

Social Justice Report 2007



*Aboriginal & Torres Strait
Islander Social Justice
Commissioner*



**Human Rights and Equal
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Aboriginal & Torres Strait Islander Social Justice Commissioner

The position of Aboriginal and Torres Strait Islander Social Justice Commissioner was established within the Human Rights and Equal Opportunity Commission in 1993 to carry out the following functions:

- (1) Report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and recommend where necessary on the action that should be taken to ensure these rights are observed.
- (2) Promote awareness and discussion of human rights in relation to Aboriginal peoples and Torres Strait Islanders.
- (3) Undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.
- (4) Examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal peoples and Torres Strait Islanders.

The Commissioner is also required, under Section 209 of the Native Title Act 1993, to report annually on the operation of the Native Title Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

For information on the work of the Social Justice Commissioner please visit the HREOC website at: http://www.hreoc.gov.au/social_justice/index.html

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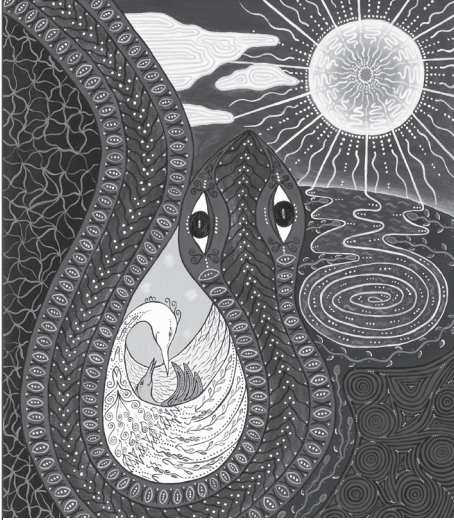


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*Aboriginal & Torres Strait Islander
Social Justice Commissioner*

*Report of the Aboriginal & Torres Strait Islander Social Justice Commissioner
to the Attorney-General as required by section 46C (1)(a) Human
Rights & Equal Opportunity Commission Act 1986.*



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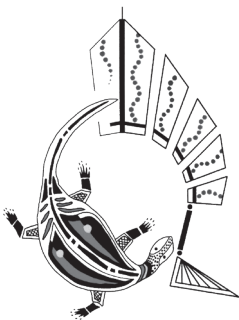
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About the Social Justice Commissioner's logo

The right section of the design is a contemporary view of traditional Dari or head-dress, a symbol of the Torres Strait Island people and culture. The head-dress suggests the visionary aspect of the Aboriginal and Torres Strait Islander Social Justice Commission. The dots placed in the Dari represent a brighter outlook for the future provided by the Commission's visions, black representing people, green representing islands and blue representing the seas surrounding the islands. The Goanna is a general symbol of the Aboriginal people.

The combination of these two symbols represents the coming together of two distinct cultures through the Aboriginal and Torres Strait Islander Commission and the support, strength and unity which it can provide through the pursuit of Social Justice and Human Rights. It also represents an outlook for the future of Aboriginal and Torres Strait Islander Social Justice expressing the hope and expectation that one day we will be treated with full respect and understanding.

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11 February 2008

The Hon Robert McClelland MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I am pleased to present to you the Social Justice Report 2007.

The report is provided in accordance with section 46C(1)(a) of the Human Rights and Equal Opportunity Commission Act 1986. This provides that the Aboriginal and Torres Strait Islander Social Justice Commissioner is to submit a report regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the exercise and enjoyment of human rights by those persons.

The report analyses promising ways to address family violence and child abuse in Indigenous communities (Chapter 2), considers the human rights impact of the Northern Territory intervention (Chapter 3) and outlines reported government initiatives to address family violence and child abuse (Appendix 2).

The report includes 14 recommendations and also identifies one action that I will continue to monitor over the coming year.

I look forward to discussing the report with you.

Yours sincerely

Tom Calma
Aboriginal and Torres Strait Islander
Social Justice Commissioner



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Note – Use of the terms ‘Aboriginal and Torres Strait Islander peoples’ and ‘Indigenous peoples’

The Aboriginal and Torres Strait Islander Social Justice Commissioner recognises the diversity of the cultures, languages, kinship structures and ways of life of Aboriginal and Torres Strait Islander peoples. There is not one cultural model that fits all Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia.

Throughout this report, Aborigines and Torres Strait Islanders are referred to as **‘peoples’**. This recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their livelihoods.

Throughout this report, Aboriginal and Torres Strait Islander peoples are also referred to as **‘Indigenous peoples’**.

The use of the term ‘Indigenous’ has evolved through international law. It acknowledges a particular relationship of Aboriginal people to the territory from which they originate. The United Nations High Commissioner for Human Rights has explained the basis for recognising this relationship as follows:

Indigenous or aboriginal peoples are so-called because they were living on their lands before settlers came from elsewhere; they are the descendants – according to one definition – of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means... (I)ndigenous peoples have retained social, cultural, economic and political characteristics which are clearly distinct from those of the other segments of the national populations.

Throughout human history, whenever dominant neighbouring peoples have expanded their territories or settlers from far away have acquired new lands by force, the cultures and livelihoods – even the existence – of indigenous peoples have been endangered. The threats to indigenous peoples’ cultures and lands, to their status and other legal rights as distinct groups and as citizens, do not always take the same forms as in previous times. Although some groups have been relatively successful, in most part of the world indigenous peoples are actively seeking recognition of their identities and ways of life.¹

The Social Justice Commissioner acknowledges that there are differing usages of the terms ‘Aboriginal and Torres Strait Islander’, ‘Aboriginal’ and ‘indigenous’ within government policies and documents. When referring to a government document or policy, we have maintained the government’s language to ensure consistency.

1 United Nations High Commissioner for Human Rights, *Fact sheet No.9 (Rev.1), The Rights of Indigenous Peoples*, www.unhcr.ch/html/menu6/2/fs9.htm

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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.

Introduction

This is my fourth *Social Justice Report* as the Aboriginal and Torres Strait Islander Social Justice Commissioner. The focus of this year's report is family violence and child abuse in Indigenous communities.

Issues related to family violence and child abuse have dominated public discussion of Indigenous affairs over the past eighteen months. Beginning with the distressing picture painted by the NSW Aboriginal Child Sexual Assault Taskforce's, *Breaking the Silence, Creating the Future* report¹ and then escalating with the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse report, *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'*,² the plight of many Indigenous women and children has been vividly exposed.

These reports reinforced that serious action needs to be taken. On 21 June 2007, the Australian Government announced a 'national emergency response to protect Aboriginal children in the Northern Territory' from sexual abuse and family violence.³ I welcomed this announcement to protect the rights of Indigenous women and children in the Northern Territory (as well across the the rest of Australia) but have argued that it needs to be done in a manner consistent with Australia's international human rights obligations and in particular with the *Racial Discrimination Act 1975* (Cth).⁴

The announcement of the NT intervention brought the attention of the nation to the grave problem of family violence and abuse with an intensity that we have never seen before. Despite this new interest, we know that family violence and child abuse in Indigenous communities are not new problems. Indigenous individuals and communities have long been telling their stories of violence and abuse and calling for action. Most of the time, sadly, these calls have fallen upon deaf ears. There are no shortage of reports and inquiries outlining the problem but there has

1 Aboriginal Child Sexual Assault Taskforce, *Breaking the silence: creating the future: addressing child sexual assault in Aboriginal communities in NSW*, NSW Attorney General's Department, Sydney, 2006.

2 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007.

3 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007, available online at: http://www.fahcsia.gov.au/internet/minister3.nsf/content/emergency_21june07.htm, accessed 1 February 2008.

4 Human Rights and Equal Opportunity Commission, 'A human rights based approach is vital to address the challenges in Indigenous communities', Media Release, 26 June 2007, available online at: http://www.humanrights.gov.au/about/media/media_releases/2007/45_07.html, accessed 9 November 2007.



been a severe shortage of concerted, long term action by governments working in partnership with communities.

In my role as the Social Justice Commissioner, I have been working hard to engage with Indigenous people about their experiences of family violence and abuse and advocating a human rights based approach to develop solutions. On 19 June 2006 the Human Rights and Equal Opportunity Commission (HREOC) and Australians for Native Title and Reconciliation (ANTaR) hosted a forum of experts on ending Indigenous family violence. This was accompanied by my publication, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities- An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001-2006*.⁵ This document sets out the key messages and challenges that need to be met in addressing family violence and child abuse. These messages provide the genesis of this year's Social Justice Report.

Given that there is already so much that we do know about Indigenous family violence and child abuse, I did not want this Social Justice Report to be going over old ground. Our Indigenous communities have been subject to research without real consultation or follow up action for too long and the last thing we need is another report gathering dust on the politicians and bureaucrats bookshelves. However, what we don't know so much about is what does actually work to reduce family violence and abuse in Indigenous communities.

In meeting Indigenous individuals and community groups through my work I come across many positive success stories about communities tackling family violence and abuse. These stories are seldom heard in the mainstream media but nonetheless these individuals and communities go on with their work, achieving great outcomes often with the odds stacked against them. To start to fill this void, this report identifies a selection of case studies that show interventions to address Indigenous family violence and child abuse that are working well.

This is an opportunity to celebrate success but also learn from experiences. I am a firm believer that the answers to Indigenous problems can be found in Indigenous communities. This is why it is so crucial to learn from successes, as well as challenges, rather than reinventing the wheel every time a new policy or program is announced. Tomorrow's national strategy should come out of today's success stories as we consolidate knowledge and experience.

The successes of the case studies were built on good processes, partnership and consultation – the foundations for a human rights based approach to family violence and child abuse.

This brings me back to the Northern Territory intervention. Fundamentally I support the government's **intentions** to protect women and children, but have some deep concerns about the actual **methods** used as part of the Northern Territory intervention.

⁵ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues*, HREOC, Sydney, 2006.



The crucial question that this report will seek to answer is does the Northern Territory emergency response legislation comply with human rights standards? This is obviously a very complex area and any analysis is preliminary given that many of the measures have not been fully implemented yet. However, I draw attention to two important points:

1. The government has an obligation to take action to address violence and abuse, particularly where there is evidence that it is widespread. Governments that fail to do so are in breach of their obligations under the *Convention on the Rights of the Child (CROC)*, the *International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)* and the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*.
2. Human rights are universal and indivisible. This means that they apply to everyone, everywhere, all the time and that different sorts of rights have equal importance. Governments should not privilege the enjoyment of one right over that of another, as if different rights are in competition with each other or subject to a hierarchy of 'more important' and 'less important' rights.

Aside from Australia's international obligations, these issues are important because measures that violate human rights are more likely to work in ways that undermine the overall well-being of communities in both the short and long term. For example, the Government has clearly stated that the Northern Territory intervention seeks to address a breakdown in law and order in Indigenous communities. And yet it potentially involves introducing measures that undermine the rule of law and do not guarantee Indigenous citizens equal treatment to other Australians.

Family violence and child abuse causes immense hurt in our Indigenous communities. The difficulty for a report that focuses on this is that it can easily emphasise the negatives and the challenges, but then place insufficient attention on identifying strengths and possible solutions. I hope that this report can balance the overwhelmingly negative portrayal of Indigenous communities and family violence and child abuse by highlighting success stories and demonstrating that Indigenous peoples are taking control of these issues in many communities. This offers hope as well as valuable evidence and learning to inform better service delivery in the future. It is intended to also restore some confidence and dignity to Indigenous Australians who have suffered from the wholesale negative portrayal of Indigenous society by some politicians and media.

Secondly, I provide a comprehensive analysis of the Northern Territory intervention and critique of some of the problematic aspects through a human rights based approach. Human rights are a positive tool for ensuring human dignity and are above political partisan considerations. The recommendations set out ways forward to protect women and children in the Northern Territory that are consistent with human rights.



Contents of the *Social Justice Report 2007*

Chapter 2 of the report looks at promising practices in addressing family violence and child abuse in Indigenous communities through 19 case studies. The case studies are supplemented by information about the challenges for addressing family violence and abuse, including key definitions; information on the incidence of family violence and child abuse; causes of violence and child abuse; and an outline of a human rights based approach to family violence and child abuse.

These case studies are organised around the themes of:

- Community education and community development;
- Healing;
- Alcohol management;
- Men's groups;
- Family support and child protection;
- Safe houses; and
- Offender programs.

A brief review of the issues around each of these areas precedes the case studies to give the overview of important contextual information, including international comparisons where relevant. Each of the case studies includes a description of the program; evidence of the impact of the program; and lessons from the implementation of the program.

The chapter then goes on to draw together commonalities between the case studies to identify lessons for success and indicators to ensure that programs are consistent with a human rights based approach.

Chapter 3 then provides a thorough overview of the Northern Territory intervention. It provides background to the announcement of the intervention, tracking back to the findings of the *Little Children are Sacred Report* that prompted the Government announcement.

It then provides an overview of the legislative package to implement the intervention, information on the scrutiny processes prior to passage of the legislation, and an overview of the initial responses to the NT emergency response measures and legislation.

The human rights impact of the legislation is considered with reference to Australia's international obligations and specifically, the *Racial Discrimination Act 1975* (Cth). Finally, suggestions are made to ensure that any measures taken to protect Indigenous women and children are consistent with human rights.

In part IV of the chapter I set out a ten point action plan to ensure that the NT intervention is consistent with Australia's human rights obligations and provides Indigenous children and their families with equality before the law. In the next report I will critically review the impacts of the legislation twelve months from its promulgation and how the report's recommendations have been addressed.

The report provides 14 recommendations and one follow up action for dealing with family violence and child abuse in Indigenous communities.



Appendix 1 of the report contains a chronology of important events in Indigenous affairs from 1 July 2006 to 30 June 2007, with a particular focus on family violence initiatives.

Appendix 2 of the report then provides an overview of existing government initiatives to address family violence and child abuse in Indigenous communities based on information I requested from all State, Territory and relevant Australian government departments.

The appendix sets out the Council of Australian Government (COAG) frameworks and initiatives to address family violence and child abuse, as well as Australian government responses reporting against the commitments arising from the 2006 *Intergovernmental Summit on Indigenous Family Violence and Child Abuse*. It then provides supplementary information on other policies and programs that address family violence and child abuse at the federal level.

The appendix also provides an overview of relevant State and Territory initiatives, including background information on major reports in each of the state and territories.

By providing details about existing programs, policies and inter-governmental cooperation arrangements; case studies of promising practices and lessons for the future; detailed analysis of Australia's human rights obligations in relation to addressing family violence and child abuse; and scrutiny of the legislative measures underpinning the NT intervention, the report provides a valuable resource for our communities, Indigenous people and governments in dealing with these most difficult and confronting of issues.

As I note in chapter 3 of the report – no one wants to see children abused, families destroyed, and the aspirations for a bright future dulled because hope has been overwhelmed by despair.

Aboriginal children – wherever they live in Australia – deserve a future in which they have the same opportunity as other children to thrive, develop and enjoy life. They are entitled to such a future for no other reason than that they are human, born with dignity and in full equality to all other Australians.

Such equality involves being able to live and grow in safety, without fear of violence or intimidation, within a thriving, caring and loving family unit, and according to your culture. It is about being able to access quality health services to treat both physical and mental health issues in a culturally secure and timely manner.

It also involves living in an environment where individuals are able to exercise control over their own lives. Where they are able to make decisions and are responsible for those decisions and their impact on their family and the community in which they live. And where their choices are meaningfully backed up by the means to achieve them, such as access to basic services and the provision of education to both build dreams and hope, and create the personal capacity to achieve these.

For many Indigenous children across Australia, such equality is a pipedream. For some, overwhelmed by environments of dysfunction, it is not even dreamed of.



It is a tragic fact that an Aboriginal or Torres Strait Islander child born today does not have the same life chances as other Australian children.

This is something that should not exist in 21st century Australia. And it is the defining challenge for our nation.

All Australian governments should be committed to ensuring an equal start in life for Indigenous children. Without this, the most vulnerable members of our society are required to overcome adversity merely to access what others take for granted.

It is with this challenge in mind that this report has been prepared.



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

Family violence and abuse occurs at unacceptable rates in Aboriginal and Torres Strait Islander (Indigenous) communities. We have heard many tragic stories of women, children and young people who have experienced devastating sexual abuse and family violence. It is a scourge that is causing damage and trauma among Indigenous communities, to our women and children, and to the fabric of Indigenous cultures.

The past eighteen months, in particular, has seen significant and sustained media coverage of these issues. Stories of violence and abuse are important and demand to be heard and acted upon. Despite this, however, mainstream media have not reported much about how Indigenous peoples and communities nationally are positively responding to family violence, abuse and neglect.

Across Australia, there are many examples of Indigenous community led initiatives to deal with the devastating impacts of family violence and abuse, and to prevent its occurrence in the first place. Sometimes this is occurring due to the efforts of a single individual, with limited or no government support. Sometimes it is emerging in the face of government inaction or in the face of government bureaucracy that responds slowly, over-cautiously, inflexibly or unimaginatively to these difficult and intransigent problems. In other circumstances, it is occurring through partnerships with individual government agencies, the NGO sector or the courts that are striving to do things differently.

This report highlights existing initiatives aimed at dealing with family violence and abuse in Indigenous communities, and ultimately preventing harm to our women and children.

These initiatives are described as 'promising practice' as opposed to 'best practice'. *Part 1* explains this focus on promising practice, as well as definitions and some of the key concepts of family violence and abuse in Indigenous communities.

The case studies provided in this report also complement research undertaken by the Human Rights and Equal Opportunity Commission over the past five years into family violence and abuse in Indigenous communities. A summary of that research was released in 2006 in the publication: *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*.



Part 1 of this report also recaps on the key challenges for addressing family violence in Indigenous communities identified through this earlier research, and the key elements of a human rights based approach to family violence.

Part 2 of the report then presents case studies of promising practice in dealing with family violence and abuse in Indigenous communities. The case studies are presented under the following themes:

- Community education and community development;
- Healing;
- Alcohol management;
- Men's groups;
- Family support and child protection;
- Safe houses; and
- Offender programs.

Part 3 of the report then draws together the common themes from the case studies and lessons for holistic intervention to prevent violence and abuse in Indigenous communities.

What this chapter shows is that, quite simply, there are many Indigenous individuals, organisations and communities that are working tirelessly to combat family violence and abuse, even if the mainstream media does not report this. As I have argued previously:

we need to confront family violence, but also do so by reinforcing the inherent worth and dignity of Indigenous peoples, not by vilifying and demonising all Indigenous peoples.¹

This collection of case studies goes some way to recognising the positives and celebrating the victories of dedicated Indigenous peoples across Australia, as well as acknowledging the often severe hardships and challenges that they continue to face.

¹ Aboriginal and Torres Strait Islander Social Justice Commissioner, Ending family violence and abuse in Aboriginal and Torres Strait Islander communities, HREOC, Sydney, 2006, p5.



Part 1: Challenges for addressing family violence and abuse in Indigenous communities

Definitions of family violence and child abuse

Over the years there have been enough reports and inquiries into family violence and abuse in Indigenous communities to fill all the bookshelves of politicians and bureaucrats around the country.

In the past eighteen months, for example, the following significant reports have been released:

- *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*² – Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse;
- *Breaking the Silence: Creating the Future. Addressing Child Sexual Assault in Aboriginal Communities in New South Wales*³ – The report of the NSW Aboriginal Child Sexual Assault Taskforce; and
- *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*⁴ – an overview of research and findings of the Human Rights and Equal Opportunity Commission related to family violence and abuse in Indigenous communities.

An overview of the major inquiries and reports across all Australian jurisdictions is provided in Appendix 2 of this report. The appendix also provides an overview of the responses of all governments to these reports, including through joint agreement at the Council of Australian Governments (COAG).

The term 'family violence' is the preferred terminology that identifies the experiences of Indigenous people. It is much broader than the regular definition of 'domestic violence' and recognises the complex interaction of different factors that contribute to violence and abuse in Indigenous communities. Previously, I have defined family violence as:

any use of force, be it physical or non-physical, which is aimed at controlling another family member or community member and which undermines that person's well-being. It can be directed towards and individual, family, community or a particular group. Family violence is not limited to physical forms of abuse, and also includes cultural and spiritual abuse. There are interconnecting and trans-generational experiences of violence within Indigenous communities.⁵

Similarly, my Office has noted that:

Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender. The identity of many Indigenous women

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- 2 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'* Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.
 - 3 *Aboriginal Child Sexual Assault Taskforce, Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department, Sydney, 2006.
 - 4 *Aboriginal and Torres Strait Islander Social Justice Commissioner, Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*, HREOC, Sydney, 2006.
 - 5 *Aboriginal and Torres Strait Islander Social Justice Commissioner, Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*, HREOC, Sydney, 2006, p6.



is bound to their experience as Indigenous people. Rather than sharing a common experience of sexism binding them with non-Indigenous women, this may bind them more to their community, including the men of the community.

Strategies for addressing family violence in Indigenous communities need to acknowledge that a consequence of this is that an Indigenous woman 'may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners' as a solution to the violence.⁶

Child sexual abuse is one of the most horrific crimes imaginable, but it is not the only form of abuse that occurs. In this report I adopt a broad definition of **child abuse**. As set out in Text Box 1 below, child abuse includes sexual abuse, physical abuse, emotional abuse and neglect.

Text Box 1: Definition of child abuse

Sexual abuse: any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards.

Physical abuse: any non-accidental physical injury inflicted upon a child by a person having the care of a child.

Emotional abuse: any act by a person having the care of a child which results in the child suffering any kind of emotional deprivation or trauma. This includes witnessing family or domestic violence.

Neglect: any serious omissions or commissions by a person having the care of a child which, within the bounds of cultural tradition, constitute a failure to provide conditions that are essential for the healthy physical and emotional development of a child.⁷

Measuring Violence and Abuse in Indigenous Communities

Family Violence

Measuring family violence in Indigenous communities is notoriously difficult and all data should be treated with caution.

The best attempts to establish a statistical picture of family violence are hampered by the low levels of reporting to police. Similarly, when we try and establish how many Indigenous people are involved as offenders in the criminal justice system as a result of family violence we have even greater problems due to the way data is collected. Data is collected on the Indigenous status of the offender and the most serious offence, but not on the relationship of the victim to the offender so we have no way of knowing whether the offence fits the family violence category.⁸ Where

6 Aboriginal and Torres Strait Islander Social Justice Commissioner, Ending family violence and abuse in Aboriginal and Torres Strait Islander communities, HREOC, Sydney, 2006, p6.

7 Poole, L. and Tominson, A., *Preventing child abuse in Australia: Some preliminary findings from an Australian Audit of Prevention Programs, National Child Protection Clearinghouse*, Australian Institute of Family Studies, Melbourne, 2000, p10.

8 Al-Yaman, F., Van Doeland, M., and Wallis, M., *Family Violence Among Aboriginal and Torres Strait Islander Peoples*, AIHW cat. no. FHW 17, Australian Institute of Health and Welfare, Canberra, 2006, p99.



the Indigenous status of the victim is recorded, the relationship with the offender is not reported.

Despite the limitations of the data we do know that nationally 28.5% of all Indigenous offenders in custody were sentenced for 'acts intended to cause injury'.⁹ This is 2.7 times higher than the non-Indigenous rate¹⁰ and makes up the majority of offences committed by Indigenous people as at 30 June 2006. Sexual assault makes up around 10% of all sentenced Indigenous prisoners.¹¹ Once again, we do not know the relationship of the offender to the victim but we can safely assume from this data that violence is a significant problem for Indigenous offenders.

Text Box 2 sets out some of the key statistics that are available in regard to family violence.

Text Box 2: Key statistics in family violence and family violence offenders

Victims

The ABS 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) found that:

- 21.2% of Indigenous people reported family violence as a problem in their community;
- 8.1% reported sexual assault as a problem in their community;¹² and
- 18.3% of Indigenous women experienced physical or threatened abuse in the past 12 months, compared with 7% of non-Indigenous women.¹³

Offenders¹⁴

- 28.5% of all Indigenous offenders in custody were sentenced for 'acts intended to cause injury'.¹⁵
- 10% of all Indigenous offenders in custody were sentenced for sexual assault offences.¹⁶

9 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, p129.

10 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, p130.

11 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, p129.

12 ABS (Australian Bureau of Statistics) 2004, *National Aboriginal and Torres Strait Islander Social Survey, 2002*, Cat. no. 4714.0, Canberra.

13 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, p152.

14 There is no way of knowing if the victim was also Indigenous and therefore a case of family violence. However, this still indicates that violence is a problem for Indigenous men and communities

15 SCRGSP (Steering Committee for the Review of Government Service Provision) 2007, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission, Canberra, p251.

16 SCRGSP (Steering Committee for the Review of Government Service Provision) 2007, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission, Canberra, p251.



Child Abuse

The Australian Institute of Health and Welfare collates child protection data.¹⁷ The most recent child protection data shows that nationally, Indigenous children are:

- 7 times more likely to be in *out of home care* than non-Indigenous children;¹⁸
- 5 times more likely to be the subject of a *substantiated* case of abuse;¹⁹ and
- 6 times more likely to be on a *care and protection order*.²⁰

There is considerable variation between jurisdictions. Table 1 below shows the number and rate of Indigenous children on care and protection orders, compared to non-Indigenous children. For instance, in Victoria the rate of care and protection orders for Indigenous children is 52.8 per 1,000, while in the Northern Territory it is only 11.4 per 1,000. Given what has come to light in the Northern Territory recently, this may say more about systemic failures of the child protection system (such as under-reporting) than the actual level of abuse. Issues around under reporting will be discussed further below.

