAG initiative recognised that governments’ work in Indigenous affairs is spread across many departments and agencies and through multiple programs, and is often uncoordinated.<sup>36</sup> In 2002, COAG agreed to trial working together with Indigenous communities in certain regions to provide more flexible programs and services based on priorities agreed with communities.<sup>37</sup>

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<sup>33</sup> Quoted in Kim Landers, ‘Senate scrutinises Govt's mutual obligation deals with Indigenous communities’, ABC Radio PM, 4 February 2005, <http://www.abc.net.au/pm/content/2005/s1296393.htm>

<sup>34</sup> Mark Coultan and Mark Metherell, ‘A new deal for indigenous Australia’, *The Sydney Morning Herald*, December 11 2004.

<sup>35</sup> Indigenous Communities Coordination Taskforce, ‘COAG Initiative’, [http://www.icc.gov.au/coag\\_initiative](http://www.icc.gov.au/coag_initiative)

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

Governments agreed that outcomes for Indigenous communities needed improvement and that the way to do that is twofold:

- governments must work together better at all levels and across all departments and agencies; and
- Indigenous communities and governments must work in partnership and share responsibility for achieving outcomes and for building the capacity of people in communities to manage their own affairs.<sup>38</sup>

COAG states that this means that responsibility for the condition and well-being of Indigenous communities is one shared by the community, its families and individuals and with governments, referred to as ‘shared responsibility’.<sup>39</sup>

Eight trial sites were agreed upon:

- Cape York in Queensland;
- Wadeye in the Northern Territory;
- Anangu Pitjantjatjara (AP) Lands in South Australia;
- Shepparton in Victoria;
- East Kimberley region in Western Australia;
- Murdi Paaki in New South Wales;
- North Eastern Tasmania; and
- ACT.

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<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

## 5. Shared Responsibility Agreements

The development of Shared Responsibility Agreements has been a key strategy in the COAG framework of working in partnership with Indigenous communities, and is now part of the Federal Government's broader approach through the newly established Office of Indigenous Policy Coordination, set up on July 1 2004 as the primary source of advice on Indigenous issues after the abolition of ATSIC.<sup>40</sup> Indigenous Coordination Centres were also set up at that time in 30 offices around Australia, staffed by people formerly employed by ATSIC/ATSIS who are now employed by mainstream government agencies to administer government funded programs and services.

An Indigenous Communities Coordination Taskforce (ICCT) previously existed which supported the Federal Government's involvement in the COAG trials, and was located within the Department of Immigration, Multiculturalism and Indigenous Affairs.<sup>41</sup> The ICCT's website described Shared Responsibility Agreements as supporting communities to identify their local and regional priorities and agreed outcomes and document them in local agreements.<sup>42</sup> The ICCT set out a template for such agreements, which it stated should detail the contribution of communities and governments to meeting and sustaining those priorities and outcomes. This template set out details such as the parties to the agreement, its objectives, local outcomes and priorities, performance measurement and

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<sup>40</sup> [http://www.oipc.gov.au/About\\_OIPC/new\\_arrangements/New\\_arrangements.pdf](http://www.oipc.gov.au/About_OIPC/new_arrangements/New_arrangements.pdf)

<sup>41</sup> <http://www.icc.gov.au>

<sup>42</sup> Indigenous Communities Coordination Taskforce, 'Shared Responsibility Agreements', <http://www.icc.gov.au/communities/agreements>

evaluation benchmarks, access to data, dispute settling arrangements, review of progress and duration and variation of agreement provisions.<sup>43</sup>

According to the ICTT, the objectives of the SRAs are for governments and communities to:

- establish partnerships and share responsibility for achieving measurable and sustainable improvements for people living in the community;
- support and strengthen local governance, decision making and accountability;
- learn from a shared approach - identify what works and what doesn't and apply lessons to future approaches both at the community level and more broadly.<sup>44</sup>

Peter Shergold, Secretary of the Department of Prime Minister and Cabinet, when appearing before the Senate Committee's Select Committee on the Administration of Indigenous Affairs on 8 February 2005, stated that SRAs such as Mulan's are fair and reasonable:

if the shared responsibility agreement expresses the negotiated will of the community. It is very easy to become paternalistic in this regard. It is very easy to become paternalistic and say that I, sitting in the Prime Minister's department or sitting in Canberra, know what is best for the people in a community. One thing that is clear to me is that that sort of paternalism has failed and it has failed disastrously. With shared responsibility agreements, I see every one of them being different and every one of them setting different balances in terms of shared responsibility. [...]

