

# Chapter 3

## Term of Reference (a) the effectiveness of Australian Government policies following the Northern Territory Emergency Response, specifically on the state of health, welfare, education and law and order in regional and remote Indigenous communities

### Northern Territory Emergency Response

3.1 On 21 June 2007 the previous Commonwealth government announced a set of measures known as the Northern Territory Emergency Response (NTER). These measures were stated to be in response to *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse.<sup>1</sup> This inquiry was co-chaired by Ms Patricia Anderson and Rex Wild QC and was conducted in order to find better ways of protecting Aboriginal children in the Northern Territory from sexual abuse. The report was publicly released by the Northern Territory government on 15 June 2007.

3.2 The NTER is often referred to as 'the intervention' and at the time of being announced was stated as being 'all about the safety and wellbeing of children'.<sup>2</sup> The legislative package for the NTER comprised of five acts:

- *Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007-2008;*
- *Appropriation (Northern Territory National Emergency Response) Act (No. 2) 2007-2008;*
- *Northern Territory National Emergency Response Act 2007;*
- *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007; and*

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1 Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, 2007. [http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_final\\_report.pdf](http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf) (accessed 8 September 2008).

2 Hon. Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs, 'second reading speech', Northern Territory National Emergency Response Bill 2007, *House of Representatives Hansard*, 7 August 2007, p. 10.

- *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007.*

3.3 A key plank of the NTER legislation is the creation of 'prescribed areas', defined in section 4 of the *Northern Territory National Emergency Response Act 2007*. This definition is also referred to in other accompanying legislation. In summary, the NTER legislation provides the legislative basis for many of the measures in the NTER to operate within these prescribed areas.

3.4 Prescribed areas include all freehold land held by a Land Trust under the *Aboriginal Land Rights (Northern Territory) Act 1976*, other Aboriginal communities described as Northern Territory Community Living Areas,<sup>3</sup> town camps declared by the Minister for Families, Housing, Community Services and Indigenous Affairs under the *Northern Territory National Emergency Response Act 2007* and any other area declared by the Minister to be a prescribed area.<sup>4</sup>

3.5 Pornography and alcohol are restricted in prescribed areas. Pornography is classified under two levels of 'prohibited material' and offences are created for possessing and supplying prohibited material in prescribed areas. Possessing level 1 prohibited material attracts a penalty of 50 penalty units (\$5 500) while possessing level 2 prohibited material attracts a penalty of 100 penalty units (\$11 000). Supplying prohibited material attracts a penalty of 100 penalty units although supplying more than five items of prohibited material can lead to a penalty of 200 penalty units and up to two years imprisonment or both.<sup>5</sup>

3.6 People receiving Centrelink payments who live in prescribed areas are subject to compulsory income management of half their Centrelink payments. A number of the measures, such as school nutrition and community clean up programs, did not require legislation.

3.7 The NTER legislation states that the provisions are to be defined as 'special measures' and excludes the legislation from the operation of Part II of the *Racial Discrimination Act 1975* (RDA) which prohibits racial discrimination.<sup>6</sup> Special measures are those that provide a benefit to a particular group so that the group will enjoy human rights on the same basis as other members of the community. A 'special

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3 Community Living Areas are a form of freehold title issued to Aboriginal corporations by the Northern Territory Government.

4 Department of Families, Housing, Community Services and Indigenous Affairs, available at [http://www.facsia.gov.au/nter/docs/factsheets/overview/factsheet\\_nter\\_communities.htm](http://www.facsia.gov.au/nter/docs/factsheets/overview/factsheet_nter_communities.htm) (accessed 23 September 2008).

5 Sections 101-104, *Families, Community Services and Indigenous Affairs and other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007*.

6 See section 4, *Families, Community Services and Indigenous Affairs and other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007*.

measure' is defined under the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>7</sup>

3.8 In the 2008-09 financial year the Commonwealth government committed \$323.8 million for the NTER.<sup>8</sup> This followed on from an allocation of up to \$580 million<sup>9</sup> in the 2007-08 financial year, of which \$467 million was spent.<sup>10</sup>

3.9 The NTER, its associated legislation and the resulting government policy and programs, have generated considerable debate and criticism since their implementation. While these measures were commenced by the previous Commonwealth government, they were supported by the current Commonwealth government while in opposition and continue to form part of the government's policy although the committee notes that some amendments have been made to the NTER and its implementation. These include a moratorium on the dismantling of the Community Development Employment Projects (CDEP) scheme in the Northern Territory<sup>11</sup> and changes to the income management scheme.

