

# ADDITIONAL COMMENTS BY THE AUSTRALIAN LABOR PARTY

1.1 At the outset, Opposition Senators wish to reiterate Labor's support for the intervention and acknowledge the seriousness of the problem of child abuse both in the Northern Territory and nationally. The Leader of the Opposition has outlined the grim statistics relating to abuse and neglect of Indigenous children in the Northern Territory:

In the five years to 2006 notifications of abuse and neglect of Indigenous children in the Northern Territory grew at more than three times the rate of that for non-Indigenous children. Between 2005 and 2006 Indigenous children in the Northern Territory were five times more likely than non-Indigenous children to be the victims of child abuse on the basis of substantiated reports of that abuse. Furthermore, of all sexually transmitted infections diagnosed in Aboriginal people in the Territory, eight per cent occurred in children under the age of 16. That is nearly three times the infection rate for non-Aboriginal children.<sup>1</sup>

1.2 Opposition Senators believe that addressing child abuse and neglect in Aboriginal communities is rightly designated as an issue of urgent national significance. We believe that federal, state and territory governments have obligations to take both immediate and sustained action to improve the lives of all children, especially those in Aboriginal communities.

## **Appropriations**

1.3 The two appropriations Bills considered by this inquiry provide around \$587 million in the current budget year for the government's Northern Territory intervention and associated measures. The committee did not have the opportunity to examine the appropriations in the same level of detail as provided for by the normal Budget estimates process, and as such only general comments can be made.

1.4 Opposition Senators welcome the increased expenditure on improved services, infrastructure and economic development in Aboriginal communities.

1.5 However, we note that the appropriations are for the current budget year only, and do not extend into the longer term. During the inquiry, the committee sought clarification on what this means for contracts funded under the initiative, and in particular the capacity to enter into contracts that go beyond 30 June 2008. FaCSIA responded to a question on notice regarding this issue:

While the current bills contain some funding for activities linked to the second (normalisation) phase of the Emergency Response, it is recognised that further funding will be required to address the longer term issues.

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1 *House of Representatives Hansard*, 7 August 2007, p. 70.

Further Commonwealth budgetary processes will include consideration of these requirements. Future year funding implications of measures contained in these bills will be considered at that time.<sup>2</sup>

1.6 Labor is concerned that the capacity to enter into long term contracts and funding commitments will be critical to the success of the intervention. Labor considers that the issue of the funding available in future budget years, to consolidate the outcomes of the initial intervention package, should be addressed as a matter of priority.

1.7 Labor Senators also note with concern evidence from FaCSIA that the two appropriation bills do not include any funds for additional housing for Indigenous people.<sup>3</sup>

### **Immediate and long term action, planning and response to the *Little Children are Sacred* report**

1.8 Labor supports the need for an emergency intervention and immediate action to improve the health and wellbeing of Aboriginal children in the Northern Territory.

1.9 Labor is concerned that this intervention is part of a longer term strategy which has as its aims:

- the protection of children;
- the nurturing of children and ensuring they have access to appropriate health and education;
- strengthening Indigenous communities to take control of their own affairs; and
- assisting those communities to achieve economic independence.

1.10 These aims cannot be achieved unless the Commonwealth, after dialogue and genuine consultation with affected Aboriginal communities, sets out a comprehensive long term plan.

1.11 The intervention is silent on many of the recommendations set out in the *Little Children are Sacred* report and it is for this reason, that its authors, Ms Pat Anderson and Mr Rex Wild QC, have been critical. In particular, Ms Anderson's response to the intervention package has been reported as follows:

'Aboriginal families and Aboriginal people do want to own this problem, they want to be part of solving it. They want it fixed, they are sick and tired of their communities being sick,' she said.

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2 FaCSIA, *answers to question on notice 8 & 9*, 12 August 2007.

3 *Committee Hansard*, 10 August 2007.

'[But] if we do this top down as proposed, there's a danger of it being seen as a cynical exercise.

'There's a real opportunity here to once and for all do something .... We need extraordinary interventions but not at the risk of infringing our fundamental human rights.' Ms Anderson said the opportunity presented by the report had been lost.<sup>4</sup>

1.12 Any longer term plan should establish a framework for the achievement, in partnership with the Northern Territory Government and Indigenous communities, of the recommendations set out in the *Little Children are Sacred* report.

### **Permit system**

1.13 Opposition Senators do not believe that in their current form the proposed changes to the permit system will improve the security and safety of children in a practical way.