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<sup>43</sup> *ibid.*

<sup>44</sup> *ibid.*

Each community decides what discretionary benefit they want and the government works with them to say, ‘What are the key objectives that we should set here?’ It might involve combating domestic violence, improving attendance at school or trying to deal with the awful disease of trachoma. I have no idea at this stage what the 50 shared responsibility agreements will look like. They will probably be set in place by the middle of this year. What I do know is that for the first time they will genuinely reflect community decision making.<sup>45</sup>

Three SRAs were signed in three of the COAG trial sites in 2003 – the Wadeye Shared Responsibility Agreement (21 March 2003), the Murdi Paaki Shared Responsibility Agreement (1 September 2003) and the Greater Shepparton Compact (4 September 2003).<sup>46</sup> In April 2004 an SRA was signed between the Commonwealth Government, the ACT Government, ATSIC and representatives of the Indigenous community in the ACT,<sup>47</sup> the region being the eighth COAG trial site to be announced. These SRAs were regionally-based, with broad statements of commitment by governments and community representative councils to work in partnership to address areas of priority need in those regions.

On December 14 2004, Indigenous leaders from Murdi Paaki signed further SRAs with the Federal Government, through Brendan Nelson, Minister for Education, Science and Training, and the NSW Government through Andrew Refshauge, then Minister for Education and Training and Minister for Aboriginal Affairs.<sup>48</sup> These agreements

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<sup>45</sup> <http://www.aph.gov.au/hansard/senate/commtee/S8106.pdf>, p. 9.

<sup>46</sup> *ibid.*

<sup>47</sup> [http://www.icc.gov.au/\\_data/page/13/ACT\\_SRA.pdf](http://www.icc.gov.au/_data/page/13/ACT_SRA.pdf)

<sup>48</sup> <http://www.dest.gov.au/minimas/live/nelson/2004/12/n1026141204.asp>



contained more locally based initiatives, including two projects with the Bourke Indigenous community working party:

- an Indigenous community night patrol will work with ‘at risk’ people on the streets of Bourke. Transport will be provided to a safe, non-threatening environment to reduce the risk of people becoming involved in anti-social behaviour; and
- more flexible approaches will be examined in using education resources to re-engage Indigenous students and improve attendance, retention and educational attainment of young people in the Bourke area.<sup>49</sup>

These Murdi Paaki SRAs were reported in the media in the wake of revelations about the Mulan agreement. On December 15, *The Age* ran an article entitled ‘No deal on our rights’, which reported that ‘Indigenous communities in western NSW have refused to trade their civil liberties for government assistance in the second group of ‘mutual obligation’ deals revealed yesterday.’<sup>50</sup> The article quotes NSW Murdi Paaki ATSIC Regional Council chair Sam Jeffries saying his community refused to trade their rights when signing a series of four agreements with the Commonwealth, NSW and local governments. ‘They will never use their citizenship rights, their basic human entitlements, to bargain for any resources out of the Commonwealth or state,’ he said.<sup>51</sup>

Democrats Senator Aden Ridgeway stated that the Murdi Paaki agreements ‘are the result

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<sup>49</sup> *ibid.*

<sup>50</sup> Meaghan Shaw, ‘No deal on our rights, group says’, *The Age*, 15 December 2004, <http://www.theage.com.au/news/National/No-deal-on-our-rights-group-says/2004/12/14/1102787078302.html>

<sup>51</sup> *ibid.*

of experience, co-ordination and good community communication. They are not the result of glib policy phrases like 'shared responsibility' and 'mutual obligation'.<sup>52</sup>