Table 1: Children on care and protection orders: number and rate per 1,000 children aged 0-17 years, by Indigenous status and state and territory, at 30 June 2005²¹

State/territory	Number of Children			Rate per 1,000 children		
	Indigenous	Other	Total	Indigenous	Other	Total
New South Wales	2,113	6,507	8,620	33.0	4.3	5.4
Victoria	682	4,976	5,658	52.8	4.3	4.9
Queensland	1,342	4,515	5,857	21.9	5.0	6.0
Western Australia	660	1,123	1,783	21.6	2.5	3.7
South Australia	322	1,231	1,553	27.3	3.7	4.5

17 It should also be taken into account that there is no National Minimum Data Set (NMDS) for Child Protection, although there are efforts underway to establish one. Each state and territory has its own legislation, policies and practices in relation to child protection, and this can account for some of the differences between jurisdictions in the data provided.

18 Australian Institute of Health and Welfare, *Child Protection 2005-2006*, Child welfare series no. 40. Cat. no. CWS 28. Canberra: AIHW, 2007, p11.

19 Australian Institute of Health and Welfare, *Child Protection 2005-2006*, Child welfare series no. 40. Cat. no. CWS 28. Canberra: AIHW, 2007, p26.

20 Australian Institute of Health and Welfare, *Child Protection 2005-2006*, Child welfare series no. 40. Cat. no. CWS 28. Canberra: AIHW, 2007, p44.

21 Australian Institute of Health and Welfare, *Child Protection 2005-2006*, Child welfare series no. 40. Cat. no. CWS 28. Canberra: AIHW, 2007, p39.



Tasmania	94	622	716	11.5	5.7	6.1
Australian Capital Territory	70	394	464	37.4	5.3	6.1
Northern Territory	281	133	414	11.4	3.8	7.0

It is notable that Indigenous children are far more likely than non-Indigenous children to be the subject of a substantiation of neglect. For instance, in Western Australia around 40% of Indigenous children were in contact with child protection services for neglect, compared to only 30% of non-Indigenous children.²²

The high level of neglect is inconsistent with the popular media images of child abuse associated with sexual assault. It is, however, consistent with what we know about the socio-economic conditions of many Indigenous communities. Overcrowding, unemployment and lack of services are all hallmarks of the disadvantage that breeds neglect. The discussion on abuse needs to consider the role of government failure to provide adequate services and opportunities in fostering these conditions, as well as focusing on the responsibilities of families and communities.

However, all of these statistics need to be treated with caution. The Anderson and Wild report, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'* is the latest in a long line of reports that argues that child abuse is chronically under reported in all communities, but especially Indigenous communities. This is partly due to fear built on past experiences that:

- the child victim of abuse will be ostracised by the community;
- a past history of interaction with powerful authorities presently represented by FACS and Police (history of Stolen Generations);
- possible removal of the child from the community (history of children never returning); and
- the perpetrator going to jail and implications of this in terms of community repercussions (memory of deaths in custody).²³

Anderson and Wild also found that feelings of shame prevented some people from reporting, especially in the light of negative media portrayals that stereotype all Indigenous men as abusers. Feelings of ambivalence also reduced reporting, given that many of the experiences of reporting abuse have been negative and had little benefit for the child or community.²⁴ In the context of remote Northern Territory communities there was also a lack of understanding about what actually constitutes

22 Australian Institute of Health and Welfare, *Child Protection 2005-2006*, Child welfare series no. 40. Cat. no. CWS 28. Canberra: AIHW, 2007, p43.

23 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p77.

24 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p77.



sexual abuse, an inaccessible reliance on English in the reporting process and no police to report to.²⁵

It is not just community members that are failing to report abuse. Anderson and Wild also found that some service providers who are mandatory reporters under legislation are also reluctant to report abuse for similar reasons around the inadequacy of the child protection response.²⁶

Causes of violence and abuse

Violence

It is impossible to provide the definitive explanation of why family violence is such a significant problem in Indigenous communities, given the complexity and range of different circumstances. However, Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys, in their comprehensive report, *Violence in Indigenous Communities*, provide a useful framework. They argue that causes should be categorised as *underlying factors*; *situational factors*; and *precipitating causes*.²⁷

Underlying factors relate to the historical experience of Indigenous peoples. Contemporary violence cannot be separated from past experiences of colonisation, including the forcible removal of children from their families. Many communities have not recovered from colonisation. For instance, the Memmott report notes that Indigenous communities in Queensland with the worst incidence of violent crimes are all former missions.²⁸

Situational factors contribute, rather than cause violence. There is an almost endless list of situational factors but some of the most common are:

- family problems;
- financial problems;
- loss of close family members;
- unemployment;
- mental health problems;
- anger;
- alcohol and other drugs;²⁹
- pornography;³⁰

25 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p77.

26 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p78.

27 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p11.

28 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p14.

29 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p18.

30 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p19.



- boredom,³¹
- lack of available resources and programs to prevent violence;³²
- a subculture that tolerates violence,³³ and
- poverty.³⁴

Text Box 3: Examples of situational factors affecting Aboriginal and Torres Strait Islander peoples

Life stressors

The National Aboriginal and Torres Strait Islander Social Survey (NATSISS) of 2002 demonstrates that Indigenous peoples are much more likely than non-Indigenous people to experience situational factors that contribute to violence.

The NATSISS reported 82% of the Indigenous population had experienced at least one life stressor in the previous 12-months.³⁵ The ABS defines a life stressor as: a serious illness; accident or disability; the death of a family member or close friend; mental illness; divorce or separation; inability to obtain work; involuntary loss of a job; alcohol or drug-related problems; witnessing violence; being the victim of abuse or violent crime; trouble with the police; gambling problems; incarceration of self or a family member; overcrowding; pressure to fulfil cultural responsibilities; and discrimination or an experience of racism.³⁶

The role of alcohol

The role of alcohol as a situational factor that contributes to family violence requires special mention. The Little Children are Sacred Report pleads for what it calls the 'scourge of alcoholism' to be addressed. This is the case, particularly given the increase of alcohol consumption in the Northern Territory which has gone from 2.3 to 3.0 billion litres in the six years from 2000-2006.³⁷ The Report emphasised the place of alcohol as an underlying problem in Indigenous communities, specifically noting the causal links between alcohol consumption and family violence. The Report outlines that although there is a lack of accurate estimates on the extent of alcohol related violence, that in a substantial proportion of cases, family violence has been committed under the

- 31 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p19.
- 32 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p20.
- 33 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p20.
- 34 As noted in the *Social Justice Report 2005*, chronic stress (in particular, psychosocial stress that is associated with an individual's perception of lacking control over what happens in their environment) is associated with men's violence against women. Studies from the United States associate poverty with higher levels of domestic violence. As we know, (often extreme) poverty is a significant factor affecting Indigenous individuals and communities in Australia. This is compounded by other stressors that Indigenous people are more likely to experience: such as, racism and an individual's perception of the lack of collective control that their community exercises in relation to its culture and its affairs. See further: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission, Sydney, 2005, pp 23-26.
- 35 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2002*, ABS cat. No. 4714.0, ABS, Canberra p5.
- 36 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2002*, ABS cat. No. 4714.0, ABS, Canberra p79.
- 37 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p16.



influence of alcohol.³⁸ It goes on to maintain that the association between alcohol abuse and violence is one that acts as a dis-inhibitor which exacerbates emotional instabilities and therefore creates tendencies towards violence.³⁹

The 2004 ABS National Drug Strategy Household Survey (NDSHS 2004) also illustrates this linkage. The Survey asked participants whether, in the last 12 months, they had been verbally abused, physically abused or put in fear by any person affected by alcohol, and illicit drugs. Details of the relationship of the offender to the victim among other information were obtained.

The number of people who identified as Aboriginal and/or Torres Strait Islander in the 2004 NDSHS was 463. As this is a relatively small sample, the results should be interpreted with caution. However, 42% of these respondents reported that they had experienced verbal and/or physical abuse and/or were put in fear by someone under the influence of alcohol; and 21% by someone under the influence of illicit drugs, in the 12 months prior to the survey. Almost one-third (30%) of the alcohol and/or illicit drug-related verbal abuse was inflicted by a current or ex-spouse or partner; with just over one-quarter (26%) of the physical abuse inflicted by a current or ex-spouse or partner.⁴⁰

The Drug Use Monitoring in Australia (DUMA) project also provides information on the impact of alcohol and other drugs. The project began in 1999 and seeks to measure drug use among detainees who have been arrested in the previous 48 hours and are being held in custody. The data is used to examine issues such as the relationship between drugs and property and violent crime, monitor patterns of drug use across time, and help assess the need for drug treatment amongst the offender population.⁴¹

The most recent data for Darwin from 2006, reveals that 68% of males and 75% of females detained in police watch houses reported heavy alcohol use in the 48 hours before their apprehension. This figure rises to 82 and 83 per cent respectively for heavy alcohol use in the 30 days prior to apprehension. Three quarters of all detainees participating in the Survey self identified as Indigenous.⁴²

38 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p226.

39 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p225.

40 See the presentation of this data and the links to family violence explained in Al-Yaman, F., Van Doeland, M., Wallis, M., *Family Violence in Indigenous Communities*, Australian Institute of Health and Welfare (AIHW). AIHW cat. no. IHW 17, Canberra, 2006, pp33-36, available online at: <http://www.aihw.gov.au/publications/index.cfm/title/10372>, accessed 21 November 2007.

41 See: <http://www.aic.gov.au/research/duma/about.html>, last accessed 22/01/2008.

42 Mouzos, J., Hind, N., and Adams, K., *Drug Use Monitoring in Australia: 2006 annual report on drug use among police detainees*, Research and public policy series, no. 75, Australian Institute of Criminology, Canberra, 2007, p114.



Precipitating causes are the triggers to violence and can be almost anything, for instance:

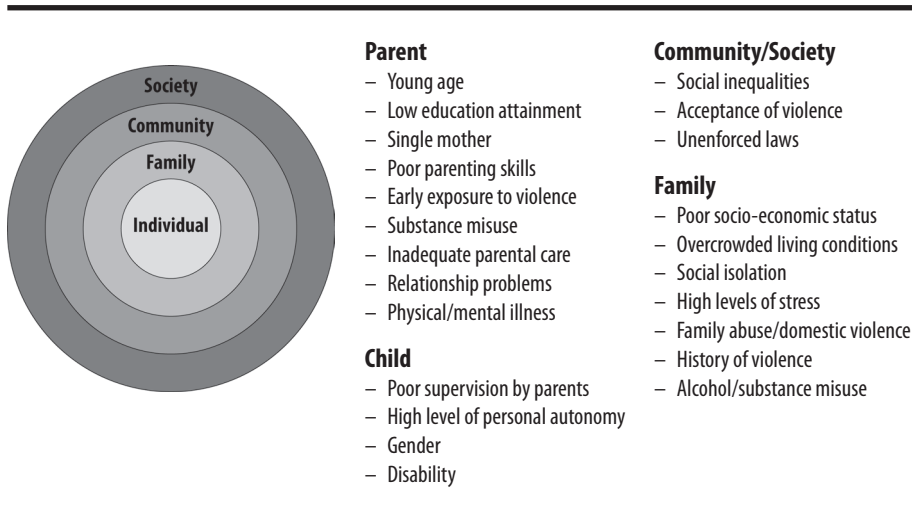
making a pass at a defacto; quarrelling between husband and wife; children fighting at school; accidentally knocking someone over at sport; arguing over a game of cards; 'driving past' a persons house; not inviting someone to a wedding or birthday; borrowing something and forgetting to give it back; disagreeing over the ownership of a sports uniform; the arrival of a 'stranger' in town; spreading false rumours; carrying yarns; and making a put down remark.⁴³

The point of this framework is that it shows that interventions need to target all of the causes and factors holistically, from dealing with the trivial triggers through to history and entrenched social issues.

Child Abuse

The causes of child abuse and neglect are also complex and inter related. As Diagram 1 below shows, risk factors for child abuse or neglect can be found at parent, child, family and community levels. The risk factors listed below apply to all communities, not just Indigenous communities. However, the social disadvantage that many Indigenous people face means that more of these risk factors apply.

Diagram 1: Multi-level risk factors associated with child abuse⁴⁴



The presence of a risk factor in a child or family situation does not mean that child abuse or neglect will follow. The majority of Indigenous families care for their children well, despite the odds often being stacked against them. Another common misconception is that all children who have been abused will go on to perpetrate abuse on others. Once again, the majority will not. Our best estimates are that

43 Memmott, P., Stvacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p21.

44 Alice Springs Town Camps Taskforce, *Alice Springs Town Camps Review Taskforce Report 2006*, Department of Local Government, Housing and Sport, 2006, p64.



around 30% will go on to become abusive parents.⁴⁵ Notwithstanding, we need to put proper services in place to try and break this cycle of violence. We also need to recognise the resilience of so many individuals in Indigenous communities.

There is no 'magic bullet' to solve the problems of family violence and abuse in Indigenous communities. However, we know that there are a range of program areas that must be addressed holistically to promote change. These program areas include:

- Support programs;
- Identity programs;
- Behavioural change;
- Night patrols;
- Refuges and shelters;
- Justice programs;
- Dispute resolution;
- Education and awareness raising; and
- Holistic composite programs.⁴⁶

Adopting a human rights based approach to family violence and abuse

The Human Rights and Equal Opportunity Commission has advocated that a human rights based approach be adopted to address issues of family violence and abuse in Indigenous communities.⁴⁷

A human rights based approach takes into account the multitude of factors impacting on the capacity for Indigenous women and children to enjoy freedom from violence and abuse. It recognises that:

- Indigenous women, children and men are entitled to live their lives in safety and with dignity, free from fear of violence or abuse. This is a cultural and human right.
- Indigenous women's experience of discrimination and violence is a complex intersection of inequality based on race and gender.
- Indigenous people have the right to full and effective participation in decisions which directly or indirectly affect their lives, including participation and partnership in program planning, development, implementation and evaluation.
- There are broader social and economic factors which impact on the enjoyment of rights by Indigenous people, with a consequent need for a holistic approach that addresses the causes and consequences of violence and abuse.⁴⁸

45 Pocock, J., Stanley, J., and Tominson, A., 'Child abuse and neglect in Indigenous Australian communities', in *Child Abuse Prevention Issues*, No 19, Spring 2003, Australian Institute of Family Studies, Melbourne, 2003, p6.

46 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001.

47 See for example, Human Rights and Equal Opportunity Commission, *A human rights based approach is vital to address the challenges in Indigenous communities*, Press Release, 26 June 2007, available online at: www.humanrights.gov.au/about/media/media_releases/2007/45_07.html.

48 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues*, HREOC, Sydney, 2006.



A human rights based approach also emphasises transparency and accountability. The development of rigorous benchmarking, monitoring and reporting systems allows the measurement of the exercise and enjoyment of people's rights over time. A human rights based approach offers an integrated framework which connects and considers all human rights, thereby providing a holistic response to, and addressing the causes and consequences of, violence and abuse in Indigenous communities.

The United Nations *Common Understanding of Human Rights Based Approach to Development Cooperation* sets out necessary elements of policy development and service delivery under a human rights based approach as follows:

1. People are recognised as key actors in their own development, rather than passive recipients of commodities and services.
2. Participation is both a means and a goal.
3. Strategies are empowering, not disempowering.
4. Both outcomes and processes are monitored and evaluated.
5. Analysis includes all stakeholders.
6. Programs focus on marginalized, disadvantaged, and excluded groups.
7. The development process is locally owned.
8. Programs aim to reduce disparity.
9. Both top-down and bottom-up approaches are used in synergy.
10. Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
11. Measurable goals and targets are important in programming.
12. Strategic partnerships are developed and sustained.
13. Programs support accountability to all stakeholders.⁴⁹

The *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities* report identified ten key challenges for addressing family violence and child abuse issues from a human rights perspective. These are contained in Text Box 4 below.

Text Box 4: A human rights based approach to addressing family violence and child abuse in Indigenous communities – key challenges⁵⁰

- 1. Turn government commitments into action:** Governments have been making commitments to address family violence for some time already. What we need is concerted, long term action which meets these commitments.
- 2. Indigenous participation:** This action must be based on genuine partnership with Indigenous peoples and with our full participation.

49 United Nations, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, United Nations, 2006, available online at: http://ohchr.org/english/about/publications/docs/FAQ_en.pdf, accessed 5 October 2007. For discussion of a human rights based approach in the Australian context see: Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, HREOC Sydney 2005, pp138-146.

50 Reproduced from Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*, HREOC, Sydney, 2006, pp5-6.



- 3. Support Indigenous community initiatives and networks:** There are significant processes and networks already in place in Indigenous communities to progress these issues. We need to support them to lead efforts to stamp out violence, including by developing the educational tools to assist them to identify and respond to family violence.
- 4. Human rights education in Indigenous communities:** There is a need for broad based education and awareness-raising among Indigenous communities. Working with communities to send strong messages that violence won't be tolerated, that there are legal obligations and protections, and that individuals have rights, are critical if we are to stamp out family violence.
- 5. Don't forget our men and don't stereotype them as abusers:** Family violence is fundamentally an issue of gender equality. We need strong leadership from women, but we also need the support of Indigenous men if we are to make progress in stamping out violence. Indigenous men need to model appropriate behaviour, challenge violence and stand up against it, and support our women and nurture our children.
- 6. Look for the positives and celebrate the victories:** There are good things happening in Indigenous communities, even if the national media is not interested in reporting them. We need to confront family violence, but also do so by reinforcing the inherent worth and dignity of Indigenous peoples, not by vilifying and demonising all Indigenous peoples.
- 7. Re-assert our cultural norms and regain respect in our communities:** Family violence and abuse is about lack of respect for Indigenous culture. We need to fight it as Indigenous peoples, and rebuild our proud traditions and community structures so that there is no place for fear and intimidation.
- 8. Ensure robust accountability and monitoring mechanisms:** There must be accountability measurements put into place to hold governments to their commitments. This requires the development of robust monitoring and evaluation mechanisms. These will also allow us to identify and celebrate successes.
- 9. Changing the mindset:** We require a change in mindset of government from an approach which manages dysfunction to one that supports functional communities. Current approaches pay for the consequences of disadvantage and discrimination. It is a passive reactive system of feeding dysfunction, rather than taking positive steps to overcome it. We need a pro-active system of service delivery to Indigenous communities focused on building functional, healthy communities.
- 10. Targeting of need:** Let us be bold in ensuring that program interventions are targeted to address need and overcome disadvantage. As it stands, government programs and services are not targeted to a level that will overcome Indigenous disadvantage. Hence, they are not targeted in a way that will meet the solemn commitments that have been made. They are targeted to maintain the status quo.



Part 2: Case studies of Indigenous communities tackling family violence and abuse

This part of the report contains 19 case studies organised around the themes of:

- a) Community education and community development;
- b) Healing;
- c) Alcohol management;
- d) Men's groups;
- e) Family support and child protection;
- f) Safe houses; and
- g) Offender programs.

The case studies were selected following consultation with experts and Indigenous peak groups, as well as inviting contributions from government agencies.⁵¹

The case studies address all of these different areas in innovative ways. Taken together they show the breadth of intervention required to address family violence and abuse.

Looking at 'promising practices' provides us with the opportunity to learn. It reminds us that there is already a great deal of knowledge and expertise about how to confront violence and abuse. Like so many areas of Indigenous policy, we need to look at what is already achieving results and find ways to extend and if possible, replicate these successes.

I have deliberately chosen the term 'promising practice' over 'best practice'. Best practice is a term from the business world and states that best practice approaches need to be 'replicable, transferable and adaptable'.⁵² The Aboriginal Healing Foundation in Canada has noted:

The problem with 'best practices' as I've been experiencing it, is that it comes out of the research that is decidedly not Aboriginal. We have to convince academics and particularly funders that there are alternative forms of practice.⁵³

Indigenous communities are diverse. This means that we need to be very careful about proclaiming best practice, transplanting it to another community and then just expecting it to work. 'Promising practice' is a slightly more tentative term, but still allows us to recognise and develop strengths.

A common feature across many areas of Indigenous affairs is that a lack of funding and capacity has prevented formal evaluation. That is also the situation with some of the programs featured in the case studies in this report – another reason why the term 'best practice' is not the most appropriate term to use.

51 A series of letters were sent by the Social Justice Commissioner inviting people or government agencies to nominate particular programs or services for their effectiveness for consideration. We also considered recent research and evaluation work undertaken by Australians for Native Title and Reconciliation (see: *Success Stories in Indigenous Health*); the Secretariat for National Aboriginal and Islander Child Care and Australian Institute of Family Studies (*Promising practices in out-of-home care for Aboriginal and Torres Strait Islander carers, children and young people: profiling promising programs*); and Reconciliation Australia (Indigenous governance awards and governance research program).

52 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Foundation, Volume 3, Promising Healing Practices in Aboriginal Communities*, Ontario, 2006, p5.

53 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Foundation, Volume 3, Promising Healing Practices in Aboriginal Communities*, Ontario, 2006, p6.



All of the case studies have demonstrated significant improvements in the lives of individuals, families and communities, yet we cannot always conclusively demonstrate this through the statistical evaluation data that governments' privilege. One of the challenges that this demonstrates is to listen to communities and ensure that evaluation is conducted in a situational and culturally appropriate way.

The case studies presented here all provide an insight into what is working and for whom, why and how. This should stimulate and inspire others to learn from these experiences.



a) Indigenous Community Education and Community Development Initiatives

Community education and community development approaches may hold the key to preventing family violence and abuse in Indigenous communities into the longer term. Community education and in particular human rights education, sends the message that family violence is not acceptable and will not be tolerated. Community development activities go one step further to identify and build community capacity to develop and sustain positive change.

Community education, in the context of family violence and abuse prevention, aims to:

- raise awareness about the incidence of violence and abuse in the community;
- promote anti-violence messages;
- reinforce that violence is not part of Indigenous culture and won't be tolerated;
- promote the legal obligations and rights of individuals; and
- offer appropriate referrals information to services for further support.

Research into family violence and abuse has consistently highlighted the need for community education and awareness-raising. Memmott and others argue that community education programs are vital 'early proactive'⁵⁴ strategies that can 'counter any likelihood of violence as soon as possible'.⁵⁵

Recently, the *Little Children are Sacred* report identified the critical importance of education in both the formal school system and at the community level. The report states:

All information gathered leads us to conclude that education is the key to solving (or at least ameliorating) the incidence of child sexual assault in Aboriginal communities. By education, we not only mean that which occurs in schools, but that which occurs in its wider context, i.e. with communication and media. Education must clearly explain:

- the importance of education as a means in itself;
- that sexual contact between adults and children is NOT normal;
- what sexual abuse is;
- that attending school is compulsory;
- that in dealing with children, parents' responsibilities are paramount i.e. that the parents must TAKE RESPONSIBILITY for their children:
 - attending school
 - being fed
 - wearing clean clothes
 - not wandering the streets unsupervised

54 Memmott, P., Stacy, R., Chamber, S., and Keys. C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p3.

55 Memmott, P., Stacy, R., Chamber, S., and Keys. C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p3.



- learning traditional law and culture
- obeying both Aboriginal and European law.⁵⁶

Specifically in relation to the need for community education about sexual abuse, the report stated:

Little information is actually communicated to the general Aboriginal population in any real, effective way. Governments have a tendency to speak, in English, to a few Aboriginal people who often do not have the resources to widely disseminate that information. Thus, important information gets “bottle necked”, yet governments feel they have communicated this information to Aboriginal people. As a result, many Aboriginal people remain powerless because they do not have access to information. It is the Inquiry’s view that, regardless of whether it is a public health message, changes to legislation or providing information about child sexual abuse, information must be communicated to Aboriginal people in their local language if we are serious about properly engaging with Aboriginal people.⁵⁷

The report identified an urgent need for education on:

the nature and types of child sexual abuse, other forms of child abuse and neglect, their significant detrimental effects to the child, family and community, and other concepts, such as the age of consent and what non-Aboriginal laws say about these matters.⁵⁸

It recommended that a range of community education projects be undertaken to raise awareness of and prevent child sexual abuse, with a particular emphasis on:

- developing appropriate resource information on sexual abuse and conducting regular media campaigns that explains what sexual abuse is;
- expanding delivery of mandatory reporting training to professionals including school staff;
- utilising high profile Aboriginal men and women to provide positive, proactive leadership on the prevention of sexual abuse and the setting of appropriate community norms for sexual behaviour;
- ensuring messages are in language and delivered through a number of mediums; and
- ensuring sexual health and personal safety programs are in all schools as part of the curriculum.⁵⁹

56 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle ‘Little Children are Sacred’ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p15.

57 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle ‘Little Children are Sacred’ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p157.

58 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle ‘Little Children are Sacred’ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p157.

59 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle ‘Little Children are Sacred’ Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p160.



