

## **PART A: BRIEF BACKGROUND TO THE NORTHERN TERRITORY INTERVENTION**

### **In the beginning: Little Children are Sacred report**

The 2007 introduction of the Northern Territory Emergency Response (NTER) was the result of an odd amalgamation: an ‘exposé’ on the ABC’s *Lateline* program, prejudice against Aboriginal communities, an upcoming election and the need to look decisive. They had some bureaucrats with outdated proposals for paternalistic control of welfare recipients dating back to the 1990s, when policy changes in the UK and USA undermined the right to welfare entitlements that had been part of the post-war welfare state.

The Federal Government’s justification for ‘the Intervention’ was said to be the NT Government’s failure to respond to the 2007 report of its own Board of Inquiry into the protection of Aboriginal children from sexual abuse.<sup>12</sup> That Inquiry had made 45 community visits, held more than 260 meetings and received 65 written submissions. Its report was titled *Ampe Akelyernemane Meke Mekarle: Little Children are Sacred*.<sup>13</sup>

*Little Children are Sacred* contained 97 detailed recommendations, none of which – despite the government’s rhetoric – were actually implemented by the Intervention.<sup>14</sup> According to the authors, the Inquiry’s findings were ‘encapsulated’ by the first two recommendations:

- (a) To consult and work collaboratively with the local communities; and
- (b) To place children’s interests at the forefront in all policy and decision-making.

Both these recommendations were ignored by the Liberal-National Federal Government in 2007, and by subsequent Labor governments.

### **Howard’s next step**

The embattled Howard Government, with an election approaching, apparently

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<sup>12</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, p 10, Mal Brough, Minister for Families and Community Services and Indigenous Affairs, stated, “With clear evidence that the Northern Territory government was not able to protect these children adequately, the Howard government decided that it was now time to intervene and declare an emergency situation and use the territories power available under the Constitution to make laws for the Northern Territory.”

<sup>13</sup> Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Rex Wild QC and Patricia Anderson, *Ampe Akelyernemane Meke Mekarle, “Little Children are Sacred”* (2007).

[http://www.inquiryntsaac.nt.gov.au/pdf/bipacsa\\_final\\_report.pdf](http://www.inquiryntsaac.nt.gov.au/pdf/bipacsa_final_report.pdf) at 29 August 2011.

<sup>14</sup> Commonwealth, *Parliamentary Debates*, Senate, 8 August 2007, p 42, Rachel Siewert quoted from the *Little Children are Sacred report*: ‘There’s not a single action that the Commonwealth has taken so far that ... corresponds with a single recommendation. There is no relationship between these emergency powers and what’s in our report.’

thought a no-nonsense, punitive course of action would go down well with voters. It rapidly introduced legislation creating a slather of centralised controls and initiatives in 73 designated communities, purportedly intended to protect young children against the sexual abuse identified in the report. However, most of the measures did not in fact, focus on child abuse prevention; most had no direct impact on children; and the Intervention was imposed on everyone, whether they looked after children or not.

It began with a series of errors – frightening communities with the arrival of military trucks, suggesting inappropriate sexual medical checks, and offending the UN by suspending the *Racial Discrimination Act 1975* (Cth). Nonetheless, the Intervention rolled out, albeit slowly, in many of the designated communities. Protests were ignored; indeed, in the public debates there were implications that objectors were possible apologists for sexual abusers.

The main elements of the NTER that this Journal will cover are:

- Extra police which were generally welcome; central new restrictions on alcohol and pornography which were not so welcome.
- Commonwealth takeover of community services and installation of officers known as Government Business Managers.
- Income Management – Quarantining of 50 per cent of welfare benefits to all recipients in the designated communities, so the funds could only be spent on certain goods (mainly food) at certain shops.

This last measure is the focus of this issue of the Journal.

The reforms were put through the Federal Parliament as an emergency package, without consultation, despite this being the first recommendation of the Report that triggered the process. The *Racial Discrimination Act (RDA)* was suspended to allow these measures to be applied only to Aboriginal communities. Suspension of the *RDA* is legally permissible for ‘special measures’, ie race-specific measures which clearly benefit members of that race; the Government hoped these reforms would qualify under that label.

Both the process and the content of the package met with immediate criticism for compromising human rights, democracy, freedom, self-determination and Indigenous rights. The reaction came from organisations and individuals both in NT and in other parts of Australia. Women for Wik, a group that had been active in earlier land rights activism, was revived specifically to respond to this change. New organisations were formed such as Concerned Australians, which included prominent non-Aboriginal Australians like Alastair Nicholson, former Chief Justice of the Family Court of Australia.

The Combined Aboriginal Organisations of the Northern Territory, established in late 2007 to coordinate local objections to the Intervention, circulated this list of key concerns via email:

