

9 August 2007

Jackie Morris
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra Act 2600
Australia

Dear Secretary

Re: *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007*
Northern Territory National Emergency Response Bill 2007
Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007

1. We thank you for the opportunity to comment on the above Bills. We have the following concerns that are applicable to all three Bills:
2. The time allocated for public scrutiny of the draft legislation is grossly inadequate; a practice that is becoming increasingly common in Indigenous affairs. For example, the *Native Title Amendment Act 1998* (Cth), the *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* (Cth) and the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* (Cth) were all passed into law in the absence of genuine consultation with Indigenous communities. The Commonwealth's recent interventions in the Northern Territory are further confirmation of the disenfranchisement of Indigenous Australians.
3. The measures contained in the Bills have been inappropriately characterised as 'special measures' within the meaning of the *Racial Discrimination Act 1975* (Cth). By its nature, a special measure confers a benefit on a particular group, for the purpose of enabling that group to enjoy their human rights on an equal basis with the broader community. However, the measures contained in the

above Bills will only limit the ability of Indigenous people in the Northern Territory to enjoy rights ordinarily taken for granted by most Australians, and in particular, the right to exercise control over land that they have property in. Furthermore, the Government is yet to explain how such drastic measures will address the revelations contained in *Little Children are Sacred*.

4. The draft legislation contains provisions that could result in the erosion of rights that are among the hallmarks of Australian democracy. A case in point is Schedule 1 of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007*, that will insert a new Part 10 into the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)*, with the aim of keeping pornographic material out of prescribed areas. Section 100 provides that Part 10 will operate concurrently with State and Territory laws. Therefore, it is possible that an individual could be prosecuted under both Territory and Commonwealth laws in respect of the same act.
5. Other provisions may unnecessarily curtail the exercise of the freedom of speech. For example, Part 3 of the *Northern Territory National Emergency Response Bill 2007* imposes requirements in relation to the use of publicly funded computers in prescribed areas. Section 28 requires a 'responsible person' for a publicly funded computer to develop a policy for acceptable usage. Subsection 28(3) provides that the policy must prohibit use for communications containing material that, among other things, would incite a contravention of any law, and communications 'designed to annoy or torment.' It is possible that an email publicising a political demonstration would fall within the ambit of s 28(3).
6. Provisions that have the potential to curtail the freedom of speech must be subject to genuine parliamentary scrutiny. Indeed, a Senate that was really doing its job would demand proof that the winding back of fundamental freedoms was necessary for the eradication of child abuse.

7. It is not only individual freedoms that are likely to be adversely affected. Indigenous corporations may also lose the ability to shape the delivery of services in order to meet local needs. Part 5 of the *Northern Territory National Emergency Response Bill 2007* applies to ‘community services entities’ in ‘business management areas’. Both terms are defined so broadly that it is likely that Part 5 will apply to the majority of Indigenous organisations responsible for delivering services to Indigenous communities in the Northern Territory. Part 5 Division 2 will empower the Minister to direct a community services entity to provide a service in a specified way, use its assets in a particular way, or even transfer ownership of its assets to a person or entity determined by the Minister. It is inevitable that instances will arise where Indigenous organisations will be at variance with the Commonwealth over the most appropriate means of delivering services. Part 5 Division 2 may allow the Minister to short-circuit such debates.
8. Part 5 Division 3 also empowers the Minister to appoint an ‘observer’ to attend a meeting of a community services entity. There are no preconditions for the appointment of an observer and hypothetically, one could be appointed for the ulterior motive of intimidating an organisation that publicly criticised the Government. An observer appointed under Part 5 Division 3 will be entitled to copies of any papers or documents to be considered at the meeting and the minutes of the previous meeting. A failure to comply with such requirements may result in a civil penalty. While the Minister may argue that the powers contained in Part 5 Division 3 will promote efficient service delivery, it is undeniable that such powers will also be vulnerable to abuse. Furthermore, the bolstering of Ministerial power at the expense of the autonomy of Indigenous organisations is inimical to the emphasis placed by *Little Children are Sacred* on the importance of community ownership of solutions to child abuse.
9. Arguably, the most concerning aspects of the reforms are the provisions concerning land tenure and access to land. It has not been possible within the space of three days to comprehensively examine the detailed provisions of Schedules 3 and 4 of the *Families, Community Services and Indigenous*

Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 and Part 4 of the *Northern Territory National Emergency Response Bill 2007*. However, in our cursory analysis we have been unable to find any nexus between those provisions and the issues raised in *Little Children are Sacred*. In particular, we are concerned that Schedule 4 of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007* is aimed at opening up access to roads, aerodromes and landing places for boats, for non-Indigenous people who are desirous of traversing Aboriginal lands.

We are also troubled that s 51 of the *Northern Territory National Emergency Response Bill 2007* will suspend the operation of the future act regime of the *Native Title Act 1993* (Cth) in relation to lands acquired under ss 31 and 47. The future act regime is triggered by acts that affect native title and in some cases, affords valuable procedural rights to native title holders, such as the right to negotiate. Further clarification is necessary in order to determine whether native title holders would still exercise the right to negotiate in the event that a mining lease was granted over land subject to s 51.

10. We regret that we have been unable to comprehensively analyse the Bills subject to the present inquiry. However, we do hope that our brief submission confirms the message that has been repeatedly conveyed by Northern Territory Indigenous leaders in recent days. These Bills have the potential to wind back rights that generations have fought for and therefore, must not be passed into law in the absence of genuine consultation. Placed in the shoes of Indigenous Territorians, the members of the Senate would expect nothing less.
11. Once again, we thank you for the opportunity to comment on the above Bills. Should you require further information please contact Nicole Watson on (02) 9514 9655.

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