3.10 The committee notes that the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Emergency Response Consolidation) Bill 2008* is currently being considered by the Senate. Proposed amendments, which if passed, would require pay television licensees not to provide channels that contain more than 35 per cent of their total broadcast hours to programs rated R 18+, reinstate the permit system that gave public access to certain Aboriginal land and allow roadhouses in areas where a community is dependent on that roadhouse for the provision of groceries and drinks, to be licensed as a community store.<sup>12</sup>

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7 *Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195, art 1(4) (entered into force 4 January 1969).

8 The Hon. Jenny Macklin, MP, Minister for Families, Housing, Community Services and Indigenous Affairs, Budget 2008-09, 'Closing the Gap between Indigenous and non-Indigenous Australians', p. 28.

9 Department of Families, Housing, Community Services and Indigenous Affairs, *Northern Territory Emergency Response: One Year On*, 20 June 2008, p. 3.  
[http://www.facs.gov.au/nter/docs/reports/nter\\_review.pdf](http://www.facs.gov.au/nter/docs/reports/nter_review.pdf) (accessed 9 September 2008).

10 Advice provided by the Department of Families, Housing, Community Services and Indigenous Affairs.

11 The Hon Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Building stronger Indigenous communities', Press release, 10 December 2007.

12 Families, Housing, Community Services and Indigenous Affairs and other Legislation Amendment (Emergency Response Consolidation) Bill 2008, Explanatory Memorandum, outline and p. 3.

## Independent review of the Northern Territory Emergency Response

3.11 On 6 June 2008 the Commonwealth government announced a three member independent review board to review the effectiveness and impact of the measures contained in the NTER. The NTER Review Board consists of Mr Peter Yu as Chair, Ms Marcia Ella Duncan and Mr Bill Gray AM. The Review Board is supported by an independent expert group and secretariat support is provided by the Department of Families, Housing, Community Services and Indigenous Affairs.

3.12 The terms of reference for the independent review are as follows:

- examine evidence and assess the overall progress of the NTER in improving the safety and wellbeing of children and laying the basis for a sustainable and better future for residents of remote communities in the NT, and in particular, in improving the education, health, community safety and employment outcomes for citizens, and particularly women and children, resident in remote communities and town camps in the NT;
- consider what is and isn't working and whether the current suite of NTER measures will deliver the intended results, whether any unintended consequences have emerged and whether other measures should be developed or ways of working applied to better address circumstances facing remote communities in the NT; and
- in relation to each NTER measure, make an assessment of its effects to date, and recommend any required changes to improve each measure and monitor performance.

3.13 The NTER Review Board's website states that in making their assessments and recommendations, the Review Board should have regard to the government's intention that Indigenous interests be engaged to ensure effective policy development and implementation processes, and that policy and program measures to be adopted or endorsed by the Government give primacy to the interests of families and children and have regard to the *Racial Discrimination Act 1975*. The Review Board should also have regard to any relevant evaluation and review processes that may have already been undertaken in relation to the NTER.<sup>13</sup>

3.14 As of 29 September 2008, the NTER Review Board had received 222 submissions.<sup>14</sup> The Review Board was due to report its findings to the Commonwealth government on 30 September 2008, however the committee notes that the report has

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13 For more information see: <http://www.terreview.gov.au/tor.htm> (accessed 10 September 2008).

14 For more information see: <http://www.terreview.gov.au/subs.htm> (accessed 29 September 2008)

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been delayed until mid-October. The Commonwealth has committed to the public release of the NTER Review Board's report by the end of 2008.<sup>15</sup>

### **Committee's approach to term of reference (a)—the NTER**

3.15 As the NTER is being independently reviewed, with that report due to be publicly released by the end of 2008, the committee has decided to defer a more detailed consideration of this term of reference until 2009. This will provide the committee with the benefit of the NTER Review Board's findings and will allow the committee to consider these findings more fully as well as seek community and stakeholder views on both the findings and the government's response.

### **Issues raised**

3.16 The NTER, since announced in June 2007 has generated considerable media attention and community concern. This level of concern is reflected in the submissions.

3.17 Out of 37 submissions received as of 10 September 2008, 15 of these are focused exclusively on the NTER. Most submissions about the NTER question why the legislative package of measures needs to exclude the RDA in order to protect children. The Darwin Aboriginal Rights Coalition describes the suspension of the RDA as a '...very significant concern for individuals, leaders and organizations alike'.<sup>16</sup> Some submitters are also concerned that the suspension of the RDA has led to what Marlene Holder describes as 'an upsurge of blatant racism'<sup>17</sup> and are urging the government to reinstate the RDA.<sup>18</sup>

3.18 Several submitters quoted the first recommendation of the Little Children are Sacred report which recommended that governments commit to genuine consultation with Aboriginal people when designing initiatives for Aboriginal communities<sup>19</sup> and noted that the NTER seemed to be in direct contradiction with this recommendation.<sup>20</sup>

3.19 There were no submissions that were expressly in support of the NTER although several welcome the additional resources that the NTER provided to Indigenous people and communities in the Northern Territory, as well as raising the

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15 Department of Families, Housing, Community Services and Indigenous Affairs, *Portfolio Budget Statements 2008-09*, Budget Related paper No 17, p. 57.

