SUBMISSION

Aboriginal Health & Medical Research Council of NSW

The AH&MRC of NSW appreciates the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee in its Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills.

In the time available, we can only address a limited number of issues. These are:

1. The (non) relationship between the legislation and the NT report
2. The relationship to the Racial Discrimination Act
3. The relationship to COAG processes already in progress
4. The relationship to previous reports on violence and abuse; and, especially:

5. The lack of a mandate or rationale for expanding the Cape York Institute trial in four communities to all parents of school-age children, whether Aboriginal or not, everywhere in Australia via legislative instruments written by the Secretary or Minister of FACSIA.

1. The (non) relationship between the legislation and the NT report

We reject the claim that this legislation is justified as an emergency response to the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse [*the Report*] co-chaired by Rex Wild and Pat Anderson, who visited 45 NT Aboriginal communities, held 260 meetings and took 61 submissions.

We note with regret the attitude shown to consultation with the Australian public by the Commonwealth Government, in restricting this public Inquiry to one day, for complex legislation that was exposed to the public only on 6th August.

Since there is no time for the Inquiry to audit the legislation against the 97 recommendations in the *Report*, we note and endorse the reviews by the co-chairs of the NT Board of Inquiry. On 6th August Pat Anderson stated:

- ***"There is not a single action that the Commonwealth has taken so far that corresponds with a single recommendation."***
- *"There is no relationship between their emergency powers and what's in our report.*
- *"We did want to bring it to the government's attention but not in the way it has been responded to by the Federal Government."*
- *"We wrote the recommendations in a such way that they appeared so reasonable that you would feel any government would be absolutely unreasonable not to begin implementing what they said."*
- *"They behaved as though we all have done nothing and we don't know anything and we have all been sitting on our hands."*

In these circumstances, where the co-chairs of the Board of Inquiry feel "betrayed" by the way their work has been used in justification for actions they do not support, and the legislation is being pushed through Parliament without only the most cursory response to serious concerns expressed by many Honourable members and Senators, and to important amendments, we believe the most useful input we can make into the Inquiry is to support the views of the vast majority of Aboriginal speakers, especially those in the Northern Territory itself, while concentrating our own comments on issues that affect people in New South Wales.

Another commentary on the relation between the NT report and the Commonwealth Actions comes from Professor Ian Anderson, Professor of Indigenous Health and director of the Centre for Health & Society at the University of Melbourne. It was written on 29 June 2007, long before the present legislation, but it explicitly compares the announced response with the report, and should be considered by the Inquiry. It can be downloaded from [www.apo.org.au/webboard/comment_results.chtml?filename_num=161613]

IAN ANDERSON compares the federal government's response to the Little Children Are Sacred report with the authors' recommendations

ON 21 June the Prime Minister and the Minister for Families, Community Services and Indigenous Affairs announced a series of measures in response to Pat Anderson and Rex Wild's report, Little Children Are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. This comprehensive report, which includes 97 recommendations to combat this distressing problem, canvassed a broad range of relevant issues including: leadership, government responses, the role of the Northern Territory Department of Health and Community Services (DHCS), health and community service delivery, police, the prosecutions' process, bail, offender rehabilitation, education, community education and awareness, educational services, alcohol, employment, housing, community justice process, pornography, gambling, and the role of communities. In their first recommendation the authors stressed the "critical importance of governments committing to genuine consultation with Aboriginal people in design initiatives for Aboriginal community, whether these are in remote, regional or urban settings."

The Anderson/Wild report found that Aboriginal people wanted to engage with this process and were "committed to solving problems and helping their children" in the face of a serious, widespread and often unreported problem of sexual abuse. They found the situation to be a "reflection of past, current and continuing social problems which have developed over many decades," and that the "combined effects of poor health, alcohol and drug abuse, unemployment, gambling, pornography, poor education and housing, and a general loss of identity and control have contributed to violence and to sexual abuse in many forms". They highlighted the need for existing programs to work more efficiently to "break the cycle of poverty and violence," and to improve "coordination and communication between government departments and agencies" to end the current "breakdown in services and poor crisis intervention." Further, they declared that these programs must have adequate resources and a long-term commitment from all governments if they are to succeed.

A number of recommendations were specific to Northern Territory institutions. For example, recommendations were made with respect to the structural reorganisation of the DHCS Family and Community Services Program, and the creation of a Commissioner for Children and Young People. The report also focused considerable attention on problems concerning the connection between disclosure and the legal processes. Attention was also given to dealing with some of the social determinants of health such as the lack of employment opportunities and inadequate housing as well as strategies to produce more resilient communities with a particular focus on the role of education.

The Australian government's response to the report came without warning – nor apparently any discussion with the Northern Territory government. Details of the plan were "high level" and, despite the haste, further clarity has not emerged. The measures announced at this time included:
• Creating a taskforce of eminent Australians to oversee the implementation of the measures.

• Introducing widespread alcohol restrictions on Northern Territory Aboriginal land for six months – including bans on alcohol sale, possession, transportation, consumption and monitoring of take-away sales across the Northern Territory.

• Medical examinations of all Indigenous children in the Northern Territory under the age of 16.

• Welfare reforms that will see 50 per cent of welfare payments to parents quarantined (in the affected areas) for food and other essentials, an obligation that will follow parents wherever they may go.

• Enforcing school attendance by linking children's attendance to income support and family assistance payments for all families living on Aboriginal land. These measures will also including ensuring that meals are provided for children at school with parents paying for the meals.

• Assuming control, by the Australian government, of Aboriginal townships through five-year leases to ensure improvements in property and public housing.

• Initiating an intensive on-ground clean up of communities to make them safer and healthier by marshalling local workforces through Work for the Dole arrangements.

• Scrapping the permit system for common areas and road corridors on Aboriginal lands.

• Banning the possession of x-rated pornography in the proscribed areas, and checking publicly funded computers for evidence of the storage of pornography.

***None of the above measures announced by Prime Minister Howard are, however, to be found in the strategies recommended by the Anderson/Wild report**. The reasons for this policy disconnect are unclear – although there has been some speculation in the press about the government's response being more about electioneering or using it as a "Trojan horse" for other policy agendas, particularly in relation to land rights.* [emphasis added]

The Australian government response is framed as a top–down crisis intervention with a campaign approach to the intervention. It is characterised as a short-term response to be followed by medium- and long-term strategies – none of which are clear at this stage. So, for example, whilst the Anderson/Wild report recommended strategies to increase policing in remote communities in the long term the Howard plan only extends for six months. Such an approach has been framed by thinking around a "new paternalism" – in clear contradiction to the recommendations in the Anderson/Wild report that relate to a more engaged, consultative process with Aboriginal communities.

Many of the government's proposals – for instance, scrapping the permit system, assuming control of Aboriginal land and instituting welfare reform – are simply not raised in the Anderson/Wild report. No reason is given as to how measures such as scrapping the permit system will address the problem of child sexual abuse. Conversely, a number of the issues that are raised in the report – in relation to community justice process, education/awareness campaigns in relation to sexual abuse, employment, reform of the legal processes, offender rehabilitation, family support services or the role of communities, for example – have not, as yet, been addressed by the Australian government response.

There are significant differences in the recommendations that relate to those issues that are canvassed both in the Australian government approach and the Anderson/Wild report. For example, there are nine recommendations in the Anderson/Wild report – with numerous sub-components in relation to alcohol – none of which include an immediate introduction of widespread alcohol restrictions. Many remote communities are already dry and this strategy could be incorporated into the recommended development of community alcohol plans. Current evidence suggests that enforced alcohol restrictions, in the absence of broader strategies to deal with addictions, simply reduce supply and tend to shift problem drinking into unregulated areas, such as Alice Springs town camps. 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.

The measures announced by the Australian government are lacking detail at this stage and there is some evidence that early thinking has shifted. Child health checks, for example, are no longer mandatory but wellness focused and voluntary. This is fortunate as many experts in this field caution against the possible traumas caused by mandatory health checks focused on detecting child sexual abuse. This is clearly an evolving agenda.

When challenged on the issue of consultation about the legislation in parliament on 7th August, Minister Brough replied as follows:

Some issues were raised by the opposition about communications, and the best communications on issues like this are face to face. ***We have now visited all 73 communities and explained to them what the intervention is about*** *and, as I said earlier on today, more than half of those communities have now had the assessment done, with more detailed information. …*

The accusation that this is top down and not based on consultation could not be further from the truth. The genesis of this legislation has come from comment and consultation, if you want to call it that. However, **it has been about me talking to people one on one**. It was from community consultation in Kalumburu, Western Australia—well before this latest break-out of charges, where 15 of the population of 90 males in that community were charged for child sex offences and similar activities—that I was told that virtually nobody in the community could work in a voluntary capacity in the school because they could not get the appropriate passes and, in addition, that the community had a huge problem with cash: 'What can you do to reduce the amount of cash in the community?' **I linked the two**. In the same way, people in Wadeye told me that they had problems with people using the cash for drugs and grog and also told me: 'Treat us like whitefellas and not like separate citizens. If our kids don't go to school, let there be a cause and effect. Let's have police here so that, when crimes are committed, things are dealt with.'

All of these things came from those community consultations that I have had over 18 months; that is where these things got their expression. So the accusation that we have not consulted could not be further from the truth. We have consulted over and over again. To do more would be to delay and, in doing so, more children would be hurt. That is just a statement of unfortunate fact. [emphasis added].

As the emphasised statements indicate, the reason why there is a mismatch between the NT *Report* , the measures announced on 21 June 2007, and the subsequent legislation now before the Inquiry, seems to be that the Minister has a concept of "consultation" that only requires one person on the decision-making side of the consultation.

Thus we would like the Senators to consider the legislation against a set of principles that the AH&MRC developed in partnership with NSW Health in relation to assessing the "aboriginal health Impact" of a policy. The document is on the NSW Health department web-site, and may be downloaded at [http://www.health.nsw.gov.au/pubs/a/pdf/ab_impact_state_book.pdf].

