CAALAS SUBMISSION TO THE SENATE LEGAL CONSTITUTIONAL AFFAIRS COMMITTEE INQUIRY INTO THE NT NATIONAL EMERGENCY RESPONSE BILL & RELATED BILLS

CAALAS is an long established Aboriginal community controlled legal service provider operating in the Central Australian region across more than half the Northern Territory landmass for more than 30 years.

CAALAS has grave concerns about speed with which this legislation has been introduced and the lack of any opportunity for real consideration and debate. We feel that there is no genuine willingness on the part of the government to consider input from organizations such as ourselves.

The process is flawed in its lack of consultation with indigenous groups and the failure to implement even one of the 97 recommendations of the "Little Children Are Sacred" Report of Anderson and Wild. The first recommendation of that report states "That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to *genuine consultation* with Aboriginal people in designing initiatives for Aboriginal communities" (our italics).

The bills being considered by the Senate have been described by former federal court Judge Murray Wilcox as "constitutionally valid but extremely discriminatory". They explicitly seek to override the *Racial Discrimination Act* by stating their provisions are "special measures." CAALAS is extremely concerned that the *Racial Discrimination Act*, a vital human rights safeguard, is being sidestepped. The *Racial Discrimination Act* implements Australia's international obligations under the *Convention on the Elimination of all forms of Racial Discrimination* "CERD".

"Special measures" under the *Racial Discrimination Act* (in accordance with paragraph 4 of article 1 of the CERD) are measures "taken for the sole purpose of

securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamentals freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they should not be continued after the objectives for which they were taken have been achieved".

CAALAS is extremely concerned that the Bills declare themselves to be special measures, thereby essentially exempting them from any judicial oversight with regard to whether or not they are racially discriminatory and in breach of Australia's international obligations under the CERD.

In relation to the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007*. CAALAS wishes to express its concern that the quarantining of welfare payments of 50% and even 100% for the persons receiving welfare payments in the affected areas of the Northern Territory (and anywhere else they may have moved to after 21 June 2007 if they were in the affected areas at that time) is explicitly excluded from review by the Social Security Appeals Tribunal (paragraph 18 of Schedule 1). Indigenous parents who have been doing the right thing, raising their children, sending them to school, providing them with healthy meals and being in all respects good parents, are to be subject to a quarantine regime whereby loss of control of 50% or more of their income is unable to be challenged by them even before the Social Security Appeals Tribunal. Other provisions in the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007* set up an income management regime based on the quality of the recipient's, or their partner's, behaviour with regard to child schooling and parenting, however the provisions applying solely to the effected areas in the Northern Territory do not rely at all on any notion of good behaviour or parenting of the recipient of their partners. The income management regime provisions do not set out the principles which the Secretary must have regard to as the Bills allow these to be set out in a legislative instrument to be made by the Minister and this concentrates significant power in the Minister which power is not reviewable.

CAALAS is extremely concerned at the acquisition of indigenous land and rights to land and notes other organisations will be presenting submissions to the senate inquiry on these issues. Our view is that these measures do not assist the government in addressing the stated aims of the legislation.

The legislation contains provisions relating to criminal matters as far as bail and sentencing is concerned. These provisions are directed specifically at aboriginal defendants and issues of culture and customary law. CAALAS deplores these provisions. It is our view that they are discriminatory and place aboriginal defendants in a worse position than other defendants appearing before the courts. We refer to the Inquiry by the Senate Standing Committee on Legal and Constitutional Affairs into the Crimes Amendment (Bail and Sentencing) Bill 2006.

CAALAS has serious misgivings about the proposed provisions relating to alcohol restrictions in communities and the potential for increasing the likelihood of long periods of incarceration for offenders. This seems to be an attempt to respond to symptoms rather than causes. A better approach to dealing with alcohol on communities would be to focus on issues of substance abuse and the underlying causes.

Our view is that the raft of measures is seriously flawed. We would welcome a *real* opportunity to respond to them systematically and comprehensively. The Inquiry is a token gesture toward consultation but in reality does not allow for or encourage any community response.

Yours Sincerely

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