Research has also consistently shown that effective education must be community driven. Community members are best equipped to respond to issues as they have first hand knowledge of the family violence and abuse dynamics and the social capacity of the community itself.⁶⁰

The *Little Children are Sacred* report also recognises this by calling for governments to engage 'in a dialogue with communities to discuss the particular education that might be needed in a specific community and how that education can best occur'.⁶¹ This partnership approach also reflects an essential component of a human rights based approach to addressing family violence and abuse. Namely that:

Partnerships require: the full and effective participation of indigenous peoples; the opportunity for indigenous peoples to identify concerns, prioritize them and propose solutions that are community driven; and respect, and support indigenous peoples' chosen form(s) of representation, including traditional or customary authority structures.⁶²

Successful community education programs build on the knowledge, as well as the specific needs of the community. An anti-violence campaign for an urban area like Redfern will most likely have different content and delivery than a campaign for a remote Aboriginal community (where there is likely to be a lower level of awareness of concepts of sexual abuse and its unlawfulness, as well as less access to enforcement mechanisms such as police and child protection workers).

Community education goes hand in hand with community development. Community development refers to a way of working *with* rather than *for* communities to increase their capacity and ability to find their own solutions. Community development and capacity building often needs to take place before communities are able to take ownership of community education activities.

Community development helps community generate their own solutions and build on strengths. Often this leads to a recognition and revitalisation of traditional laws and cultural knowledge to establish positive norms that challenge violence and abuse.

This section highlights the following promising practices in relation to community education and community development:

- i. *Blackout Violence Project* – a community education project based in Redfern using sport as the medium to communicate anti-violence messages;
- ii. *Mildura Family Violence and Sexual Assault Campaign* – a public awareness campaign against family violence and sexual assault developed in partnership with the local community and Victoria Police;

60 Memmott, P. 'Community-Based Strategies for Combating Indigenous Violence', in *UNSW Law Journal*, 25(1), 2002, p221.

61 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p160.

62 Human Rights and Equal Opportunity Commission and United Nations Permanent Forum on Indigenous Issues, *Engaging the marginalized: Report of the Workshop on Engaging with Indigenous Communities*, United Nations Workshop – International Conference on Engaging Communities, Brisbane, 15 August 2005, available online at: http://www.humanrights.gov.au/social_justice/conference/engaging_communities/index.html#link1, accessed 18 November 2007.



- iii. *Koora the Kangaroo Violence Prevention* – a school based anti-violence campaign;
- iv. *Mawul Rom Project* – a training program blending traditional and contemporary dispute resolution methods; and
- v. *Balgo Women's Law Camp* – a community cultural development project reinforcing culture and developing strategies against family violence and abuse.

These programs share some common features. They:

- are driven by the community;
- recognise the diversity of Indigenous people and respond to the needs of individual communities;
- build on community knowledge and strengths; and
- are based on partnerships with government and non-government organisations.

i) *Blackout Violence Project*



Blackout Violence Project:
Tackling family violence head on
at the annual Aboriginal Rugby
League Knockout.

The *Blackout Violence Project* is a community generated anti-violence campaign that began in Redfern, NSW. It uses rugby league as a vehicle for getting anti-violence messages out to the community and provide information about available services and support for victims of violence.

Redfern is an inner city suburb in Sydney and one of the best known Indigenous communities in Australia. The Redfern Aboriginal community centres around 'the Block' in Eveleigh St. While Redfern has a permanent Indigenous population of only 251 people (or 3.4% of the suburb's population),⁶³ it has historically been a meeting place that attracts Indigenous people from around New South Wales and Australia. There are also large Indigenous populations in surrounding suburbs.

Redfern is identified with the struggle for Indigenous rights. It is home to some of the founding Indigenous community controlled organisations such as the Redfern Aboriginal Medical Service. Whilst there are a number of serious social problems in Redfern, compounded by the transient nature of the population passing through, there are also a number of well respected and effective services and a tradition of strong advocacy for the community.

63 Australian Bureau of Statistics, *2006 Community Profile Series-Redfern (RC) – Pt A (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdataabs.gov.au>, accessed 9 November 2007.



The *Blackout Violence Project* grew from the outcry of local Aboriginal women following the violent sexual assault of a woman at 'the Block'. The perpetrators were confronted by the women who then held a peaceful protest in the streets of Redfern. More than 100 people attended the protest, along with speakers emphasising that something needed to be done about the problem and that community responsibility needed to be taken. Eventually the two men responsible for the rape were shamed into leaving the area.

These actions demonstrated the powerful nature of non-violent action. The community then began considering how to get the message that family violence and abuse is unacceptable across to a bigger audience, leading to the *Blackout Violence Project*. The Project itself is the product of the collective effort of organisations such as Mudgin-gal Women's Centre, Redfern Legal Centre, the Metropolitan Land Council as well as the Inner City Domestic Violence Action Group.

The *Blackout Violence Project* initially used popular National Rugby League games to launch its anti-violence campaign. The message behind the campaign as described by Mudgin-gal Aboriginal Women's Corporation representative, Dixie Link-Gordon is simple:

Enough is enough. Family violence has no part in our culture. It is not the Koori way and it needs to stop.⁶⁴

The objectives of the *Blackout Violence Project* are to:

- increase awareness in the community of the impact of violence and what action can be taken against it;
- send a strong message to the wider Aboriginal community of the unacceptable nature of family violence and abuse;
- provide community ownership and responsibility over community issues; and
- demonstrate the leadership of the NSW Aboriginal Rugby League community.

Blackout Violence used the 2004 NSW Aboriginal Rugby League Knockout to officially launch the campaign. Being the largest gathering of Aboriginal people in NSW, the knockout was the perfect opportunity to get the information out to as many people as possible.

Over 80 teams wore purple armbands to show their support of the anti-violence message. The players each had messages on the back of their jerseys in support of the program and over 2,000 information kits were distributed to players and spectators throughout the four day knockout carnival. These contained information on how to access support and services for those enduring abuse as well as outlining information to assist in the prevention of violence.

Approaching its fourth year of operation, the *Blackout Violence Project* is now looking at taking the next step in addressing family violence. The Project has focused heavily on raising community awareness of the effects of family violence on Aboriginal families across NSW.

⁶⁴ Link-Gordon, D., in ANTaR, *Success stories in Indigenous health: A showcase of successful Aboriginal and Torres Strait Islander health projects*, ANTaR, 2007, p22, available online at: http://www.antar.org.au/images/stories/PDFs/SuccessStories/success_stories_final.pdf, accessed 16 October 2007.



Phase two of the Project looks at building on the success of the original project, by linking up with interstate community organisations in the hope of expanding the Blackout message. The project is currently co-ordinating with other groups, including Queensland's Murri Sisters group and networks within the north-western NSW community of Brewarrina.

The *Blackout Violence Project* has received numerous government and community accolades since its inception in 2004. It was recognised at the 2004 NSW Violence Against Women Prevention Awards and has recently been documented as a successful program in the ANTaR publication, *Success stories in Indigenous health: A showcase of successful Aboriginal and Torres Strait Islander health projects*.⁶⁵

Blackout Violence has not been formally evaluated but the success and community support for the project has been overwhelming. Dixie Link-Gordon notes that:

from the minute we rolled out the project, we were swamped with non-stop phone-calls on information about the project and how it could be used to model similar strategies back in other communities.⁶⁶

The impact of *Blackout Violence* has led to other community education projects, such as *'Enough is Enough'*, a project aimed at the broader community of Redfern.

The success of the program has led to the employment of a part time education officer who, in conjunction with community organisations such as the Redfern Legal Centre and Wirringa Baiya Aboriginal Women's Legal Centre, is working on an education package. The package shows women and other interested parties how to go about setting up their own family violence support groups and includes other important information on family violence prevention and training.

Blackout Violence has been running for three years with a high level of success and for most part, with very little government funding. Following the *NSW Violence Against Women Prevention Award* funding was received from the federal Department of Families, Community Services and Indigenous Affairs (FaCSIA) for a one year period.

The project is inevitably limited in the absence of any secured long term funding. The project will continue to run alongside community initiatives such as the Inner City Domestic Violence Action Group, but its future outside of that remains unclear.

The project is already overstretched, with current funds only being sufficient to support the employment of an education officer for 18 hours a week. This is a particularly small amount of time to effectively facilitate the workings of an already overworked, under resourced, but much needed community program.

65 ANTaR, 'Success stories in Indigenous health: A showcase of successful Aboriginal and Torres Strait Islander health projects', 2007, p22, available online at: http://www.antar.org.au/images/stories/PDFs/SuccessStories/success_stories_final.pdf, accessed 16 October 2007.

66 Link-Gordon, D., *Communication with the Social Justice Commissioner's Office*, 18 October 2007.



Lessons from the *Blackout Violence Project*

Community engagement

The *Blackout Violence Project* picked the perfect timing and setting to launch the project. The Rugby Knockout is one of the biggest days on the Koori calendar. Dixie Link-Gordon maintained that it was the best time to acknowledge the normalisation of violence as well as the importance of family support for those affected:

Our tolerance of violence and abuse is desensitised and that is not good for children, Elders or ourselves. Community support over an issue such as this is essential, because alienation and lack of family backing are some of the major reasons why people refuse to come forward and report family violence and abuse.⁶⁷

Connecting the issue to rugby also made use of good Indigenous male role models, reaching out to younger men who can be difficult to influence in community education campaigns.

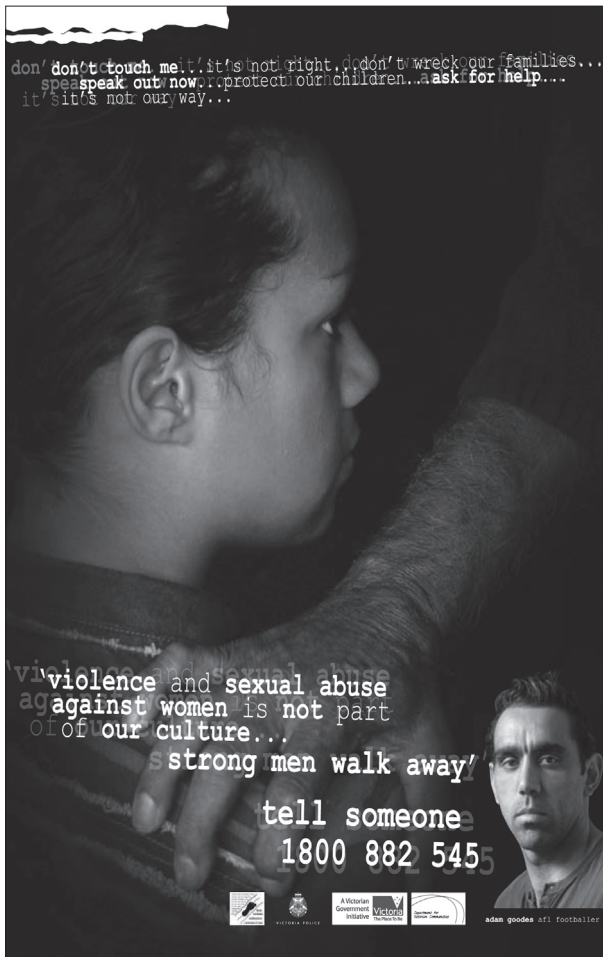
Community generated

Blackout Violence developed organically in response to a terrible incident of abuse but tapped into broader community demands to take a stand against family violence. It is significant that the community felt they had a win by staging the protest. According to Rob Welsh, Chairman of the Metropolitan Aboriginal Land Council, those who attended the rally were 'convinced that they [now] had the power to change the behaviour of the local community'.⁶⁸ This sense of empowerment created a strong foundation for the *Blackout Violence Project* to develop.

67 Link-Gordon, D., *Communication with Social Justice Commissioner's Office*, 18 October 2007.

68 Welsh, R., Address to ANTaR Forum, Redfern Town Hall, 25 June, 2005, available online at: http://www.ncca.org.au/__data/page/1836/WS_3_-_Goal_5.pdf, accessed 9 October 2007.

ii) Mildura Family Violence and Sexual Assault Awareness Campaign



Mildura Family Violence and Sexual Assault Campaign

Victoria Police, in consultation the local Mildura Indigenous community, have developed a series of television commercials and posters to communicate anti-violence messages. What makes this campaign unique was the very strong partnership with the community, which has led to improved community/police relations.

Mildura is a major regional and agricultural centre in Victoria. It is on the Victorian and NSW border and has a population of almost 50,000. Like many rural towns across Australia, Mildura has been hard hit by the drought, impacting on a range of social indicators.



The Indigenous population for the region is 1,433 people, or 2.9% of the population,⁶⁹ which is slightly higher than the Australia average of 2.3% of the population.⁷⁰ The traditional owners of Mildura are the Latje Latje people.

Although Mildura is a regional centre and reasonably well resourced in terms of social services, including Indigenous organisations like the Mildura Aboriginal Corporation and the Murray Valley Aboriginal Cooperative, Indigenous people still lag behind on a number of social indicators. There is a 23.5% Indigenous unemployment rate,⁷¹ compared to 5.6% for non-Indigenous people in Mildura and only 11.3% of Indigenous people in Mildura have completed Year 12.⁷² Anecdotally, family violence, abuse and anti-social behaviour amongst young people, are all reported as important issues that the local Indigenous community would like to tackle.

Description of the *Mildura Family Violence and Sexual Assault Awareness Campaign*

The campaign came out of Victoria Police consultations with local Indigenous community representatives for the pilot of the Sexual Assault Investigation Model. During consultations, the Mildura Aboriginal Corporation and the Murray Valley Aboriginal Cooperative identified the lack of accessible and culturally appropriate information regarding sexual assault, as well as the normalisation of sexual assault and family violence.

Acting on this information Victoria Police provided funding to initiate a community awareness campaign, to be developed in partnership with the community. This process commenced in July 2005. The partnership involved all relevant Indigenous groups working in the area, including:

- Mildura Aboriginal Corporation;
- Murray Valley Aboriginal Cooperative;
- local and regional Family Violence Action groups (part of the Indigenous Family Violence Partnership Forum);
- local and regional Aboriginal Justice Advisory Committees (part of the Victorian Aboriginal Justice Advisory Committee);
- Aboriginal Family Violence Legal and Prevention Service ; and
- Koori Court representatives.

69 Australian Bureau of Statistics, *2006 Community Profile Series– Mildura (RC) –Pt A (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed on 1 November 2007.

70 Australian Bureau of Statistics, *2006 Community Profile Series– Mildura (RC) –Pt A (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 1 November 2007.

71 Australian Bureau of Statistics, *2006 Community Profile Series– Mildura (RC) –Pt A (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 1 November 2007.

72 Australian Bureau of Statistics, *2006 Community Profile Series– Mildura (RC) –Pt A (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 1 November 2007.



One of the project managers from Victoria Police, who was involved in the process, noted that community groups were initially 'very suspicious' about Victoria Police's commitment to the concept.⁷³ However, a great deal of trust was built as the relationships emerged and it became clear that the campaign really was community centred (for example, with Victoria Police having minimal input into the content of the advertisements).

The funding primarily came from Victoria Police. In total it cost around \$110,000 to produce television advertisements to be run in the Mildura/Robinvale area for 12 months, as well as complementary posters.⁷⁴

Three television advertisements were developed and have been running on Mildura television since October 2006 and will end in December 2007. The three advertisements have all focused on different target groups:

- Women – featuring local women encouraging others to report violence;
- Women and children – focusing on the impact of violence on children; and
- Men – featuring AFL star Adam Goodes with the message that violence is not acceptable.

The three advertisements deliver simple but powerful messages of anti-violence. The advertisement targeting men uses black and white still pictures of the faces of local Indigenous men with spoken anti-violence messages. It culminates with a shot of Adam Goodes stating that 'sexual abuse and violence is shame. Strong men walk away'.

The other advertisements are in a similar format with still photos of the faces of women and children interspersed with the messages that family violence and sexual abuse is not okay and encouraging people to seek help.

Some of the catch-phrases for the campaign are:

'Violence and sexual abuse against women is not part of our culture... help break the cycle'

'not our culture...not our way'

'protect our children... ask for help'

'tell somebody'

'don't wreck our families... speak out now'

'strong men walk away'

The advertisements also offer a point of referral for victims of violence. This referral is to the Aboriginal Family Violence Legal Service, rather than the Police. This is another attempt to ensure that the message and content is culturally accessible. It balances the reluctance some community members might have about reporting violence to Police with the need to provide an appropriate point of referral that can provide legal and other support to victims and family members.

73 Project Manager, Victoria Police, *Communication with Social Justice Commissioner's Office*, 4 December 2007.

74 Unpublished briefing. Information provided by Victoria Police to the Aboriginal and Torres Strait Islander Social Justice Commissioner.



Impact of Mildura Family Violence and Sexual Assault Awareness Campaign

There was no funding allocated for an evaluation of the campaign but anecdotally the feedback has been very positive. According to Victoria Police, the 'the actual process of developing the ads was as important as the end product.'⁷⁵ The process has built trust between Victoria Police and the Mildura Indigenous community. As a result Victoria Police have developed ongoing relationships with all of the partnership members. This has long term benefits and:

will provide Victoria Police with a basis for ongoing consultation in relation to other issues associated with sexual assault and family violence as well as the potential to consult on a range of other issues affecting policing and the Indigenous communities in the area.⁷⁶

For instance, Victoria Police are now using these networks to negotiate protocols about how to respond to incidents of family violence and sexual assault in the Indigenous community. Given the initial sense of suspicion about engaging with police in this sort of project, it is very significant that Indigenous groups are now so actively involved in shaping Police practices.

Victoria Police believes that 'the impact of the campaign will be seen in the long term given that violence and sexual assault and non-reporting to police are such entrenched problems.'⁷⁷ The improved relationship between community and police has laid the ground work for better recognition of the problem and more reporting. For example, one of the Indigenous women involved in the process and who appeared in the advertisement, is now employed as the Aboriginal Community Liaison Officer with the Police in Mildura. It is hoped that combined with the advertising campaign, this will help improve reporting of violence and sexual assault.

Lessons from the Mildura Family Violence and Sexual Assault Awareness Campaign

Partnership approach

The campaign gained traction as it was able to involve a range of key Indigenous organisations in the process. This was a deliberate strategy by Victoria Police to recognise the diversity of interests amongst the Indigenous community and have 'not just one voice, but many voices.'⁷⁸ This ultimately made the campaign more representative and created more resonance within the community.

75 Project Manager, Victoria Police., *Communication with Social Justice Commissioner's Office*, 4 December 2007.

76 Unpublished briefing. Information provided by Victoria Police to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

77 Project Manager, Victoria Police., *Communication with Social Justice Commissioner's Office*, 4 December 2007.

78 Project Manager, Victoria Police., *Communication with Social Justice Commissioner's Office*, 4 December 2007.



Building on existing community strengths

Victoria has developed some very effective, well established Indigenous groups to advise government and progress projects, like the local and regional family violence action groups and local and regional Aboriginal Justice Advisory Committees. The campaign built on the strengths of these existing networks instead of starting from scratch.

Empowering women and communities

The real success of this campaign is how Victoria Police were able to empower communities and facilitate the process. Victoria Police did not have input into the content of the advertisements beyond setting the broad objectives. This enabled the communities to 'take over the project and run it',⁷⁹ creating a real sense of ownership. This ownership led to enthusiasm and commitment with member of the advisory group even starring in the advertisements.

Effective consultation

The project emerged from consultations with the local community about their needs. Its success in part stems from the tailoring of the response to those exact needs, rather than rolling out a more standardised message. The development of the advertisements by the local community, and their participation in the ads, provided additional relevance and contributed to the effectiveness of the process.

79 Project Manager, Victoria Police, *Communication with Social Justice Commissioner's Office*, 4 December 2007.



iii) *Koora the Kangaroo Violence Prevention Program*



Early intervention: *Koora the Kangaroo* draws on cultural traditions to promote anti-violence messages at Woorabinda State School.

© Queensland Centre for Domestic and Family Violence Research (2005).

Koora the Kangaroo Violence Prevention Program is a school based violence prevention program that has been piloted in Woorabinda State School in Queensland. It is an Indigenous developed program that builds on community partnerships to promote non-violence messages and greater pride and connection to culture.

Woorabinda is an Indigenous community in central Queensland, about 200 kilometres from Rockhampton. Woorabinda was established as a Queensland Government Reserve in 1927, and at least 17 different language groups were forcibly moved there.

In the 1980s the land was handed over to the local community to manage as a Deed of Grant in Trust. Woorabinda now has a population of 851 people, 805 of whom are Indigenous.⁸⁰ Woorabinda is reasonably well serviced. Within the township there is a hospital, State school, preschool, Council run high school (Wadja), CDEP office, day care centre, retail store, café, Police station, churches, Council office, post

80 Australian Bureau of Statistics, *2006 Community Profile Series: Woorabinda (Indigenous Location)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 29 November 2007.



office, pool, stadium, family centre, old peoples home (HAAC), women's shelter and garage.

Woorabinda has a young population with the median age of only 19 years.⁸¹ This equates to a lot of school age children in the community. The community is serviced by Woorabinda State School which has an Indigenous only enrolment of approximately 178 children.⁸² Woorabinda State School describes the school population as 'highly transient'⁸³ and notes that truancy is a problem.⁸⁴

Description of the *Koora the Kangaroo Violence Prevention Program*

The idea for *Koora the Kangaroo* came from Ailsa Weazel, a local community member and community worker, who had noted an increase in violence in Woorabinda and decrease in respect among children for Elders and culture. Ailsa Weazel states:

This behaviour came about because violence was being accepted as the 'norm' within my community and I really felt there was a desperate need to bring peace and hope to the children.⁸⁵

This approach acknowledges the detrimental effects of family violence on children and builds on research which shows that the:

Impacts of witnessing family violence for children indicate that these children often show more aggressive and antisocial behaviours, as well as post traumatic stress symptoms, fearful and inhibited behaviours and show poorer social skills than other children. Such children are also more likely to develop attitudes that justify and normalise the use of violence in relationships.⁸⁶

The program recognises the impact schooling can have on the social, behavioural and moral development of children in challenging perceptions of violence.

Ailsa Weazel entered into a partnership with the Queensland Centre for Domestic and Family Violence Research, as well as the Woorabinda State School to develop a program to respond to these concerns. *Koora the Kangaroo* was implemented in 2004.

Koora the Kangaroo uses traditional modes such as storytelling to promote community values and highlight ongoing community issues such as family violence and respect for themselves and others. There are four layers of intervention in the program:

81 Australian Bureau of Statistics, *2006 Community Profile Series: Woorabinda (Indigenous Location)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 29 November 2007.

82 Woorabinda State School website, available online at: <http://www.woorabins.qld.edu.au/>, accessed 29 November 2007.

83 Woorabinda State School website, available online at: <http://www.woorabins.qld.edu.au/>, accessed 29 November 2007.

84 Woorabinda State School website, available online at: <http://www.woorabins.qld.edu.au/>, accessed 29 November 2007.

85 Weazel, A. quoted in 'Koora hops on board to make a difference' in *Community Spirit*, Queensland Government Department of Communities, December 2005.

86 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Central Queensland, Mackay, 2005, p4.



1. *Koora the Kangaroo* mascot – a life sized mascot used to capture the children’s attention and engage them in educational component of the program and broader community awareness.
2. Stories written by Ailsa Weazel which draw on traditional culture to communicate anti-violence messages.
3. School based visits by community members to tell the stories and conduct other cultural activities like traditional dancing and art.
4. Teacher’s resource package to support learning beyond the community led sessions, as well as providing additional skills in culturally appropriate work for teachers.

Some of the key messages from the *Koora the Kangaroo* stories are as follows:

‘We must not let violence destroy our family. We must look after each other and talk and work things out’

‘Koora asked the Elders to talk about old times and the respect that each member of the family should show in order to one day be a wise leader in their own families and to live in peace and harmony.’

‘Violence does not help us at all. Hitting, punching, pushing, bullying, or any other sort of abuse is violence. Violence is not our way!’

‘I know what’s wrong with you – you lack self esteem! ... Self esteem is when you can be proud of yourself for just being you ‘cause no one else is like you.’

‘Our way is to look after each other and take care of ourselves. When you are older, other will look up to you and ask for your wisdom and guidance. That’s why it is important to listen and learn from Elders, parents and teachers – they will help you learn how to make good decisions and be a wise leader.’⁸⁷

Koora the Kangaroo is aimed at children in the junior grades at primary school (Preschool to Year 4) as well as the intermediate level of those children in primary school to early high school years (Year 5 – Year 7). The program was delivered to Woorabinda State School over a 6 month term with 6 school based sessions over irregular intervals due to school and program facilitator constraints.

Impact of the *Koora the Kangaroo Violence Prevention Program*

The program has been evaluated by the Queensland Centre for Domestic and Family Violence Research. In evaluating the program they:

- looked at the student’s responses and recollections of the key messages;
- developed quantitative baseline and post program surveys completed by teachers about student aggression;
- convened staff group discussions exploring teacher perception of usefulness and efficacy of the program; and
- conducted individual case studies with four teachers examining in-depth their perceptions of the children’s experiences of the program and perceptions of the teachers’ resource package.

87 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Central Queensland, Mackay, 2005, pp6-7.



Teachers at Woorabinda State School highlighted the important role the *Koora the Kangaroo* program in affecting the day to day behaviours of children. Feedback showed that children were very responsive to the messages and values imparted by the Koora project when it came to classroom behaviour and interactions with others.