It has a number of key principles, which we commend to the Senate in reviewing this legislation. In relation to development of policy, they are:

Development of the policy, program or strategy

1. Has there been appropriate representation of Aboriginal stakeholders in the development of the policy, program or strategy?

2. Have Aboriginal stakeholders been involved from the early stages of policy, program or strategy development?

The focus of question 1 is the involvement of appropriate Aboriginal stakeholder representatives in the policy development process. The focus of question 2 is the timing of that involvement, namely whether Aboriginal stakeholder representatives have been involved from the early stages of the policy development process.

Within the context of health policy development in NSW, Aboriginal representation can broadly be divided into two types: government and communitybased.

In most cases government representation will consist of staff from the NSW Department of Health and/or Area Health Services, and community representation will involve the AH&MRC, Aboriginal Community Controlled Health Services (ACCHSs) and/or other providers of health services for Aboriginal people.

In some circumstances broader representation may be required, involving stakeholders such as other State and Commonwealth government departments, local government, other Aboriginal peak bodies, and/or other community-based health service providers (for example, general practitioners, medical specialists and community nurses). …

3. Have consultation/negotiation processes occurred with Aboriginal stakeholders?

4. Have these processes been effective?

The focus of questions 3 and 4 are the processes of consultation and negotiation, and although not the same, these activities often apply equally in many circumstances.

Effective consultation/negotiation processes are essential to policy development and evaluation. Too often, however, insufficient time and resources are dedicated to these processes and they are poorly delivered and managed. Many participants have been left disappointed, frustrated, cynical and wary of future involvement.

This is particularly true for consultation/negotiation involving Aboriginal people.

Effective consultation/negotiation processes should be based on principles of openness, transparency, integrity, partnership, trust and mutual respect for the legitimacy and point of view of all participants.

For Aboriginal people, the principles of selfdetermination and a holistic view of health must also be included. Non-Aboriginal staff involved in consultation/negotiation processes with Aboriginal people should strongly consider participating in Aboriginal cultural awareness training programs to help them better understand Aboriginal history and culture.

The outcomes of consultation/negotiation should not be pre-determined. Effective consultation may not always lead to agreement; it should lead to a better understanding of stakeholder positions.

2. Relationship to the Racial Discrimination Act

As the member for Banks outlined clearly in his speech in the House of Representatives on 7th August, the Government did not necessarily have to exclude key parts of the legislation from the operation of Part II of the Racial Discrimination Act 1975.

By declaring various measures as "special measures", the way was open for the Government to justify them in accordance with the definition of special measures in Article 1 of the *International Convention on the elimination of all forms of racial discrimination*, namely:

> 4. *Special 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 fundamental 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 shall not be continued after the objectives for which they were taken have been achieved.*

Given that speakers for the Government in both Houses have repeatedly asserted that the sole purpose of these measures is to protect the human rights and fundamental freedoms of Aboriginal people, it is unclear why the Government made no defence of its rejection of the amendments moved in the House of Representatives. These would simply have deleted the clauses that excluded the operation of the Racial Discrimination Act.

We note and endorse the views of Murray Wilcox QC on reviewing these matters as reported in the media on 6th August:

Reporter: *"Among the visitors to Garma this year was the nation's longest-serving Federal Court Judge, now retired, Murray Wilcox QC. The retired judge assessed the Federal Government's Emergency response legislation yesterday afternoon on a laptop in a stringybark forest on the edge of Arnhem Land, and he's not impressed."*

Judge: *"Well, I think it's constitutionally valid, but it's extremely discriminatory legislation. That is actually acknowledged by the legislation because it specifically excludes the operation of the Racial Discrimination Act and the Anti-Discrimination Act and legislation in the Northern Territory – in other words the government is saying: 'This is racially discriminatory legislation, but nonetheless it is to be regarded as valid'."*

Reporter: *The former Judge also issued this warning:*

Judge: *"I must say I am amazed to see any federal government introduce into the parliament legislation of this nature. People may think 'Well it doesn't matter, they're only people up in the Northern Territory, but if they can do that in the Northern territory they can do that in any community in the country, and I think we all ought to be concerned when governments behave like that."*

***Reporter**: Retired Federal Court Judge Murray Wilcox QC speaking in Arnhem Land with the Garma Festival music in the background. Melinda James the reporter.*

Source: http://mpegmedia.abc.net.au/news/audio/am/200708/20070806-am04-Judge.mp3

We also note the speech by the member for Banks:

"Under a special measure, providing the balance of what you do is beneficial and a temporary measure and is about advancement, you can have positive and negative measures in your package and it can still constitute a special measure and not be deemed to be racial discrimination.

… The previous Labor government had this debate as well when it had to enact the Native Title Act in response to the High Court's decision in Mabo and people were running around thinking that their backyards were not safe. The legal advice to the then Labor government was that the only way through the impasse was to suspend the Racial Discrimination Act and to act in a racially discriminatory way to ensure people that their backyards were safe.

The Labor government refused to do that and there was some internal Discussion, and to his eternal credit the then Prime Minister, Paul Keating, embraced the Racial Discrimination Act in the solution that his government brought down. It had in it positive measures in relation to Indigenous people with the promise of a land fund and a social justice package, but there were negative provisions in relation to Aboriginal people in terms of validation of titles. The preamble—and I read these out so that you can compare and contrast, because they are chalk and cheese—of the Native Title Act said:

The law, together with initiatives announced at the time of its introduction and others agreed on by the Parliament from time to time, is intended, for the purposes of paragraph 4 of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and the Racial Discrimination Act 1975, to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders, and is intended to further advance the process of reconciliation among all Australians. …

I do not accept the argument that to save children we have to act in a racial discriminatory way. Your legislation should involve the Racial Discrimination Act. It should embrace it …"

We believe that all Australian citizens should be concerned by the fact that their elected representatives are being asked to endorse a package of legislation which is stated to be for the benefit of Aboriginal people, and hides behind an exclusion clause that protects it from the operation of the relevant test of whether or not Australia is honouring its international commitment to eliminate all forms of racial discrimination.

We note also that this is a sorry footnote to the premature celebrations of the 1967 referendum by which 90% of Australians voted to allow the Commonwealth the constitutional power to make special laws that included Aboriginal people.

Since the legal phrases referring Part II of the Racial Discrimination Act do not mean much to the average reader, we believe it is of value to at least state the headings of what has been excluded in relation to this legislation before the inquiry:

We also want to draw the attention of the Inquiry to the exception allowed for "special measures".

8 Exceptions

(1) This Part does not apply to, or in relation to the application of, special measures to which paragraph 4 of Article 1 of the Convention applies except measures in relation to which subsection 10(1) applies by virtue of subsection 10(3).

And lastly, we want to draw the attention of the Inquiry to the content of Subsections 10(1) and 10(3) that place limits on the exception of "special measures":

10 Rights to equality before the law

(1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.

(2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.

(3) Where a law contains a provision that:

(a) authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or

(b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander;

not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person.

That is to say, a law that authorizes certain actions in regard to the property of an Aboriginal or Torres Strait Islander person, without their consent, in ways that are different from the laws applicable to other Australian citizens, are not "special measures" to which the exemption in accordance with article 1 of the international convention applies.

In that context, we wish to draw the Inquiry's attention to the analysis by Professor Jon Altman for Oxfam Australia of the lack of evidence of connection between some of the "property management" aspects of the legislation and the welfare of Aboriginal children.

We quote from the executive summary and recommendations, and encourage the Inquiry to read the full report.

EXECUTIVE SUMMARY

This paper provides compelling evidence to show that the proposed changes to the Aboriginal Land Rights (Northern Territory) Act 1976 (the "ALRA") have no connection with the incidence of child sexual abuse; are likely to jeopardize the effectiveness of the Government's emergency response in the Northern Territory and are detrimental to the development of Aboriginal communities.

The paper argues that the proposed amendments to the ALRA should be vigorously opposed for the following reasons:

• There is no evidence that either measure is related in any way to child sex abuse;
• There is some risk that the relaxation of the permit system might exacerbate the problem of child sex abuse;
• The development of the proposal to abolish the permit system predates the release of the Anderson/Wild Little Children Are Sacred report and is based on an ideological position rather than any factual basis as there is no evidence that child abuse is any higher where the permit system exists;
• These two land rights reform measures are at direct loggerheads with a number of other measures and are consequently likely to jeopardize the effectiveness of the overarching National Emergency Response;
• Abolition of the permit system will be unnecessary if compulsory leasehold of townships is implemented.

From a broader developmental perspective, the compulsion associated with both measures will be counter-productive. In particular, both measures will lessen the property rights, and associated political and economic power, of an already marginalized Indigenous minority.

From a public policy perspective, it is of grave concern that much of the land reform being proposed may be funded from the Aboriginals Benefit Account (ABA) – a special account that receives the equivalent of mining royalties raised on Aboriginal land. While ABA funds can be distributed to, or for the benefit of, Aboriginal people in the NT, this needs to be based on the advice of the ABA Advisory Committee.

Funding any new scheme from the ABA will shift the risk away from the Commonwealth Government to Aboriginal interests using resources earmarked for development according to Aboriginal priorities.

From an Indigenous policy perspective, it is extremely disappointing that there are very clear, inherent inconsistencies in the National Emergency Response.

RECOMMENDATIONS

Given the proposed changes to the ALRA are in no way associated with child sexual abuse in Aboriginal communities and there is therefore no pressing urgency to pass the amendments, Oxfam Australia makes the following recommendations:

1. The legislative amendments be subjected to thorough parliamentary scrutiny – particularly a Senate Inquiry – to ensure that all stakeholders have the opportunity to contribute to the debate concerning the proposed changes and to ensure that Parliamentarians are fully apprised of their potential impact.

2. All political parties engage in a respectful dialogue with Aboriginal communities who will be affected by the proposed changes to ascertain whether there is community support for the changes.

3. The workability of the land rights amendments made in 2006 be rigorously assessed before any further reforms are introduced.

4. In the absence of all of the above, the proposed amendments be vigorously opposed and not passed by the Parliament of Australia.