1.14 In its submission, the Police Federation Australia said:

In relation to the long-standing permit system for access to Aboriginal communities, the PFA is of the view that the Australian Government has failed to make the case that there is any connection between the permit system and child sexual abuse in Aboriginal communities. Therefore, changes to the permit system are unwarranted.

We note that the Government has decided, on balance, to leave the permit system in place in 99.8 per cent of Aboriginal land.

Operational police on the ground in the Northern Territory believe that the permit system is a useful tool in policing the communities, particularly in policing alcohol and drug-related crime. It would be most unfortunate if by opening up the permit system in the larger public townships and the connecting road corridors as the Government intends, law enforcement efforts to address the 'rivers of grog', the distribution of pornography, and the drug running and petrol sniffing were made more difficult.<sup>5</sup>

1.15 The Northern Land Council noted that it had conducted comprehensive consultation in its region, in relation to changes to the permit system, in 2006 and that both traditional owners and Aboriginal people living on communities universally opposed the changes.<sup>6</sup> Similarly, the Central Land Council submitted that:

Opening up roads and community 'common areas' on Aboriginal land will open up Aboriginal land and communities more broadly. Once people enter Aboriginal land it is difficult to control their movement. Aboriginal

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4 'Report authors see little changing from indigenous plan', *AAP*, 10 August 2007; see also 'Tactic a backward step say authors', *The Australian*, 11 August 2007, accessed at: <http://www.theaustralian.news.com.au/story/0,25197,22225009-5013172,00.html>

5 *Submission 24*, p. 3.

6 *Submission 154*, p. 3.

landowners are concerned about the potential flow of visitors on to their land more broadly without permission and without guidance with regard to safety and important sites.

The permit system is an important policing tool in remote communities. Police routinely asked unwanted visitors to leave communities because they do not have a permit...If more unwelcome visitors visit communities, such as grog runners and carpet baggers, there will be a greater demand for policing with fewer powers of enforcement.<sup>7</sup>

1.16 On the other hand, several submissions spoke of the need for greater public scrutiny of Aboriginal communities.<sup>8</sup>

1.17 The committee requested copies of the submissions provided to the 2006 review of the permit system. However, the Secretary of FaCSIA refused to provide the submissions on the basis that: 'It is advice to the government; it is a matter for the government.'<sup>9</sup> Opposition Senators believe that this is an example of the unnecessarily secretive approach the government has taken to the development of many aspects of the intervention package. Clearly, debate would be more fully informed if submissions to the 2006 review of the permit system were publicly released.

#### **Additional Recommendation 1**

**1.18 Subject to additional recommendations 2 and 3 below, Labor Senators recommend that the blanket removal of the permit system on roads, community common areas and other places as specified in Schedule 4 of the National Emergency Response and Other Measures Bill be opposed.**

#### **Additional Recommendation 2**

**1.19 Labor Senators support access without a permit for agents of the Commonwealth or Northern Territory Government to facilitate service delivery (such as doctors or other health workers).**

#### **Additional Recommendation 3**

**1.20 Labor Senators recommend that greater public scrutiny of Aboriginal communities in the Northern Territory be facilitated by allowing access to roads and common town areas, without a permit, by journalists acting in their professional capacity, subject to the restrictions relating to the protection of the privacy of cultural events (such as sorry business) as proposed in schedule 4 of the National Emergency Response and Other Measures Bill.**

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7 *Submission 84*, p. 3.

8 See for example Mr C Tangey, *Submission 1*.

9 *Committee Hansard*, 10 August 2007.

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## **Compulsory acquisition of rights, titles and interest in land**

1.21 Facilitating better housing and infrastructure has been central to the government's argument for needing five year leases over townships in Aboriginal communities. The government has argued that taking on the responsibility as the effective town landlord is necessary to quickly improve vital infrastructure and housing in these communities as well as to support the economic development of the communities.