The teachers also reported an overall reduction in violence levels in the classroom, resulting in a reduction of the occurrence of violence from daily and many times daily, to regularly to occasionally.⁸⁸

Importantly, the program also had positive outcomes for the cultural awareness of both the students and teaching staff. The teacher's resource package provide the teachers with information regarding culturally sensitive practice, but also improved their knowledge on Aboriginal family structures, law, kinship and values. One teacher stated that the package 'helps me understand what I'm seeing in the children'⁸⁹ to help build culturally secure teaching practices.

The program also helped strengthen pride in the student's cultural identity and:

provided a setting for children to experience pride and success in activities that connected them with Aboriginal culture.⁹⁰

For instance, one teacher remarked that she had observed children taking more pride in themselves:

They want to respect each other and adults, indicating that the children are now listening, settling and participating, sharing and communicating respectfully. They are demonstrating pride in their learning. One child said to me, 'Hey, we're getting clever aren't we!'⁹¹

The *Koora the Kangaroo* program had to compete for time and space in the busy school curriculum. Feedback from teaching staff at school indicated that it may have been delivered more effectively if better integrated with the school's own Values Education program. However, the teachers were still supportive of the program, even in this context, stating that:

The stories are especially useful as they are Indigenous friendly; this is something the Values Education program lacks.⁹²

88 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Central Queensland, Mackay, 2005, p12.

89 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Centre for Domestic and Family Violence Research, Mackay, 2005, p16.

90 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Centre for Domestic and Family Violence Research, Mackay, 2005, p16.

91 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Centre for Domestic and Family Violence Research, Mackay, 2005, p16.

92 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Centre for Domestic and Family Violence Research, Mackay, 2005, p23.



Another major challenge was the irregularity of the program. As maintained by one member of teaching staff:

I feel that more regular visits would have been a benefit. These students have to depend on consistency for behaviour reasons and a lesson here or there can be disruptive to them.⁹³

This irregularity stemmed from the very heavy demands on Ailsa Weazel and other community member's time. All of the community members already have other community commitments like participation in the Community Justice Group and cultural commitments such as 'sorry business'.⁹⁴

Despite these challenges, the program evaluation demonstrated a largely positive impact on the students and the school Principal expressed enthusiasm for increasing the presence of the Koora program in the school. However, no-one took on the role of driving the school's take-up of the program, and consequently the Koora program dropped off the school's agenda. This unfortunate outcome highlights the importance of building and maintaining solid and reciprocal relationships between schools and communities.

However, in the meantime, Ailsa Weazel has taken *Koora the Kangaroo* and the stories to other communities such as Mount Isa. Good outcomes have been reported from this also. There have also been negotiations with the Queensland Education Department to use the story books in the broader curriculum.⁹⁵

There is a great deal that can be learnt from the *Koora the Kangaroo* program even though it is no longer running in Woorabinda. In fact, the challenges as much as the successes provide important lessons for developing school based education programs for Indigenous children.

Lessons from the *Koora the Kangaroo Violence Prevention Program*

Culturally appropriate

The *Koora the Kangaroo* program is culturally appropriate because it is built on traditional knowledge of the community and delivered in a mode that is accessible to children. The entire program is informed by local culture; from using a central cultural animal, the kangaroo, as the mascot to delivering the program by using the oral history of storytelling.

Story telling is at the heart of the program. It provides a fun and practical way to challenge values and address issues such as respect and family violence through a traditional medium. The storytelling itself centres on traditional characters and stories which are local to Woorabinda. This means that the children are not only able to relate to these, but they are simultaneously being equipped with knowledge relating to their own cultural heritage.

93 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Central Queensland, Mackay, 2005, p15.

94 Bradford, M., and Nancarrow, H., *Koora the Kangaroo: Violence Prevention at Woorabinda State School*, Evaluation Report, Centre for Domestic and Family Violence Research, Mackay, 2005, p10.

95 Bradford, M., *Communication with Social Justice Commissioner's Office*, 4 December 2007.



Partnership approach

This program demonstrates how local community ideas can be formalised into the school curriculum. Schools are essential platforms to address violence issues, particularly given the known effects of violence on children who have either experienced violence directly or witnessed violence at home. The inclusion of community members also strengthens the engagement between schools and communities. Ultimately, this partnership was not sustained and suggests that better strategies need to be developed to build relationships.⁹⁶

Different components for different audiences

The program provides education to both students and teachers. The teacher's resource reinforces the key messages but also improves competencies in culturally sensitive teaching practices. The quality and cultural appropriateness of teaching is directly related to how comfortable Indigenous children feel at school and their subsequent attachment to school and educational outcomes.

96 Bradford, M., *Communication with Social Justice Commissioner's Office*, 4 December 2007.



iv) *Mawul Rom Project*⁹⁷



Cross cultural mediation: Yolngu elders and police officers at *Mawul Rom* training in Arnhem Land.
© Mawul Rom, 2007.

Mawul Rom is a traditional dispute resolution ceremony that belongs to the Yolngu people of Eastern Arnhem Land in the Northern Territory. The program combines community development principles with traditional culture to provide training to Indigenous and non-Indigenous participants from all over Australia in dispute resolution, mediation and leadership skills. These skills are then applied to a variety of individual and community problems, including family violence.

Description of the *Mawul Rom* Project

The *Mawul* Ceremony has been used for centuries as a means of healing relationships between family and clan members as well as between other individuals and groups. However, it was not until conversations occurred between Rev Dr Djiniyini Gondarra and Patrick McIntyre in 1998, that the potential of cross-cultural bridge-building between the Ceremony and contemporary mediation was recognised.

The planning process involving collaborations between Yolngu people and non-Indigenous alternative dispute resolution experts took 6 years, with the pilot being delivered in 2004.

Mawul Rom fits within the alternative dispute resolution (ADR) paradigm. ADR is an umbrella term to describe ways of dealing with conflicts without going to court.

ADR proponents argue that ADR leads to more just outcomes, is more cost effective and therefore more accessible. ADR is used by Indigenous people in criminal justice,

⁹⁷ The following information concerning the *Mawul Rom Project*, except where otherwise indicated is drawn from materials copyright to the Mawul Rom Association and is used with permission. No unauthorised use of this material is permitted.



family law, native title, land rights, commercial decision-making, employment and community disputes and has the potential to adapt to the cultural needs of Indigenous communities.

The interest in ADR with Indigenous communities is reflected in recent research projects such as the Indigenous Facilitation and Mediation project undertaken by the Australian Institute of Aboriginal and Torres Strait Islander Studies, as well as, initiatives undertaken by the National Native Title Tribunal and the Federal Court of Australia.

The pilot project began in 2004 with 43 Indigenous and non-Indigenous participants from all over Australia.

The *Mawul Rom Project* involves traditional ceremony and educational components. The objectives of the project are:

- to promote cross cultural education regarding matters such as dispute resolution and leadership;
- provide research development in both Indigenous and non-Indigenous modes of learning to facilitate effective cross-cultural decision making;
- assist Indigenous and non-Indigenous Australians to develop through experiential learning and understanding of national and international developments in dispute resolutions;
- establish an on-going dispute resolution education program that runs annually and focuses on decision making, mediation and leadership;
- enable cross cultural exchange in both new and established educational environments, including professional and educational institutions; and
- to continue to foster reconciliation between Indigenous and non-Indigenous peoples.⁹⁸

Mawul Rom is delivered over a four year period, starting with the one week induction workshop at Galiwin'ku. The first week intensive workshop is not limited to those completing the program. Those who begin with the pre-requisite induction and continue with the program for the 4 years will qualify as unique cross-culturally appropriate mediators and leaders.

The Mawul Ceremony is described by Rev Dr Djiniyini Gondarra as:

a healing ceremony – it heals peoples' relationships. It is an opportunity to heal the hurt, the pain, the scar of the past. It is through the Mawul Ceremony that we bring people together in the spirit of reconciliation. Individuals and families benefit... When people carry a scar or a hurt, Mawul is a vehicle, a channel, for healing. There is an opportunity for people to come together.⁹⁹

Involvement in the Ceremony is an important part of learning about traditional dispute resolution. All participants are painted each day so that they can participate in Ceremony.

98 Mawul Rom Project, *Mawul Rom Project: Traditional and Contemporary Mediation and Leadership Training*, June 2004, available online at: http://ntru.aiatsis.gov.au/ifamp/research/pdfs/MawulRom_2004.pdf, accessed 12 October 2007.

99 Mawul Rom Project, *Mawul Rom Project: Traditional and Contemporary Mediation and Leadership Training*, June 2004, p8, available online at: http://ntru.aiatsis.gov.au/ifamp/research/pdfs/MawulRom_2004.pdf, accessed 12 October 2007.



The *Mawul* program consists of four daily learning processes:

- work under the Banyan Tree: time for structured discussions among participants;
- unstructured reflective/relationship building space;
- ceremonial education and performance; and
- *Mawul* Ceremony meal and mediation.

The *Mawul Rom* course is now recognised as both a Graduate Diploma and Master level qualification with Charles Darwin University.

Impact of the *Mawul Rom* Project

A full four year 'learning cycle' of *Mawul Rom* has not yet been completed. *Mawul Rom* has attracted considerable interest with 90 participants in 2007, with over 100 Yolngu community members attending throughout the week and over 1,000 community members joining the closing ceremony.¹⁰⁰

Over 40 Indigenous participants have gone through the initial training.¹⁰¹ They have gone back to their communities with dispute resolution skills that they have been able to apply to a number of community problems, including family violence and family disputes. Many of these people have gone on to find full time or contract work in dispute resolution.

Mawul Rom staff also indicate that the program has helped build pride and reinvigorate the local Yolngu people who are very proud that their ceremonies and culture are being recognised. Recently this has been seen in the increased number of young people getting involved.

Mawul Rom has recently developed partnerships with the Australian Federal Police, Department of Families, Community Services and Indigenous Affairs and the Northern Territory Department of Justice. This is recognition of the success of the project so far, but also represents the opportunity to provide cross-cultural skills to non-Indigenous people working in these important interfaces with Indigenous communities. It will, however, be several years before the longer term impact of the Program will be known.

Lessons from *Mawul Rom*

Building a bridge between Indigenous and non-Indigenous culture and knowledge

Mawul Rom brings together elements of Yolngu traditional culture and law with Western models of alternative dispute resolution. According to Rev Dr Djiniyini Gondarra:

100 Gondarra, D., and Blake, S., 'Cultural Healing in Criminal Justice Service Delivery: An Identification of best practice and innovation to inform future service design', *Third National Indigenous Justice CEO Forum*, 21-22 November 2007, p8.

101 Blake, S., *Communication with Social Justice Commissioner's Office*, 5 December 2007.



In Yolngu communities it's very hard to use Balanda [white] law system to bring about conflict resolution between families and clans. Balanda systems of law break and damages relationship between people, family and clan groups. This is because Balanda system of law is very hard for us to understand and does not come out of Yolngu dispute and conflict resolution practice and process.¹⁰²

Mawul Rom makes the process more explicable for both Indigenous and non-Indigenous participants. The relationships and cross-cultural understanding that develops through the training process are very valuable. The strong, strategic partnership with the Australian Federal Police and the Northern Territory Department of Justice aims to ensure that the knowledge filters down to vital service delivery level.

102 Gondarra, D. and Blake, S., 'Cultural Healing in Criminal Justice Service Delivery: An Identification of best practice and innovation to inform future service design', *Third National Indigenous Justice CEO Forum*, 21-22 November 2007, p8.



v) *Balgo Women's Law Camp*



Aboriginal women have answers themselves: Women and children at the *Balgo Women's Law Camp*.
© Zohl de Ishtar, 2007.

The *Balgo Women's Law Camp* was a community initiated cultural development activity organised by the Kapululangu Aboriginal Women's Association in August 2007. The *Women's Law Camp* blended traditional law and culture with community development principles to develop local strategies to tackle violence and abuse.

Balgo is a remote Indigenous community located on the boundary between the Great Sandy Desert and the Tanami Desert in Western Australia. It is about 280 kilometres south-east of Halls Creek along the Tanami Track and 830 kilometres northwest of Alice Springs.

Balgo is on Walmatjarri country and is the hometown of people from seven language groups, including the Kukatja, Ngarti, Warlpiri, Pintupi, Wangkatjungka and Djaru peoples. Balgo was established as a Catholic Mission Station in 1939. It is part of the 2.6 million hectare Balwina Aboriginal reserve.

Balgo has a population of 460 people, 410 who are Indigenous.¹⁰³ Balgo retains strong culture, with 74.5% of people speaking Kukatja and other Indigenous languages.¹⁰⁴ However, like most remote Indigenous communities, there are problems with overcrowding and access to services.

103 Australian Bureau of Statistics, *2006 Census QuickStats: Balgo (Indigenous Location)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 22 November 2007.

104 Australian Bureau of Statistics, *2006 Census QuickStats: Balgo (Indigenous Location)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 22 November 2007.



Balgo came to the attention of the nation in 2004 when the Western Australian Coroner investigated the deaths of two young people by suicide following petrol sniffing. The Coroner painted a grim picture of life in Balgo and poor government cooperation to deliver essential services:

If people have inadequate or poor quality food, then they need to be provided with more and better quality food. If they live in a dirty and unhygienic environment, then the environment needs to be cleaned up. These propositions seem to be simple and yet their achievement appears to have been beyond the capability of both Commonwealth and State Governments in spite of the provision of very considerable amounts of money for which is, in the context of Balgo, a relatively small number of persons.¹⁰⁵

According to Dr Zohl dé Ishtar, Coordinator of the Kapululangu Aboriginal Women's Association, petrol sniffing has decreased in Balgo but has been replaced with cannabis use instead.¹⁰⁶

Anecdotally, family violence and abuse are considerable problems in Balgo with Dr dé Ishtar estimating around three to four incidents of family violence a week.¹⁰⁷ There is a permanent police presence in Balgo but no safe house. The Western Australian Special Police Taskforce on Child Sexual Abuse has visited Balgo in response to allegations of abuse.¹⁰⁸

Despite these poor circumstances, Balgo is renowned for its art, with some of its artists being amongst the most sought out in the Indigenous art world.

Description of the *Balgo Women's Law Camp*

The *Balgo Women's Law Camp* was an initiative of the Kapululangu Aboriginal Women's Association. The Kapululangu Aboriginal Women's Association is the only women's organisation in Balgo (and in the south-east Kimberley) and was initiated and established by the women Elders of the community and has a membership of women from all age groups.

Kapululangu Aboriginal Women's Association was established in 1999 by the female Elders in Balgo. It aims to revitalise law and culture and care for women in the community. The Association's current activities include:

- organisation of the *Balgo Women's Law Camp*;
- support for women's law and culture;
- ceremonies on the Balgo Women's Law Ground;
- Tjarrtjurra – Women's healing sessions;
- weekly hunting and bush medicine gathering trips;
- Tjilimi – women's house for Elders living together on the Balgo Women's Law Ground;

105 Coroner Alastair Hope, *Record of Investigation into Death of Owen James Gimme and Mervyn Milner*, Balgo, April 2004, p 30.

106 dé Ishtar, Z., *Communication with Social Justice Commissioner's Office*, 5 December 2007.

107 dé Ishtar, Z., *Communication with Social Justice Commissioner's Office*, 5 December 2007.

108 Kapululangu Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.



- daily assistance to women's elders – shopping and attending the clinic; and
- advocacy for local women and liaising with government departments.¹⁰⁹

Kapululangu's Elders decided to call the *Balgo Women's Law Camp* following concerns about the Australian Government emergency intervention in the Northern Territory and Western Australian Special Police Taskforce on Child Sexual Abuse. In particular, the Western Australian Special Police Taskforce on Child Sexual Abuse visited Balgo in mid July 2007. According to Kapululangu there were concerns that the Task Force had:

failed to inform and consult with the community Elders before visiting the community, and had not involved the Elders and parents in their questioning of young women and men...They complained that, although a few residents were involved in these meetings, the majority of the community had no idea that these meetings were happening until they were over.¹¹⁰

These concerns, coupled with incidences on family violence and worries over the disconnection of the younger generations with their cultural heritage, led the Kapululangu Aboriginal Women's Association to develop the Camp. The Kapululangu wanted to:

deliver a strong message to the governments that the Kapululangu women were capable of making an important contribution to their community's well-being.¹¹¹

Or as one of the Elders, Margaret Anjule Napurrula puts it:

We have to show government we have strong Law here. They can't rubbish it. We have got strong Law ourselves.¹¹²

Over 100 women and girls attended the camp on the 24-27 August 2007, with 75 Indigenous participants from places such as Balgo, Mulan, Halls Creek, Perth and as far away as Lismore and Sydney. There were 15 non-Indigenous representatives from various state departments such as the WA Department for Indigenous Affairs, Child Protection agencies, the Department of Crime Prevention and police.

Organising the Law Camp involved the entire community. The women Elders initiated the Camp and networked with women in other communities, local men assisted with preparing for the camp and were involved in its closing ritual, and all of Balgo's local agencies provided resources. Women from nearby Mulan, Billiluna and Ringers Soak were also involved. The Camp was funded by Kapululangu, Balgo's Palyalatju Maparnga Health Committee, and the Kimberley Aboriginal Law

109 Kapululangu Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.

110 Kapululangu Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.

111 Kapululangu Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, p8, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.

112 Kapululangu Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, p5, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.



and Culture Centre in Fitzroy Crossing. The Australian Centre for Peace and Conflict Studies, at the University of Queensland, supported Dr dé Ishtar's organisational contribution.

There were 3 core objectives addressed at the *Balgo Women's Law Camp*:

- To reinvigorate or wake young men and women up to the powerful contribution Women's Law can make in addressing abuse and violence problems in communities;
- To identify other strategies for addressing concerns within communities such as child sexual abuse and family violence; and
- To urge the Government and other bodies to fund the Kapululangu project which is currently the only women's organisation representing Balgo.¹¹³

The camp blended traditional women's law ceremonies with community discussions about how to tackle troubling issues. The ceremonies had a very powerful effect for those involved and also served as an opportunity for younger women to learn about Law.

The final day of the camp involved discussions about community problems and solutions. An overview of discussions and strategies, documented in the 'Aboriginal Women Have Answers Themselves' report can be found below at Table 2.

Discussion	Strategy
<ul style="list-style-type: none"> • Social problems result from alienation of children/youth from their Aboriginality 	<ul style="list-style-type: none"> • Increase learning opportunities for children and youth to learn Law and Culture
<ul style="list-style-type: none"> • Child sexual abuse and violence against women and children 	<ul style="list-style-type: none"> • Safe house for women and children in Balgo • Improve child protection system
<ul style="list-style-type: none"> • Health factors are extremely poor in Balgo and the Katjungka region 	<ul style="list-style-type: none"> • Involve Indigenous healing methods • Provide better funded medical services
<ul style="list-style-type: none"> • Alcohol and drugs are causing tensions in the community 	<ul style="list-style-type: none"> • Increase community cultural activities • Block access to alcohol and drugs

113 Kapululangu Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, p6, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.

114 Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007, 'Aboriginal Women have the Answers themselves'*, p16, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.



<ul style="list-style-type: none"> • Children and youth are disadvantaged by an extreme level of truancy 	<ul style="list-style-type: none"> • Strengthen parenting skills, Elders' authority and respect for Law • Increase employment prospects, particularly for youth
<ul style="list-style-type: none"> • Limited community identity is undermining Balgo's future 	<ul style="list-style-type: none"> • Build pride in Aboriginality through Community Cultural Development
<ul style="list-style-type: none"> • Violence and crimes remain high, particularly impacting on children 	<ul style="list-style-type: none"> • Strengthen policing • Increase community involvement in crime prevention

Impact of the *Balgo Women's Law Camp*

The *Balgo Women's Law Camp* has not been formally evaluated, but by all accounts it has had a positive impact on the community. The entire process was empowering for the community and according to Dr dé Ishtar reinforced:

how strong and proud people feel in themselves. They were so tall they were floating.¹¹⁵

The opportunity to discuss community problems also built up the women's confidence in their ability to generate their own answers. The strategies identified by the women are a very good starting point for further planning and implementation of services in Balgo.

The *Balgo Women's Law Camp* took a strong stand against family violence and abuse in the community, using the authority of Women's Law to back up to the messages. The women also successfully included the men in the Women's Law Camp. Although men were not allowed at the campsite, they helped prepare the site by grading the road, providing wood, water and meat to the women. As a sign of respect, when the women returned to the Balgo community centre, the men were waiting for them with heads bowed in acknowledgment of the power and strength of Women's Law.

The challenge is to build on the momentum created by the Law Camp to support the community to realise the aspirations and plans that it has identified.

Kapululangu Aboriginal Women's Association is currently unfunded. Kapululangu last received substantial governmental funding in 2001. An \$8,000 grant allocated by the Indigenous Women's Program from the Indigenous Coordination Centre (ICC), for 2005-2006 was not received until September 2007.

Its survival is dependant on the good will, commitment and resilience of the women Elders. Whilst this demonstrates the tenacity of these women and makes the achievements of the *Balgo Women's Law Camp* all the more significant, it prevents the sustained community cultural development that has been identified as a priority in Balgo.

115 dé Ishtar, Z., *Communication with Social Justice Commissioner's Office*, 6 December 2007.



The lack of supporting infrastructure, notably a Safe House also poses challenges to the women of the Kapululangu Aboriginal Women's Association. This is because when Balgo women are seeking refuge they prefer to approach the Kapululangu Tjilimi (Women's House) on the Women's Law Ground for protection. Because Kapululangu does not have adequate funding to resource a fully secure safe refuge this places the Elders who live in the Tjilimi at risk of violence.¹¹⁶

Lessons from the *Balgo Women's Law Camp*

Empowering women through cultural recognition

The *Balgo Women's Law Camp* recognises the central role of traditional law and culture in solving problems related to family violence and abuse. Traditional law and culture reinforce that violence against women and children is not acceptable. Traditional law also gives power and voice to a marginalised group in the Balgo community. Encouraging connection to culture is a way of empowering women to take a stand against violence and associated problems.

Recognition of culture and law

The *Balgo Women's Law Camp* challenges policy makers to not only recognise that communities have the solutions to their problems but to also be open-minded about engaging with culture and law. A spokeswoman for Kapululangu, Patsy Mudgebell states:

Aboriginal people have solutions to our own problems... but Kapululangu's attempts to run these programs have repeatedly gone unfunded. This is because governments don't understand the central importance of Law... and culture... to building pride of Aboriginality as a mechanism of protection in young people. The Elders know that without this solid foundation all the bricks of health, education and housing will continue to fall down.¹¹⁷

116 Aboriginal Women's Association, *Report on the Balgo Women's Law Camp 2007*, 'Aboriginal Women have the Answers themselves', p18, available online at: <http://www.womenforwik.org/pdfs/BalgoWomensLawCamp100907.pdf>, accessed 9 October 2007.

117 Kapululangu Aboriginal Women's Law and Culture Centre, 'Revitalising women's culture – caring for women and community', Media Release, 13 July 2007.



b) Healing

Healing services are essential to mend the harm caused by family violence and abuse as well as prevent further harm and allow individuals and communities to move forward. Healing is a concept that can be notoriously difficult to define, yet its impact is powerful.

This section sketches some of the issues around healing, including a brief look at the Canadian experience of healing programs. It will also showcase three instances of promising healing programs:

- i. *Rekindling the Spirit* – a family centred healing service in Lismore, Northern New South Wales that addresses the harm of family violence and abuse;
- ii. *Yorgum Aboriginal Family Counselling Service* – a Perth based Indigenous controlled and staffed counselling and community development service assisting victims of family violence, sexual abuse and Stolen Generation members; and
- iii. *Western Australian Healing Project* – a collection of healing projects run in a variety of urban, rural and remote Indigenous communities.

What is healing?

Healing is something we often talk about in relation to Indigenous people and programs. Because it is such a broad, context driven concept it can sometimes be hard to define. Similarly, because it is linked to individual and community empowerment it is crucial that the meaning is ultimately set by those involved in the process.

The *Social Justice Report 2004* dealt with the need for healing services in relation to women exiting prison. Before that, the *Bringing them home* report made a number of recommendations related to healing and wellbeing service for members of the Stolen Generations. In the *Social Justice Report 2004*, healing is described as:

A significant process for empowering Indigenous communities and creating improved partnerships to address the legacy of family violence and abuse... Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnections between, and effects of, violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous people, families and communities.

Healing can be context-specific – such as, addressing issues of grief and loss – or more general by assisting individuals deal with any trauma they may have experienced. The varying nature of healing demonstrates that it cannot be easily defined, with healing manifesting itself differently in different communities.¹¹⁸

Examples of healing processes include:

Women – specific and men – specific groups; story-telling circles; cultural activities; understanding the impacts of issues such as racism, colonisation and identity on Indigenous well-being; the use of mentors and/or Elders to provide support

118 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission, Sydney, 2004, p57.



to individuals; and retreats or residential-style components where participants spend a period of time going through the healing process, usually on a spiritually significant site, away from their families and communities.¹¹⁹

Healing can occur at the individual as well as community level. It aims to deal with different layers of trauma experienced by Indigenous communities. Often, healing will seek to mend the harms of the past, as well as contemporary manifestations of trauma through violence and abuse in communities. Healing is holistic so these two layers of hurt cannot be separated.

