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Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008

Senate Standing Committee on Community Affairs

1. Introduction

Thank you for the opportunity to make submissions to this Inquiry on the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008 (the "Bill").

NAAJA Charter

NAAJA's charter is to provide high quality and culturally appropriate legal aid services for Aboriginal and Torres Strait Islander people within the North Zone of the Northern Territory. The operations of NAAJA are to:

- Ensure that legal assistance is provided in the most effective, efficient and economic manner.
- Provide quality, culturally appropriate and accessible legal aid related services to Aboriginal people through legal advice and representation in Criminal Law, Civil Law and Family Law.
- Provide legal representation in the following courts: Supreme Court of the Northern Territory, Magistrates Court both in Darwin and Katherine and on circuit in remote communities, Family Court and Federal Magistrates Court.
- Coordinate law reform and policy activities and deliver community legal education and information.
- Train and employ Aboriginal people.
- Endeavour to secure the services of language interpreters to assist Aboriginal persons with matters in respect of which they are provided with legal assistance.

NAAJA Legal Services

NAAJA has a civil and a criminal legal section with lawyers, client services officers and administrative staff in each section. The civil and criminal sections are separated by an information barrier.

This means that information about clients in the civil section is not available to the criminal section, without the client's express permission and information about clients in the criminal section is not available to the civil section, without the client's express permission.

This also means that it is not a conflict of interest for NAAJA's criminal and civil sections to act for different sides. For example NAAJA civil section might act for the mother in a family law dispute and NAAJA's criminal section might act for father in a criminal matter. If we did not have the information barrier, NAAJA would not be able to act for the mother and the father.

NAAJA Criminal Section

NAAJA's criminal section represents Aboriginal and Torres Strait Islander defendants in criminal prosecutions in the Magistrates and Supreme Courts. NAAJA staff attend every "bush court" on circuit from each of our 3 offices.

- NAAJA staff based in Darwin travel to bush courts at Daly River, Jabiru, Maningrida, Milikapiti, Pirlangimpi, Oenpelli, Nguiu, Wadeye.

- NAAJA staff based in Katherine travel to bush courts at Barunga, Borroloola, Lajamanu, Ngukurr, Timber Creek.

- NAAJA staff based in Nhulunbuy travel to bush courts at Alyangula, Galiwinku, Numbulwar.

NAAJA Civil Section

NAAJA's civil section does a range of work on behalf of our Aboriginal and Torres Strait Islander clients, including:

- Complaints about government services (police, health, prison);
- Seizure or forfeiture of property because it was used to take liquor into a restricted area or was used in the commission of a crime;
- Family law matters;
- Applications that a child be declared in need of care (Family and Community Services matters);
- Assisting people to obtain compensation for injuries received in motor vehicle accidents (MACA) or as a result of an offence by some other person;
- Applications for orders in relation to adult guardianship and volatile substance abuse;
- Prison transfer requests;
- Discrimination;
- Representing people before the Mental Health Review Tribunal;
- Representing the family of people who have died in custody in a coronial inquest into the death;
- Centrelink matters.

NAAJA civil section staff travel regularly to communities in our region to conduct civil clinics.

Advocacy

NAAJA's advocacy section prepares submissions, policy documents, advocates on particular policy issues with a range of different government and non government stakeholders and conducts community legal education. Since the "intervention", NAAJA has been conducting particular community legal education and advocacy activities on intervention related matters, in conjunction with other legal agencies. Our experience to date has been that the changes to policing, alcohol prohibition and welfare rights (income management) have been particularly important to our client group.

2. NAAJA's Response to the Bill

NAAJA does not take issue with some of the amendments proposed in the Bill and supports other amendments in the Bill. However NAAJA is concerned that these largely minor amendments (leaving aside the reinstatement of the permits system) indicate that the Federal Government is proceeding with the general direction of the "intervention legislation".[1]

NAAJA had understood that there was to be whole scale review of the intervention legislation commencing in June 2008. We had understood that this review was to be conducted alongside a number of other reviews, including a review currently underway into Centrelink's communications policies and methods.

NAAJA believes that there should be a whole scale review of the intervention legislation and the methods by which Government agencies have implemented its different aspects. Such a review must be wide ranging and truly consultative, with consultations conducted in a sensitive and appropriate manner. Such consultations must be carefully designed in light of the confusion about the governance of prescribed areas, resulting from the introduction of Government Business Managers and the introduction of shire governments in the Northern Territiory. We have witnessed a disempowerment of local leadership and confusion within communities about who is able to speak for them and who Government is willing and able to listen to. As stated in the *Social Justice Report 2007*, this also risks undermining the local community leadership and initiative that is essential to resolve the problems of child abuse and neglect, alcohol misuse, joblessness and inadequate services.