Note: This briefing was prepared prior to sighting the Aboriginal Land Rights amending legislation to be tabled in Federal Parliament during the sitting week beginning 6 August 2007.

*[*Source: Altman J. "*National Emergency" and Land Rights Reform: Separating fact from fiction An assessment of the proposed amendments to the Aboriginal Land Rights (Northern Territory) Act 1976.* Briefing paper for Oxfam Australia. Centre for Aboriginal Economic Policy Research, The Australian National University 7 August 2007.]

In summary, the most contentious aspects of the legislation now being considered by this Senate Inquiry, namely the ones reviewed by Professor Altman are the ones that:

- Have no evidence connecting them with the stated aim of the intervention, namely to prevent child abuse and neglect;
- Are not covered by the definition of "special measures" and are in any case exempted from the relevant legislation, placing Australia in apparent breach of the International Convention on the Elimination of All Forms of Racial Discrimination;
- Arouse the most suspicion in both the Aboriginal and general Australian community that the "Emergency" legislation has ulterior motives; and thus
- Are likely to fail to engage the very people whose active participation in preventing abuse and neglect is most important.

We therefore ask that the Senate Inquiry place on record a clear statement of its views on these matters.

3. Relationship to existing COAG processes

We draw the Inquiry's attention to the fact that the stated objective of this "emergency" intervention was already on the agenda of the Council of Australian Governments, at its meetings in July 2006 and in April 2007. There, it alluded to the specific issues in the context of its "Indigenous Generational Reform" program which stated the objective of closing the gaps between the wellbeing of Aboriginal and Torres Strait Islander people and other Australians with a strong emphasis on measurement, transparency, public accountability, and identifying programs that work.

We draw the attention of the Inquiry to the *COAG communiqué* of 14th July 2006, since it includes material relevant to the current legislation, and, while it states the need for "an immediate national targeted response", its focus is on "a concerted, long-term joint effort". The fact that the present Inquiry is limited to a single day to consider the expenditure of $580 million in a year seems very strange in the light of the attitude of all governments as expressed at COAG 14 months ago.

Indigenous Issues

Generational Commitment

COAG agreed that a long-term, generational commitment is needed to overcome Indigenous disadvantage. COAG agreed the importance of significantly closing the gap in outcomes between Indigenous people and other Australians in key areas for action as identified in the Overcoming Indigenous Disadvantage: Key Indicators Report (OID) released by COAG in 2003.

COAG's future work will focus on those areas identified for joint action which have the greatest capacity to achieve real benefits for Indigenous Australians in the short and long term.

COAG has agreed to establish a working group to develop a detailed proposal for generational change including specific, practical proposals for reform which reflect the diversity of circumstances in Australia.

The working group will consider how to build clearer links between the OID framework, the National Framework of Principles for Delivering Services to Indigenous Australians, the COAG Reconciliation Framework and the bilateral agreements between the Commonwealth and State and Territory Governments. The working group will report back to COAG by December 2006.

Outcomes of the Indigenous Summit on Violence and Child Abuse in Indigenous Communities

COAG expressed concern that some Indigenous communities suffer from high levels of family violence and child abuse. Leaders agreed that this is unacceptable. Its magnitude demands an ***immediate national targeted response*** *focused on improving the safety of Indigenous Australians. Despite all jurisdictions having taken steps over recent years to address this problem, improved resourcing and* ***a concerted, long-term joint effort*** *are essential to achieve significant change. COAG understands that these issues exist for Indigenous communities throughout Australia in urban, rural and remote areas.* [emphasis added].

In June 2004, COAG agreed to the National Framework on Indigenous Family Violence and Child Protection. COAG has reaffirmed its commitment to this National Framework. Leaders also affirmed the need to continue to undertake work addressing all aspects of the underlying causesof family violence and child abuse.

At this meeting, COAG has agreed to adopt a collaborative approach to addressing particularly the issues of policing, justice, support and governance. Bilateral agreements between the Commonwealth and States and Territories will be the key to ensuring this proceeds. This approach, which has been informed by the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities held on 26 June 2006, recognises the differing circumstances in jurisdictions and builds on successful work already being undertaken. It also builds on work by all jurisdictions to implement the principles under the National Framework on Indigenous Family Violence and Child Protection that COAG agreed in June 2004.

The Commonwealth has agreed to make available funds in the order of $130 million over four years to support national and bilateral actions on the basis that the States and Territories have agreed to complement this effort with additional resources to be negotiated on a bilateral basis.

Policing, community education and support for victims and witnesses

Indigenous Australians must be able to rely on, and have confidence in, the protection of the law. To this end, COAG has agreed to provide more resources for policing in very remote areas where necessary, to improve the effectiveness of bail provisions and to establish a National Indigenous Violence and Child Abuse Intelligence Task Force to support existing intelligence and investigatory capacity. Joint strike teams will be established on a bilateral basis, where necessary, to work in remote Indigenous communities where there is evidence of endemic child abuse or violence. COAG has also agreed to invest in community legal education to ensure Indigenous Australians are informed about their legal rights, know how to access assistance and are encouraged to report incidents of violence and abuse. In addition, more support for victims and witnesses of violence and abuse will be provided.

Application of customary law

The law's response to family and community violence and sexual abuse must reflect the seriousness of such crimes. COAG agreed that no customary law or cultural practice excuses, justifies, authorises, requires, or lessens the seriousness of violence or sexual abuse. All jurisdictions agree that their laws will reflect this, if necessary by future amendment.

Complementary measures

COAG has also agreed to work together to fund and administer complementary measures that address key contributing factors to violence and child abuse in Indigenous communities. One of the main factors is alcohol and substance misuse. Reducing substance misuse can substantially reduce levels of violence and abuse, improve the overall health and wellbeing of Indigenous people, and may also increase educational attainment, household and individual income levels, and reduce crime and imprisonment rates. Many jurisdictions have acted in this area, but more could be done. COAG has agreed to further support communities seeking to control access to alcohol and illicit substances at a local level. States and Territories have agreed to encourage magistrates to make attendance at drug and alcohol rehabilitation programmes mandatory as part of bail conditions or sentencing. COAG has also agreed to provide additional resourcing for drug and alcohol treatment and rehabilitation services in regional and remote areas.

Indigenous leaders and organisations also play a vital role in addressing the problem of violence and abuse. COAG has agreed to support networks of Indigenous women and men in local communities so that they can better help people who report incidents of violence and abuse. All governments agreed that sound corporate governance is important for the stability and effective

functioning of communities and non-government organisations. All governments agree in principle that they will only fund non-government organisations that are led and managed by fit and proper persons.

Poor child health and educational attainment can also contribute to an intergenerational cycle of social dysfunction. COAG has agreed to an early intervention measure that will improve the health and wellbeing of Indigenous children living in remote areas by trialling an accelerated roll-out of the Indigenous child health check in high-need regions with locations to be agreed on a bilateral basis. COAG has also agreed that jurisdictions will work together on the important and complex issue of the low rates of school attendance in Indigenous communities, which reduces the future life chances of Indigenous children. All jurisdictions will collect and share truancy data on enrolments and attendance. The Commonwealth will establish a National Truancy Unit to monitor, analyse and report on this data.

Some States and Territories have identified additional areas for collaborative work, which will be pursued bilaterally with the Commonwealth.

Implementation

The overarching bilateral agreements on Indigenous service delivery will be the primary mechanism for implementing the measures. This ensures that tailored approaches can be developed to address the specific needs and recognise the recent initiatives of jurisdictions, regions and communities. COAG has asked the Standing Committee of Attorneys-General (SCAG) to report to the next COAG meeting on the extent to which bail provisions and enforcement take particular account of potential impacts on victims and witnesses in remote communities and to recommend any changes required. COAG has also asked MCEETYA to report to the next COAG meeting on the issue of enforcing compulsory school attendance and detailed arrangements for the establishment of a National Truancy Unit to monitor, analyse and report on truancy data. Progress on implementation of the action strategy will be reported back to COAG in December 2006.

[Source: http://www.coag.gov.au/meetings/140706/index.htm#indigenous]

Given the statements above, which are only a little more than 12 months old, it is natural to ask why the commitment of the Commonwealth at that stage was only

"$130 million over four years to support national and bilateral actions on the basis that the States and Territories have agreed to complement this effort with additional resources to be negotiated on a bilateral basis"

and yet it is now $587 million in a single year for these measures.

If it is a response to the NT *Report,* it remains to be explained why the co-chairs of that Board of Inquiry do not accept it as such.

If it is because the Commonwealth Government believes it has powers in the Northern Territory in relation to passing laws for the benefit of Aboriginal and Torres Strait Islander people that it lacks in the States and in the ACT, it has forgotten the power under the Constitution that was given it by 90% of Australians at the referendum whose 40th anniversary we have just celebrated, namely S51 (xxvi) below:

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 51

Legislative powers of the Parliament [see Notes 10 and 11]

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(i) trade and commerce with other countries, and among the States;

(ii) taxation; but so as not to discriminate between States or parts of States;

(iii) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;

(iv) borrowing money on the public credit of the Commonwealth;

(v) postal, telegraphic, telephonic, and other like services;

(vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;

(vii) lighthouses, lightships, beacons and buoys;

(viii) astronomical and meteorological observations;

(ix) quarantine;

(x) fisheries in Australian waters beyond territorial limits;

(xi) census and statistics;

(xii) currency, coinage, and legal tender;

(xiii) banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;

(xiv) insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;

(xv) weights and measures;

(xvi) bills of exchange and promissory notes;

(xvii) bankruptcy and insolvency;

(xviii) copyrights, patents of inventions and designs, and trade marks;

(xix) naturalization and aliens;

(xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;

(xxi) marriage;

(xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;

(xxiii) invalid and old-age pensions;

(xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;

(xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;

(xxv) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;

(xxvi) the people of any race , ~~other than the aboriginal race in any State~~, for whom it is deemed necessary to make special laws;

(xxvii) immigration and emigration;

(xxviii) the influx of criminals;

(xxix) external affairs;

(xxx) the relations of the Commonwealth with the islands of the Pacific;

(xxxi) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;

(xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth;

(xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;

(xxxiv) railway construction and extension in any State with the consent of that State;

(xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;

(xxxvi) matters in respect of which this Constitution makes provision until the Parliament otherwise provides;

(xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;

(xxxviii) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;

(xxxix) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

Moreover, at their meeting of 14th April 2007, just 17 days before the NT *Report* the relevant COAG communiqué simply states:

Indigenous Issues

Indigenous Generational Reform

COAG reaffirmed its commitment to closing the outcomes gap between Indigenous people and other Australians over a generation and resolved that the initial priority for joint action should be on ensuring that young Indigenous children get a good start in life.