Judy Atkinson describes this as 'transgenerational trauma'.¹²⁰ Others refer to it as historical trauma theory.¹²¹ It:

supports the notion that an individual does not have to experience such events in their own life to suffer – traumatic events in the lives of one generation reverberate in the next.¹²²

In their review of violence prevention strategies in Indigenous communities, Memmott and others argue that:

What is required is treatment and 'healing' on a massive scale, including the healing of individuals, families and whole communities. Without intervention and without healing and recovery from the long-term effects of the underlying longitudinal causes of violence impacting on Aboriginal people as well as the situational and precipitating factors, cycles of inter-generational violence will continue.¹²³

There is a slowly increasing number of healing programs in Australia, although there remains very little research and evaluation in the area. Canada, however, is much further advanced and has a body of literature supporting effective healing programs as a result of the activities supported by the Aboriginal Healing Foundation (AHF) over the past decade.

The Aboriginal Healing Foundation (AHF) is an aboriginal-managed not for profit organisation. The AHF was established in 1998 through a one off \$350 million grant from the federal government of Canada.¹²⁴

This has allowed funding up to 2009 to encourage and support through research and funding, community-based Aboriginal run healing initiatives which address the legacy of the Indian Residential School System. Additional funding under the Residential Schools Settlement Agreement is likely to extend their work until 2012.¹²⁵

119 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission, Sydney, 2004, p58.

120 Atkinson, J., *Trauma Trails: Recreating Song Lines, the transgenerational effects of trauma in Indigenous Australia*, Spinifex Press, Melbourne, 2002.

121 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Foundation, Volume 3, Promising Healing Practices in Aboriginal Communities*, Ontario, 2006.

122 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Foundation, Volume 3, Promising Healing Practices in Aboriginal Communities*, Ontario, 2006, p15.

123 Memmott, P. Stacy, R. Chambers, C., and Keys, C., *Violence in Indigenous Communities: Full Report*, Crime Prevention Branch, Attorney General's Department, Canberra, 2001, p17.

124 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Foundation, Volume 3, Promising Healing Practices in Aboriginal Communities*, Ontario, 2006, p2.

125 Aboriginal Healing Foundation, *Annual Report 2006*, Aboriginal Healing Foundation, Ontario, 2006, available online at: <http://www.ahf.ca/about-us/annual-reports>, accessed 14 November 2007.



The AHF works under the vision of helping Aboriginal communities heal themselves. It has encouraged innovative and creative services that tackle the immediate and intergenerational effects of the Residential School System but also assist services to become sustainable in their own right. The AHF has made 1,345 grants to Aboriginal organisations since 1998.¹²⁶

This model gives substantial control to Aboriginal people to determine how healing needs are met. The AHF has demonstrated a commitment to long term funding of the programs as they realise that healing is not a process that can be rushed and can take time to bear fruit.

The AHF has evaluated its programs and developed a guide to promising healing practices which identifies key characteristics of good services. These include:

- values and guiding principles that reflect an Aboriginal worldview;
- a healing environment that is personally and culturally safe;
- a capacity to heal represented by skilled healers and healing teams;
- an historical component, including education about residential schools and their impacts;
- cultural interventions and activities; and
- a diverse range and combination of traditional and contemporary therapeutic interventions.¹²⁷

Although these principles are based on Canadian experiences they may also help guide effective healing services for Indigenous peoples in Australia.

126 Aboriginal Healing Foundation website, online at: <http://www.ahf.ca/funded-projects>, accessed 14 November 2007.

127 Aboriginal Healing Foundation, *Final Report of the Aboriginal Healing Foundation, Volume 3, Promising Healing Practices in Aboriginal Communities*, Ontario, 2006, p15.



Healing: Chris Binge and sons at a *Rekindling the Spirit* men's camp.

The *Rekindling the Spirit* Program is an Indigenous owned and run initiative based at Lismore which provides a holistic healing service to Indigenous communities, families and individuals with an emphasis on behavioural change. Many of the participants are ex-offenders or have been referred by child protection services.

Lismore is a regional centre in northern New South Wales. Lismore district has a relatively large Indigenous population, with over 1,800 Indigenous people making up the total population of around 35,000 people.¹²⁸ The region has four times the state average of Indigenous people.

Lismore is part of Bundjalung country. There are more than ten distinct Indigenous groups across the Northern Rivers districts that make up the broader Lismore district. Like other Indigenous communities across Australia, Lismore continues to face significant socio-economic disadvantage.

The *Rekindling the Spirit* Program also works with clients from rural areas. Of note, they have worked with the community at Tabulam in North – Eastern NSW, about 90 kilometres from Lismore. Just outside of Tabulam is Jubullum Village. Jubullum is the site of a former Reserve and is now owned and operated by the Jubullum Local Aboriginal Land Council, with around 250 Indigenous residents.

128 *Rekindling the Spirit, Rekindling the Spirit Program Guide: for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p6.



Description of the *Rekindling the Spirit Program*

The *Rekindling the Spirit Program* began in 1995 when a young Aboriginal worker with the Department of Community Services, Greg Telford, saw a gap in the provision of services directed towards Indigenous men in the Lismore area. He noted that Indigenous men and women were not accessing mental health and other services because of the lack of culturally relevant resources that were available. At this point in time there were no Indigenous alcohol, drug or mental health workers or agencies with specialised services to address family violence, anger management, mental health, substance abuse or strategies for personal development.

To fill this void, Greg Telford started devoting more time to working with Aboriginal men, after hours. The first group commenced in 1997 and the program was piloted in 1999.

Rekindling the Spirit works with Indigenous men, women and children. Many of the participants are referred by the Department of Corrective Services or Department of Community Services. It is usually part of their legal order that they attend the program, although *Rekindling the Spirit* also attracts voluntary self referrals as well.

Rekindling the Spirit works with people who have experienced family violence, either as the victims, perpetrators, or children who have witnessed family violence. Clients usually face a range of other problems including:

- drug and alcohol use;
- sexual abuse;
- isolation (especially the clients from the rural community of Tabulam);
- mental health issues; and
- racism and the on-going effects of trans-generational trauma.¹²⁹

The primary objectives of *Rekindling the Spirit* are to:

- promote family healing and well being;
- address negative and unhealthy behaviours and attitudes which deny individual responsibility as well as perpetuate the cycles of violence and abuse;
- recognise the underlying historical and social context of Aboriginal disadvantage; and
- encourage the empowerment of Aboriginal people by Aboriginal people.

Rekindling the Spirit focuses specifically on the bigger picture of Indigenous health and wellbeing which expands beyond western notions of physical illness to include the emotional, sexual, spiritual, physical and mental well-being needs of people. It does this by treating the family unit, and hence the wider Indigenous community.

Greg Telford maintains that the motive behind *Rekindling the Spirit* is 'breaking cycles'. It is about 'taking individual responsibility and not succumbing to the mentality of victimhood'.¹³⁰ The program is not about giving individuals a label as either 'victim' or 'perpetrator'. Greg Telford states:

129 *Rekindling the Spirit, Rekindling the Spirit Program Guide: for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007.

130 ABC Lateline: *Preventing Violence in Aboriginal Communities*, available online at: <http://www.abc.net.au/laeteline.content/2006/s1802593.htm>, accessed 25 October 2007.



It is about continuity, about empowering individuals, families and ultimately communities in the fight against family violence and abuse which has become an intergenerational issue.¹³¹

Rekindling the Spirit has three main streams of services:

- Men's programs – including urban and rural men's groups, men's camps and father and son camps;
- Women's programs – including women's group and women's camp; and
- Family services – includes couples counselling, parenting counselling and training, mediation, family counselling and family reunion support for members of the stolen generations.

The usual program length for each client is 12 weeks, although it is often recommended that they stay on longer.

Table 3 below provides an overview of the programs provided for Indigenous men and Table 4 below provides an overview of the programs provided for Indigenous women and families.

Service	Delivery
Intake & Case Management Allocation	One to one appointment; (with or without Department representatives) monthly review; quarterly goal setting; annual review.
Men's Group (Urban)	Weekly 4 hour meetings; centre-based support including casework, advocacy and referral; home-based support for follow through. Major themes addressed are: <ul style="list-style-type: none"> • violence; • alcohol and drug use; • emotional connection with self; • trauma and abuse; • relationship with partner and children; • lack of practical skills including financial supports; and • disconnecting with Aboriginal culture.
Men's Group (Rural)	Weekly, usually held at Jabullum (Tabulam community)
Men's Camp	3-night camp in bush setting occurs half yearly.

131 Telford, G., *Communication with Social Justice Commissioner's Office*, 19 November 2007.

132 *Rekindling the Spirit, The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p26.



Counselling Support (including mediation)	One to one with case manager or specialist counsellor mediator.
Men and Boys Camp	3-night camp in bush setting suitable for extensive activities including food preparation by the fire, fishing, hunting, cultural activities.
Crisis Response	Home-based or in-service includes protection and/or relocation of family members; external referral.
Therapeutic, Alcohol and Other Drugs Service	Twice weekly service, Intensive referral; Support ongoing maintenance with participants; active group-work participation; transport and advocacy.
Police Youth Citizens Club	Attend gym to build physical health, relationship building with Police; training to establish and encourage health and well-being.
Bundjalung Men's Gathering Community Development Program	Annual consultation and interaction with Aboriginal and community Elders to promote respectful participation; widespread issues promotion in culturally sensitive setting; building alliances and service providers.

Table 4: Services for women and families provided by *Rekindling the Spirit*¹³³

Service intervention	Format, strategy and location details
Intake & case management allocation	Appointment with referrer present; monthly review; quarterly pathway review, annual review.
Counselling and support to determine pathway	Weekly session to address major aims' home or centre-based support including addressing presenting problems and current life challenges. Support to women in home can include case-work for her family (including partner) as well.
Women's Group	At <i>Rekindling the Spirit</i> centre or community location; includes afternoon session, child-care with a registered service, and transport as required, held weekly.

133 *Rekindling the Spirit, The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p119.



Counselling Support	One to one with family worker. Service includes strengthening ability to stay in group to re-network. Sometimes court support and documentation is provided.
Couples & Family Counselling	Woman (client) and her family member(s) can attend for support in resolving entrenched conflict. Can include intensive counselling to avoid risks of unsafe home-life, child abuse or neglect.
Women's Retreat or Camp	Two to five night retreats or camps a year in locations suggested by women, usually away from normal environment in nurturing and quiet settings such as comfortable conference centres.
Crisis Response	Home-based or in service includes protection and/or relocation of family members; external referral.
Aboriginal Alcoholics Anonymous	Intensive referral; support ongoing maintenance with participants; active group-work participation; help placement and support to rehabilitation facilities.
Malanee Bugilmah (Intensive Family Based Service)	Liaison with the service as required, supporting client's needs to extend her activities outside of the home in healthy settings.
Family Days and community meeting supports	Provide healthy activities for families to come together to enjoy recreation and connection with other families. Specific themes may revolve around women's specific requests and leadership skills for community development and community meetings.
Advocacy and Support	Continued family support.

Camps for men and women are a particularly successful part of the program. To date, *Rekindling the Spirit* has conducted in excess of 30 cultural camps. An overview of the camps is provided in Text Box 5 below.



Text Box 5: Rekindling the Spirit Men's and Women's Camps

Men's Camps

The Men's camps are usually held in a place of cultural significance such as Pretty Gully, Jabullum in Tabulam, Casino or Lismore.

The camps provide an opportunity for the men to heal and get a 'rekindled connection with the land, with traditional values, and with traditional practices and skills.'¹³⁴

Bringing the men together in the natural environment of camp also means that new skills and experiences are easier to take in without fear of being 'assessed' by *Rekindling the Spirit* staff.¹³⁵ In particular, for men recently released from correctional facilities, the camp is an extremely powerful experience and enables them to see how easy their basic needs for shelter, food and clothing at camp can be met.¹³⁶ This is not only a positive cultural tool, but important for reintegration into society as well.

The camp provides a good opportunity for the men and staff to build more trust, as well as improve their self-esteem through fun activities. The cultural camps are also an ideal space for the men to bond with one another. This is particularly helpful for the healing process where men gradually begin to reveal sensitive issues such as their experiences with abuse or drug or alcohol use.

As bonds and trust strengthen, the camp fire usually provides a good place for men to talk openly about their own life stories. In this way, they simultaneously gain a sense of community as well as communication skills that are transferable back home.

Women's Camps

The *Rekindling the Spirit* women's camps have similar objectives to that of the men's programs. However, the locations of the women's camps are often not exclusively in a natural habitat to give the women a break from the chores that camping can involve, seeing as most of the women are already over worked and feeling stretched at home.

Instead, they are conducted in comfortable conference style settings to allow for a secure space where new skills and bonds are encouraged. This is also usually supplemented by being close to a beach or other environment that gives off positive energy and in turn facilitates the spiritual well-being of those involved. Sometimes however, camps might be held in a city-based location such as the Gold Coast, to allow the 'women to learn new skills in the ways of the mainstream culture.'¹³⁷

Importantly, women can not self-refer to attend the Camp, but instead must demonstrate a commitment to the Women's programs before they do so. This is usually achieved in the continued attendance, as well as the female participants meeting their own progress agreements.

Along with group sessions, women's camps are also accompanied with traditional activities such as jewellery making, basket weaving or fishing. Importantly, priority is given to skilled Aboriginal craftswomen, who teach the group by using either

134 Rekindling the Spirit, *The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p97.

135 Rekindling the Spirit, *The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p96.

136 Rekindling the Spirit, *The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p97.

137 Rekindling the Spirit, *The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p161.



traditional or contemporary materials. These sessions allow women to connect with their roots as well as enable them to learn new skills. During these sessions women are comfortable and opportunities to discuss difficult topics like violence, abuse and drug and alcohol use often arise.

Impact of the *Rekindling the Spirit* Program

Rekindling the Spirit has been operating for almost 11 years and is now an established, well respected service that can act as a model for other holistic healing services. Long term evaluation has not been done but some analysis of recent clients suggests significant successes. Statistics analysed by the NSW Department of Corrective Services show that 97% of men and women who completed the *Rekindling the Spirit Program* had not returned to custody after two years of completing the program.¹³⁸

The overall number of referred and accepted clients with the service as at 30 June 2007, including the cumulative clients from the year prior, was 189 in total. 98 of these made up the new client intake for the 1 July 2006 to the 30 July 2007. The remaining 91 people were those who had stayed with the program from previous years.

Rekindling the Spirit is an Indigenous run and managed program that encourages self-determination within the local community. *Rekindling the Spirit* revitalises culture and pride which in turn has built leadership and capacity in the community. This also translates into individual successes. For instance, Greg Telford reported that one of the men who participated in the very first men's group has gone on to become a fully qualified drug and alcohol worker with the local Aboriginal Medical Service.¹³⁹

Funding is an issue for *Rekindling the Spirit*. Although it has been funded through the NSW Government's *Two Ways Together* plan, this is the last year of the funding agreement. With the continuity of the program in mind, Greg Telford and other members of *Rekindling the Spirit* staff have been collaborating with similar organisations, individuals, communities and government in order to ensure the legacy of the *Rekindling the Spirit* program by developing a training package.

On the issue of sustainability and the inevitable need for financial backing of community initiatives, Greg Telford maintains that:

the Government needs to be aware that two years of funding only begins to scratch the surface of entrenched issues such as family violence. There needs to be continued support of programs if we are going to see real results. Getting an initiative up and running and then having it suspended because of lack of financial support is a common problem that leaves communities raw and left to deal with the aftermath of family violence.¹⁴⁰

138 *Rekindling the Spirit, The Rekindling Programs Guide for Goori men, women, families, and other Rekindling the Spirit programs*, Rekindling the Spirit, Lismore, 2007, p10.

139 Telford, G., *Communication with Social Justice Commissioner's Office*, 11 December 2007.

140 Telford, G., *Communication with Social Justice Commissioner's Office*, 19 November 2007.



Lessons from *Rekindling the Spirit*

Culturally Appropriate

Rekindling the Spirit uses an approach that focuses on traditional Bundjalung family values, and developing community solutions to individual problems. Connection to land and culture is promoted and clients are given an opportunity to connect with their spirituality.

Unlike mainstream services, *Rekindling the Spirit* is run and staffed by Indigenous people. Elders were involved in the development of the program and often contribute to group sessions and camps.

Partnership approach to service delivery

Rekindling the Spirit has developed effective partnerships with the NSW Department of Corrective Services, Department of Community Services and NSW Health as sources of referral and funding. *Rekindling the Spirit* workers communicate openly and effectively with the referring agencies to report on individual progress, as well as advocate for better client outcomes.

Rekindling the Spirit has been part of the Two Ways Together, the NSW Government's 10 year plan (2003-2012) to improve the lives of Aboriginal people and their communities. This is a whole of government plan that reports back to the Premier regularly.

Sustainability

Rekindling the Spirit grew from small beginnings and has since flourished into a successful, much needed community program. The sustainability of the program is also owed to the commitment and diligence of the staff at *Rekindling the Spirit*. It is through their expertise, as well as their personal and cultural experience that translates into effective care for their clients. The cultural experience of staff also facilitates the healing process with clients by creating common ground, which enhances the relationships of trust which are needed for this process.

Indigenous Staff Expertise and Networks

Rekindling the Spirit recognises that the employment of Indigenous staff is an important healing tool, not only for clients and families but also for the staff who have been exposed to violence or other trauma in their upbringing.

Holistic

Rekindling the Spirit recognises that 'health' is a concept that does not simply mean the absence of disease. It does this by distinguishing between Western and Indigenous notions of health to focus on the spiritual, sexual, emotional and also mental health needs of people. Importantly, the program also takes into account the social and historical context of Indigenous culture and disadvantage to produce a culturally appropriate response to the needs of clients.

Rekindling the Spirit offers a holistic response to healing that not only acknowledges the importance of culture in the healing process, but focuses on community as well as individual treatment. In doing so, the program recognises the importance of healing the family unit in assisting to break the cycle of intergenerational trauma and violence.



Greg Telford put it well when he said that Rekindling the Spirit is about:

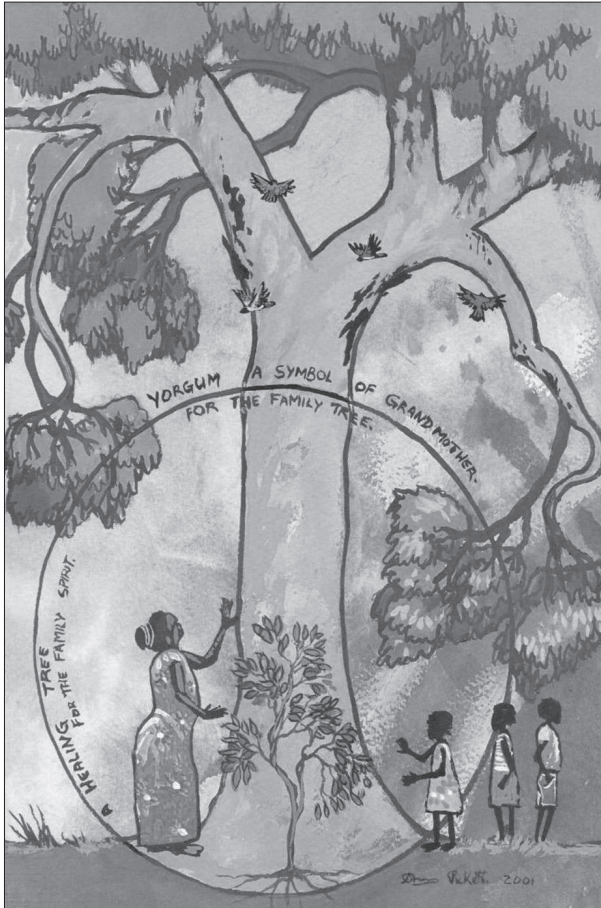
Continuity, about empowering individuals, families and ultimately communities in the fight against family violence and abuse which has become an intergenerational issue.¹⁴¹

Flexible, long term funding

Despite being a strong community based organisation with long-running success and well-built relationships with government and non-governmental organisations, *Rekindling the Spirit* inevitably depends on funding from other bodies to keep it running. A much needed program, it shows us that there needs to be an extended commitment to ensure the sustainability of such initiatives.

141 Telford, G., *Communication with Social Justice Commissioner's Office*, 19 November 2007.

ii) Yorgum Aboriginal Family Counselling Service



Culturally appropriate: *Yorgum* is an Indigenous owned and run initiative that provides a holistic healing service to Indigenous families.

Yorgum Aboriginal Family Counselling Service provides counselling and healing services to Aboriginal victims of family violence and sexual abuse. It is the only Aboriginal run family violence and sexual assault service in all of Western Australia. *Yorgum* has developed from strong community foundations to become an essential part of the service delivery landscape of Perth.

The Perth metropolitan area has an Aboriginal population of 21,324 people. This is only 1.5% of the total population, compared with the 2.3% average across Australia.¹⁴² This relatively low rate reflects the fact that Western Australian Aboriginal people are more likely to live in remote areas than other Indigenous people. Nonetheless, Perth is still an important Aboriginal centre with a fluctuating transient population drawing people from all over the state.

142 Australian Bureau of Statistics, *2006 Census Quickstats: Perth (Indigenous Region)*, available online at: <http://www.census.abs.gov.au>, accessed 12 December 2007.



The Aboriginal population in Perth faces significant disadvantage. One way of looking at this disadvantage is starting from childhood. The *Western Australian Aboriginal Child Health Survey* provides a snapshot of the social and emotional wellbeing of the Indigenous children in Perth. Compared to their Aboriginal counterparts in remote Western Australian Aboriginal communities, children in Perth are more likely to be effected by clinically significant social and emotional difficulties, with 1 in 4 at high risk of social and emotional problems.¹⁴³ By way of comparison, children living in isolated communities were 83% less likely than Aboriginal children living in the Perth metropolitan area to be at high risk.¹⁴⁴ Similarly, the level of emotional and behavioural difficulties for households where alcohol was reported to be a problem was estimated to be highest in the Perth area, where two in every five children was at high risk of emotional or behavioural difficulties.¹⁴⁵

Perth is part of Noongar country. Noongar country stretches from Esperance, to Bunbury and up to Geraldton. Despite the considerable problems that face the Noongar population, a recent landmark native title win has boosted community pride and cohesion. In September 2006 Justice Murray Wilcox ruled in favour of the Noongar claim, recognising that Noongar society and culture had survived.

Description of the *Yorgum Aboriginal Family Counselling Service*

Yorgum developed out of a group of concerned Aboriginal women who recognised the need to develop counselling services for Indigenous people. At that stage there were no culturally appropriate counselling services, so the women started the Aboriginal Counselling Course to skill local workers.

Out of this course grew the *Yorgum* service. Whilst the program had its beginnings in a volunteer basis, the success of the initiative led to incorporation in 1993. *Yorgum* secured funding from what is now called the Department for Child Protection Services in 1995 to run a service for child victims of sexual assault.

Over the years *Yorgum* has expanded to provide more services and developed partnership with Oxfam Australia. *Yorgum* now include a team of 16 all Aboriginal Indigenous staff and management, from social workers and family case workers to counsellors and community development workers.

Yorgum provides holistic counselling and healing services in the following programs:

- Child sexual abuse treatment service;
- Counselling for children witnessing and experiencing family violence;
- Family Violence Counselling and Advocacy Program ;

143 Zubrick, S., Lawrence, D., Mitrou, F., Blair, E., Griffin, J., Milroy, H., Cox, A., and Li, J., *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Perth, Curtin University of Technology and Telethon Institute for Child Health Research, 2005, p74.

144 Zubrick, S., Lawrence, D., Mitrou, F., Blair, E., Griffin, J., Milroy, H., Cox, A., and Li, J., *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Perth, Curtin University of Technology and Telethon Institute for Child Health Research, 2005, p68.

145 Zubrick, S., Lawrence, D., Mitrou, F., Blair, E., Griffin, J., Milroy, H., Cox, A., and Li, J., *The Western Australian Aboriginal Child Health Survey: The Social and Emotional Wellbeing of Aboriginal Children and Young People*, Perth, Curtin University of Technology and Telethon Institute for Child Health Research, 2005, p148.



- Community Development Healing Project (including family violence community workshops, working with communities on a needs basis, events and support initiatives like the Grandmother's group and men's healing camps); and
- Building Solid Families (state Link Up program).¹⁴⁶

All of the programs are run according to the holistic, healing philosophy of *Yorgum*. This philosophy eloquently draws on cultural symbols. The meaning and philosophy of *Yorgum* are explained in Text Box 6 below.

Text Box 6: The *Yorgum* Aboriginal Family Counselling Service Philosophy

The name '*Yorgum*' is a Noongar name for a large red flowering gum tree which has healing properties. The name is an expression of the life-sustaining image of the living tree. The deep roots, rising sap, branches reaching to the sky, the shelter given and the home provided to the many forms of life-insects, reptiles, birds and other animals. It is a symbol of connectedness and inter-dependence in the diversity of living beings. The image conveys the philosophy of the *Yorgum* staff and the way in which they work.

