

**Submission to the Senate Legal and Constitutional Affairs Committee Inquiry
into the Appropriation (Northern Territory National Emergency Response)
Bill (No. 2) 2007-2008**

by

Australians for Native Title and Reconciliation (ANTaR)

Introduction

On 21 June this year the Prime Minister, John Howard and Indigenous Affairs Minister, Mal Brough announced the Federal Government was seizing control of more than 60 remote Aboriginal communities in an attempt to overcome child abuse in the Northern Territory.

So dramatic was the Federal Government's intervention, that it prompted the *Weekend Australian's* Nicholas Rothwell to say that it ranks with the referendum of 1967, or the passage of land rights in the NT, as a turning point in Australian history.

The magnitude of these changes was not lost on Indigenous Affairs Minister, Mal Brough, who after introducing the Northern Territory Emergency legislation, told ABC Television's *Lateline* program that: "We've just passed through the parliament measures which give me the authority and the responsibility to impact on the lives of Indigenous children like no Minister has ever had..." <http://www.abc.net.au/lateline/content/2007/s1999216.htm>.

Given the seriousness of the problem of child abuse, the scale of these legislative changes and the unprecedented power that they give to the Minister, it is scandalous that there has been so little time for consultation, scrutiny and debate on the Government's Northern Territory National Emergency response.

Australians for Native Title and Reconciliation (ANTaR) agrees with the Prime Minister and Minister Brough that child abuse in Aboriginal communities is a national emergency requiring urgent action from Government. All fair minded Australians would hope that the Government's intervention succeeds in overcoming this problem.

However, ANTaR is concerned that unless changes are made to the Government's approach, its attempt to stop child abuse in Northern Territory Aboriginal communities will fail. We are worried that some of the measures being proposed will in fact add to the suffering of Indigenous children rather than overcome it.

ANTaR is an Australia-wide, community-based organisation committed to the rights of Australian Indigenous people. It comprises member organisations in the States and Territories. Our mission is to generate in Australia both a moral and legal recognition of, and respect for, the distinctive status of Indigenous Australians as First Peoples and for the protection of the rights of Indigenous Australians, including their relationships to land, the right to self-determination, and the maintenance and growth of their unique cultures.

More than 300,000 people have signed ANTaR's *Sea of Hands* in support of native title and reconciliation.

ANTaR has worked extensively to support Aboriginal people who are overcoming violence and child abuse. In 2006 it organized a forum in Parliament House, Canberra bringing Aboriginal leaders who have successfully tackled abuse and violence together with politicians and public servants to discuss strategies to overcome these problems. ANTaR is currently campaigning to urge the NSW Government to properly fund its response to the abuse of Aboriginal children in that state. Its *Success Stories in Indigenous Health* booklet released in June this year also profiles a number of successful programs that are tackling child abuse and its effects.

ANTaR's principal objections to the *Northern Territory National Emergency Response Bill* are as follows:

The Government response is inconsistent with the Little Children are Sacred Report.

The Government has justified its actions on the basis of the *Little Children are Sacred* report, commissioned by the Northern Territory Government and written by former Northern Territory Director of Public Prosecutions, Rex Wild QC and senior Aboriginal health worker, Pat Anderson.

Little Children are Sacred found that the sexual abuse of Aboriginal children in the NT is serious, widespread and often unreported; Aboriginal people are not the only victims and not the only perpetrators of sexual abuse; and most Aboriginal people are willing and committed to solving problems and helping their children.

According to the Inquiry, sexual abuse of Aboriginal children is happening largely because of the breakdown of Aboriginal culture and society and the combined effects of poor health, alcohol and drug abuse, unemployment, gambling, pornography, as well as poor education and housing. Of these factors, the Inquiry considered that alcohol remains the gravest and fastest growing threat to the safety of Aboriginal children.

The Inquiry made 97 recommendations. These include action to: improve school attendance; provide education campaigns on child sexual abuse and how to stop it; reduce alcohol consumption in Aboriginal communities; build greater trust between Government departments, the police and Aboriginal communities; strengthen family support services; empower Aboriginal communities to take more control and make decisions about the future; and appoint a senior, independent person who can focus on the interests and wellbeing of children and young people, review issues and report to Parliament.

Although the Federal Government said *Little Children are Sacred* had prompted its actions, the emergency measures announced by the Prime Minister do not reflect the recommendations of the report.

According to Professor Ian Anderson, "None of the ... measures announced by Prime Minister Howard are ... to be found in the strategies recommended by the Anderson/Wild report." ANTaR commends Professor Anderson's article to the Committee. It is available at: http://www.apo.org.au/webboard/comment_results.shtml?filename_num=161613

Banning alcohol in affected communities for 6 months will not stop grog running.