The Federal Government has committed to continuing support for the COAG trials, and to the notion of SRAs. The Federal Government's newly established Office of Indigenous Policy Coordination has produced Guidelines for Developing Shared Responsibility Agreements in Western Australia. The Guidelines state that the Principles for Negotiating SRAs are:

- Negotiations with communities should be conducted through an interest based approach, in order to develop flexible options for agreements that are likely to make changes to outcomes.
- SRAs are to focus on communities and families, not just existing service delivery and other organisations.
- The community needs to know that it is involved in a negotiation, what the process is, and that it has a right to enter or not enter into an agreement.
- Agreements should provide for reciprocity and shared responsibility.
- Identification of issues and problems from the community and Government perspectives should be broad to discuss underlying causes and drivers of why things are the way they are.
- Options and solutions need to be specific.

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<sup>52</sup> Aden Ridgeway, quoted on ABC Message Stick, 15 December 2004  
<http://www.abc.net.au/message/news/stories/s1265947.htm>

- Documenting the agreement should be simple, understandable and outcomes measurable.

The Processes for Negotiation are listed as:

1. Background research
2. Information gathering and giving
3. Scoping document to outline the opportunities and themes
4. Deciding whether to pursue an SRA
5. Process design
6. Forming negotiation teams
7. Capacity building
8. Exploration and identification of issues, interests and options
9. Negotiating the agreement
10. Decision making and sign off
11. Implementation, monitoring and evaluation

The Guidelines state that these phases are not necessarily consecutive, and that one phase may happen simultaneously with another. The Guidelines also indicate that the key phases and process steps identified are an adaptation of the National Native Title Tribunal phases for mediation.

The Western Australian COAG trial site is situated in the east Kimberley region and encompasses various communities, including Mulan.<sup>53</sup>

## **6. Analysis of draft Mulan Shared Responsibility Agreement**

### **What responsibility is being shared?**

The notion of ‘Shared Responsibility Agreements’ fits with the broader policy approach of ‘mutual obligation’, as various political and Indigenous leaders have pointed out. It is a kind of quasi-contractual arrangement that implies two parties – Indigenous communities and governments – entering into it by choice, with both parties having equal responsibility for and benefit from the agreement.

However in reality, there is an enormous power imbalance embodied in such agreements. They shift the notion of government responsibility for provision of basic services and infrastructure that it has to all citizens, and makes such responsibilities conditional on certain behavioural or other changes in the community. While it is important to have practical, tangible outcomes to work towards and measure, it is also important that government policy approaches do not replace more complex systemic analyses of the causes of disadvantage and discrimination with individualised, short-term, reactive agreements.

While there has been no punitive outcome identified as following from a community not delivering on its obligations - other than governments considering not entering into

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<sup>53</sup> [http://www.icc.gov.au/communities/locations/wa\\_coag\\_site](http://www.icc.gov.au/communities/locations/wa_coag_site)

further agreements with that community - there is also no accountability mechanisms in place if governments do not live up to their commitments.

John Howard has stated:

I am very unhappy – as most Australians are – at the health standards of Aboriginal people. They still lag way behind the rest of the community and it is not just a question of money, because a lot more money has been put into Aboriginal health.

It is a question of culture. It is a question of practice. It is a question of attitude. It is a question of community responsibility.<sup>54</sup>

In the same way that notions of ‘passive welfare’ imply stigma and blame on the part of the recipient, if such agreements fail or communities do not deliver certain agreed upon outcomes, it will almost certainly be those communities that are portrayed as somehow at fault. Such rhetoric and policy serves to shift perceptions of responsibility for existing problems and lack of progress solely to Indigenous communities themselves.

### **Is this an appropriate focus for an agreement between an Indigenous community and governments?**

Some Indigenous leaders who have been supportive of the notion of ‘mutual obligation’ have been critical of this agreement. In particular, the connection between hygiene measures and the more convenient provision of petrol has been questioned. The use of such an agreement to try and change behaviour has been criticised.