### ***Negotiation rather than compulsory acquisition***

1.22 The committee received evidence regarding the significant disappointment of Aboriginal communities in the Northern Territory that the government has chosen to compulsorily acquire interests in land instead of negotiating with communities in relation to the best means of achieving the shared objectives of the intervention package. Mr John Ah Kit of the Combined Aboriginal Organisation of the Northern Territory told the committee:

We have problems with the compulsory acquisition and the special purpose leases around the town camps, which are almost as good as freehold. You need to talk to the organisations that control those and you need to talk to the Territory government. I am sure some agreement can be struck, if there were a head-lease on offer for those organisations like Tangentyere ... But there is no real consultation.<sup>10</sup>

1.23 More broadly Mr Daly, Chair of the NLC advocated further negotiation between governments and Aboriginal people:

We always thought that we would be consulted all along. Unfortunately, some things have been dropped in front of us and now we are running at 100 miles an hour. But what we have always said to the Commonwealth—and we say this to all governments within Australia—is: 'Come and talk to us. We're practical people and we're about getting the outcomes for our people.'<sup>11</sup>

1.24 Labor Senators note that the compulsory acquisition powers will be phased in, giving time for further negotiation with affected communities, and urge the Government to negotiate with the affected communities during this phase-in period.

### ***Just terms***

1.25 Labor Senators support the comments in the government report on the uncertainty over whether just terms compensation will be paid under the legislation and particularly note the evidence of the Law Council suggesting that:

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10 *Committee Hansard*, 10 August 2007.

11 *Committee Hansard*, 10 August 2007.

[T]he provisions concerning compulsory acquisition of Aboriginal land are discriminatory, unnecessary and should be excised from the legislation—individual Aboriginal communities should be consulted and asked to assist and participate before compulsory acquisition could be contemplated...<sup>12</sup>

1.26 The Law Council also noted that:

If it is the Territory's power that supports these parts of the legislation and no other head of power is referable—which, arguably, is the case—then compensation would not be required under the Constitution and the legislation would not require payment of compensation. That, to me, is the most fundamental difficulty. If compensation is payable, in my view, the legislation should clearly state that.<sup>13</sup>

1.27 Labor Senators consider it to be an absolutely fundamental principle that the Commonwealth Government should pay just terms compensation for the acquisition of property from anyone, anywhere in Australia. Further, Labor rejects absolutely any suggestion that services or infrastructure, which all Australians have the right to expect their governments to provide, should be considered as contributing to compensation for the acquisition of the property rights of Indigenous people.

1.28 We support comments in the majority report calling on the government to clarify the position in relation to the compulsory acquisition powers in the bills which provide for a 'reasonable amount of compensation' to be paid.

### ***Compulsory lease provisions***

#### *Access for traditional usage*

1.29 Opposition Senators believe that the operation of leases provided for under proposed section 31 of the National Emergency Response Bill should allow access to the leased land for traditional purposes consistent with section 71 of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

#### *Need for negotiation and a review in 12 months*

1.30 This lease process will be new and untried, and could cause significant concern and confusion for Aboriginal communities if not handled sensitively by the Commonwealth Government. However, if this process is approached co-operatively, it has the potential to deliver significant benefits to those communities. Opposition Senators urge the government to use the Minister's powers under proposed section 36 as a basis for negotiating with affected communities in relation to the terms and conditions of these leases.

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12 *Committee Hansard*, 10 August 2007.

13 *Committee Hansard*, 10 August 2007.

1.31 Labor Senators believe a review to examine how effective the leasing provisions have been in achieving the aims of the intervention package should be conducted 12 months from the commencement of the legislation. The review should also assess progress in establishing infrastructure and housing in both towns and town camps. We cannot afford for the improvements to stall, or become mired in a legal process that does not deliver outcomes. Labor Senators believe that a co-operative attitude from both sides will yield the most effective outcomes.

1.32 The immediate infrastructure requirements of these communities have, justifiably, seen the government motivated to take immediate action. The success of the stabilisation phase in terms of infrastructure improvements is immediately measurable. In 12 month's time, the government will know how many houses it has built, or fixed, and how much community infrastructure has been improved.

1.33 Although the acquisition of the five-year leases will occur in three tranches, the first tranche is to be immediate and the others will occur within six months. Thus there will be a significant number of communities where immediate action can be taken and progress is capable of being reviewed after a year. To suggest otherwise undermines the argument in favour of the emergency measures.

#### **Additional Recommendation 4**

**1.34 Labor Senators recommend that an independent review of the effectiveness of the measures taken under Part 4 of the National Emergency Response Bill should be conducted after 12 months.**

#### **Welfare reform**

1.35 When this intervention was first announced, the Prime Minister and the Minister said that the income management regime for people in prescribed Northern Territory communities would apply for an initial period of 12 months.

