

Recommendations

In accordance with the functions set out in section 46C(1) (a) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), this report includes 14 recommendations- 2 in relation to support for building on promising practices in family violence and child abuse and 12 in relation to the Northern Territory intervention. The report also contains 1 follow up action that my office will undertake in the next 12 months in relation to monitoring the Australian government response to my recommendation on the Northern Territory intervention. These and the recommendations are reproduced here and appear at the relevant part of the report.

Indigenous communities dealing with family violence and abuse: recognising 'promising practice' and learning from achievements

Recommendation 1: Prioritising funding for initiatives that address family violence and child abuse

a) That the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) develop, on a whole of government basis, a simplified single submission process to fund community initiatives to address Indigenous family violence and child abuse issues. The funding of such initiatives should receive priority funding through existing programs such as the Shared Responsibility Agreement flexible funding pool.

Indigenous Coordination Centres should operate as the contact point for applications, as well as for assisting Indigenous people and community organisations in developing initiatives and in coordinating funding sources from different mainstream and Indigenous specific programs as relevant.

b) That the Office of Indigenous Policy Coordination and FaHCSIA's relevant program areas prepare and disseminate a plain English guide for Indigenous communities advising them of funding available through all Australian government programs for such initiatives.

c) That this simplified submission process should aim to build Indigenous community capacity. Funding should be provided on a triennial basis, recognise the challenges of establishing programs and be sufficiently flexible to accommodate the varying needs of communities. Options for state and territory governments to co-fund such initiatives should also be explored.

d) That all funded projects should include a funding and technical assistance component for monitoring and evaluation of the project at agreed milestones.

Recommendation 2:

That FaHCSIA fund and coordinate (on a whole of government level) the development of an information sharing mechanism such as a clearinghouse to facilitate the sharing of knowledge and successes in Indigenous family violence and child abuse initiatives. The Attorney-General's Department, as well as agencies such as the Australian Institute of Criminology, Australia Institute of Health and Welfare, DOHA and other relevant agencies and Indigenous community and specialist NGO representatives should be consulted in the development of this clearinghouse.

The Northern Territory 'Emergency Response' intervention – A human rights analysis

Recommendation 3: Provision of external merits review of administrative decision-making

That the Parliament should immediately repeal all provisions which deny external merits review. These provisions should be replaced with provisions which make explicit that merit review processes do apply. This includes, but is not limited to, the following provisions:

- sections 34(9), 35(11), 37(5), 47(7), 48(5) and 49(4) of the *Northern Territory National Emergency Response Act 2007* (Cth) relating to determinations about Indigenous land;
- section 78 and sections 97 and 106 of the *Northern Territory National Emergency Response Act 2007* (Cth) in relation to decisions by the Minister to suspend all the members of a community government council, and decisions of the Secretary of the Department of FACSIA in relation to community store licences respectively; and
- new section 144(ka) of the *Social Security (Administration) Act 1999* (enacted by the *Social Security and other legislation amendment (Welfare Payment Reform) Act 2007* (Cth)) in relation to the right to seek a review by the Social Security Review Tribunal of decisions that relate to income management.

Note on implementation: This action can only be achieved through amendments to the legislation.

Recommendation 4: Reinstatement of the *Racial Discrimination Act 1975* (Cth)

That the Parliament immediately repeal the following provisions that exempt the NT measures from the protections of the *Racial Discrimination Act 1975* (Cth):

- section 132(2), *Northern Territory National Emergency Response Act 2007* (Cth);
- section 4(2), *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); and
- section 4(3),(5) and section 6(3), *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

Note on implementation: This action can only be achieved through amendments to the legislation.

Recommendation 5: Subject the NT intervention measures to the safeguards of the *Racial Discrimination Act 1975* (Cth)

That the Parliament amend each of the following Acts by inserting a *non-obstante* clause in order to ensure that the NT provisions are subject to the protections of the RDA in the exercise of all discretions under the legislation:

- section 132, *Northern Territory National Emergency Response Act 2007* (Cth);
- section 4, *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); and
- section 4 and section 6, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

Section 4 of the *Social Security Legislation Amendment (Newly Arrived Residents' Waiting Periods and Other Measures) Act 1997* (Cth) provides a model for such a clause.

Such a clause might read as follows:

‘Without limiting the general operation of the *Racial Discrimination Act 1975* in relation to the NTNER measures, the provisions of the *Racial Discrimination Act 1975* are intended to prevail over the NTNER Act. The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975*.’

Note on implementation: This action can only be achieved through amendments to the legislation.

Recommendation 6: Amend the ‘special measures’ provisions of the NT legislation

That the Parliament amend the following provisions of the NT intervention legislation to clarify the status of the measures as ‘special measures’ under the RDA:

- section 132(1), *Northern Territory National Emergency Response Act 2007* (Cth);
- section 4(1), *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); and
- section 4(1), (2) and (4), and section 6, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

In particular, Parliament should:

- remove those provisions which *deem* the measures to constitute a special measure;
- replace these provisions with language which clarifies that the measures are *intended* to constitute special measures; and
- insert new provisions that require that in the performance of any actions undertaken to implement the measures contained in the legislation, the intended beneficial purpose of the legislation must be a primary consideration.

Note on implementation: This action can only be achieved through amendments to the legislation.