COAG requested that the Indigenous Generational Reform Working Group prepare a detailed set of specific, practical proposals for the first stage of cumulative generational reform for consideration by COAG as soon as practicable in December 2007. National initiatives will be supported by additional bi-lateral and jurisdiction specific initiatives as required to improve the life outcomes of young Indigenous Australians and their families.

COAG also agreed that urgent action was required to address data gaps to enable reliable evaluation of progress and transparent national and jurisdictional reporting on outcomes. COAG also agreed to establish a jointly-funded clearing house for reliable evidence and information about best practice and success factors.

COAG requested that arrangements be made as soon as possible for consultation with jurisdictional Indigenous advisory bodies and relevant Indigenous peak organisations.

Reports to COAG on Indigenous Issues – Progress Report on the Outcomes from the Summit on Violence and Child Abuse in Indigenous Communities

COAG noted progress on actions arising from COAG's July 2006 agreement on tackling violence and child abuse in Indigenous communities and requested that a further progress report be provided to it by December 2007. Achievements include the launch of a National Indigenous Violence and Child Abuse Intelligence Taskforce, establishment of a Joint Strike Team in the Northern Territory, and the accelerated roll-out of the Indigenous Child Health Check. COAG noted amendments to the Commonwealth Crimes Act regarding customary law and bail determinations, and the recent establishment of a National Student Attendance Unit.

[Source: http://www.coag.gov.au/meetings/130407/index.htm#indigenous]

Seventeen days after this COAG meeting, the report of the Northern Territory Board of Inquiry was submitted to the Chief Minister (30 April 2007). It was not the first report of its kind.

In summary, we do not find it convincing that the situation in the Northern territory was such a sudden surprise to the Commonwealth Government that, despite the processes in train at COAG, and without consultation with others, it felt compelled to multiply its previous national commitment almost tenfold and focus it on a single jurisdiction, on the argument that the NT Government had failed to respond to the Report in a mere six weeks. The NT Report was not the first of its kind, and government responses to such reports have never previously appeared within 6 weeks.

4: Relationship to other Abuse and Violence reports and responses

Queensland (1999)

In 1999, there was a report in Queensland from a Task Force chaired by Ms Boni Robertson [Queensland Government, Department of Aboriginal and Torres Strait Islander Policy and Development. *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report.* December 1999.] A particularly useful feature of this report was an 8-page listing of previous reports and a synopsis of their recommendations from around Australia, back to 1988. The report is available at [http://www.women.qld.gov.au/?id=109].

The report's summary of historical and contemporary factors is brief and to the point:

Causes and contributing factors

As a result of ill-chosen, discriminatory and poorly researched Government initiatives, Indigenous people have endured decades of oppression and neglect. The massacres and inhumane treatment of their families remain fresh in their minds. Many members of contemporary Indigenous Communities can still remember the policies that isolated them from the broader community, that exempted them from associating with family and kin, that forcibly removed them as children and subjected them to treatment that breached even the most basic human rights. Indigenous families today are continuing to be affected by the losses they have suffered.

The harsh reality for those in authority who have ignored or failed to intervene in the atrocities thus far, is that action is now essential. The very public implosion of Indigenous Communities can no longer be hidden or excused as being 'the Aboriginal way'. Such thinking is a serious indictment that must be challenged and rejected. Indigenous Communities have endured, and continue to endure, substandard and overcrowded housing, poor health, poor education and welfare dependency. Many live in environments similar to those in the poorest developing countries, and lack access to the resources required to alter their impoverished state. This is a situation that warrants urgent address.

A majority of the informants believed that the rise of violence in Aboriginal Communities can be attributed to the so-called 'Aboriginal industry' in which both Indigenous and non-Indigenous agencies have failed in many ways to deliver critical services. In times of economic rationalism, the 'industry' has failed to produce tangible outcomes. Concerns have been raised about the absence of initiatives in many reports commissioned by Governments over the past two decades. Informants were aware of the misuse of services with the culprits being both non-Indigenous and Indigenous people. An example of such misused authority and how it assists violence is the sly grog trade where there seems to be reluctance on the part of authorities to prosecute for breaches to the regulations. The sly grog trade and violence were expressed by many throughout the consultations to be inseparable issues, worsened by the failure of responsible bodies to carry out their duties at the expense of Indigenous people.

However, while the account of the problem and the call for urgent action is similar to some of the stated rationale for the "Emergency" NT legislation, the executive summary list a number of important risks associated with aspects of this current legislation.

Working for change

The lack of collaboration in the past has hindered progress for Indigenous people. The reasons for poor collaboration include:

- ***a failure by all levels of Government to commit to long-term initiatives, instead of quick-fix solutions;***
- *constant staff changes among senior public servants;*
- *appointment of Government Ministers for short terms, so they do not become familiar with their portfolios;*
- *the lack of coordination of policies and programs across Governments;*
- *the squandering of public monies in duplicated programs;*
- *the under representation of Indigenous peoples in senior positions; and*
- ***the absence of Indigenous people in decision-making processes.***

The report makes about 123 recommendations in all. On issues of "welfare dependency" it makes reference to the work of Mr Noel Pearson on the topic, but does not treat it as Holy Writ. For example, their analysis of the need for economic opportunities and, in particular, CDEP, identifies different problems than the ones that have been so widely mentioned in the course of CDEP being demolished in recent times:

4.2.4.Community Development Employment Program (CDEP)

A number of initiatives have been designed to provide employment for Indigenous Communities, the most prominent being the Community Development Employment Program (CDEP), a major initiative of the Commonwealth Government.

The development of CDEP assumed that many Indigenous people would at last be able to enjoy some form of economic independence. In the consultations for this Report, however, there were indications that this initiative has not always been utilised in the most effective way. At the same time, the Task Force did see examples of CDEP being used in an innovative and creative manner.

The Task Force observed a number of instances where the Community Council wanted to utilise CDEP to develop projects that would not only create valued and valuable employment within the Community, but would also deliver essential services, such as maintenance of parks, general garbage collection, and lawn mowing. However, the Councils were told by the CDEP Coordinator in one Community that this could not be done. At a meeting at which a Task Force member was present, the Council asked the CDEP Coordinator if CDEP could re-commence a market garden. They were told it was not in the guidelines. When they asked if CDEP could be used to mow the parks, they were told it was not in the guidelines. At least six suggestions were rejected by the CDEP Coordinator as not being in the guidelines.

This prompted the Task Force to ask: 'What is in the guidelines?' If the guidelines are so narrow, then the program is ineffective as a work for the dole incentive, or as an economic development scheme within Indigenous Communities.

Despite the stated problems with CDEP, it does provide an invaluable resource for employment and training if it is administered appropriately and used creatively. Like all government programs, CDEP should be subject to accountability, not only in terms of how many people are on the program, but also in terms of the type of initiatives developed and the outcome generated for the benefit of the Community generally.

The guidelines of CDEP are being utilised effectively in Communities such as Kowanyama and Cherbourg, as a vital resource for Community development. However, it is less effective in some other Communities.

Therefore, it is not suggested that the program should cease, but as suggested throughout the consultations, it does warrant a more strategic application in order to make it a viable and productive employment strategy. *It requires much more strategic management so that it can assist in the development of viable Community projects determined by the people and managed by the CDEP Coordinator, who is responsible for working with the people to complete the identified initiative. [emphasis added]*

If economic development is to accompany social advancement, governments should request Community Councils to use CDEP as a forum through which violence prevention programs can be addressed in compulsory training sessions. CDEP could also include training in parenting and other basic skills such as financial management, market gardening, dressmaking, bakery and other programs. These ideas were raised by members of the Communities.

In view of recent events, it is difficult to escape the impression that the current "Emergency" in the Northern Territory is being used as a vehicle for yet another ill-considered and hasty "fix" for the latest definition of "the Aboriginal problem", which ignores all that Aboriginal and Torres Strait islander people have learned over the last forty years. As Pat Anderson said on 6th August: "

- *"They behaved as though we all have done nothing and we don't know anything and we have all been sitting on our hands."*

As Senator Bartlett said in the Senate debate on 8th August:

There have been lots of statements made, lots of media releases, lots of comments to camera and lots of impassioned statements. That is good; it is an issue that deserves passion. But it also deserves reason and it also requires listening; and we have not had that. As the National Director of Australians for Native Title and Reconciliation, Gary Highland, said in a release yesterday—and ***nobody doubts the minister's sincerity; the minister's problem is not that he does not care—his problem is that he does not listen.*** [emphasis added]

The Robertson Report should be read for what it actually says, not simply cited as evidence that a problem has been around for a long time. It actually analyses problems in detail, and across a wider range than exists in Cape York. For example, the Senate Inquiry would be ill-advised to suppose that the problems of substance abuse will be miraculously solved by this legislation and the simplistic application of "prohibition". As Mr Katter, the member for Kennedy said during the debate on 7th August:

"With all due respect, no society on earth has succeeded in banning alcohol. … I ask the government to name a single society on earth that has succeeded in prohibition."

With that in mind, it is worth examining the account given in the Robertson report:

4.3.2. Government responsibility - Community responsibility
In commenting on alcohol use, the Task Force is aware that it is the normal right of a citizen to consume alcohol, according to Australian law. However, laws exist to govern the sale and consumption of alcohol. These legal constraints are often overlooked, particularly in remote

Communities. In fact, the situation in the Communities reflects the historical application of European law, intersected with recent but confused human rights gains. The laws controlling alcohol use are not being equitably applied. The Task Force was informed of some publicans in rural towns selling grog to children.