Drying up the “rivers of grog” described by the Little Children are Sacred Report will be essential to overcoming the abuse of Northern Territory Aboriginal children. However, ANTaR does not consider that banning alcohol in affected communities for 6 months will achieve this.

Nearly all Territory Aboriginal communities have been 'dry' for some years. However, this has not prevented the availability of alcohol from towns surrounding the communities or the illicit trade in 'grog running.' Unless these sources are also tackled, a ban is unlikely to be effective.

Any ban would also need to be accompanied by rehabilitation services for people coming off alcohol and other substances. Professor Ian Anderson suggests that enforcing alcohol restrictions without the introduction of broader strategies to deal with addictions can merely lead to problem drinkers moving into unregulated areas: “As a result, a single measure such as enforced alcohol restriction may, in fact, result in increased harm from violence and abuse in these communities.”

(http://www.apo.org.au/webboard/comment_results.shtml?filename_num=161613)

Changing land tenure arrangements will not help overcome child abuse.

The Federal Government plans to acquire five year leases over townships, resume leases on town camps and appoint administrators to manage all government programs. This risks undermining the local Aboriginal leadership and initiative essential to overcoming the problem. It also threatens to weaken the capacity of communities to deal with abuse and its causes. As Australian National University Professor Jon Altman points out in an Oxfam report, **the Government has yet to provide any evidence demonstrating how changing land tenure arrangements will help overcome child abuse:**

One of the Commonwealth Government’s fact sheets indicates two broad reasons for the change in policy. First, a suggestion that public investment in housing and repair had proved to be ineffective because of the underlying tenure and control of houses. This statement, which is not backed up by any credible evidence, suggests that this is not a temporary five-year measure. Second, it is stated that public investment to repair houses, buildings and infrastructure is hampered by a long approval processes. There is no evidence to support this contention – on the contrary, experience dating back to 1976 suggests that proper approval and planning processes have rarely been used by public sector agencies in respect of Aboriginal communities.

(<http://www.oxfam.org.au/campaigns/indigenous/docs/land-rights-altman.pdf?PHPSESSID=75199cd66c56bd1e917c33caf8625a54>)

The proposed welfare reforms are untested

The changes proposed by the Government would quarantine the welfare payments of all Aboriginal people from the communities who are long term social security recipients.

Although the Minister says this is inspired by the Cape York Welfare Reform Project, the two approaches differ markedly. While the Northern Territory proposal is a blanket one, the Cape York program only targets those communities that have agreed to participate and those

parents who have neglected children. The Cape York program depends on the involvement of respected Aboriginal community representatives to determine whether welfare payments should be quarantined. This Aboriginal leadership is missing from the NT approach.

The Cape York Project is also in its infancy and a proposed trial in four communities has not yet commenced. No evidence is yet available to determine its level of success or whether its introduction will lead to unintended consequences. **ANTaR does not believe changes to welfare payments should be extended to other areas before a proper evaluation of the Cape York Project has taken place.**

Scrapping the permit system will increase the risk of children being abused

The Government proposes to scrap the permit system for access to townships, main roads and airstrips on Aboriginal lands. **No evidence has been provided to support the Minister's claims that scrapping the permit system will help overcome child abuse.** In fact, Australia's leading expert on child abuse in Aboriginal communities, Professor Judy Atkinson considers that scrapping the permit system may actually increase the risk of child abuse by restricting the ability of communities to remove suspected paedophiles from Aboriginal land. Fears have also been expressed that removing the permit system will make communities more vulnerable to grog running.

The Emergency Response does not appear to draw on expert evidence of what is needed to overcome child abuse.

Professor Judy Atkinson of Southern Cross University is the author of *Trauma Trails, Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex 2002). Widely regarded as Australia's leading expert on child abuse in Indigenous communities, Professor Atkinson favours a "child centred approach" to overcoming abuse in the Northern Territory, a situation she regards as both a "national emergency and a national shame."

Professor Atkinson's work was cited in the House of Representatives second reading debate following the introduction of the Northern Territory legislation by National Party Member for Page, the Hon Ian Causley:

Professor Judy Atkinson goes into communities and gets the confidence of the community. She picks out people she believes to be leaders in the community and works with those leaders in the community to change the results. She tries to get through to them that things have to change within the community—that they cannot have these assaults and rapes and that there must be an education. She works with the people in the community to get that result, and she has runs on the board as far as those results are concerned. At present she runs a course at the university and is getting graduates from the university. Those graduates will go out and work in the community. It is a process that has to be helped, because obviously there are not enough graduates at present.