1.36 In this period, the government should be able to measure how the behaviour of individuals has changed in terms of their spending on food and essentials, as opposed to other items such as alcohol. School attendance should also be a measurable indicator of performance of the welfare reforms.

1.37 Labor Senators want to assess the effectiveness of the income management measures at stabilising the communities, and to see how they are interacting with broader income management systems and welfare reforms.

1.38 Labor Senators also note that the quarantining of welfare payments and direction of where people can spend their money means travelling between outstations and homelands will be severely restricted. This means that people who may want to go back to remote areas for cultural and ceremonial reasons may be prevented from doing so on the basis that the legislation requires other expenditure. Labor Senators have concerns about how these provisions may operate in practice, particularly as these provisions have the potential to prevent Aboriginal people travelling for funerals.

## **Additional Recommendation 5**

**1.39 Labor Senators recommend that a review be conducted after 12 months of the operation of the welfare reform and income management system specific to the Northern Territory.**

### **Racial Discrimination Act**

1.40 Labor Senators are mindful of the Law Council's concern that exclusion in the three main bills of the operation of the Racial Discrimination Act is 'utterly unacceptable'.<sup>14</sup>

1.41 Labor Senators also note the comments by Mr John von Doussa, President of HREOC in relation to 'special measures', particularly the necessity of undertaking immediate and effective consultation with those affected by the measures:

...a fundamental feature of 'special measures' is that they are done following effective consultation with intended beneficiaries and, generally, with their consent. In the present case, the absence of effective consultation with Indigenous peoples concerning the legislative measures is, therefore, a matter of serious concern. We accept that this is a case where urgent action is necessary. Nevertheless, it seems to us that the success of the action, both immediately and in the long term, will depend upon effective consultation. Effective consultation is fundamental to respecting the human rights of Indigenous people.

We accept the reality of the situation that these bills are going to pass so quickly through parliament; therefore, what we want to emphasise today are some practical considerations. Ideally, to justify the legislation as 'special measures' there should have been comprehensive consultation beforehand and significant input from the communities concerned. That has not happened, but it is not too late now to embark upon a consultation process. [HREOC emphasises] the need for a culturally appropriate consultation process and a significant public information campaign so that the communities affected understand what is being done and why it is being done, and so that they have the opportunity to contribute to the decisions that are made now as to the implementation of this legislation.<sup>15</sup>

1.42 Given the need for consultation, Labor Senators are of the view that the government should consult now. We reiterate the view put by HREOC that it is never too late to consult.

1.43 The government has indicated in briefings to the opposition that they are confident that the legislation does not offend the Racial Discrimination Act. This advice was also provided by FaCSIA in evidence to the committee's inquiry.

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14 *Submission 52*, p. 4; see majority report at paragraphs 2.21 and 2.22.

15 *Committee Hansard*, 10 August 2007.



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1.44 Labor Senators believe that, as legislators, we should be sending a clear message that we have confidence in this plan, we have confidence that it will be of benefit to the people of the Northern Territory, and we have confidence that it will achieve results against its aim – the protection of our children. In doing so, we must observe the integrity of the Racial Discrimination Act. This is a basic principle for the Opposition, a basic principle for this country and a basic principle for the Indigenous community of this country.

### **Additional Recommendation 6**

**1.45 Labor Senators recommend that the provisions in the bills suspending the operation of the Racial Discrimination Act be opposed.**

### **Changes to CDEP**

1.46 The government has indicated its intention to require CDEP participants in the Northern Territory to transition into mainstream work or onto income support and the Welfare Payment Reform Bill provides for a transition payment for existing CDEP participants. The committee heard that these changes will affect approximately 8,000 Indigenous people in the Northern Territory.<sup>16</sup> In addition, several submissions were received expressing concern in relation to these changes. The Bawinanga Aboriginal Corporation (BAC) submitted a report prepared by consultants engaged by BAC. The report stated that:

The extensive research base on CDEP has led the authors to believe that the Australian government's decision to abolish the program will have extensive socioeconomic impacts upon the constituents of BAC. Many of these impacts will be unintended, far reaching and difficult to predict. Most people going from CDEP to the Work for the Dole (WfD) program are likely to experience a significant drop in pay which could act as a serious disincentive to work. Of particular concern is that the abolition of CDEP may lead to a depopulation of the Outstations in the region. This is due to severe problems in the workability of the WfD program. The report finds that the impacts are not in the interests of the people of the region or the nation as a whole...<sup>17</sup>

1.47 Similarly, LHAI submitted to the committee that:

[T]he Government response could well precipitate the collapse of generally well functioning organisations such as LHAI. This is because of the precipitous withdrawal of funding without time to plan or structurally adjust, the climate of extreme uncertainty which makes retention and recruitment of staff and the maintenance of morale extremely difficult, and the uncertainty as to security of land and assets. An organisation cannot

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16 *Committee Hansard*, 10 August 2007.