**WHAT'S THIS LEGISLATION GOT TO DO WITH SAVING THE CHILDREN?**

**Federal Government Intervention in the Northern Territory**

1. **Lack of time to consider the legislation and no consultation means they are more likely to get things wrong and also breaches the first recommendation** of the Little Children are Sacred report which called for collaboration between the Australian and NT Governments and genuine consultation with Aboriginal people. Neither has been done. Indigenous people must have ownership of measures that affect them, or the measures will fail.
2. **The Emergency Response doesn't address child abuse nor is it mentioned in the legislation.** The recommendations of the Little Children are Sacred report, claimed to be the trigger for the 'Emergency Response', have been entirely ignored, and the government response has no evidence and ignores the advice of experts.
3. **Funding is for welfare control and more bureaucrats, not for programs that address children's needs.** \$88m is for the administrative cost of quarantining welfare payments for 20,000 people, ie removing control over 50% of their money. The \$2.3 billion shortfall for NT remote community housing and infrastructure needs will be further strained by accommodating government staff who are located at or need to visit communities, even if separately funded.
4. **All individuals who receive welfare payments will be subject to income management**, regardless of their ability to manage their affairs. The new arrangements will follow any individual if they leave the community. 50% of the welfare payments of all individuals in 'affected communities' will be income managed for the first 12 months.
5. **This is racially discriminatory legislation** and exempted from the Racial Discrimination Act, even though it purports to be a 'special measure'. Aboriginal people in the NT are being included in the measures on the basis of race, if they were living in the designated areas in July, regardless of their personal circumstances or actions.
6. **Forced acquisition of property rights and assets** by compulsory 5-year leases on all communities. "Just terms" compensation will only be paid "if warranted". The legislation also provides for the Commonwealth and NT Governments to have continuing ownership of the community buildings and infrastructure on Aboriginal land that have been constructed or upgraded with government funding – in other words, to gradually strip communities of their assets and resources they have built up over the years, often by local efforts.
7. **Alcohol measures are ineffective** as the great majority of NT Aboriginal communities are already 'dry' but the existing laws may not be properly policed and enforced. The new, harsh penalties for drinking, possessing, selling and transporting alcohol are very heavy – however there will be NO restrictions on selling takeaway alcohol, nor reductions in outlet numbers (such as roadhouses which are the main suppliers of alcohol illegally taken into communities).
8. **The removal of permits to access Aboriginal land will not prevent child abuse.** Aboriginal landowners and NT Police strongly support the continuation of the permit system. There is no evidence that the incidence of child abuse is greater where permits function or that permits inhibit the delivery of government services as has been claimed. Removal of permits will make it easier for potential

- child abusers and grog runners to access communities and will deny Aboriginal people their right to privacy and ability to protect sacred sites.
9. **Welfare legislation allows for “income management” of up to 100% of welfare payments.** Income management will be “used as a tool to assist state and territory governments to meet their responsibilities” in relation to school enrolment and school attendance. There is no provision for extra schools, desks, teachers and classrooms as neither the Federal nor NT Govts have provided adequate funding to enable all NT Aboriginal children to attend school!
  10. **Abolition of CDEP / transfer of CDEP participants to welfare provisions.** CDEP (Community Development Employment Projects), the primary source of employment and income for most Aboriginal people in remote communities, will be phased out to force individuals onto welfare so that their incomes become subject to income management. Many essential community services, community organisations, artists’ cooperatives, night patrols, community stores etc. are staffed by CDEP workers. Abolition of CDEP is likely to have a shattering impact on remote communities and town camps.
  11. **In conclusion this is an abuse of power and wasted opportunity as these resources could be used for engaging Aboriginal communities** and individuals in necessary planning and change, rather than assuming total control over their lives and treating them as irresponsible children. In failing to engage with the NT Government and Aboriginal communities, the Federal Intervention is missing an historic opportunity to use its record surpluses (\$17b this year!) to addressing the long neglected critical issues underlying child abuse and broader Indigenous disadvantage.<sup>15</sup>

Thus from the very beginning there was considerable concern about the Intervention, and many questions raised about whether this was the way to go. However, these concerns were largely ignored by the Government at the time, and by the incoming Labor Government a few months later.

### **Change of government and the Yu report**

After the Howard Government lost power in November 2007, the incoming Rudd Labor Government, which had supported the legislation in Opposition, continued the Intervention with enthusiasm. Its open support was illustrated by the following commentary published in December 2007 in *The Australian*:

#### **Labor eyes expanded NT scheme**

New Indigenous Affairs Minister Jenny Macklin plans to negotiate with the states to replicate parts of the Northern Territory intervention around the nation, vowing to do whatever it takes to improve Aboriginal lives.

In an interview with *The Weekend Australian*, Ms Macklin said she was not interested in ideology, only outcomes, and that she has ordered her department to collect hard data on the progress of the intervention to provide information for a 12-month review.

Ms Macklin refused to attack the Howard government's approach to indigenous affairs, and indicated that radical policies might be applied across the country,

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<sup>15</sup> Email circulated by the ‘Combined Aboriginal Organisations of the Northern Territory’, 2007.

provided they had been shown to work.

"As the indigenous affairs minister, I'm actually the indigenous affairs minister for all indigenous people in Australia," she said. "It's very important that we support the indigenous people in the Northern Territory, but the same applies for the people who live in all the major cities - there's a lot of indigenous people everywhere."

Ms Macklin's comments are the strongest so far on the new federal Labor government's intentions on indigenous policy.<sup>16</sup>

At that stage income management, a major part of NTER, had not yet been applied to many communities: the program covered only 1 400 people in November 2007.<sup>17</sup> Income management could easily have been stopped or delayed for evaluation; but the incoming Government had long-term ideas for wider welfare reform and proceeded with the roll-out. It did, however, agree to review the measures after the first full year of operation.

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<sup>16</sup> Patricia Karvelas and Simon Kearney, 'Labor eyes expanded NT scheme', *The Australian*, 1 December 2007.

<sup>17</sup> Jenny Macklin, 'Northern Territory Emergency Response progress', Press Release 9 June 2010: 'The number of people being supported through income management has reached 17 000 under the Northern Territory Emergency Response (NTER). This compares with 1400 people on income management in November 2007.'  
[http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/pages/nter\\_progress\\_9jun10.aspx](http://www.jennymacklin.fahcsia.gov.au/mediareleases/2010/pages/nter_progress_9jun10.aspx) at 29 August 2011.