> It is not only the Councils who should be held accountable for the misuse of alcohol on Communities. What about the Government, the Police and the Liquor Board, don't they have a legislated responsibility to watch what is happening in the canteens and with the sly grog? Don't they have a duty of care or something?341

It is time to ask, to what extent have the authorities been negligent in their duties and responsibilities to Aboriginal people?

4.3.2.1 The sly grog trade

In 1988, the Report of the Queensland Domestic Violence Task Force recommended:

…that the sly grog trade be brought to the attention of the Ministers responsible for Police, Justice and Community Services with a view to developing strategies including legal remedies to eliminate the practice of the supply of sly grog.342

Eleven years on and the sly grog continues to be a major problem within the DOGIT Communities. It is being brought in by plane and road, and local Aboriginal people and white service workers/contractors have been identified as the main offenders. Many of the Communities visited by the Task Force alreadyhad bylaws, which contained provisions against sly grog that, if enforced properly, would address offences.

The Task Force was told that police failed to pursue sly grog traders, and the absence of any significant evidence of convictions supports this contention. It is pointless to introduce new laws dealing with sly grog trading if the current law is not enforced. The Task Force was informed that one of the problems the Queensland Police face is difficulty in obtaining enough evidence against sly grog traders to mount a successful prosecution. However, some submissions from the Communities contradict this view.

During the visit to Doomadgee, female Elders told the Task Force that a grog bust had occurred the previous weekend, when a trader had brought a supply of grog to the Doomadgee road turnoff for sale to residents. A Community member had informed the police. The Queensland Police officer in charge of the station at Doomadgee showed Task Force members the impounded grog, much of it 'monkey blood', a cheap brand of port. If the grog had been sold, the sly grog trader would have made up to $30,000 in a few hours of trading. It was clear that both the female Elders and the Queensland Police felt making the effort to catch the sly grog trader was important to the Community.

In contrast, in other Communities, Queensland Police told the Task Force that sly grog was not their responsibility, but that of the Aboriginal Community Police. Aboriginal Community Police ***do not have legal powers*** *to address the sly grog issue. They are still largely untrained. The problem may be partly addressed by the current proposal to transfer Community Police to the Queensland Police. This move should improve the standard of Community policing.*

However, the State has not resolved the issue of Aboriginal Community Police training and powers of arrest. This serious omission has been a problem for decades. It was a major concern documented by the Aboriginal Coordinating Council to the Royal Commission into Aboriginal Deaths in Custody. It is unfair to place the responsibility on Aboriginal Community Police and Community Councils without providing the necessary powers, resources and skills. The State has a duty of care to Indigenous Queenslanders to provide adequate policing of the sly grog trade. To

continue to ignore the sale of sly grog poses serious indictment on how authorities fulfil their legislative responsibilities.

The Liquor Licensing Board told the Task Force that the Queensland Police are their legal eyes and ears in the Communities. If the Queensland Police can provide adequate evidence, the Board has the powers to deal effectively with the sly grog trade. The Task Force observed that it is easy to pick up an Indigenous person who has an alcohol addiction, for being drunk and disorderly, but many police appear less willing to pursue sly grog dealers actively.

It is important to develop a model set of bylaws and appropriate penalties. The present bylaws do not provide sanctions that would allow Aboriginal Community Police to deal effectively with traders in sly grog. Bylaws on DOGIT and Local Government Shire Communities should establish protocols to eradicate the sly grog industry and ensure canteens are effectively managed. For example, it has been suggested that if a person is found guilty of sly grog running, their vehicle should be impounded. There should also be tough sanctions for dealers who prey on people and Communities. It would be a useful strategy to ensure that enforcement arrangements are negotiated with State and Community Police before the passage of the laws.

The Task Force recommends that the Department of Aboriginal and Torres Strait Islander Policy and Development negotiate with the Queensland Police Service and the Department of Tourism Sport and Racing in relation to enforcement of laws on sly grog trading.

The above is just a sample of the real-world knowledge captured in the Robertson report, just as in the other reports in WA and NSW described below, up to and including the recent one from the NT. Why then does this legislation assume that a form of legal prohibition combined with removing permits from hundreds of kilometres of access roads will somehow interdict the supply of alcohol?

To quote Professor Altman again, by way of counteracting the misleading statistic that only a tiny percentage of Aboriginal community land will be removed from permit control:

It is worth noting that, just as section 19A head leases would relax the permit system, Measure 5 would preclude the need for permits in common areas of major towns. The major issue with this measure, assuming compulsory acquisition occurs, is that there would no longer be any requirement to obtain a permit for access roads to these townships. ***Given that some of these access roads are hundreds of kilometers long and traverse considerable tracts of Aboriginal land, this signals a significant change.***

While it is stated that the permit system would continue to apply to the vast majority of Aboriginal land, including homelands, many of these access roads pass near, or through, homelands.

The price of alcohol will increase in proportion to the risk of supplying it, and this will especially be so for those who fall under "income management" and resort to barter of legally purchasable commodities for other things. And since there is ample evidence in the NT report that sex is already being traded for drugs, how is that to be interdicted by legislation that restricts cash incomes?

There are many voices already saying that this legislative package is wrong mainly because it will not actually work. As the Member for Fraser said on the 7th of August:

"These proposals are not implementing the Wild/Anderson report and this is one of the things that leads to my concern that the program may fail. I will now deal with the recommendations of that report. The report says:

In the first recommendation, we have specifically referred to the critical importance of governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities, whether these be in remote, regional or urban settings.

The report then quotes the following statement by Fred Chaney:

... one of the things I think we should have learned by now is that you can't solve these things by centralised bureaucratic direction.
... ...
... you can have programs that run out into communities that aren't owned by those communities, that aren't locally controlled and managed, and I think surely that is a thing we should know doesn't work.

In a subsequent recommendation on page 26, the report states:

That the Northern Territory Government work with the Australian Government in consultation with Aboriginal communities to:

a) develop a comprehensive long-term strategy to build a strong and equitable core service platform in Aboriginal communities, to address the underlying risk factors for child sexual abuse and to develop functional communities in which children are safe.

In an open letter to Mal Brough signed by my friend Mick Dodson and a lot of other distinguished Australians, including former Liberal Prime Minister Malcolm Fraser and leaders of the Indigenous community, the letter's authors support a commitment to tackle violence and abuse and they support the fact that urgent action is required. But they said that it needs to be a longer term plan and that in their present form these proposals miss the mark and are unlikely to be effective.

These are not people who are criticising the government for taking action. They are saying that what you are doing will not work. That is exactly one of my serious concerns about this package.

There is goodwill for a national response and it is appropriate to give priority to assisting victims of abuse. The great pity with this package of legislation is the way in which the government has chosen to act. It has been unnecessarily divisive and it has been disappointingly short term. It has set up a process with much too high a risk of failure. For now it is all there is and given the government's majority in both houses, this legislation will pass. It will pass when the government wishes and it will pass in the form the government wishes. Therefore, the best we can do is seek to amend it and to improve it and to point out to the government the risk of failure and the risk of counterproductive consequences.

People like Jackie Huggins, Mick Dodson, Patricia Anderson, Rex Wild and Sid Stirling and organisations like NAVA, the Northern Territory Police Association and the community from Amoonguna have been saying that there is a risk of counterproductive consequences from this initiative, which we will give the benefit of the doubt to as being well intentioned.

With all due respect to the member for Fraser, and recognising that the amendments moved and voted down on party lines were in fact intended to improve the legislation in important ways, the amount being expended under this legislation in a single year is twice what the Commonwealth government spends on all Aboriginal Community Controlled Health Services in Australia in a year; almost half as large again as the gap identified in many reports as needed for

primary health care per annum, and apart from some initial capital items, would need to be recurrent to maintain the system being put in place.

It is simply not good enough for an investment of public money of this unprecedented magnitude to be based on expanding a $3 million theoretical pilot study by the Cape York Institute, [and a model for four more-or-less consenting Cape York communities], to a compulsory program for 73 communities in the Northern Territory, let alone expanding the welfare "reform" measures to cover every parent of every school age child in Australia, when people who actually understand the problem have so many doubts that it will work.

Examination of the problem analyses in the 1999 Robertson report, and thinking through how those scenarios would play out in the context of this legislation is something that the Senate should do, even if the present Inquiry is unlikely to be able to prevent the legislation coming into force.

That is not to say that other responses have previously proved to be adequate.

Five months after the Robertson Report was delivered, in May 2000 there followed a Queensland Government response [*Queensland Government. Response to the Aboriginal and Torres Strait Islander Women's Task Force on Violence Report: The First step].* In December 2000 there was a supplementary report [The Next Step] that reported progress. These can be downloaded as [http://www.datsip.qld.gov.au/pdf/thefirststep.pdf and http://www.datsip.qld.gov.au/pdf/thenextstep.pdf].

How well they have addressed the issues in the Robertson Report is perhaps a matter for review, but that is not the main point here. The point is that the set of actions specified in these responses across many government agencies is complex – much more complex that the current federal initiative.

In any case, there is an example of a report/ response/ review cycle available from Western Australia, which may be more immediately relevant because the Chair of the relevant Inquiry, Mrs Sue Gordon OAM, is also the Chair of the National indigenous Council and of the Task Force created to implement the Commonwealth Government's "Emergency response" in the NT.

Western Australia (2002)

In July 2002, there was a report in Western Australia from a Task Force chaired by Mrs Sue Gordon OAM [Gordon, S Hallahan, K, Henry, D (2002) *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia.] A particularly useful feature of this report was the analysis of issues and an evidence-based review.

The Inquiry made 197 findings and recommendations. None of them relate to restricting alcohol or pornography, or quarantining welfare payments. Nevertheless, many of them are relevant to things that are not specified in the current legislation, such as collaborative planning with communities.