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<sup>54</sup> ‘Howard ‘unhappy’ with Aboriginal health’, *The Age*, December 10 2004.

Indeed, the Prime Minister himself has been critical of top-down punitive approaches to attempt to effect behavioural change. In January 2004, Opposition Leader Mark Latham gave a speech on mutual responsibility in which he proposed fining parents of children who truanted from school. Prime Minister John Howard's response was to state that governments 'could not change a law to change behaviour'.<sup>55</sup>

An editorial in *The Age* in response to the draft Mulan agreement pointed out that government campaigns are often aimed at modifying our behaviour for our own good – for example to quit smoking, to exercise more, etc. – however they are generally not coercive. Punishments are usually only invoked when an individual's behaviour poses a danger to others – for example, drinking and driving, as opposed to drinking in your own home.<sup>56</sup>

The negotiation of this agreement does not seem to reflect the comprehensive process set out in the Guidelines drafted by the Office of Indigenous Policy Coordination. It is unclear from media reports and from information provided by OIPC whether the draft Mulan SRA went through these processes, however it appears it did not.

The rationale for the draft Mulan agreement is expressed in terms of enhancing economic development opportunities and improving health for the Mulan community, but also in terms of reduction in costs to government. The longer term ramifications of the need to

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<sup>55</sup> 'Contradictions of mutual obligation', *The Age* Editorial, 13 December, 2004.

<sup>56</sup> *ibid.*

investigate broader and better resourced responses to the high rates of trachoma in the community is not addressed.

**Is the community self-determining in entering into such an agreement?**

It is important to note that the Mulan community administrator, with what appears to be the backing of some members of the community, did initiate the agreement with the Federal Government and commit to hygiene measures to address trachoma in return for funding for petrol bowsers. Community support for and action regarding endemic health problems is crucial to an effective response.

However, despite government rhetoric about SRAs being aimed at genuinely reflecting community decision-making, the Mulan agreement highlights the flaws in the government's policy framework and approach. From the interviews with the Mulan administrator reported in the media, it appears that this particular agreement was initiated on the advice that it would fit in with the Government's policy framework of 'mutual obligation', and would therefore provide a means for the community to get funding for petrol bowsers that it was not able to access otherwise. It also appears that some elders in the community were not familiar with the terms of the deal, or were even concerned about speaking out against it in case there were ramifications for their entitlements to their land.

The Mulan community were already working towards addressing the high rates of trachoma in their community, and there was already evidence of a vast drop in the rates

of trachoma amongst children aged 10 to 16. The face-washing program was a school-based measure already being undertaken by the community, without the incentive of petrol bowsers or the parameters of such a measure being determined in response to an agreement with Government.

While there may be an argument that the agreement then provides no additional burden on the community, and works to support positive initiatives addressing health problems, there is an underlying philosophy to such an agreement that is of concern. It appears that the agreement is underpinned by ideology rather than a genuine attempt to address health problems in the community on the part of the government. Aboriginal communities who are already disadvantaged and disempowered are certainly not in a position to negotiate equally and mutually with governments for basic services or infrastructure that other Australians take for granted. And despite the rhetoric, governments insisting that communities negotiate for such funding in exchange for behavioural change is not mutual or shared, but distinctly paternalistic and coercive.

## **7. The future of Shared Responsibility Agreements**

On 28 December 2004, the results of a Newspoll survey regarding Shared Responsibility Agreements reported in the media indicated that more than two-thirds of Australians surveyed were supportive of such agreements.<sup>57</sup> This was described in an opinion piece in

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<sup>57</sup> Newspoll Opinion Polls, 28/12/2004: Question: 'Recently an Aboriginal community in Western Australia signed a shared responsibility agreement with the federal government, where the community agreed to make sure their children wash themselves daily and attend to other health issues, in exchange for the government installing petrol pumps. Are you generally in favour or against this type of shared responsibility agreement between aboriginal communities and governments?', Results at [http://www.newspoll.com.au/cgi-bin/display\\_poll\\_data.pl?mode=file&page=Search&limit=10&order=date](http://www.newspoll.com.au/cgi-bin/display_poll_data.pl?mode=file&page=Search&limit=10&order=date)