Recommendation 7: Subject the intervention measures to regular monitoring and review to establish whether they meet the purposes of a ‘special measure’

That the Government ensure strict monitoring and evaluation provisions to ensure that only those measures that are appropriate and adapted to the purpose of child protection are maintained. Such monitoring should particularly focus on measures relating to income management, alcohol bans, changes to the permit system and compulsory acquisition of Aboriginal land.

Note on implementation: This action can be achieved through the exercise of powers vested in the Minister for Indigenous Affairs. It may require amendments to the legislation by Parliament at a future time.

Recommendation 8: Application of the *Anti-Discrimination Act 1992* (NT)

a) That the Minister for Indigenous Affairs declare that the *Anti-Discrimination Act 1992* (NT) continues to have effect in all prescribed communities under the NT intervention legislation and that the *Anti-Discrimination Act 1991* (Qld) continues to be of effect in relation to welfare reforms in Cape York.

b) That Parliament repeal the following provisions of the legislation to remove this restriction on Indigenous peoples right to obtain remedy:

- section 133, *Northern Territory National Emergency Response Act 2007* (Cth);
- section 5, *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth); and
- section 5, *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

Note on implementation: This action can be achieved in the short term through the exercise of powers vested in the Minister for Indigenous Affairs. This should be backed up by amendments to the legislation by Parliament to confirm that discriminatory provisions have no place in Australian law and to ensure full compliance with Australia's human rights obligations.

Recommendation 9: Negotiate with Aboriginal owners in relation to access to Aboriginal land

That the Minister for Indigenous Affairs place a moratorium on 5 year compulsory leases over Aboriginal land. Further, that the Minister direct public servants and Government Business Managers to conduct negotiations with Aboriginal communities to obtain access to Aboriginal land for infrastructure and related purposes.

Note on implementation: This action can be achieved through the exercise of Ministerial discretion (such as by choosing to **not** exercise her discretion to compulsorily acquire property and instead instructing government officials to negotiate with Aboriginal communities).

Recommendation 10: Amend the legislation to ensure the entitlement to 'just terms' compensation

That the Parliament amend sections 60 and 134 of the *Northern Territory National Emergency Response Act 2007* (Cth) to remove the exemption from section 50(2) the *Northern Territory (Self Government) Act 1978*.

Note on implementation: This action can only be achieved through amendments to the legislation.

Recommendation 11: Reinstate CDEP and develop community based options for income management

- a) That the CDEP scheme be reinstated in the Northern Territory, with community economic development plans developed into the future to ensure the transition from CDEP into 'real jobs' where possible.
- b) That voluntary income management measures be introduced for CDEP participants.
- c) That the income management regime under the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) be reviewed and amended to ensure compliance with human rights standards as outlined in this report.
- d) That the government support the development and introduction of voluntary income management and financial literacy programs for welfare recipients. When such programs are operational in prescribed Aboriginal communities, individuals and potential communities should be exempted by the Minister from the mandatory income management regime as set out in the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

Note on implementation: Aspects of this action require amendments to the legislation, while others can be achieved through the exercise of Ministerial discretion or at the operational level in delivering services to communities.

Recommendation 12: Supporting community based initiatives for alcohol management

That the alcohol management scheme established in the *Northern Territory National Emergency Response Act 2007* (Cth) be reviewed to establish its workability as well as whether it adds value beyond the measures relating to dry community restrictions and permits adopted by the Northern Territory Liquor Commission.

That all alcohol management processes should occur consistent with the RDA. Central to this is ensuring the participation of Indigenous peoples in developing, implementing and monitoring alcohol management plans.

Note on implementation: Aspects of this action may ultimately require amendments to the legislation, while others can be achieved through the exercise of Ministerial discretion or at the operational level in delivering services to communities.

Recommendation 13: Ensuring Indigenous participation and developing community partnerships

That the Minister for Indigenous Affairs direct the NT Emergency Response Taskforce and all public servants to ensure the participation of Indigenous peoples in all aspects of the design, delivery and monitoring of the intervention measures.

That the Minister task Government Business Managers operating at the local level to develop **Community Partnership Agreements** as the basis for shared action by the community and governments. Such agreements should be developed with the express purpose of setting a comprehensive community development plan for communities as an alternative that can ultimately supersede the application of various intervention measures (such as mandatory income management).

Note on implementation: This action can primarily be achieved through the exercise of Ministerial discretion or at the operational level in delivering services to communities. A process of Community Partnership Agreements may ultimately require amendments to the legislation in the future.

Recommendation 14: Monitoring and evaluation of the NT intervention

That the intervention measures be independently monitored 12 months following their commencement to establish whether the legislation is achieving its intended purposes; is resulting in unintended negative consequences; and to assess appropriate alternative approaches or mechanisms that would enhance the ability of the legislation to achieve its purpose.

Such a review should ensure the full participation of Indigenous peoples in affected communities in the NT and should also address the specific concerns raised in this report relating to human rights compliance

Note on implementation: This action can primarily be achieved through the exercise of Ministerial discretion or at the operational level in delivering services to communities.

In addition to the 14 recommendations contained in this report, I also include one follow up action. This indicates what action government's can expect from the Social Justice Commissioner to follow up the issues raised in this report.

Follow Up Action by the Social Justice Commissioner

The Social Justice Commissioner will, in the next *Social Justice Report*, report on the actions taken by the government to address the concerns identified in this report relating to non-compliance with Australia's human rights obligations and the *Racial Discrimination Act 1975* (Cth). In particular, the Social Justice Commissioner will identify the response of the Australian Government to the 14 recommendations contained in this report.