- *11. The Inquiry endorses the collaborative model addressing non-attendance by Aboriginal students, pending its successful review, and recommends that it be expanded to other educational districts.*

- *113.The Inquiry finds that truanting or non-attending is a significant issue affecting the education of Aboriginal students as identified by the Department of Education (DOE). The Inquiry endorses the current commitment of DOE to increase school attendance by Aboriginal students. The Inquiry notes the establishment of a review committee to consider fundamental changes to the delivery of education and training to WA's Aboriginal youth. The Inquiry recommends, pending favourable outcomes, the extension of successful programs and systems to increase school attendance by Aboriginal students. The Inquiry finds that school attendance must be one of the primary focuses of DOE in improving the educational outcomes of Aboriginal students.*

- *152. The Inquiry recommends that the full impact of any programs are considered before implementation in Aboriginal communities.*

- *155. The Inquiry finds that the projects which are time limited, with insufficient funds, inflexible service specifications, are not desirable. Some projects are overly dependant on the supervisor or manager and may lapse when that person moves. The Inquiry finds that Aboriginal communities need ongoing planned and consistent service provision and the nature of certain 'pilot projects' being implemented are unlikely to have that outcome.*

- *156. The Inquiry finds that evaluations and reviews of programs and service delivery should include a focus on the outcomes as well as the process of implementation.*

- *157. The Inquiry finds that there is a need for agencies to examine the implications of programs for Aboriginal people and ensure each program's suitability to that cultural group.*

- *158. The Inquiry finds that resource distribution to provide services to communities are not fair and equitable. Communities of equal size do not have the same social infrastructure and supports. The Inquiry further finds that departments are not funded in such a way that they can provide adequate services, staff and infrastructure in all rural, regional and remote communities.*

- *159. The Inquiry finds that the departments face particular challenges in responding to abuse or neglect of Aboriginal children. The recognition of past inappropriate actions by government departments has made workers very sensitive and in some cases fearful of*

doing further damage rather than improving conditions for children. In recognition of this particular difficulty and taking into account a number of submissions which assert that Aboriginal children are dealt with differently, recommendations will be made in relation to the need for clarity of response when Aboriginal children are at risk or have been abused or neglected.

- *160. The Inquiry finds that the complexity and breadth of problems provide challenges in relation to governance and leadership in Aboriginal communities. The Inquiry notes the plans of Department of Indigenous Affairs to respond to this problem and finds that there is a need for a comprehensive response across government agencies given the fundamental problems caused by difficulties in governance and leadership in communities.*

- *161. The Inquiry recommends that a formula for resource distribution by government agencies including both direct service delivery and funding activities needs to be developed. The resource distribution formula needs to include indices of social disadvantage.*

- *162. The Inquiry recommends that once the funding has been nominally allocated according to the agreed resource formula, communities, government and non-government agencies should then develop service provision plans in accordance with the community plans of each community and in consultation with those communities. The community plans should build on the regional plans developed by the Aboriginal and Torres Strait Islander Commission. The resource allocation formula and actual allocation needs to be made public, so that communities can plan within the real constraints of available funds and allocate priorities within those constraints.*

- *163. The Inquiry recommends that there needs to be a 'top down bottom up' (involving strategic direction coupled with local planning) approach to the planning, management and delivery of services. The attached model outlines this process.*

- *164. The Inquiry recommends that prevention and early intervention and other support activities must be integrated and delivered according to each community plan. This must include the development and enhancement of social infrastructure within that community. The model provided by Gerritsen and colleagues, the Aboriginal Suicide Prevention Steering Committee, and the Institute of Child Health Research is a useful model, which has been adopted by the Inquiry.*

- *165. The Inquiry recommends that there needs to be a Statement of Service Provision for each community by all agencies. This must include both the planned service provision for the following year and the actual service provision that was provided in the past year. This Statement of Service Provision must respond to community plans, be based on the resources allocated according to the allocation formula, the agreed core service delivery functions and the integrated prevention and early intervention services.*

- *166. The Inquiry recommends that outcome and output measures relating to family violence and child abuse must be set. The performance reviews of the Director Generals of each of the key agencies must include an assessment against benchmarked measures. The performance of key staff in agencies must include a review of the impact that the officer has had on family violence and child abuse in communities, using agreed outcome performance measures, not just meetings attended or committees established.*

- *167. The Inquiry recommends that Aboriginal communities must be offered the opportunity to regularly comment on the quality of service provision delivered in their community by government agencies. This should relate to the statement of service provision and address the appropriateness of the service delivery. Most businesses have a feedback mechanism*

separate to the complaints mechanism. Government agencies servicing communities should have such a mechanism to evaluate the service delivery to communities.

- *168. The Inquiry recommends that pilot projects should not be used when there is no intention to test the model of service provision. The intention of pilot projects is to test out aspects of the program before a roll-out into the wider community. Pilot projects must have a specific model that is being tested and which fits into the community plan for the development of social infrastructure within that community.*

- *169. The Inquiry recommends that there be further examination of the role of the Department of Indigenous Affairs as a result of recommendations made in this report about capacity building and support for councils.*

- *170. The Inquiry recommends that the 'one stop shop' concept be developed in communities and deal with the range of factors and problems that are linked to, and result from, family violence and child abuse. This would include drug abuse, the misuse of alcohol and other substances, gambling, early parenting, suicide, and other health and welfare activities. This one stop shop could also take responsibility for oversight of services to young people within the justice system as well as those children and young people who have protective needs.*

- *171. The Inquiry recommends that different models for the delivery of basic social services should be developed depending on remoteness and size. The basic models could then be implemented according to community wishes and taking into account existing infrastructure.*

The only mention of "welfare dependency" in the report is a citation of the work of Mr Noel Pearson on the topic, and a reference to a place in the Robertson Report where it is also mentioned.

The current Inquiry might refer to the speech on this report by Senator the Hon. David Johnston, as a matter of public importance, on 18 September 2002. As the Senator said:

"For decades Aboriginal people have been seeking respite from the problem of violence within their families. It is a very sad historical indictment of all government agencies, including our state and federal governments, that in 2002 Aboriginal women are 45 times more likely to be the victims of domestic violence.

… The Gordon report is not just another report from another inquiry—the last of many in a long line of inquiries and royal commissions that we have seen in Western Australia over the past century. It is probably one of the most significant signposts in an area that has vexed and perplexed government for more than 50 years. … I thoroughly recommend to my fellow senators that they read at least the executive summary of the Gordon report. I urge the state government in Western Australia to take on board every one of the 197 recommendations when they consider their response. Please do not let this be another inquiry left to sit on the shelf, and do not let Sue Gordon's wise words end up on deaf ears."

The Western Australian Government's ongoing response to the report has a website [http://www.dia.wa.gov.au/gordon/index.htm] and the immediate response can be downloaded from [http://www.premier.wa.gov.au/feature_stories/ResponsetoGordonInquiry.pdf].

This document was published in November 2002 [*Putting people first: The Western Australian State Government's Action Plan For Addressing Family Violence and Child Abuse in Aboriginal Communities: The Response to the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities]*. It states in part:

"Child sexual abuse and family violence are unacceptable practices that must be confronted vigilantly by both the Government and Aboriginal communities working together. Government and Aboriginal community collaboration is a theme that permeates the Gordon report. The Government has accepted the challenge posed by the Gordon Inquiry to develop a collaborative relationship with the Aboriginal community. Last October the Government entered into a formal relationship with ATSIC and other peak Aboriginal organisations representing the wider Aboriginal community where we agreed to work together in a shared commitment to a new and just relationship. In this response my Government re-commits to that agreement and with renewed vigour.

In the on-going development of this partnership the Government expects that Aboriginal people and their leaders will recognise the need for serious action and accept enduring responsibility to contribute to the effort to prevent child abuse and family violence in their communities. It is incumbent on both Government and the Aboriginal community that nothing short of a zero tolerance approach to child abuse is acceptable.

For its part the Government will move immediately to increase police and child protection resources, targeting localities where it is jointly agreed this is urgently required. This response also details initiatives that will enhance the capacity of statutory agencies to act when child abuse is detected or suspected. …

The Commonwealth and the State will be working in partnership to address child abuse and family violence as a priority. We will build on the groundwork which has already been laid through the Council of Australian Governments Reconciliation framework and on the processes established by the Statement of Commitment for engaging Aboriginal leaders as partners.

These new foundations have been laid under the Government's policy commitment to streamline consultative and administrative arrangements in Indigenous affairs. They have been made possible by the preparedness of the Commonwealth Government to take new, cooperative approaches and the willingness of Aboriginal leaders to take responsibility and to work constructively with governments for the interests of their community. ..

It is for this reason that the Government's response to the Gordon Inquiry is in two phases. This initial response focuses on improving the capacity of government to protect children from abuse which is an immediate and urgent priority. It also commits the government to entering into a process of engagement with the wider Aboriginal community for the purpose of developing the building blocks that will secure a long-term partnership. This second phase will commence prior to Christmas with a Government/Aboriginal leadership round-table discussion to produce a road map for progressing the partnership.

In summary, the State Government has clear responsibility for statutory and immediate responses when child abuse and family violence occurs or where there is a risk to individuals in communities. We will meet these responsibilities."

The implementation of this initiative was reviewed by the WA Auditor-General's Office in 2005, and the report is available at [http://www.audit.wa.gov.au].

The findings can be briefly summarised:

Auditor General's Overview

Family violence and child abuse has devastating effects on individual lives and is a very significant issue for the community. While the incidence of abuse is throughout our society, it occurs in Aboriginal communities at a rate that is much higher than that of non-Aboriginal communities.

The State Government's response to the Gordon Inquiry into family violence and child abuse in Aboriginal communities includes more than 120 initiatives and a whole-of-government approach to organising and delivering services.

While this examination has identified a need for active management of the Government's Action Plan initiatives to achieve timely implementation and to overcome obstacles as they arise, an even bigger challenge lies ahead. Management needs to follow through beyond the initial implementation to ensure that the issues are being addressed on sustainable basis.

It is important that the impetus for change is not lost and the opportunity forgone.

Executive Summary

The Government response to the Gordon Inquiry in December 2002 was an Action Plan containing more than 120 initiatives to be implemented by 15 public sector agencies. It included $66.5 million in new funding.