*The Australian* as demonstrating that Aboriginal people ‘need not dread the agony of recriminations and misplaced envy that followed many of the land rights and social services reforms that began with the Whitlam era’, and that: ‘Public opinion is turning its back on the divisiveness that followed Mabo and Wik, thus giving the Government greater authority to work closely and imaginatively with Aborigines towards a better future.’<sup>58</sup>

In response to media representation and political commentary that has characterised the Mulan agreement as community initiated, practically focused and as moving away from land and other rights, public opinion has been supportive. In the absence of comprehensive evaluation of past policy failures and following the perception of ATSIC as having failed to address Indigenous disadvantage, the government’s new policy focus on Shared Responsibility Agreements has been introduced with little critique or detail about how such agreements will be negotiated, measured or evaluated. Scant attention has been paid to the lessons to be learnt from the COAG trials.

Also on 28 December 2004, *The Australian* reported that Aboriginal communities will in the future be required to enter Shared Responsibility Agreements in order to keep Community Development Employment Projects (CDEP) places.<sup>59</sup> The article quoted the Minister for Employment and Workplace Relations, Kevin Andrews, as saying that the system had failed to get Indigenous people involved in the country’s economic life. It

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<sup>58</sup> Tony Cutliffe, ‘Trust will be rewarded’, *The Australian*, December 28 2004, <http://www.theaustralian.news.com.au/printpage/0,5942,11792777,00.html>

<sup>59</sup> Patricia Karvelas, ‘Bid to lift black role in work program’, *The Australian*, 28 December 2004, <http://theaustralian.news.com.au/printpage/0,5942,11794847,00.html>

stated that in communities where there is no ‘real economy’, CDEP places will be allocated in exchange for communities fulfilling certain responsibilities. ‘Under the plan, mutual obligation requirements – such as asking parents to ensure their children attend school – will be expanded. A community could be asked to ensure their children shower daily and attend to other health issues in exchange for CDEP places.’<sup>60</sup> Kevin Andrews was quoted as saying: ‘It’s an extended form of mutual obligation. The whole commonwealth arrangement with indigenous communities will be via a shared agreement.’<sup>61</sup>

## **8. Issues raised by Shared Responsibility Agreements**

The Prime Minister and various other ministers have indicated that Shared Responsibility Agreements are the main policy framework for the Federal Government’s future relationships and negotiations with Indigenous communities. It appears that this is the case for both the provision of basic infrastructure and services as well as some new programs and initiatives targeted to address the specific disadvantage experienced by Indigenous communities. This raises particular issues of concern:

- The Shared Responsibility Agreement approach embodies a clear shift from a notion of individual and collective rights and entitlements to community-by-community negotiated contractual arrangements with a particular focus on shifting Indigenous people into the private sector, without adequate recognition of

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<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

- the systemic disadvantage and discrimination experienced by Indigenous communities;
- Employing the rhetoric of ‘shared responsibility’ and ‘mutual obligation’ misrepresents the great disparity of power and choice between Indigenous communities and governments in entering into Shared Responsibility Agreements;
  - The framework of Shared Responsibility Agreements raises important challenges about community consultation, governance and leadership in the way that Indigenous communities enter into such agreements, and it is already apparent in the context of the Mulan agreement that there has not been adequate community consultation and some community members did not support the agreement but felt there would be negative ramifications if they spoke out against it;
  - Accountability and responsibility by government for the provision of basic services and infrastructure to Indigenous communities, and addressing systemic health and other problems, is shifted to being conditional on behavioural change with unclear benchmarks and ramifications;
  - The research, processes, evaluation and lessons to be learned from the COAG Trials are not being sufficiently considered or integrated into this new policy approach;
  - The Federal Government’s approach appears to be more about furthering a particular ideological position than genuinely acting to improve the health and welfare of Indigenous communities.