16 Darwin Aboriginal Rights Coalition, *Submission 5*, p. 14.

17 Marlene Holder, *Submission 6*, p. 1.

18 Oxfam Australia, *Submission 17*, pp 6-7; Law Council of Australia, *Submission 33*, p. 4.

19 Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, 2007, p. 84.

20 See for example Oxfam Australia, *Submission 17*, p. 6; Central Australian Legal Aid service and Northern Australian Aboriginal Justice Agency, *Submission 24*, p. 4.

profile of the importance of services and support to families and children. As the National Rural Health Alliance states:

On the positive side, the work in the Northern Territory has stimulated valuable public attention and bipartisan political support for work to improve the health of Aboriginal and Torres Strait Islander people. Provision of adequate services and policies to achieve equal health for Aboriginal and Torres Strait Islander people throughout the nation within a generation will require whole-of-government and national support. It will mean working on the social and economic determinants of poor health, as well as on putting in place a comprehensive primary health care system for Indigenous people. Response measures should be coordinated and aligned with existing services; programs should be complementary not competitive. Governments should be prepared to make the substantial investment that will be required to bring about equity.

Whatever view is taken of the detail of the Northern Territory intervention to date, it can certainly provide useful information for guiding decisions about how a long-term national program should be implemented.<sup>21</sup>

3.20 Much of the criticism in submissions about the NTER focused on the way that the measures had been created and implemented, without consultation with Indigenous people and communities that were going to be affected. A majority of the submissions proposed that dealing with disadvantage faced by Indigenous communities was best done in consultation with people affected and by building on the strengths of the community.<sup>22</sup>

3.21 Many people making submissions about the NTER were keen to bring successful community driven initiatives to the committee's attention, such as community and night patrols operating in remote communities in central Australia<sup>23</sup> and the substance abuse programs run by Indigenous organisations at Mount Theo and Ilpurla in Central Australia.<sup>24</sup>

3.22 One submission referred to the NTER as 'a bureaucracy building exercise'<sup>25</sup> leading to little more than the employment of additional public servants.<sup>26</sup> There was considerable concern that implementation of the NTER would simply lead to more examples of failed government policy. The submission from the Central Australian Youth Link Up Service puts it in the following way:

It is strange how often this issue arises in this region: successive waves of government bureaucrats implementing policies that have already proved to be ineffective. The

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21 National Rural Health Alliance, *Submission 8*, p.4.

22 Desert Knowledge Cooperative Research Centre, *Submission 13*, p.2.

23 Ms Jenny Walker, *Submission 15*, pp 6-9.

24 Central Australian Youth Link Up Service, *Submission 26*, p. 7.

25 Northern Territory Council of Government School Organisations, *Submission 10*, p. 2.

26 See also Ms Jenny Walker, *Submission 15*, p. 2.

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inevitable roadcrash is then blamed on the Indigenous people who the flawed policy was applied to and the bureaucrats move on, to be replaced by another wave of people who follow the same tragic pattern. It seems this is a product of the top down approach, and reflects the fact that in federal bureaucracies the players are constantly changing while the problems on the ground continue.<sup>27</sup>

3.23 Many were concerned that there was no evidence that the measures of the NTER were going to improve the lives of children, with the Northern Territory Council of Government School Organisations suggesting that the NTER was having a negative impact because 'children are being taken out of home communities to areas where parents can drink and often are not returning to school until several months later'.<sup>28</sup>

3.24 Several submissions detail problems with store cards and income quarantining, and advocate voluntary systems of income management. Tangentyere Council has provided the committee with an example of a voluntary food voucher system used by 840 people before the NTER commenced. This system allows people to allocate some of their Centrelink payments to food vouchers.<sup>29</sup> Tangentyere Council also details examples of how the compulsory income management system of the NTER is creating an administrative burden on community organisations and stores.<sup>30</sup>

### **Future direction for the committee's inquiry**

3.25 The committee notes the level of concern expressed in submissions about the measures of the NTER and the way in which they have been implemented. The committee will consider the independent review of the NTER and gather further evidence in relation to the NTER and its impact over the course of its inquiry.

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27 Central Australian Youth Link Up Services, *Submission 26*, p. 4.

28 Northern Territory Council of Government School Organisations, *Submission 10*, p. 3.

29 Tangyentere Council, *Submission 31*, p. 7.

30 Tangyentere Council, *Submission 31*, p. 7.