The underlying philosophy is valuing our diversity: in different individuals, different families, language groups and people from places who are included and respected; that human differences can be accepted as expressions of our uniqueness and capacity to survive.

Abuse can be compared to a tree with the root system being affected by some of the factors such as loss of culture, identity, low self-esteem, unresolved cultural traumatic experiences.

The lack of consistent, supportive and loving relationships and the absence of positive life enhancing values are like the soil in which the tree grows. A tree is an organic system. If the whole system is diseased, you can't just treat one of the roots and expect the rest of the tree to be healthy. You must treat the whole tree as well as the soil within which it grows.¹⁴⁷

The real success of *Yorgum* is the way it has developed a culturally appropriate and accessible service. Jade Maddox, Chief Executive Officer of *Yorgum*, notes that this starts with the environment they create for their clients. Staff make an effort to get to know all the clients so there is a relationship beyond the counsellor and there is a genuine friendliness that can be missing in other mainstream counselling services. Jade Maddox states that they often get positive feedback from clients, reflecting that *Yorgum* makes them feel good because it is 'safe, warm, cultural and friendly'.¹⁴⁸

146 Unpublished briefing document, *Yorgum Aboriginal Family Counselling Service*. Information provided by Jade Maddox to the author.

147 Unpublished briefing document, *Yorgum Aboriginal Family Counselling Service*. Information provided by Jade Maddox to the Social Justice Commissioner's Office.

148 Unpublished briefing document, *Yorgum Aboriginal Family Counselling Service*. Information provided by Jade Maddox to the Social Justice Commissioner's Office.



Yorgum counsellors also use Aboriginal ways of engaging with their clients. For instance, staff have developed an Aboriginal Case Management model which privileges cultural planning. Counsellors use sand play in therapy, especially with children. Jade Maddox explains that 'after all we have been using the sand to communicate for hundreds and thousands of years.'¹⁴⁹ Art also features heavily in counselling as well as community development activities. All of these engagement tools help connect to culture and are a vehicle to express difficult emotions.

Many of the children that come to *Yorgum* receive support from the Grandmother's group. This has a dual purpose of allowing the Elder women to share their knowledge, keep active and provide nurturing to the younger generation. It also has a profound impact on the children, with the grandmothers often being the most skilled counsellors of them all.

For instance, one young girl who was a victim of abuse had been attending *Yorgum* for sometime but had not engaged with any of the counsellors. She was still severely traumatised by her experiences and simply would not speak. However, when she was introduced to the Grandmothers she almost immediately started talking and opening up. This built up her trust in the service and allowed her to start counselling and healing.¹⁵⁰

Impact of *Yorgum* Aboriginal Family Counselling Service

Yorgum is a well established service that has delivered significant individual and community benefits. Testament to their success is the fact that all funding is now on a recurrent basis¹⁵¹ as they have a proven track record of achieving results as well as good governance practices. *Yorgum* has not been formally evaluated but it has recently been acknowledged by ANTaR in its publication, *Indigenous Health Success Stories*.

Yorgum has a broad reach in the community. In 2006-07 the total number of clients attending *Yorgum* for support or counselling was 1,048. Of these, 687 were adults and 361 were children.¹⁵² Referrals are received from child protection, sexual assault and health services, as well as self-referral.

In addition, through the community development program, there are opportunities to work with community members outside of the counselling role in ways that develop individual and community capacity. Family violence workshops are an example of a 'local solution at the local level'¹⁵³ facilitated by *Yorgum* staff for the Noongar community.

149 Maddox, J., *Communication with Social Justice Commissioner's Office*, 12 December 2007.

150 Maddox, J., *Communication with Social Justice Commissioner's Office*, 12 December 2007.

151 *Yorgum* Aboriginal Family Counselling Service, *Annual Report 2007*, p8.

152 *Yorgum* Aboriginal Family Counselling Service, *Annual Report 2007*, p13.

153 *Yorgum* Aboriginal Family Counselling Service, *Annual Report 2007*, p12.



Lessons from *Yorgum* Aboriginal Family Counselling Service

Culturally appropriate

Yorgum have developed a range of unique, culturally appropriate counselling techniques that enable them to engage some of the most traumatised and traditionally hard to reach clients. This has been achieved through a real commitment to staff training, development and supervision. There are good mechanisms for supporting staff in this difficult work and encouragement to use their cultural knowledge and creativity to develop new ways of working.

There is a possibility that the original Aboriginal Counsellor Training course will recommence soon. This could help spread this valuable knowledge to other counsellors.

Community development

Yorgum recognise that not all the problems can be solved through counselling. There is a need to develop communities. Initiatives like the Grandmother's Group have been incredibly successful. The Grandmother's Group honours Elders and supports their valuable role in the community. Similarly, community workshops have provided a voice to Aboriginal people and helped promote anti-violence messages.

Flexible, long term funding

As well as securing Western Australian government funding, *Yorgum* have also developed a long term funding arrangement with Oxfam Australia. Oxfam Australia funds the Community Development Healing Project which includes some of the more innovative programs like the Grandmother's Group and men's healing camps. Jade Maddox remarks that this funding arrangement has given them considerable flexibility to be creative.¹⁵⁴ Oxfam promote *Yorgum* on their website and include it in the *Oxfam Unwrapped* scheme which allows people to buy a goods or service in lieu of a gift, with \$50 buying support for the Grandmother's Group.¹⁵⁵

154 Maddox, J., *Communication with Social Justice Commissioner's Office*, 12 December 2007.

155 Oxfam Australia website, available online at: <http://www.oxfamunwrapped.com.au/Product.php?productid=111>, accessed 7 November 2007.

iii) *Western Australian Aboriginal Healing Project*



Follow the beat: A young girl lets loose on a drum at Kalgoorlie's Drum Beats, an initiative of the WA Aboriginal Healing Project.

The *Aboriginal Healing Project* evolved out of the context of the Gordon Inquiry. The Gordon Inquiry, headed by Magistrate Sue Gordon AM, reported on the responses by government agencies into complaints of family violence and child abuse in Aboriginal communities. It followed a Coroner's inquest into the death of Susan Taylor, a 15-year-old girl in the Swan Valley Noongar Community in Perth. The Gordon Inquiry made 197 findings and recommendations in its report.

In its response to the Gordon Inquiry, the Western Australian Government committed \$75 million over four years to implement strategies addressing family, domestic and sexual violence in Indigenous communities. This led to the expansion of Sexual Assault Resource Centres (SARC) with dedicated Aboriginal Liaison Officer positions and specific counselling services for Aboriginal people.

In most cases, the expansion of SARC services increased service capacity and organisational commitment to provide services to Aboriginal people affected by sexual violence. This increased confidence led the Western Australia Department of Health to consider the possibility of community based healing initiatives to work beyond the individual level but still building on the strengths of the SARC model in a complementary way.



Located in the Women's Health Policy and Project Unit of the Western Australian Department of Health, the *Aboriginal Healing Project* was developed as an initial two year pilot program utilising matched Western Australian and Australian government funds. Funds are provided from FACSIA under the Family Violence Partnership Program. A total of \$2.9 million has been provided for the project. Funding commenced in 2005 and the project has been running ever since.

Description of the *Aboriginal Healing Project*

The *Aboriginal Healing Project* is currently run in Bunbury, Mandurah, Kalgoorlie, Geraldton and Port Hedland. Each of these sites has a high Aboriginal population and are allocated Department of Health funding for the implementation of the Gordon Inquiry recommendations for sexual assault projects. There are well established non government services in each of these areas.

The selection of project sites has contributed to the success of the project. The *Aboriginal Healing Project* is premised on the notion that communities must be ready and willing to heal. Dorinda Cox, Manager of the *Aboriginal Healing Project*, notes that some of the preconditions that must be present for healing projects to work include:

- Whether the community actually wants the healing projects – some communities are not ready to work on these issues and there can be 'some resistance around family violence and sexual assault';¹⁵⁶
- Whether the community has self identified healing as an issue they would like to address;
- Whether the necessary supporting infrastructure for healing exists, such as 'good counselling services, mental health services and Aboriginal medical services';¹⁵⁷ and
- Whether a suitable place for the project to occur exists, for instance, whether there is an existing healing centre, or at least a 'place of belonging'.¹⁵⁸

In communities where these preconditions aren't met, healing projects can be counterproductive. Dorinda Cox notes that 'most communities have some'¹⁵⁹ of these conditions, if not all. In these communities, they suggest that government pools resources to increase capacity.

The *Aboriginal Healing Project* employs full time Aboriginal project officers in each of these communities to develop practical projects on healing and reduction of violence. Four of these workers are located in the Sexual Assault Resource Centres and one is located in an Aboriginal organisation.

156 Cox, D., *Communication with Social Justice Commissioner's Office*, 30 November 2007.

157 Cox, D., *Communication with Social Justice Commissioner's Office*, 30 November 2007.

158 Cox, D., *Communication with Social Justice Commissioner's Office*, 30 November 2007.

159 Cox, D., *Communication with Social Justice Commissioner's Office*, 30 November 2007.



The *Aboriginal Healing Project* has clear objectives about healing and reducing harm through:

- increased sense of group cohesion;
- increased value and worth;
- identifying and agreeing on collective actions which will heal the effects of past suffering and harm;
- increased sense of safety in family and community groups; and
- reduction in the incidence and experience of violence.¹⁶⁰

However, how these are met in each site is entirely dependent on what the community wants and needs. All of the programs are currently aimed at women, adolescents and children.

The project officer in each site consults extensively with the local communities to tailor the project to their needs. Consultations are an ongoing process, with the project officers continually gathering feedback and ideas on the activities in order to maintain the community ownership of the healing activities. Given the diversity of locations, it is not surprising that the range of projects is equally diverse. It makes sense that the needs of the more remote locations like Kalgoorlie and Port Hedland will be different to less remote, better serviced locations like Bunbury or Mandurah.

Some examples of healing projects that have been undertaken to date are as follows:

- Port Hedland: *Mums Against Drugs* – the local women identified that drugs, including ice, were a big problem in the community and causing a great deal of violence. They decided that they wanted support and advice on how to take action against drugs to start healing their community.
- Port Hedland: *Deadly Young Women* – providing support to mainly traditional young women who have been stranded in town after last year's cyclone. There is a severe shortage of accommodation so these young women are often living on the streets in very dangerous conditions. The group meets their practical needs, like 'a good feed and a shower'¹⁶¹ but also increases their protective skills, provides education about violence and sexual assault and support for previous trauma they have suffered.
- Bunbury: *Strong Sisters* – an activity group for 8-15 year olds that aims to increase their self esteem and pride through fun, culturally based activities.
- Bunbury: *Young Mums group* – providing parenting support and education for young women in a safe, culturally appropriate environment.
- Kalgoorlie: *Drum Beats* – anger management program that uses drums as a form of expression.

160 Unpublished briefing document, *Family Violence Partnerships Programme Western Australian Aboriginal Healing Project*. Information provided by Dorinda Cox to Social Justice Commissioner's Office

161 Statz, E., *Communication with Social Justice Commissioner's Office*, 15 October 2007.



- Kalgoorlie: *Prison group* – a program for the women in the Eastern Goldfields regional prison. There is a severe lack of support and rehabilitative programs for the women in prison so the project officer worked with the prison to provide a support group on a regular basis. The group is focused on activities like beading and painting but there is an underlying focus on safety and healing as many of the women are victims, and sometimes perpetrators, of violence.

Most of the projects are practical, activity based groups. On the face of it, these might not seem like traditional healing processes but according to *Aboriginal Healing Project Manager, Dorinda Cox*:

They create the right environment for conversations around healing and violence to occur.¹⁶²

This 'under the radar' approach is non-threatening and lets the participants set the agenda and pace for dealing with difficult issues like family violence and abuse in communities. The activities also provide a 'hook' to get people to attend the programs.

Evaluation has been built into the operation of the *Aboriginal Healing Project*. At the end of each session project officers complete a template that outlines how the activity went, how it met the project goals and reflections for improvement. These forms are fed back to the manager for quality assurance and recording.

The *Aboriginal Healing Project* also seeks feedback from participants to show how they are meeting the key indicators set out in their funding agreement.

Impact of the *Aboriginal Healing Project*

Over 500 participants have taken part in the various Aboriginal healing projects across Western Australia to date.¹⁶³

The *Aboriginal Healing Project* has undertaken some preliminary evaluation of the program, using a primarily qualitative approach. Focus groups and interviews have been held with program participants as an opportunity to discuss their satisfaction with the various projects, the difference it has made to their lives, as well as any areas for improvement.

Overall the response has been very positive and participants seem to be getting benefit from the projects.

A selection of comments from participants in various projects run by the *Aboriginal Healing Project* follows. It indicates the sense of empowerment and support felt by many participants:

In the group we 'learn how to express yourself, listen, and support other people in the community'

The group is 'able to make a difference in peoples lives'

'Strong sisters, solid sisters, I'd suggest it to other kids, culture learning, it's deadly, challenging, happy and brave'

162 Cox, D., *Communication with Social Justice Commissioner's Office*, 30 November 2007.

163 Statz, E., *Communication with Social Justice Commissioner's Office*, 15 October 2007.



'I like the fact that it's all us yorgas (women) and that more people are understanding our culture. Also that we are meeting different people and learning different things every time we come about what our grandmothers' and Elders went through when they were our age'

I like 'the activities, we're empowered, tried new things, there's heart in the group, it's relaxing'

The group 'allowed me to talk openly about my own issues'

'at last it's going, at last we are doing something, getting somewhere'

'good to talk it out and feel better at the end of the group'

'they (participants and project officer) are all very friendly, trustworthy and supportive'.¹⁶⁴

According to survey data, around 90% of participants feel the programs have taught them ways to self-nurture, protect their children and increase their safety.¹⁶⁵

The *Aboriginal Healing Project* staff have also noticed changes in the wellbeing and confidence of the women who have participated. For instance, a number of the women have subsequently become involved in leadership activities like a reference group for Indigenous health issues and taken part in the Indigenous Women's leadership program. According to Erin Statz from the *Aboriginal Healing Project*, this is:

a huge step for these women who previously were living crisis to crisis. This has developed their self esteem and made them more active in the community.¹⁶⁶

Similarly, Indigenous young women who have disengaged from education have gone on to enrol in TAFE courses following supported group visits to the TAFE which built up their confidence to take this step.

Lessons from the *Aboriginal Healing Project*

Community generated

A strength of the *Aboriginal Healing Project* is that each community has been given the freedom to generate their own project and solutions to their problems. This has ensured that communities get the intervention they want and need. It also positions the community in an active partnership with the project so that the process of deciding what to do is actually part of the community development and healing process.

Flexibility

The flexibility and responsiveness of the *Aboriginal Healing Project* can be seen in the community led definitions of healing. Rather than being prescriptive, communities have been asked what healing means for them and how it can be achieved. Overwhelmingly, communities have identified activity based ways of group healing. This means doing things that 'reduce stress levels, give time to reflect and reconnect with self, family and country'.¹⁶⁷

164 Unpublished *Aboriginal Healing Project* evaluation report. Provided by Dorinda Cox to the Social Justice Commissioner's Office.

165 Statz, E., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

166 Statz, E., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

167 Statz, E., *Communication with Social Justice Commissioner's Office*, 15 October 2007.



For instance, one successful activity has been a women's healing camp. For some women, this is the first time they have ever had their hair done by a hairdresser. This might seem like a little thing, but it is an activity that makes the women feel good about themselves and helps them relax away from the pressures of community life. Creating a relaxed environment makes difficult but necessary, conversations around issues like sexual abuse possible.

This way of viewing healing is in contrast to Western healing models which privilege therapy and counselling. Dorinda Cox notes that therapy is 'fairly new'¹⁶⁸ to Indigenous people and may not always be the most appropriate way to facilitate healing.

Sustainability

The *Aboriginal Healing Project* is relatively unique because it has built evaluation into the project from the very outset. This ensures that the Project Officers reflect on their practice, progress of the groups and remain consistent with the core objectives of the project and build the sustainability of the service.

Importantly, the evaluation data provides rich material for funders and helps build a compelling case for continuation. So often we see good programs struggle with funding bodies because they cannot articulate what they are doing and measurable gains. The emphasis on evaluation has increased the sustainability of the *Aboriginal Healing Project*.

Implementing the project where communities are ready

The *Aboriginal Healing Project* has clear criteria about the communities they work with. Communities need to be ready, able and willing to heal. Healing is a difficult process that requires additional support and resources. Without these necessary preconditions, any healing projects can be setting people up to fail.

The *Aboriginal Healing Project* staff are realistic about what they can achieve with their limited resources. However, they do not turn their back on communities that are not ready for healing. They use their assessments to advocate for further support from government to build capacity.

168 Cox, D., *Communication with Social Justice Commissioner's Office*, 30 November 2007.



c) Alcohol Management

Alcohol abuse causes devastating harm in Indigenous communities, fuelling environments fraught with violence and abuse. In a submission to the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory, a Yolgnu elder described alcohol as '[the curse of] this white man's water'.¹⁶⁹

Recognising this harm, proactive strategies have been introduced in some communities to manage the impact of alcohol. This section will consider the impact of the *Groote Eylandt and Bickerton Island Alcohol Management Plan*. In particular, this case study will focus on the methods used by the Groote Eylandt community of Umbakumba to reduce alcohol consumption and related harm.¹⁷⁰

The relationship between alcohol and family violence in Australian Indigenous communities has been well documented. Memmott and others note in, *Violence in Indigenous Communities*,¹⁷¹ that alcohol is one of the many situational factors that can contribute to violence. They also note that there will be different dynamics and therefore different solutions required in different communities to address the impact of alcohol. As an example of why this is the case, there are dry communities where violence is still a problem and conversely, Indigenous people who drink alcohol but do not become violent as a result.¹⁷²

We also need to consider the drinking patterns of Indigenous people when looking at alcohol management strategies. On one hand, we know that a lower proportion of Indigenous people drink, but on the other, those that do drink are approximately six times more likely to drink at high-risk levels than non Indigenous people.¹⁷³ High risk drinking leads to significant health consequences, with an alcohol related death of an Indigenous person occurring every 38 hours.¹⁷⁴

169 Anderson, P., and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, p163.

170 In 2006, the University of Sydney was invited to conduct a review of the Groote Eylandt alcohol management plan on behalf of the Northern Territory Liquor Licensing Commission. The results of this evaluation are found in Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System*. This evaluation is a comprehensive overview and evaluation of the development, operation and effectiveness of the alcohol management on Groote Eylandt, and includes all the major communities on both Groote and Bickerton Island (Milyakbura), of which Umbakumba is one. Permission to quote from the report granted by Ian Crundell, Principal Advisor Community and Justice Policy Division, Dept. of Justice, via email, 22/10/2007.

171 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p26.

172 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p26.

173 It is important to note that recent work by Chikritzhs and Brady have problematised the collection of drug use statistics, particularly within Indigenous communities. See generally, Chikritzhs, T., and Brady, M., 'Fact or fiction? A critique of the National Aboriginal and Torres Strait Islander Social Survey', (2002), 25, *Drug and Alcohol Review*, pp277-287.

174 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007.



Alcohol abuse is not just a problem for Indigenous people living in remote parts of Australia. The incidence of alcohol abuse within the national Indigenous population does not significantly vary across remote and non-remote areas.¹⁷⁵ Moreover, only one in four Indigenous Australians live in remote communities. This means that the great majority of Indigenous Australians live in regional and urban areas¹⁷⁶ and are therefore not subject to discrete community restrictions. This underlines the need for varied approaches to alcohol management rather than focusing solely on problems of, and solutions for, discrete Indigenous communities.

Little Children are Sacred is the latest report to make the connection between alcohol abuse and violence and abuse. It identifies the 'scourge of alcoholism'¹⁷⁷ in many Indigenous communities and notes that:

every one of the 45 places visited by the Inquiry indicated that alcohol was having an extremely significant detrimental effect on almost every aspect of community life including the safety of children.¹⁷⁸

The report concluded that alcohol consumption increased the risk that a person would sexually abuse a child; that alcohol abuse by family members resulted in reduced supervision and protection of children from sexual abuse; and that abuse of alcohol by children also renders them more vulnerable to abuse. The report found that alcohol also impacts on the social fabric of Indigenous communities in the following ways:

- Aboriginal culture is being lost as alcohol has impacted severely on the teaching and practising of culture...
- alcohol abuse clearly led to general physical violence and dysfunction,
- alcohol impacted negatively on education (the Inquiry was told that children were often sleep deprived due to the late night antics of 'drunks'),
- large numbers of children are drinking alcohol,
- alcohol impacted negatively on employment and employment prospects, and
- alcohol is a major cause of family and social breakdown and lead to the weakening of the normal family and social protections that exist in relation to children.¹⁷⁹

175 In 2004-05, 13% of people aged 18 years and over in major cities of Australia had risky/high risk levels of alcohol consumption, compared to 15% in inner regional and 16% in outer regional Australia. Australian Bureau of Statistics, *Alcohol Consumption in Australia: a Snapshot 2004-05*, 2007, ABS cat. 4832.0.55.001, Canberra, available online at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4832.0.55.001/>, accessed 10 January 2008.

176 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey 2002*, ABS series cat. no. 4714.0., Commonwealth of Australia, Canberra, 2002, p1.

177 Anderson, P. and Wild, R., Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.

178 Anderson, P. and Wild, R., Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.

179 Anderson, P. and Wild, R., Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.



Alcohol abuse is not just an issue for Indigenous people. The Australian alcoholic drinks market grew by 2.6% in 2006, to reach a value of \$12.4 billion and is projected to reach a value of \$14.1 billion by 2011.¹⁸⁰ Alcohol is the second largest cause of drug-related deaths and hospitalisations in Australia after tobacco. The estimated direct health care cost of substance abuse is \$145 million for alcohol and \$43 million for illicit drugs.¹⁸¹

In light of such great social and economic cost, research has been increasingly devoted to effective alcohol regulation in Australia in order to address alcohol related harm across the population. In their comprehensive evaluation of Australian alcohol management strategies in both Indigenous and general populations, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, the National

Drug Research Institute (NDRI) identifies two key types of control which can be placed on the sale of alcoholic beverages:

1. *Economic availability*: that refers to the price of alcoholic beverages in relation to the disposable income of drinkers; and
2. *Physical availability*: that relates to the ease with which individuals can obtain or come into contact with alcohol in their local environments.¹⁸²

The NDRI also ranks the strategies tried in various liquor management plans across Australia in order of their effectiveness in reducing consumption of alcohol and alcohol related harm. The three most effective restrictions to date have been:

1. the price of alcohol;
2. restrictions on the hours and days of sale for licensed premises; and
3. limiting access to beverages more frequently associated with certain types of harm.

In terms of Indigenous specific research, Memmott and others support the role of alcohol management plans as 'early proactive' interventions that 'aim to counter any likelihood of violence as early as possible'.¹⁸³

Alcohol management strategies have been introduced within Indigenous communities in most states and territories. For the most part these involve the introduction of 'dry areas' or restrictions on limits of alcohol that can be purchased.

For example:

- In **Queensland**: The *Cape York Justice Study* (2001) led the Queensland government to introduce the *Meeting Challenges, Making Choices* (MCMC) policy in 19 communities (including Yarrabah, Aurukun shire, Lockhart River and Hope Vale).¹⁸⁴ Strategies introduced included the development of Alcohol Management Plans and Family Violence Strat-

180 DataMonitor, *Alcoholic Drinks in Australia; Industry Profile*, Ref. 0125-2201, Sydney, 2006, p7.

181 Australian Institute of Health and Welfare, *2001 National Drug Strategy Household Survey: First Results*, AIWH cat. No. PHE 35, 2002, Canberra (Drugs Statistics Series No. 9), p1.

182 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, pxi.

183 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, pp3-4.

184 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, p73.



egies, rehabilitation services and the creation of statutory powers for Community Justice Groups.¹⁸⁵

- An evaluation of the MCMC program was conducted in 2005 by the Queensland government and revealed mixed results. The evaluation revealed the importance of community involvement and support for alcohol management if it is to succeed, and also noted adverse effects in some communities such as pushing drinkers out of communities to avoid arrest, increased pressure on people with a car to drive out of the community to buy alcohol, and an increase in sly grogging.¹⁸⁶ There were, however, improvements in the number of hospital separations for assault, self inflicted and other injuries and a small number of residents reported that there were fewer fights in the community.
- In **South Australia:** The *Liquor Licensing Act 1997* (SA) provides for the establishment of 'dry areas' aimed at controlling unwanted behaviour associated with the excessive consumption of alcohol in public places. Local Councils can apply for areas to be deemed 'dry' by lodging an application with the Liquor and Gambling Commissioner. In July 2006, there were 92 areas subject to dry area provisions in South Australia. Dry area provisions have been evaluated in Glenelg, Adelaide City and Port Augusta. Although not officially stated, it has been commonly observed that the targets of the legislation are 'Indigenous people and juveniles'.¹⁸⁷
- Dry area provisions of the ***Anangu Pitjantjatjara Yangkuyntjatjara Land Rights Act 1981* (SA)** and the ***Maralinga Tjarutja Land Rights Act 1984* (SA)** provide for Aboriginal owners of those lands to 'make by-laws restricting consumption and possession of alcoholic beverages'.¹⁸⁸
- In the **Northern Territory:** The ***Liquor Act 1978* (NT)** includes provisions for 'general restricted areas' and public restricted areas. The so-called '**Two Kilometre Law**' was introduced in 1983 in section 45D of the *Summary Offences Act 1923* making it an offence to consume alcohol within a two kilometre radius of a licensed premise.
- The Northern Territory government has made particular use of 'dry areas' established under the *Liquor Act 1978* (NT) providing for the 'residents of an area to apply for the area to be declared 'dry', or subject to special restrictions on the sale of liquor'.¹⁸⁹ The taking of alcohol into these restricted areas is a criminal offence. At June 2006, over 100 Northern

185 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, p73.