In our experience, the disempowerment, confusion, feelings of being overwhelmed and disillusionment of Aboriginal people as reported in the *Little Children are Sacred Report*, has been sharply exacerbated by the passing and implementation of the intervention legislation. It is difficult to convey the confusion and difficulties which have been experienced by Aboriginal people arising out of the intervention legislation. Many fundamental aspects of Aboriginal people's lives changed in an extremely short period of time, including their employment arrangements, welfare payments, the status of the Aboriginal land on which they live, how they are policed and what is prohibited. Furthermore, Aboriginal people in the prescribed areas have had to comprehend that they now live under different legislation and have different rules apply to them, than those that apply even to Aboriginal people in the Northern Territory who do not live in prescribed areas. In some cases, this geographic difference can be measured in metres.

In light of this, it is concerning that the Bill continues the language used in the "intervention legislation" and its political/policy justifications. We are concerned with:

a) The use of the word "emergency" in the Bill's title. We take issue with this in two respects:

[1] Throughout this submission, the term "intervention legislation" refers to the Northern Territory National Emergency Response Act 2007; Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007; and Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007.

a. The passing of the intervention legislation was described as such an emergency that this justified both the extraordinary lack of consultation and opportunity for public comment and the removal of the ordinary checks and balances within the Westminster system. It is our experience that this has resulted in uncertainty (both for Aboriginal people and Government officials), confusion, poor policy planning and wasted public resources – the opposite of what the "emergency" was said to require.

b. There has been widespread criticism of both the policy behind and the implementation of the intervention legislation, leading many to reject the notion of the different stages of the "emergency" on which the abrogation of rights and also the various sunset clauses have been based.

b) The continued reference to the special measures contained in the intervention legislation, when this description is so controversial (as discussed in the *Social Justice Report 2007*).

c) The continued distinctions between prescribed areas and other parts of Australia and between Aboriginal and non-Aboriginal people. The Bill also continues the implication that child abuse is an "Aboriginal" issue, which is both extremely damaging and also patently untrue. This labelling of Aboriginal people in prescribed areas has been recognised as an issue by Government, as the prescribed area notices are being redesigned so as not to refer to pornography. However, the failure to truly comprehend it as an issue is shown by the decision that the original signs referring to pornography will remain in the community.

We acknowledge that the Bill does contain measures which provide for community consultation and also restores checks and balances. However as the Bill only applies to particular discreet aspects of the intervention legislation, in many ways this only serves to heighten the widespread concerns about many aspects of the intervention legislation.

Should the Bill be passed, this would mean for example that:

- A community would be able to express their views about certain R 18 + pay television channels being able to operate in their community, but there is no legislative capacity for their views to be taken into account with respect to the regulation of alcohol in their community.

- Decisions of the Communication Minister would be subject to merits review, while decisions made with respect to the thousands of Aboriginal people now subject to income management are not.

- The Minister's decision to repeal the license condition is a legislative instrument and hence disallowable, while many of the other important legislative decisions in the intervention legislation are not.

- The provisions in Schedule 1 (relating to pay television licensing) are subject to the prohibition against racial discrimination in the *Racial Discrimination Act*. This is in stark contrast to the other provisions of the intervention legislation, to which the *Racial Discrimination Act* expressly does not apply.

- The special measure contained in Schedule 1 relating to the R 18 + programs requires community consultation and acceptance, unlike the provisions claimed to be "special measures" in the intervention legislation.

It is also disturbing that the concerns of some groups with respect to the intervention legislation have been taken into account, while those of many Aboriginal people and organisations, human rights groups and others have not. We note that the Explanatory Memorandum refers to the concern by industry about pornography being transported through prescribed areas (resulting in the amendments in Schedule 2).

We also query what the Bill signifies about the Government's long term commitment to the intervention legislation given that only one aspect of the ALP's original position has been included in the Bill. To our knowledge, since the formation of the new Government, there has not been any:

- Negotiations with affected communities prior to the acquisition of property;

- Just terms compensation for the acquisition of property and a rejection of the proposal that such compensation could be constituted by the provision of goods and services by government;

- Statements about the requirement for the benefits of income management to be identifiable after 12 months;

- Repeal of the provisions suspending the operation of the *Racial Discrimination Act* and a requirement that the intervention legislation comply with the *Racial Discrimination Act*.