The Action Plan responds particularly to the finding that 'violence and child abuse are grave social problems that are endemic in many Aboriginal communities'. It also seeks to address child abuse and family violence in the wider community by improving across government coordination of community services.

This performance examination reviewed the effectiveness of monitoring the implementation of the Action Plan. This is considered timely because three years have elapsed since the release of the Action Plan and some initiatives will soon be suffi ciently advanced to begin assessing outcomes, such as decreased rates of family violence and child abuse.

Key Findings

There are inadequacies in the central reporting and monitoring of the progress of the Action Plan to facilitate effective oversight by Government.

- *An authoritative account of the progress with implementing initiatives has not been prepared by the Action Plan's Secretariat, with the result that central monitoring and oversight groups do not have available basic information such as the total number of initiatives, the number implemented and estimates on final expenditure and anticipated completion dates.*

- *Reporting to the public does not acquit all the initiatives and is inconsistent in structure and the type of information reported. Reporting only provides information on a small number of initiatives. As a result, the public has not been informed about the progress of many initiatives nor of the Action Plan overall.*

- *An evaluation framework for assessing whether the Action Plan is making a difference has not been finalised. The target date for delivery of the framework was the end of 2003. This delay is significant because a clear and shared sense of purpose is important during the planning and implementation phases and because the opportunity may have been lost to collect some important baseline data.*

In the absence of an authoritative account and appropriate public reporting, we examined a sample of 10 key initiatives and found that:

- *seven initiatives have been implemented or substantially progressed on time.*

- *the three remaining initiatives are progressing but are behind schedule. The reasons include coordination across agencies and with Aboriginal communities taking longer than expected, delays in the construction of facilities and in delivering financial assistance.*

Recommendations

The Department of Indigenous Affairs (as the agency that became responsible for the Secretariat in April 2005) in conjunction with participating agencies should:

- *establish reporting of authoritative accounts of the progress of Action Plan initiatives*
- *finalise an evaluation framework.*

- *The effectiveness of collaboration between agencies through the current oversight arrangements and on the ground should be revisited with the objective of expediting implementation of initiatives.*

It would not be fair to the Western Australian Government to point to this mixed track record of implementation as an example of what it might have been able to achieve if the Commonwealth Government had been offering to supply population-proportional funding to assist it in addressing the problem.

In round figures the expenditure on the current Commonwealth "Emergency Response" amounts to about $10,000 for each of the 53,662 (2006 census) Aboriginal and Torres Strait Islander citizens of the Northern Territory, which, if deployed at the same rate nationally, would mean that the Commonwealth outlay would be about $4.5 billion.

No doubt the Western Australian Aboriginal and Torres Strait islander population (2006 census) of 58,711 would benefit from receiving a Commonwealth investment of $587 million on top of the funding invested by the WA Government.

Similarly, the NSW population of 138,506 Aboriginal and Torres Strait islander people would benefit from receiving a Commonwealth investment of $1.38 billion to assist the NSW Government in implementing the recommendations of the *Breaking the Silence: Creating the Future* report on child sexual abuse that it received in 2006.

The AH&MRC would be happy to endorse such a recommendation, since there is currently some debate in NSW about the funding available.

New South Wales (2006)

In 2006 there was a report in NSW [Attorney-General's Department: *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW*] and a NSW Government response to it [New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006 – 2011].

The documentation of the work of the NSW Aboriginal Child Sexual Assault Taskforce (ACSAT) chaired by Marcia Ella-Duncan can be found at: http://www.lawlink.nsw.gov.au/acsat .

The *Report* contains 119 recommendations, and the *Response* contains 88 actions. However, they are not directly related to one another, so it is not easy to work out the response to each recommendation.

The Chair of ACSAT, Maria Ella Duncan, said on the media on 21st June that "to her knowledge" only one of the recommendations had been acted on – to create a steering committee. This is probably the one referred to in recommendation 20(b):

ACSAT recommendations are strategically and effectively implemented	**Recommendation 20** a) Develop an implementation strategy within three months of release of the report and ensure that is endorsed by government. The strategy is to include: i. formal responses by each government department to the recommendations ii. an evaluation framework to measure impacts of implementation including definitive time frames iii. a plan for public release of the report iv. a strategy for communicating with communities v. an independent evaluation mechanism. b) Establish a steering committee to guide the implementation that includes Aboriginal community members

Ms Ella Duncan has referred to this rate of action as "lip service". She also said: "A lot of the recommendations in my view are tinkering with processes that are already in place" and that the NSW Government hadn't allocated any new spending to cover the recommendations – the estimated cost being $40 million.

Mr Gary Highland, the National Director of Australians for Native Title and Reconciliation (ANTAR) has said that up until the end of 2006 both Premier Iemma and Attorney General Debus were saying that implementing the Report was a priority, but that in 2007 Treasurer Costa and NSW Treasury refused the additional funding. In an article on the ANTAR web site he says:

"Treasurer Costa may justify his conduct along the lines that it was one of those tough decisions Governments have to make in order to balance the books. But the truth is that there would be no other group of children in this state who would be treated in such a way. The package wasn't properly funded because these are Aboriginal children at risk and it was calculated that not enough voters will care."

Mr Highland summarises the current situation as follows:

"The important thing about the NSW response is that it's evidence based. It also is proceeding with the active participation and cooperation of indigenous people. The answer to this problem isn't the Federal response or the NSW response. The NSW response is sound, but it is underfunded. The Federal response is heavy handed and misguided."

In response to a question about supporting the Federal response, Premier Iemma said:

"With the Prime Minister's response, what we are doing is examining the detail of what he has proposed and we will be looking at working with the Commonwealth."

In Parliament on 27 June 2007, Premier Iemma said in response to a question from the Leader of the Opposition:

"The Government's response to the report was released in January. The first bit of nonsense in the question is about funding. More than $30 million in funding has been provided for the responses the Government has developed and either has acted on or will act on over the period set out in the report. So the first bit of nonsense is the claim that the Government has not responded to the report. The Government's response contains a comprehensive set of recommendations that go to law enforcement, child protection, early intervention and working with Aboriginal communities to protect children and to stop and prevent abuse.

The recommendations involve police surveillance and additional measures, for example, recruiting Aboriginal liaison officers to work in Aboriginal communities. That is designed to address a fundamental point in the report: perpetrators are not brought to justice because witnesses and victims, because of intimidation and harassment, do not see the charge process through. The Government has already moved on the policing front to deal with that. The Government's response to the report allocates at least $30 million in funding. Let us talk about dollars. The simple fact is that the Leader of the Opposition believes that the Government's efforts are confined to the recommendations of one report or to one portfolio."

The Hon Robyn Parker stated next day:

I want to say a few words in response to the contribution by the Hon. Henry Tsang on child sexual abuse. I congratulate the Prime Minister and Mal Brough on their initiatives. They have undertaken those initiatives because the Northern Territory Government has taken too long to take action on child sexual abuse. The statistics are outrageous and I am confident that the Federal Government is doing the right thing. We are here to protect small children. It is not only Aboriginal perpetrators who are involved; there are a number of different perpetrators. As leaders, we should try to save those young children who are suffering, because this problem has been ignored for too long. The task force is going to the Northern Territory to engage with the local community and leaders across the board. It is supported by Noel Pearson and Kevin Rudd.
We also have a terrible situation in New South Wales. The Government initiated a report entitled "Breaking the Silence", which I have mentioned in the House before. The Government has shown an outrageous lack of response. To date, we have had seven days silence from the Minister, Paul

Lynch. The report found that child sexual abuse in Aboriginal communities is at epidemic proportions. A child in an Aboriginal community in New South Wales is four times more likely to suffer sexual abuse, yet the Government has taken no action. It responded almost in the dead of night, during the election campaign in January, with its recommendations, but it has taken no action and provided no money in the budget. There is no specific money in the New South Wales budget to address this problem—no line item, nothing at all. The Government says it has a $30 million package. Where is it? Child sexual abuse is not identified anywhere. It is a shame. New South Wales will end up in the same situation as the Northern Territory. The Government has recommendations. It should show the way forward, work with the local community, and talk about early intervention. The template is there. The Government ought to do something. [Time expired.]

As noted above, if the "template" now released for action in the Northern Territory were used in NSW it would bring about $1.4 billion to the NSW Government to address the problem urgently.

Thus, if NSW Senators agree to the current package, we would hope that they would support the extension of pro-rata funding to NSW.

5. The lack of a mandate or rationale for expanding the Cape York Institute trial in four communities to all parents of school-age children, whether Aboriginal or not, everywhere in Australia via legislative instruments written by the Secretary or Minister of FACSIA.

In plain English, the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 divides Australia into three zones, which differ in the basis on which a person may be commended to Centrelink for the implementation of income management provisions.

- In the four designated communities in Cape York, the "Queensland Commission" makes these recommendations. We assume that this "Commission" has been created along the lines indicated in the report from the Cape York institute. It is assumed that the designated Queensland communities have more or less voluntarily agreed to participate in this process, and that there are rules for their decisions that can be defended.

- In the Northern Territory, everyone who has stayed overnight in one of the 73 designated Aboriginal communities is automatically deemed to be in need of income management, unless the Minister decides otherwise.

- In the rest of Australia, other rules apply, and they apply in the case of child protection to every parent of every child, and in the case of school enrolment and school attendance, to every parent of every child who is required to attend school.

It is with the last of these "zones" that we are concerned here.

Among other things, the Bill empowers the Secretary of the Commonwealth Department of Family and Community Services and Indigenous Affairs to issue a legislative instrument that declares an individual primary school or a high school in a State or Territory (or all such schools in a whole State or whole Territory and an area within a State or Territory) to be a declared primary school or a declared high school for the purposes of those parts of the act referring to (a) non-enrolment in school or (b) unsatisfactory attendance at school.

Similarly, the Bill empowers the Secretary and/or Minister at various places to make legislative instruments that define unsatisfactory attendance and other key things.