186 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, pp78-80.

187 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, p85.

188 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, p91.

189 Fitzgerald, T., *Cape York Justice Study*, Department of Communities, Brisbane, 2001, p48.



Territory communities had applied for and been granted 'restricted area' status, including most non-urban communities and town camps.¹⁹⁰

- The NT Licensing Commission can also tailor licence conditions to community circumstances. After a hearing, communities can be made subject to special restrictions on alcohol availability. Tennant Creek, Katherine, Alice Springs and Elliot are all subject to such tailored restrictions. Each has also been evaluated, revealing varying degrees of success.
- In **Western Australia:** Section 64 of the *Liquor Licensing Act 1988* (WA) was amended in 1998 focusing on public health and safety, and allowing the licensing authority 'to impose, vary or cancel' the conditions of any liquor license where the health and welfare of the community is adversely affected by excessive alcohol consumption. This allows for the Director of Liquor Licensing to enforce restrictions as deemed necessary in certain communities to try to curb the incidence of alcohol related crime and disruption. Restrictions have been introduced in Halls Creek, Derby, Roebourne, Port Hedland and South Hedland, Meekatharra, Newman, Mount Magnet, Wiluna and Nullagine, with varied levels of success.
- Separate to this, several Indigenous communities in Western Australia have also advocated for processes to minimise the impact of alcohol. For instance, the Derby Alcohol Action Group (DAAG) and the Alcohol Action Advisory Committee (AAAC) in Halls Creek were instrumental in negotiating agreements with licensees, lobbying the Director of Liquor Licensing and implementing community projects such as sobering-up shelters and health promotions. Community advocacy in Wiluna, Port and South Hedland and Meekatharra has been influential in administering local agreements with licensees, mostly resulting in positive impacts. These efforts were, however, hampered by a lack of enforceability making them difficult to apply across the community.

The *Cape York Justice Study* asserts that 'the number of Indigenous communities that have declared themselves 'dry' demonstrates the considerable support for the general restricted area provisions'.¹⁹¹ The National Drug Research Institute observes that the 'limited evidence indicates that 'dry area' declarations have some impact in reducing both alcohol consumption and related harm... [although] reports on the evaluation of these restrictions indicate some... variation in their impact'.¹⁹²

Because these alcohol management strategies impact particularly on Indigenous communities they may also raise issues under the *Racial Discrimination Act 1975 (Cth)*. Restrictions imposed on one group of people based on their race may amount to racial discrimination and be contrary to section 9 or 10 of the Act. This is unless they can be characterised as a 'special measure' under section 8 of the Act, which is an exception to the prohibition of racial discrimination.

190 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, p96.

191 Fitzgerald, T., *Cape York Justice Study*, Department of Communities, Brisbane, 2001, p48.

192 National Drug Research Institute, *Restrictions on the sale and supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007, pp131-132.



To be characterised as a special measure an action must:

- confer a benefit on some or all members of a class, and membership of this class is based on race, colour or national or ethnic origin;
- be for the sole purpose of securing adequate advancement of the group so that they may enjoy and exercise equally with others, their human rights and fundamental freedoms;
- give protection that is necessary so the group may enjoy and exercise equally with others, their human rights and fundamental freedoms; and
- not lead to a regime of 'separate rights' or be in place for longer than is necessary to achieve equality for the class of members to whom the action is applied.¹⁹³

In essence, this requires defining a restriction on alcohol as a positive or beneficial measure. HREOC has argued that alcohol restrictions **are** capable of being characterised in this way on the basis that 'while you might be detracting from the rights of the individual to alcohol by virtue of introducing restrictions, you may (also) be in fact conferring rights on the group as a result (known as collective rights):'¹⁹⁴ Such benefits may include community safety, freedom from violence and other related benefits.

However, the Commission has also made clear that the consent and participation of those impacted upon is crucial to determining whether the restrictions can be considered beneficial.¹⁹⁵ This has implications for how alcohol restrictions are imposed. Restrictions without the consideration, consultation and consent of the community may not meet the criteria for a special measure.

At a practical level, alcohol management plans that do not have the community behind them are also likely to be less effective. One unintended impact of some dry areas is to push:

drinkers into more and more unsafe drinking practices... [T]hey'll drink in places where they can't be found because that way they can't be found by people like [the police] so what we're marginalising them even more, we're pushing them into more and more unsafe places.¹⁹⁶

The effectiveness of alcohol management plans almost always depends on the level of support the plan receives both from within the community and from external stakeholders. Factors such as the level of policing of dry areas can have a significant impact on levels of sly grog entering dry areas. Many plans receive negligible support through complimentary measures like community education, alcohol treatment and rehabilitation facilities¹⁹⁷ and counsellors or meaningful work within or around the affected community.¹⁹⁸

193 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*, HREOC, Sydney, 2006, p19.

194 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*, HREOC, Sydney, 2006, p19.

195 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities*, HREOC, Sydney, 2006, pp102-114.

196 Mitchell, S., *Communication with Social Justice Commissioner's Office*, 6 November 2007.

197 Conigrave, K, *Correspondence with Social Justice Commissioner's Office*, 17 January 2008.

198 Wodak, H., *Communication with Social Justice Commissioner's Office*, 6 November 2007.



Umbakumba Alcohol Management Plan: regulating alcohol in the idyllic Groote Eylandt.

Groote Eylandt is an idyllic island situated in the Gulf of Carpentaria. The Traditional Owners are the Anindilyakwa people, whose lands stretch across Groote Eylandt, Bickerton Island and the mainland.

There are three main population centres on Groote Eylandt – the Indigenous communities of Angurugu and Umbakumba, and the mining town of Alyangula. There are also several outstations both on Groote Eylandt and neighbouring Bickerton Island.

The island experienced only sporadic contact with Europeans until the mission at Emerald River was established by the Church Missionary Society in 1924.

Umbakumba was settled by Fred Gray in 1938 and used as a service point for defence forces during World War II. Fred Gray continued to run Umbakumba after WWII until the Church Missionary Society took over Umbakumba as a mission in 1958. The Church Missionary Society managed Umbakumba until 1966 when the Aboriginal Welfare Branch took over responsibility.¹⁹⁹

The first elected local council was established in 1982 and Umbakumba has been self-managed since then.²⁰⁰ In the early 1960's GEMCO, a subsidiary of BHP, established what has become the largest Manganese mine in the world on the island at Alyangula.

199 Unpublished, Umbakumba Community Council Inc. *Annual Report 2006-07*, s1.2. Provided by Community Council CEO, Keith Hansen to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

200 Unpublished, Umbakumba Community Council Inc. *Annual Report 2006-07*, s1.2. Provided by Community Council CEO, Keith Hansen to the Aboriginal and Torres Strait Islander Social Justice Commissioner.



In 2006, there were 1,541 residents on the island.²⁰¹ As a result of a large mining population, just under half the population on Groote Eylandt is Indigenous. Of the Indigenous population, 479 speak Anindilyakwa as their first language and 82 reported speaking only English. As a result of the sustained church presence, the great majority of the Indigenous residents are Anglican.²⁰²

The impact of alcohol on Groote Eylandt and the development of the Groote Eylandt and Bickerton Island Alcohol Management Plan

Alcohol was introduced to the residents of Groote Eylandt by mining interests in the early 1960s. As a result, escalating crime and social dysfunction began to tear the Indigenous communities apart. Over the next 20 years, Groote Eylandt became notorious for its high crime rate. Famously likened to a 'war zone', Groote Eylandt had an imprisonment rate of 2,274 per 100,000 in 1986,²⁰³ more than ten times that of population centres like Alice Springs and Darwin.

When the mine opened on the island, conditions were imposed on the mining company in the 1964 Agreement with the Traditional owners included provisions that GEMCO must minimise the impact of alcohol on the community. In 1980, most of Groote Eylandt (excluding Alyangula and the prawn processing depot at Bardalumba Bay) were declared a 'restricted area' under the *Liquor Act* (NT). Alcohol could not be brought into, consumed, sold or disposed of in any of the restricted areas.

Despite this, Groote Eylandt continued to suffer major alcohol related harm. By the late 1980's, a number of women and men from Angurugu tried to address the crisis by further restricting access to alcohol. After meetings and discussions with all Aboriginal communities it was decided that to become a member of the licensed clubs on the island you had to be in the employ of the mining company or live in the township of Alyangula. There was a substantial improvement following this initiative, although alcohol continued to be purchased or brought into communities illegally.

It also became apparent that certain residents of Alyangula were purchasing excessive amounts of alcohol – up to seven cartons of heavy beer at a time – which was being supplied to non-Alyangula residents, including those at Umbakumba. Alcohol related violence and deaths continued to occur.²⁰⁴

This problem was initially addressed through a voluntary limit on takeaway purchases for those members of the Aboriginal community in Alyangula for whom alcohol was a problem. This system was developed by GEMCO in association with

201 Australian Bureau of Statistics, *2006 Census QuickStats: Groote Eylandt (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 9 November 2007.

202 Australian Bureau of Statistics, *2006 Census QuickStats: Groote Eylandt (Statistical Local Area)*, available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 9 November 2007.

203 Extracted data from *Royal Commission into Aboriginal Deaths in Custody*, Vol. 5, s4.5, Table 4, available online at: <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/national/vol5/1.html>, accessed 8 January 2008.

204 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p15.



Anindilyakwa Land Council, police and the individual employees in an effort to protect the jobs and homes of the Aboriginal employees and the impact of alcohol on their communities.

However:

despite successes with this system, concerns were raised that this method of 'rations' could be accused of being discriminatory and could be legally challenged. Because of this, the use of individual takeaway alcohol limits for Alyangula residents was reduced and then largely abandoned by May 2004.²⁰⁵

While this informal system of takeaway limits was in place, a committee was formed to seek a more permanent solution to the problems of regulating alcohol consumption across the island. The committee comprised representatives of the Land and community councils, health services, the township of Alyangula and the liquor licensees. The committee came to a decision to try to 'ratify the system of voluntary individual limits and to seek the support of the Northern Territory Racing, Gaming and Licensing Authority to do so.'²⁰⁶

Developing the *Groote Eylandt and Bickerton Island Alcohol Management Plan* was a long process, which involved a great deal of consultation and consensus building. In fact, twelve Drafts of the Liquor Management Plan were considered between April and August 2003. The final draft was presented to the Minister for Racing, Gaming and Licensing for his information and action in 2003.²⁰⁷ Assurances were gained from the NT Anti-Discrimination Commission that the draft plan did not breach the provisions of the *Anti Discrimination Act*.²⁰⁸

Under the Management Plan, permits would be needed by anyone 'who wished to consume alcohol at their own residence or those of other permit holders, or to buy takeaway supplies.'²⁰⁹ The Plan did not limit the type or amount of liquor that could be purchased by permit holders.

In addition, all residents of Alyangula needed to be financial members of the ARC or the Golf Club in order to obtain takeaway liquor, and all members of either Club were required to obtain a permit from the Licensing Commission.

Residents of Umbakumba could also apply to the Liquor Commission for a permit. This would allow them to possess and consume liquor at their residences and those of other permit holders. They would still be subject to restrictions on the

205 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, pp16-17.

206 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p17.

207 Groote Eylandt Echo 22/08/2003

208 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p18.

209 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p19.



importation of liquor such as not being allowed to take liquor into Angurugu, or to import into Groote Eylandt by plane or barge.²¹⁰

The *Groote Eylandt and Bickerton Island Alcohol Management Plan* came into force in 2005.

Description of the *Umbakumba Alcohol Management Plan*

The *Umbakumba Alcohol Management Plan* describes a series of formal and informal initiatives developed by the community over a period of about 20 years. The result of these initiatives is that Umbakumba is now a dry community.

Throughout the 1980s Umbakumba was the only Aboriginal community on Groote Eylandt to have its own canteen, and had unlimited access to beer, while a permit was required for wine and spirits. The canteen caused much disruption and violence in the community.

The Umbakumba community began to seek to moderate the flow of alcohol in the early 1990s through the *Living with Alcohol Program*.²¹¹ Through the increasingly strong influence of the local women as well as growing support from community men, a beer ration was introduced and stronger forms of alcohol were banned altogether. Initially, the beer ration was 30 cartons per day and then reduced to 14 cartons (336 cans) for the Umbakumba community per day (for a total population of under 350 people).²¹² Over the years this quantity steadily decreased.

Originally, local men at Umbakumba were in control of ordering the ration, but in 2005, women were handed control of the ration. If there was trouble arising from drinking, the ration would be cut for a period of time.

While these measures were partially successful, alcohol continued to be consumed illegally within the Umbakumba community through 'bush club', or in homes. The alcohol was obtained usually through thefts from licensed premises, or through a person who had rights to buy take-away alcohol such as residents of Alyangula or contractors working at the mine.

The introduction of the *Groote Eylandt and Bickerton Island Alcohol Management Plan* has provided the women of Umbakumba with the necessary support to curb alcohol consumption in the community. This is primarily due to the successful regulation of the sale of alcohol from the two licensed premises on Groote Eylandt.

Umbakumba is able to rely on the formal agreements between the licensees, the police and the Northern Territory Liquor Licensing Commission to regulate the sale and consumption of alcohol by Indigenous residents, particularly illegal sale and consumption to Indigenous residents who do not possess permits. However, the

210 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p19.

211 This program was established in the NT in 1992 in an attempt to curb excessive alcohol consumption and alcohol-related harm. A series of strategies and services were implemented across the Territory funded through a levy of 5 cents per standard drink placed on all alcoholic beverages with over 3% alcohol. In 1997 a High Court ruling (*Ha v NSW*) declared state collection of taxes unconstitutional. This caused the levy to be discontinued at which point the Commonwealth Government resumed responsibility for funding the program.

212 Hansen, K., *Correspondence with Social Justice Commissioner's Office*, 13 January 2007.



men resident in Umbakumba have agreed with the women and the Community Council that no one in Umbakumba is permitted to drink at all, regardless of the rights they may still possess under the *Groote Eylandt and Bickerton Island Alcohol Management Plan*.

With the resultant shift in community attitudes, the women at Umbakumba with the support of the Alyangula Police, the Women's Resource Centre staff and the Community Council banned alcohol altogether in Umbakumba in October 2006. Umbakumba has successfully remained a dry community since.

The Impact of the *Umbakumba Alcohol Management Plan*

There is strong support for the *Umbakumba Alcohol Management Plan* and considerable pride in their achievements in turning the community around. When the Anderson and Wild Inquiry visited Umbakumba they noted that:

while Umbakumba provides an excellent example of a community actually winning the war against alcohol, it was the only place of the 45 visited that was happy to make that claim.²¹³

Alcohol management has contributed to a reduction in violence and crime on the island. Particularly noticeable is the great reduction in community violence. Previously, inter-familial disputes would often spill over into street confrontations and occasionally involved family members arming themselves with spears, shotguns and other more makeshift weapons such as crow bars, planks of wood and stones.²¹⁴

This reduction is borne out in Police statistics collected over the period of the development of the *Umbakumba Alcohol Management Plan*. Between 2004-05 and 2005-06, the incidence of assault and aggravated assault fell by 73% and 67% respectively.²¹⁵ Disturbances and public drunkenness also fell markedly by 40% and 75% respectively.²¹⁶

However, the rate of domestic disturbances coming to the attention of Police did not vary significantly, from 90 in 2002-03 to 117 in 2005-06 (with a peak of 123 in 2003-04).

This seems odd given the general reduction in violence but we must bear in mind that statistics on family violence are notoriously problematic. There is also some evidence to suggest that the relatively constant rate of reported family violence may be accounted for by initiatives by the NT Police to combat family and domestic violence, including encouraging reporting, allocating additional resources and the

213 Anderson, P. and Wild, R., Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.

214 Ingram, A., (Co-ordinator, Women's Resource Centre), conversation with the author, 8 November 2007.

215 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government, July 31, 2007*, p33.

216 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government, July 31, 2007*, p33.



introduction of temporary restraining orders.²¹⁷ In other words, more people may be reporting abuse, rather than the statistics indicating that there has been an increase in the actual number of family violence incidences.

There are also suggestions that although alcohol is no longer the primary cause of family violence, it has been replaced by cannabis fuelled violence. However, rather than violence resulting from intoxication, violence related to cannabis use was reported to be linked more frequently to arguments over money to buy cannabis.²¹⁸ Despite this, residents of Umbakumba reported that their community was 'far calmer, more harmonious and more productive, compared with earlier years when alcohol had been available.'²¹⁹

The *Umbakumba Alcohol Management Plan* has impacted on nearly every aspect of community life, with a range of positive flow on effects. The *Little Children Are Sacred* report notes that:

the culture of the community has changed dramatically in a positive way, from one that revolved around alcohol and violence to a more traditional family orientated one.²²⁰

One man told the Inquiry, that he had not drunk alcohol for two years:

When I drank I used to be a fighter, a swearer and a wife abuser but now I'm happy being a good husband.²²¹

The evaluation of the alcohol management plan for the island noted that many Indigenous people in Angurugu had reported 'the community had started to focus on long term goals such as wanting better education for their children, or entering the workforce.'²²²

There was also significantly more cultural activity reported from Umbakumba which has been successfully linked with CDEP programs. The CDEP co-ordinator organised a team of men to develop a market garden, irrigated with a near by freshwater lagoon. This program is in its second year of operation and there are plans to distribute fresh fruit and vegetables to the old people and families in the community as well as to sell the excess produce in the future.

Fishing trips are organised regularly and the fish is similarly distributed. Cultural activities such as ceremonies and traditional crafts such as spear and necklace

217 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, pp35-36.

218 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, pp31.

219 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p32.

220 Anderson, P. and Wild, R., Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.

221 Anderson, P. and Wild, R., Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, Darwin, 2007.

222 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, p41.



making are an increasingly strong element of community life in Umbakumba which many people believe has been greatly assisted through the beer rations and then, most recently the alcohol ban.

Men employed through the CDEP programs run by the Community Council were proud of the work they were doing for their community and frequently won tenders to complete construction and maintenance work on the island.²²³ CDEP teams sealed and curbed the roads in Umbakumba as well as constructed fences around houses, tended the market garden, landscaped individual gardens and constructed the irrigation for these projects.

The process of developing the *Umbakumba Alcohol Management Plan* has also led to a shift in the gender power relations on the island. The women described their position in the community, when agitation for restrictions started in the late 1980's, as very weak. In a stark demonstration of their control of community opinion, in the lunch break of one of the first community meetings with the Liquor Commission, the local men sent the women home and the meeting resumed without the women after lunch. The women subsequently wrote to the Licensing Commissioner outlining their concerns that they had been excluded from the consultative process and the Commission held supplementary meetings in order to capture the women's views on the alcohol management scheme.²²⁴

Many of the women involved in advocacy for liquor management have become increasingly prominent in local politics and some women were also elected to the local Council – a phenomenon unimaginable in 1980. These women also initiated a door knock in May 2007 with the support of the Community Council, to retrieve home made and other weapons as part of a strategy to further reduce the incidence and severity of community and family violence.²²⁵

The confidence and leadership capacity of the women has grown significantly, but 'credit should also be given to the senior Elder men for their acceptance of the proposals put to them by the women',²²⁶ leading to better cooperation and negotiation.

The process for developing the *Umbakumba Alcohol Management Plan* built good community and government relationships through the flexibility and culturally aware work of the Liquor Commission. There were many heated discussions during the consultation process as well as extra, secret or closed meetings where women and council members could express their concerns to the Licensing Commissioner without interruption or fear of intimidation (particularly by men who drank). This flexibility of processes and willingness to accommodate the realities of remote community life immeasurably strengthened the consultation process.²²⁷

223 Ingram, C., (CDEP Supervisor), *Communication with Social Justice Commissioner's Office*, 8 November 2007.

224 Umbakumba Community meeting (senior women only) with Social Justice Commissioner's Office, 7 November 2007.

225 Northern Territory Police, *Police praise Council efforts in Groote Eylandt*, Media Release, 9 May 2007, available online at: <http://www.nt.gov.au/pfes/index.cfm?fuseaction=viewMediaRelease&pID=6753&y=2007&mo=5>, accessed 12 January 2008.

226 Hansen, K. *Correspondence with Social Justice Commissioner's Office*, 13 January 2008.

227 Unpublished, Conigrave, K., Proude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government*, July 31, 2007, pp21-23.



The Licensing Commission facilitated multiple meetings, meeting at outstations and places convenient for local participation as well as conducting two rounds of meetings with residents, with a break of three months in between, allowed all the communities to fully understand the implications of the management plan and to discuss it at length amongst themselves. The good relationship with the police and the willingness of the local liquor licensees to participate in and support the process were also vital elements in the success of the alcohol management plan, island wide.

As Helen Wodak argues,

The model before [the Intervention, and the model accessed by Umbakumba] was a really strong model in that people would apply for something, there would be a hearing, it would be something that people would be consulted about, there would be a process the community would go through to get used to that idea and then it would be implemented...

[R]emote communities and a lot of the town camps in Darwin weren't dry, they were declared dry [as a result of the alcohol regulation put in place under the Northern Territory Intervention.] Communities were notified because a letter was sent from Canberra to the chief executive officer of the Land Trust in Darwin, the day before the legislation came into force... signs still haven't been put up.

So that pre-Intervention model, where women in Umbakumba could say 'this is what I want', where the community could actually reach a point where they could make that decision and it's a decision the community... is proud of – I think most people would say that that process was much more successful.²²⁸

However, when assessing the impact of the *Umbakumba Alcohol Management Plan*, we need to remember that Umbakumba is unique in many ways which have contributed to the success of their program.

Most obviously, Groote Eylandt is one of the most geographically isolated locations in Australia which makes the control of sly grog, and the movement of drinkers following alcohol availability, much simpler problems than those faced by other remote centres. Since the closing of their canteen, the community at Umbakumba is almost a 60km drive on sealed and unsealed road from the only two takeaway liquor outlets on the island. Indigenous residents at Angurugu, geographically much closer to Alyangula have not experienced the same success in reductions in alcohol related harm.²²⁹

The *Umbakumba Alcohol Management Plan* also faces a number of challenges. These include:

- *Removal of CDEP:* The abolition of CDEP under the Northern Territory Intervention directly impacted on these programs and led to an almost immediate increase in the number of men travelling to Darwin from Groote Eylandt to drink in the long grass, sometimes for weeks at a time. Men who had previously felt they were positively contributing to their community, who wore the uniform of a council worker and earned a wage were suddenly unemployed. Umbakumba had 117 people work-

228 Wodak, H., *Communication with Social Justice Commissioner's office*, 6 November 2007.

229 Rev. Haynes, R., *Communication with Social Justice Commissioner's Office*, 5 November 2007.



ing under the CDEP scheme at the time of its abolition.²³⁰ Since July 2007, 'real' jobs have been found for a fraction of the Umbakumba CDEP workforce.

- Associate Professor Kate Conigrave, principal author of the *Groote Eylandt Evaluation* believes that well run CDEP programs play an important and ongoing role in managing and minimising substance abuse in remote communities:

as an addiction medicine specialist and a public health specialist it seems illogical [to abolish CDEP] – we know that unemployment, having a lack of something to do, having a lack of identity and self-confidence all are risk factors for alcohol problems, we know having a good alternative activity can protect you against relapsing into a drinking problem but here we've got people who have been productively engaged in key activities within these communities who are being robbed of that role, who are being left with time on their hands, low self esteem, and who are a greatly increased risk of alcohol problem.²³¹

- *Attitudes around family violence:* There is a level of family violence which has remained unaffected by the success of the alcohol management process. The level of tolerance for this kind of violence is markedly declining amongst the younger women in the community whose knowledge and access of official remedies including temporary restraining orders and other police interventions is increasing.²³² However, these very public mechanisms are not embraced by many of the older residents of Umbakumba, who feel the shame of family contact with the justice system very keenly and, as a result, prefer to handle these issues locally.²³³ This attitude can also affect the level of support women who report abuse receive from community members. The introduction of human rights education for both men and women dealing with conflict resolution and effective engagement with law enforcement agencies would be invaluable for the continued improvements in the quality of family and community life on the island.
- *Delays:* It has taken over 20 years for Umbakumba to become a dry community. However, while obviously not ideal, this extended time frame allowed for capacity building to occur amongst local residents. Once formal processes were set in train, the communities of Umbakumba and Groote Eylandt more widely had a great deal of time to discuss the plans and to inform the community about the process of consultation.