At the core of this is the fact that you must start there: in the communities, at the grassroots. You cannot impose these things on the community; you have to get them to understand the right thing to do within the community and get the community to accept that. (http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2733517&TABLE=HANSA RDR)

Mr Causley was right to praise the life saving work of Professor Atkinson. However, her methods – gaining the confidence of the community and working with its leaders – are sharply at odds with his Government’s emergency response. There is no evidence to suggest the Government has sought the advice of experts like Professor Atkinson in developing its approach.

Professor Atkinson has written about how she would tackle the crisis of child abuse in Northern Territory Aboriginal communities. ANTaR commends her article to the Committee: <http://www.antar.org.au/content/view/490/1/>

The Government also does not appear to have drawn on the expertise of Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, who, together with his predecessors has published extensively on ending violence in Indigenous communities. See for example:

http://www.humanrights.gov.au/social_justice/familyviolence/family_violence2006.html

Neither does the Federal Government appear to have sought the advice of the Secretariat for National Aboriginal and Islander Child Care (SNAICC). SNAICC considers that elements of the Federal Government response “lack expert guidance in the area of child protection, are too short term in focus, and fail to provide a way for stakeholders to contribute their expertise so the measures can have a lasting effect on the safety and welfare of children.” <http://www.snaicc.asn.au/news/SNAICCVIEWNTMeasures.html>

In July 2006, the Federal Government announced the formation of an Australian Crime Commission National Indigenous Violence and Child Abuse Intelligence Task Force (NIITF).

Among the objectives of the NIITF are:

- enhancing national understanding about the nature and extent of violence and child abuse in Indigenous communities; and
- conducting research on intelligence and information coordination and identification of good practice in the prevention, detection and responses to violence and child abuse in Indigenous communities.

The NIITF seeks to “inform future law enforcement, and wider government, decisions on addressing violence and child abuse in Indigenous communities.”

The NIITF considers that the “fundamental drivers of Indigenous violence and child abuse are social and economic.” It describes its approach as “‘non punitive’ and respectful of Indigenous people and cultures. National and regional level consultative arrangements will be established, where possible utilising existing structures. In these processes, particular efforts will be made to engage with and involve Indigenous elders, leaders and women’s groups.” (http://www.crimecommission.gov.au/html/pg_NIITF-1.html)

ANTaR urges the Committee to determine what involvement, if any, the NIITF had in the development and implementation of the Federal Government’s emergency response and the legislation underpinning it.

An alternative Indigenous approach has greater chance of success.

The Combined Aboriginal Organisations of the Northern Territory has released an alternative Emergency Response and Development Plan to protect Aboriginal children. The Combined Aboriginal Organisations group is made up of more than 60 local and regional Aboriginal organisations including medical, children's and legal services, land councils and other service providers.

Its plan is a comprehensive approach that gives priority to protection from immediate physical or emotional harm but also addresses underlying issues including housing, health care and education.

Unlike the current Government approach the Combined Aboriginal Organisations' plan builds on the recommendations of the *Little Children are Sacred* report and programs that are already working in Aboriginal communities. It adopts a partnership approach between Government and Aboriginal people and would strengthen the governance and capacity of Aboriginal communities.

It envisages the creation of a national lead agency to implement the plan and an independent monitoring and evaluation body to report on progress.

There are 68 actions in the plan ranging from developing an emergency response in conjunction with Aboriginal community representatives, boosting child protection services, proper training of a permanent police presence in communities, tackling alcohol take away sales and buyback of existing hotel licenses and improved schooling strategies to trauma counseling for victims of abuse.

ANTaR considers that this plan has a far greater chance of success than the current Government approach. We urge the Committee to recommend the adoption of this plan in a bipartisan manner. A copy of the Combined Aboriginal Organisations of the Northern Territory Emergency Response and Development Plan is available at: <http://www.antar.org.au/images/stories/PDFs/cao%20report%20%208%20july.pdf>

Aspects of the legislation would be exempt from the Racial Discrimination Act

The Human Rights and Equal Opportunity Commission (HREOC) has expressed concern that the proposed legislation seeks to sidestep the *Racial Discrimination Act 1975* (Cth) (RDA).

The RDA already provides for the existence of “special measures” that are necessary and for the sole purpose of securing adequate advancement of a certain group or individuals requiring protection so as to ensure they enjoy their human rights equally with others.