17 *Submission 3*, p. iv.

plan if it has no idea what in 8 weeks time its income will be or what assets it can undertake its work with.<sup>18</sup>

1.48 In terms of the immediate impact of the changes, LHAI stated:

Cessation of CDEP for LHAI will result in the direct loss of 17 individual full time Indigenous contracted staff positions in an already limited labour market area. The loss of these jobs will directly impact upon the remaining 11 Indigenous positions at LHAI as the resource centre becomes increasingly constrained in its capacity to deliver core business services to homelands residents.<sup>19</sup>

1.49 While Opposition Senators support the intention behind these measures, we are concerned about evidence the committee received regarding the potential impact of these changes, particularly in the short term.

1.50 Given the significance of these changes for Aboriginal communities, in the Northern Territory it is extremely disappointing that the committee did not hear from CDEP organisations at its public hearing.

### **Minister's powers to give directions in relation to assets**

1.51 Labor Senators also hold concerns in relation to the provisions which allow the Minister to give directions in relation to the use, management, possession and even ownership of assets which are provided for under proposed section 68 of the National Emergency Response Bill. The Law Council noted in evidence to the committee that:

[S]ome Aboriginal associations...—some of them commercial and some of them for the provision of services—have had a variety of funding from both the Commonwealth and the Northern Territory governments. There is a concern that the act will be there [,] without any differentiation between those that had been obtained through commercial enterprise and those that had been obtained through funding... That is very much a matter of concern. Here we may well have organisations or associations who have been successful, worked hard and acquired assets and may well lose them under this type of legislation.

Senator STEPHENS—In relation to the winding back of the CDEP program, would it be fair to say that the assets that have been built up by communities through the CDEP program would be the kinds of assets that would be affected under this clause?

Ms Webb—Yes, I think that is certainly the case. It may be that those assets have been partially funded by CDEP funds or Commonwealth funds and partially funded by commercial enterprises or commercial activity, but they will be caught up with it.<sup>20</sup>

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18 *Submission 38*, p. 6.

19 *Submission 38*, p. 17.

20 *Committee Hansard*, 10 August 2007.

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1.52 In terms of the practical effect of these provisions, Laynhapuy Homelands Association Incorporated (LHAI) advised that:

[O]ver the 22 years of operation since formal incorporation, LHAI has acquired and maintained significant ‘operational’ assets in terms of staff housing, plant and equipment, workshops, administration building, etc. and the assets of our airline business. Many of these assets have been financed through bank loans, received as donations, ‘scrounged’, purchased from members funds through by royalties and income generating activities. Although some ‘operational’ assets have been wholly or partly acquired through government specific funding, the organisation more generally often bears the cost of maintenance, operation and depreciation.

In recent years, the kava wholesale business allowed LHAI to also make significant investment of its own funds in infrastructure and housing improvements in the homelands.

Very few of LHAI’s assets are 100% government funded – either NT or Commonwealth.<sup>21</sup>

1.53 Labor Senators are concerned that the impact of proposed section 68 is that any asset can be directed to be transferred from an organisation, so it would be possible under the legislation to strip assets from organisations and prevent them from functioning at all.

### **Requirements for reporting**

1.54 Labor Senators support the intervention, and want clear indicators of success. For the emergency phase, some key performance indicators should be able to be set after 12 months, and in any case a full range of performance indicators should be measurable after two years. Labor Senators support the recommendations in the majority report for annual reporting on progress, and for the overall two-year review (Recommendations 1 and 3).

1.55 Finally, Labor Senators urge the government to support the Opposition's recommendations outlined above, which are provided in good faith and in an attempt to work constructively with the government on this issue.

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21 *Submission 38*, p. 9.

**1.56 Labor Senators recommend that the Bills be supported.**

**Senator Patricia Crossin  
Deputy Chair**

**Senator Linda Kirk**

**Senator Joseph Ludwig**

**Senator Ursula Stephens**