Then, the Secretary may issue a warning (section 123UL) to a parent stating that they may be subject to the income management provisions of the Bill on the grounds of non-enrolment (Section 123UD (5) onwards) or unsatisfactory attendance (Section 123UL) and the onus is on the parent to prove that this is not so. In the absence of such proof, the Secretary may place the person under

income management, and the usual channels of appeal are not available to that person.

Under Sections 123UD (non-enrolment) and 123UE (unsatisfactory attendance) there are no requirements in the Bill that any particular source of evidence needs to be used by the Secretary: however section 123ZB of the Bill indicates how the relevant information may be obtained:

123ZEB Disclosure of information to the Secretary—school enrolment and attendance

(1) Despite any law (whether written or unwritten) in force in a State or Territory:
(a) a State or Territory; or
(b) a non-government school authority; or
(c) any other person who is responsible for the operation of one or more schools;
may give the Secretary information about the enrolment, or non-enrolment, of children at school.

(2) Despite any law (whether written or unwritten) in force in a State or Territory:
(a) a State or Territory; or
(b) a non-government school authority; or
(c) any other person who is responsible for the operation of one or more schools;
may give the Secretary information about the attendance, or non-attendance, of children at school.

These provisions empower parties to supply the Commonwealth with personal identifying information despite privacy and other laws in force in NSW. All non-Government Senators who spoke in the debate on this Bill on 8th August expressed grave concerns about the rushed drafting and curtailed debate; especially in relation to the aspects of the legislation that apply outside the Northern Territory. In addition, the distinguished former Judge Murray Wilcox QC said of the legislation on 6th August: "I must say I am amazed to see any federal government introduce into the parliament legislation of this nature. People may think 'Well it doesn't matter, they're only people up in the Northern Territory, but if they can do that in the Northern territory they can do that in any community in the country, and I think we all ought to be concerned when governments behave like that."

In principle, the Bill gives the Federal Minister and Departmental Secretary the power to declare any school or area of NSW, and seek information about enrolments and/or attendance of individuals by wholly unspecified processes that are in no way constrained by State legislation.

Moreover, presumably because of the haste in drafting, any of the parties specified in (a) (b) or (c) may give the Secretary information about "children at school", not limited to the school/s for which they are responsible.

However, that is only a minor issue, relative to others.

- Apart from the $3 million investment that produced a document – admittedly advised by seconded Treasury officials – from the Cape York Institute, there is no evidence or rationale given for why this intervention is either necessary or likely to be effective. The history of the Cape York Institute report may be taken from the media release that Minister Brough released 2 days before announcing the measures to be taken in the NorthernTerritory:

http://www.atsia.gov.au/media/media07/190607.aspx

Government receives Cape York Institute welfare report

Minister for Families, Community Services and Indigenous Affairs, Mal Brough, today received a report from the Cape York Institute about tackling welfare dependency in Indigenous communities.

Mr Brough said the report - From Hand Out to Hand Up: Cape York Welfare Project- was spearheaded by Aboriginal activist Noel Pearson in partnership with the remote Indigenous communities of Aurukun, Coen, Hope Vale and Mossman Gorge in the Cape.

"In late 2005, Noel Pearson and the Institute approached the Howard Government with a proposal to radically change the way welfare was administered to remote Indigenous communities in the Cape.

"The Institute told us that the mainstream welfare system was not benefiting Indigenous communities, in fact, it told us that welfare offered these communities little more than a pathway to lifelong dependency."

Mr Brough said the Howard Government provided $3 million to the Institute in 2006 to work with communities to find better ways to assist Indigenous people.

"We agreed that the absolute priority was the welfare of children and dealing with the causes of child neglect and abuse.

"Communities want changes that ensure parents are held to account for the education and care for their children and incentives created for young people to aspire to a future which gives them choices and opportunity for the future."

Mr Brough said the Government would closely examine the report

"This is a high quality report which is ambitious and wide ranging and I congratulate the Institute for its work and thank the communities for their involvement," Mr Brough said.

Presumably after a "close examination" of the report for two days, an adjacent media release appeared at http://www.atsia.gov.au/media/media07/210607.aspx

National emergency response to protect Aboriginal children in the NT

In response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory, the Australian Government today announced immediate, broad ranging measures to stabilise and protect communities in the crisis area.

The immediate nature of the Australian Government's response reflects the very first recommendation of the Little Children are Sacred report into the protection of Aboriginal children from child abuse in the Northern Territory which said: "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…."

All action at the national level is designed to ensure the protection of Aboriginal children from harm.

The emergency measures to protect children being announced today are a first step that will provide immediate mitigation and stabilising impacts in communities that will be prescribed by the Minister for Families, Community Services and Indigenous Affairs.

The measures include:

- *Introducing widespread alcohol restrictions on Northern Territory Aboriginal land.*
- *Introducing welfare reforms to stem the flow of cash going toward substance abuse and to ensure funds meant to be for children's welfare are used for that purpose*
- *Enforcing school attendance by linking income support and family assistance payments to school attendance for all people living on Aboriginal land and providing meals for children at school at parents' cost*
- *Introducing compulsory health checks for all Aboriginal children to identify and treat health problems and any effects of abuse*
- *Acquiring townships prescribed by the Australian Government through five year leases including payment of just terms compensation*
- *As part of the immediate emergency response, increasing policing levels in prescribed communities, including requesting secondments from other jurisdictions to supplement NT resources, funded by the Australian Government.*
- *Requiring intensified on ground clean up and repair of communities to make them safer and healthier by marshalling local workforces through work-for-the-dole*
- *Improving housing and reforming community living arrangements in prescribed communities including the introduction of market based rents and normal tenancy arrangements*
- *Banning the possession of X-rated pornography and introducing audits of all publicly funded computers to identify illegal material*
- *Scrapping the permit system for common areas, road corridors and airstrips for prescribed communities on Aboriginal land, and;*
- *Improving governance by appointing managers of all government business in prescribed communities*

The national emergency response will be overseen by a Taskforce of eminent Australians, including logistics and other specialists as well as child protection experts. Magistrate Sue Gordon, chair of the National Indigenous Council and author of the 2002 Gordon Report into Aboriginal child abuse in Western Australia has agreed to take a leadership role on the Taskforce.

At first glance, it might seem that the two boxed items are the analogues of initiatives described in the Cape York Institute report. However, there are some critical differences.

- By what one hopes is a due process in which the relevant communities were consulted, they agreed to the process.
- The decision-making about who is or who is not subjected to income management, as outlined in the Cape York institute report, is made by a body on which community leaders are represented: this being presumably the "Queensland Commision identified in the legislation before the Senate inquiry.
- In that legislation, the Secretary of FACSIA is required to abide by specific terms that the Queensland Institute specifies. [Section 123ZK Secretary must comply with certain directions given by the Queensland Commission]

By contrast, in the Northern Territory declared communities, the situation is quite different.

- There are no communities who sought such a process or were lavishly funded to develop a model that might suit them.
- The decision-making is (ultimately) made by the Minister, by virtue of the exemption power, starting from a default position in which everyone is included.
- There is no power of any other body to modify the conditions, and the usual channels of appeal in social security matters are removed, despite an amendment having been moved to allow them.

And again, in the remaining zone, the conditions are different again:

- There are no communities who sought such a process or were lavishly funded to develop a model that might suit them.
- The decision rules are made via legislative instruments, as yet unspecified, and the Legislative Instruments Act 2003 recommends, but does not require, any consultation with any affected party.
- Having made the recommendation (in the case of child protection) or provided information (in the case of enrolment/ attendance) the notifying body has no clause equivalent to that applying to the Queensland Commission whereby it may require the Secretary to comply with any directions – at best this might be placed in a legislative instrument, once written.

Now, arguments by analogy might be plausible if the Cape York Institute model were something that had been trialled and proven for notionally willing participants, rather than a document received by Minister Brough two days before the Emergency measures were announced. However, there is no evidence

whatsoever that this process will work even in Cape York, let alone anywhere else.

The passing of this legislation will change the social welfare conditions that apply to every child in Australia and their parents.

On this matter the AH&MRC supports the view of Senator Bartlett in the debate on 8th August:

I do not think that many people in the wider community are aware that the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 has a whole range of measures that have nothing at all to do with the Northern Territory.

That legislation puts in place the framework for enabling payments to be quarantined for people across the country if they are seen as not meeting requirements regarding enrolment of their child at school or school attendance benchmarks, or if they have notifications regarding child protection. It also includes the framework regarding the Cape York welfare reform trials, which I am supportive of trialling, of letting them go ahead and seeing how they work.

There are significant, and—let us not kid ourselves—very far reaching changes in one of these bills to do with potential quarantining of welfare payments for parents across the country in relation to areas like school attendance, enrolment and child neglect notifications.

As I have been informed by government briefings, these changes are not likely to come into operation until 2008, and certainly not before next year. We are not going to get a chance to look at these very far reaching and significant measures. We are being asked to start debating them straightaway.

Even though there is not the faintest suggestion that there is urgency for these measures, they are being pushed through under the cloak of the Northern Territory situation.

I am not saying that I oppose those measures; frankly, I am interested in exploring how those measures could work, what other things might attach to them, what role the states would play. I would be interested in hearing more from the Cape York institute about how those measures are going to work up there, because they have done a lot of work on them. They have got resources backing it. They have got a whole range of programs attached to it. They are linking it in to people at the community level. It would be very useful for the Senate to inform itself about all of those things.

If we were to support this motion we would be facilitating an inability for us to inform ourselves. If we vote for this motion we will be forcing ourselves not to inform ourselves, which is simply not responsible. The whole point and the history of the standing order that prevents legislation being introduced and debated straightaway was to prevent legislation from being bulldozed through unless the case could be made for urgency.

In circumstances where there is a federal election before the end of this year, it is only reasonable to expect that a Government would want to go openly to the electorate with an information campaign about why this radical reform of the Welfare system that affects every parent and child in the country is necessary, when most of them are not within a thousand kilometres of the Northern Territory or Cape York. This is an issue that should be addressed at COAG, not in a rush driven by irrelevant considerations.