The existence of “special measures” should make it unnecessary to override the RDA, unless the Government considers that the measures it has proposed will not “secure the adequate advancement” of the Indigenous children it seeks to protect.

ANTaR agrees with HREOC that: “If the measures proposed cannot meet the test for a ‘special measure’, then rather than remove the protection of the RDA, the measures should not be enacted.” (http://www.humanrights.gov.au/media_releases/2007/53_07.html)

Abolishing CDEP will not stop child abuse

A key element of the Government's emergency response is the abolition the Community Development Employment Projects (CDEP) scheme in remote Indigenous communities in the Northern Territory.

ANTaR supports the replacement of CDEP with real jobs that have career paths and training as occurred with the \$47.6 million 'Working on Country' program announced in the last Federal Budget. This program will create 200 full time Indigenous community ranger jobs for work that was previously carried out by people on CDEP.

(<http://www.crikey.com.au/Politics/20070530-Indigenous-Working-on-Country-program-a-potential-winner.html>)

However, creating "real jobs" does not appear to be the motivation behind the current decision. As Indigenous Affairs Minister, Mal Brough, told ABC Television's *7:30 Report*, abolishing CDEP will enable the Government to quarantine welfare payments: "The biggest sum of money that comes into these communities is in fact CDEP money, and because of the way it actually is handled, the quarantining of the 50 per cent of welfare payments can't be achieved if we leave it the way it is."

<http://www.abc.net.au/7.30/content/2007/s1994420.htm>

ANTaR does not believe the quarantining of welfare payments should be extended to the Northern Territory until a proper evaluation of the Cape York project has been carried out and unless it is supported by Northern Territory Aboriginal communities.

Indigenous people have not been adequately consulted about the proposed changes.

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report, *Unlocking the Future* made recommendations about the appropriate consultation that should occur prior to any change of the *Northern Territory Aboriginal Land Rights Act*.

The Committee was Howard Government dominated and its recommendations were unanimous. It said that the Act should not be amended without:

traditional Aboriginal owners in the Northern Territory first understanding the nature and purpose of any amendments and as a group giving their consent; and

any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views

(<http://www.aph.gov.au/house/committee/atsia/reeves/tblcontrecom.pdf>)

ANTaR believes the same tests should be applied to the current legislative changes proposed by the Government. These proposed changes have been met with overwhelming opposition from Northern Territory Aboriginal people.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma has spoken of the importance of governments upholding the principles of free, prior and informed consent in relation activities that affect Indigenous people. Commissioner Calma explains the principles as follows:

- *Free* requires no coercion, intimidation or manipulation;
- *Prior* requires that consent has been sought sufficiently in advance of any authorization or commencement of activities and respects time requirements of Indigenous consultation and consensus building processes;
- *Informed* requires that information is provided that addresses the purpose, scope, obligations and impact of any proposed activity; and
- *Consent* requires that consultations be undertaken in good faith; on a basis of mutual respect; and with full and equitable participation. It also requires that Indigenous peoples can participate through their own freely chosen representatives and customary or other institutions and ultimately it must allow the option for Indigenous people to withhold their consent. (http://www.humanrights.gov.au/speeches/social_justice/sj_nt_reports_05.html)

It would appear that the proposed legislation falls well short of adhering to the principles recommended by Commissioner Calma.

ANTaR urges the Committee not to support the Federal Government's proposed Northern Territory legislation unless it is satisfied that they are consistent with the wishes of Aboriginal Territorians.

Conclusion

ANTaR shares the Federal Government's commitment and determination to eliminate violence and child abuse in Aboriginal communities. We agree with the Prime Minister that this situation constitutes a national emergency.

In May 2006, we said that if Minister Brough was genuine about bringing people together to solve the problems of violence and abuse in an inclusive way that focuses on the issues not ideology, then ANTaR would support him 100 percent.

However, this has not occurred. The Minister has been unwilling to genuinely engage with Aboriginal people to develop solutions. Neither has he been prepared to listen to the advice of those people with a demonstrated track record of defeating violence and abuse in Aboriginal communities.

Furthermore, the Government has not presented any evidence to support its claims that seizing Aboriginal land, removing the permit system, quarantining welfare payments or throwing Aboriginal people off CDEP will stop child abuse. We therefore urge the Committee not to support the Government's Northern Territory National Emergency Response legislation.

Gary Highland
National Director
Australians for Native Title and Reconciliation
 PO Box 1176
 ROZELLE NSW 2039
 Tel: 02 9555 6138 Mob: 0418 476 940
 Email: gary@antar.org.au