230 Unpublished, Umbakumba Community Council Inc. *Annual Report 2006-07*, s1.2. Provided by Community Council CEO, Keith Hansen to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

231 Conigrave, K., *Communication with Social Justice Commissioner's Office*, 18 October 2007.

232 Umbakumba Community meeting (senior women only) with Social Justice Commissioner's Office, 7 November 2007.

233 Umbakumba Community meeting (senior women only) with Social Justice Commissioner's Office, 7 November 2007.



Lessons from the *Umbakumba Alcohol Management Plan*

Community generated

The *Umbakumba Alcohol Management Plan* came from the community and was not imposed by outside sources, leading to greater community acceptance and ownership. The women from Umbakumba initially accessed services through the Living With Alcohol program which provided a framework through which they could develop community generated solutions to alcohol related family violence. It was this initiative by local women which began the alcohol management process. The *Umbakumba Alcohol Management Plan* developed organically over the years, shifting from restrictions to a full ban when the community was ready.

Effective consultation

The communities at Umbakumba and other Indigenous settlements on Groote Eylandt were able to negotiate and develop the Alcohol Management Plans with Government and service providers through an extensive series of community meetings and effective community representation. Community consultation was facilitated through a series of public hearings.

The Licensing Commission held all their meetings with translation available and travelled to outstations in order to facilitate a true cross section of community views.²³⁴ All the key stakeholders were involved – licensees and Police, GEMCO, Community and Land Council representatives, as well as individuals from all the communities on Groote Eylandt.

Community development

The lengthy process of program development in Umbakumba allowed the women who initiated the movement for alcohol management to build their own capacity as leaders in their community. Over this 20 year period, the female elders in Umbakumba have regained a position of respect and authority which was almost completely absent when they began the process in 1980s. This has also built a more respectful and cooperative relationship between women and men to negotiate solutions.

A partnership approach

The women involved in the development of the *Umbakumba Alcohol Management Plan* were ably assisted by a stable team of non Indigenous service providers, including the Coordinator of the Women's Resource Centre and CEO of the Community Council and the CDEP coordinator. Successful partnerships were also formed with the Licensing Commission, local Police and the mining company GEMCO, in developing one of the most successful alcohol management programs in the Northern Territory.

Holistic

While the *Umbakumba Alcohol Management Plan* was being developed, other strategies were being put in place in Umbakumba which tackle the situational factors of alcohol misuse and family violence. The CDEP programs provided a sense of community unity in fixing infrastructure and supporting vulnerable people in the community and provided a positive alternative to alcohol. Regular income for men took financial pressure off families and men were able to feel self sufficient, rather than having to bully family members into giving them money.

234 Unpublished, Conigrave, K., Prude, E. and d'Abbs, P., *Evaluation of the Groote Eylandt and Bickerton Island Alcohol Management System, A report produced for the Department of Justice, Northern Territory Government, July 31, 2007*, pp20-21.



Empowering women

The women who initiated the alcohol management process were gradually empowered through their engagement with government and community services. The involvement of these services provided authority and support for these women, particularly at the beginning of the advocacy process, when their own cultural authority was weakest through decades of social dysfunction. As the movement for alcohol regulation gained momentum, the female elders were able to access and strengthen their traditional sources of strength and leadership.

Involving men in the solutions to family violence

The alcohol restrictions put in place by the women would not have been possible without the acceptance and support of the men. The support of the men also seems linked to better opportunities in the community, in particular the CDEP program.

The CDEP program has built a skill base, particularly for young men who were glad to participate in a routine of paid employment which often produced practical benefits for their community. Regular income took financial pressure off families and men were able to feel self sufficient, rather than having to bully family members into giving them money.

Sustainability

The length of time and the rigorous process of consultation have meant that alcohol consumption in Umbakumba is not tolerated – the community norms have been successfully modified. However, plans to move the Community Council to Nhulunbuy on the mainland, will seriously test the resilience of Umbakumba residents as the community will be left without a resident Police presence, no resident medical staff and no system of local governance. These kinds of administrative structures are vital in supporting community driven programs through liaising with government, organising funding for programs (particularly important post CDEP) and maintaining the systems of administration.

Flexibility

The flexibility of support services and the Licensing Commission throughout the negotiation process are integral to the success of the *Umbakumba Alcohol Management Plan*. Without the recognition of local power dynamics and custom, the Plan would not have been successfully implemented.



d) Indigenous men's groups in South Australia: saying 'No to Drugs, Alcohol and Violence'

This section examines the role Indigenous males are playing in South Australia in reducing family violence through men's groups and, more broadly, through the preservation and revival of traditional culture.

Indigenous men's groups exist across Australia²³⁵ and provide a tool for addressing family violence, grief, trauma and other issues facing Indigenous men.²³⁶ Two case studies are presented here from South Australia, both operating in urban settings:

- *Yerli Birko* ('group of males') – Based in the Adelaide Metropolitan Area, it supports local Indigenous men to address a range of issues (including grief, trauma, drug and alcohol problems and family violence) through a program of sharing stories and information and preserving and reviving male culture.
- *Spirited Men* – based in the regional urban setting of Murray Bridge, it provides a culturally based men's support group and also operates a family violence prevention/anger management program *Tau Ngaraldi* ('stop the anger').

A third case study of the first SA Gathering of Aboriginal Men held in Camp Coorong, Meningie, South Australia in 2006 is also presented here.

The importance of culture

Through the case studies that follow, a narrative emerges that speaks of the importance of traditional Aboriginal culture to Indigenous men.

Culture provides a source and support for strong anti-family violence norms of behaviour. In traditional cultures, men come together to address 'men's business'. Men's groups draw on this history and tradition, creating social capital for non-traditional living Indigenous men. This can be used to mitigate the impact of psychosocial and other forms of chronic stress caused by negative long-term situational factors facing them and that are drivers of family violence (such as racism and poverty).

Culture also supports Indigenous men coming together to make their community's business *their* business, or men's business. Working together to offer leadership in the formulation of a wide range of solutions to problems affecting their communities in a similar way to which organised Indigenous women have already successfully demonstrated in many settings.

Recent research has highlighted the importance of cultural dislocation as an underlying factor contributing to family violence in South Australia.

235 See, for example: Aboriginal Health and Medical Research Council, *Directory of Aboriginal Men and Boy's Groups located in New South Wales*, available online at: <http://www.ahmrc.org.au/amh/amh/downloads/MensHealth.pdf>, accessed 5 November 2007.

236 See generally: Mc Calman, J., Tsey, K., Wenitong, M., Whiteside, M., Wilson, A., Cadet-James, Y., and Haswell, M., *A literature review for Indigenous men's groups*, School of Indigenous Australian Studies and School of Public Health and Tropical Medicine, James Cook University, 2006, p6. See also the case studies earlier in this chapter of *Yorgum* and *Rekindling the Spirit*, which include men's camps/groups as one of the tools utilised.



The 2007 report by the South Australian Social Inclusion Commissioner, titled *To Break the Cycle: Prevention and rehabilitation responses to serious repeat offending by young people*,²³⁷ involved extensive consultations with State-wide Indigenous communities.²³⁸ It highlighted that despite an ongoing cultural revival across SA, cultural learning was viewed by them as an outstanding need, and was a particularly important issue for Aboriginal young people.

Not only was it felt that cultural education and cultural mentoring would engender self-esteem and pride in Aboriginal young people, but it also helped ensure the continuation of Aboriginal culture into the future.²³⁹ Indigenous leadership and the involvement of Elders in the formulation of solutions to problems affecting the community were also seen as critical factors in building and strengthening community capacity.²⁴⁰

Indigenous male cultural norms have been grossly misrepresented in the media in recent years as supporting child abuse and family violence.²⁴¹ This is a point of view that I and many Indigenous leaders have loudly condemned and repudiated. I have repeatedly argued that customary law and traditional ways provides support for strong families in which the rights of women and children are respected.

In my view, Aboriginal customary law and traditional ways does not encourage nor condone family violence or abuse against women and children. While systems of law differ among the many Indigenous peoples of this country, I have yet to see any evidence of a single Indigenous culture in which violence against women is condoned as part of that 'culture'. As I have publicly stated many times: We should be speaking of the perpetrators of violence and abuse as people who do not respect customary law. We need to be continually countering the false claims that customary law is itself the problem.²⁴²

Indeed, as set out here, it can be part of the solution.

The importance of culture is a significant difference between Indigenous men's groups and non-Indigenous men's groups.

237 Cappo, D., (SA Social Inclusion Commissioner) *To Break the Cycle – Prevention & Rehabilitation responses to serious repeat offending by young people*, Government of South Australia, Adelaide, 2007, available online at: www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf, accessed 7 November 2007.

238 Managed through an Aboriginal Advisory Group, there were a total of 24 community and youth forums facilitated, which included the metropolitan area and 12 regional locations in SA. Cappo, D. (SA Social Inclusion Commissioner) *To Break the Cycle – Prevention & Rehabilitation responses to serious repeat offending by young people*, Government of South Australia, Adelaide, 2007, p34, available online at: www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf, accessed 7 November 2007.

239 Cappo, D., (SA Social Inclusion Commissioner) *To Break the Cycle – Prevention & Rehabilitation responses to serious repeat offending by young people*, Government of South Australia, Adelaide, 2007, p37, available online at: www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf, accessed 7 November 2007.

240 Cappo, D., (SA Social Inclusion Commissioner) *To Break the Cycle – Prevention & Rehabilitation responses to serious repeat offending by young people*, Government of South Australia, Adelaide, 2007, p38, available online at: www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf, accessed 7 November 2007.

241 See for example: Kearney, S., Wilson, A., *Raping children part of 'men's business'*, *The Australian*, 16 May 2006, available online at: <http://www.theaustralian.news.com.au/story/0,20867,19149874-2702,00.html>, accessed 8 November 2007.

242 Calma, T., *The Integration of Customary Law into the Australian Legal System*, address given by the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Globalisation, Law and Justice Seminar, 27 October 2006 Perth, UWA in partnership with La Trobe Law and the Australian Institute of Comparative Legal Systems.



Many non-Indigenous men's groups are a response to the challenge of feminism to patriarchy. They help men to challenge traditional (and oppressive) male roles and the heritage of male dominance that existed, and still exists, within non-Indigenous society. In contrast, Indigenous men's groups address a far more complex situation; many of the men attending such groups will experience themselves as radically disempowered in non-Indigenous settings, facing systemic racial discrimination and socio-economic disadvantage.

In this context, Indigenous men's groups provide a space for the preservation and revival of empowered and culturally supported male role models. This may have a direct impact on family violence in and of itself because many commentators believe that the pervasive disempowerment of Indigenous men is a driver of family violence.

Commentators have observed that the only place many Indigenous men feel powerful is in their own homes, and link family violence to this distortion of what would otherwise be a 'spread of power' in their lives. In other words, the misuse of power in one of the few spheres available to Indigenous men but can result in the abuse of women and children.²⁴³

Men's groups also provide a 'cultural fit' in that they provide a space for men to tell stories.

Story telling is crucial to Indigenous peoples. It is integral to the maintenance of our cultures and it helps us to understand our heritage. And it is critical in defining our identity. The story-telling tradition of our peoples is one of the great strengths of our cultures. It contributes to our resilience as peoples as it has throughout millennia. Indeed, story-telling has the potential of healing many of our Indigenous men.

Within the men's groups that are the subject of the case studies presented here, narrative therapy is used to varying degrees. Narrative therapy was developed during the 1970s and 1980s by Michael White and David Epston, based in the Dulwich Centre, Adelaide. Their approach became famous with the 1990 publication of their book, *Narrative Means to Therapeutic Ends*.²⁴⁴

The Aboriginal Health Council of South Australia (the State peak body that represents Aboriginal Medical Services in SA) has worked with Michael White, and the Dulwich Centre to develop and deliver the Diploma of Narrative Approaches for Aboriginal People. At time of writing, there are over 40 (mostly Indigenous) graduates.

Narrative therapy holds that our personal identity is shaped by the stories (narratives) we tell ourselves about our lives. A narrative therapist is interested in helping people understand these stories, and to begin to understand their lives in empowering ways. Part of the therapeutic value of this method is that by seeing their lives as a 'story' people are able to view their lives in a more objective manner. This externalisation, or objectification, of a problem makes it easier to come to terms with the problem.

243 Mc Calman, J., Tsey, K., Wenitong, M., Whiteside, M., Wilson, A., Cadet-James, Y., and Haswell, M., *A literature review for Indigenous men's groups*, School of Indigenous Australian Studies and School of Public Health and Tropical Medicine, James Cook University, 2006, p6, available online at: <http://10.1.1.248:8080/ProgressMessages/litera31.doc?proxy=10.1.1.248&action=complete&index=16&id=52122717&filename=litera31.doc>, accessed 12 November 2007.

244 Epston, D., White, M., *Narrative Means to Therapeutic Ends*, Dulwich Centre, Adelaide, 1990.



This is a form of therapy that has been found to be particularly effective in addressing many of the issues that can erode Indigenous men's and women's social and emotional well-being including grief and loss, trauma and depression from racism and the impact of the Stolen Generation practices and that contribute to drug and alcohol abuse and family violence.

Narrative therapy does this by encouraging Indigenous people to not only tell their stories, but to consider the cultural, spiritual and historical context of their lives and 'rewrite' their stories by exploring other ways of thinking about it. This re-telling is done with a view to weaving new and positive meanings back into their lives, as well as exploring new possibilities for the future. Men in the case study groups reported that they find it healing to realise that problems that they have internalized as 'their problems' (notably, racism) are often in fact much larger than themselves: a part of historical and social processes over which they have had little control.

The need to get Indigenous men involved with addressing family violence has been recognised by Indigenous women in South Australia.²⁴⁵ The South Australian *Family Safety Strategy* (2007) recognises 'the importance of working with extended families and communities in responding to Indigenous Family Violence and the need to provide holistic services that positioned themselves around the whole family rather than responding to each family member separately'.²⁴⁶ This commitment has the capacity to further support men's group initiatives.

The extent of family violence in South Australia

Anecdotally, family violence is reported as being a significant issue in the Indigenous communities in both Adelaide and Murray Bridge. However, disaggregated data about family violence in these two locations is not available. In this section, data in relation to the State of South Australia is set out. In relation to the case studies themselves, data specific to their individual settings is included.

The SA Office for Crime Statistics and Research reports that for all of SA in 2005 'alleged Aboriginal offenders' comprised 37% of all arrests for assault.²⁴⁷ Given that Indigenous people comprise 1.7% of the total SA population,²⁴⁸ the data shows community members are being arrested for assault at significantly higher rates than the non-Indigenous community, but the context of the alleged violence (and the circumstances of the arrest) is unclear.

245 See for example the recommendations coming from the 2006 SA Gathering of Aboriginal Women: SA Office for Women, *Snapshots, Women's safety strategy 2005 -07*, Government of South Australia, 2007, p8, available online at: http://www.officeforwomen.sa.gov.au/files/WomensSafetyStrategy_SnapShots_April2007.pdf, accessed 15 November 2007.

246 Office for Women, *Family Safety Strategy Strategic Overview*, Government of South Australia, Adelaide, undated, p3, available online at: http://www.osw.sa.gov.au/files/Family_Safety_Framework_Strategic_Overview.pdf, accessed 15 November 2007.

247 Percentages are calculated in relation to: 232 for grievous bodily harm; 272 for actual bodily harm and 1,210 for 'other assault'. Office of Crime Statistics and Research, *Crime and Justice in South Australia, 2005, No. 42 (1) Offences Reported to Police, The Victims and Alleged Perpetrators*, SA Dept of Justice, Adelaide, 2006, p187 (Table 6.15b), available online at: http://www.ocsar.sa.gov.au/docs/crime_justice/OFF_Report2005.pdf, accessed 14 November 2007.

248 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islanders*, ABS cat. no. 4705.0, ABS, Canberra, p5, [Table - Estimated Resident Population, Indigenous status - 2001 and preliminary 2006].



There are limits to the data that make it difficult to use to assess the extent of family violence as South Australia Police (SAPOL) officers are not required to record the relationship between the perpetrator of the assault and the victim and the extent of non-reporting is so great as to render what data is collected of little use.²⁴⁹

Other sources indicate a high number of Indigenous victims of assault. The ABS *National Indigenous Social Survey 2002* (NATSISS 2002) reported that 29.6% of respondents from SA reported being the victim of physical or threatened violence in the previous 12-months.²⁵⁰

Data relating directly to family violence is also generated as a byproduct of the issuance of Domestic Violence Restraining Orders (DVROs) by SAPOL. Over 2004 (the latest available data), 43 DVROs were issued to Indigenous people (no gender breakdown published) across SA (about 13.5% of all DVROs). This compares with 319 DVROs issued to people in the non-Indigenous community, with a further 59 issued to people whose Indigenous status was not recorded.²⁵¹ However, due to the likely extent of underreporting in this area, such data is not likely to indicate the extent of actual family violence occurring in Indigenous (and indeed the non-Indigenous) communities.²⁵² This data, like the above, suggests family violence is occurring at significantly high rates in SA.

249 Office of Crime Statistics and Research, *Crime and Justice in South Australia, 2005, No. 42 (1) Offences Reported to Police, The Victims and Alleged Perpetrators*, SA Dept of Justice, Adelaide, 2006, p258, available online at: http://www.ocsar.sa.gov.au/docs/crime_justice/OFF_Report2005.pdf, accessed 22 November 2007.

250 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2002*, ABS cat. No. 4714.0, ABS, Canberra, p23 [Table 2].

251 SA Office of Crime Statistics and Research, *Correspondence with the Social Justice Commissioner's Office*, 30 November 2007.

252 Al-Yaman, F., Van Doeland, M., Wallis, M., *Family Violence in Indigenous communities*, Australian Institute of Health and Welfare (AIHW). AIHW cat. no. IHW 17, Canberra, 2006, pp16-17, available online at: <http://www.aihw.gov.au/publications/index.cfm/title/10372>, accessed 30 November 2007.



Men's business: Members of the *Yerli Birko* group.

Yerli Birko is a men's group based in the Adelaide Metropolitan area. It aims to support Indigenous men across a range of issues including in relation to the prevention of family violence.

At the 2006 Census, 12,463 Indigenous people were living in the Australian Bureau of Statistics (ABS) Statistical Division of Adelaide,²⁵³ comprising approximately 1.1% of the population²⁵⁴ and just under half of the Indigenous population of the State (26,000).²⁵⁵ This is less than half the national average of Indigenous representation reported in the total Australian population (estimated at 2.5%).²⁵⁶ Approximately 40% of Adelaide's Indigenous population are under 15 years of age.

Adelaide is built on Kaurna land. The Kaurna people suffered the full force of the colonisation of the State. Significant numbers of Indigenous people in region have Kaurna ancestry.

253 Hereon referred to as 'Adelaide' when referring to data from the 2006 Census. Australian Bureau of Statistics, *2006 Census of Population and Housing, Adelaide (SD 405), Selected Person Characteristics by Indigenous Status by Sex* (First Release Processing) (Table 01). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.

254 Australian Bureau of Statistics, *2006 Census Quick Stats: Adelaide (Statistical Division)*, available on the ABS website at: <http://www.censusdata.abs.gov.au>, accessed 25 October 2007.

255 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islanders*, ABS cat. no. 4705.0, ABS, Canberra, p5, [Table – Estimated Resident Population, Indigenous status – 2001 and preliminary 2006].

256 Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islanders*, ABS cat. no. 4705.0, ABS, Canberra p4.



Neighbouring peoples include the Ngadjuri, the Peramangk and the Ngarrindjeri towards the south east of the State (which includes the Murray Bridge area). As settlement expanded out from Adelaide, many clans and families were moved, or encouraged to move, to missionary run reserves at Point Pearce on the Yorke Peninsula or at Point McLeay near the mouth of the River Murray (now known as Raukkan).²⁵⁷ Aboriginal people began to move in increasing numbers to urban settings including the Adelaide Metropolitan Area in the 1960s.

The present day legacy of the movement and mixing of tribal groups in SA is reflected in the NATSISS 2002. This reported that approximately 37% of the SA Indigenous population had no tribal affiliation; and that of the approximately 63% who did, only 16.4% remained on their traditional country.²⁵⁸

Efforts to preserve and revive the Kurna language and culture began in 1990. A Living Kurna Cultural Centre was established, and a Kurna language program was introduced into Kurna Plains School, the only Aboriginal school in metropolitan Adelaide,²⁵⁹ in 1992. Census 2006 data for Adelaide reported that 3% of the Indigenous population (485 people) spoke an Indigenous language at home.²⁶⁰

In Adelaide, there is a sizable male youth cohort and relatively few Elders: 48% of Aboriginal and/or Torres Strait Islander males were under 19-years of age at the Census 2006; only approximately 3% were over 60 years of age in Adelaide.²⁶¹

Census data suggests that many young Indigenous males in Adelaide are being raised in one-parent families, with the father's role being less than that of the mother. Census 2006 data reported 5,523 Adelaide 'households with Indigenous persons'.²⁶² Of these, approximately 26% were a 'couple family with children'; and 35% were 'one parent' families.²⁶³

Adelaide's Indigenous populations are significantly socio-economically disadvantaged across all indicators when compared to the non-Indigenous population.

There are very few specific services in Adelaide for the male perpetrators of domestic or family violence with a preventative emphasis; be they for Indigenous or non-Indigenous males. The *Aboriginal and Torres Strait Islander Urban Location and Health Project* highlighted a need for 'safe spaces and places' for Aboriginal

257 Horton, D., (ed) *The Encyclopaedia of Aboriginal Australia*, Aboriginal Studies Press for the Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1994, p33.

258 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Social Survey 2002*, ABS cat. No. 4714.0, ABS, Canberra, p22 [Table 2].

259 Kurna Plains School is an Aboriginal Reception to Year 12 school. Kurna language and culture form an important part of the curriculum, which covers the breadth of the standard public school program, available online at: <http://www.kurnaas.sa.edu.au/>, accessed 31 October 2007.

260 Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC) (SLA 420105040) Language spoken at home by proficiency in Spoken English/Language* (Table 06). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.

261 Australian Bureau of Statistics, *2006 Census Quick Stat: Adelaide (Statistical Division)*. Available on the ABS website at: <http://www.censusdata.abs.gov.au>, accessed 25 October 2007.

262 With at least one Aboriginal and Torres Strait Islander person normally resident.

263 Australian Bureau of Statistics, *2006 Census of Population and Housing, Adelaide (SD 405), Tenure Type and Landlord Type by Dwelling Structure by Indigenous Status of household* (Table 18). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.



and Torres Strait Islander men to be able to gather for support and to discuss their issues and experiences in Adelaide.²⁶⁴

In recent years in Adelaide, the situation of young Aboriginal men has become critical because of a combination of: the media's stereotyping of them as out of control, violent offenders, poor relations between SAPOL officers and the Indigenous community, and the very real possibility that greater numbers of young Indigenous men will be incarcerated in the future due to recent changes in SA law.

All three factors are the result of SAPOL and the SA media's reporting a so-called Aboriginal 'Gang of 49' (named for what has been alleged is a gang of 49 related, young, mostly Aboriginal males, many of whom were said to be repeat offenders) who are alleged to be responsible for an ongoing violent, organised crime wave in Adelaide.²⁶⁵

'Operation Mandrake' was launched by SAPOL as a result, as well as the previously discussed Inquiry undertaken by the State's Social Inclusion Commissioner. His report, *To Break the Cycle*, recommends strengthening the existing requirement on the SA courts to take account of community safety when sentencing serious repeat young offenders; that is, by treating them as if they were adult offenders. The idea being to ensure young repeat offenders are exposed to prison rehabilitation programs as well as removed from the community for a longer than the usual period of time for youth offenders.²⁶⁶ A Bill to this effect has reportedly been drafted, but is yet to be legislated.

The Aboriginal Legal Rights Movement (ALRM) in Adelaide, among others, has been highly critical of the way this issue has been handled by the media, police and the South Australian Government.²⁶⁷ There have been questions raised by ALRM as to whether the 'Gang of 49' ever existed.²⁶⁸

Description of the *Yerli Birko* men's group

One positive that emerged from the fallout of the 'Gang of 49' affair was that concerned men in the Indigenous community, and others working with the community, began to look at ways they could address this constellation of negatives impacting on young Indigenous males in Adelaide, as well as provide support for Indigenous men in Adelaide in general.

264 Gallaher, G., *Aboriginal and Torres Strait Islander Urban Location and Health Project*, Department of Public Health, Flinders University, 2007.

265 See, for example, Walker, J., *Crime wave a family matter for the gang of 49*, article in *The Australian*, November 2, 2007.

266 Cappo, D., (SA Social Inclusion Commissioner) *To Break the Cycle – Prevention & Rehabilitation responses to serious repeat offending by young people*, Government of South Australia, Adelaide, 2007, p43 (Recommendation 2), available online at: www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf, accessed 5 November 2007.

267 See James, C., *Gang of 49 'not real'*, in *The Advertiser*, February 28, 2007. See also community concerns in Cappo, D., (SA Social Inclusion Commissioner) *To Break the Cycle – Prevention & Rehabilitation responses to serious repeat offending by young people*, Government of South Australia, Adelaide, 2007, p 38, available online at: <http://www.socialinclusion.sa.gov.au/files/breakthecycle2007.pdf>, accessed 5 November 2007.

268 Aboriginal Legal Rights Movement, *Annual Report 2006-07*, ALRM, Adelaide, p36, available online at: <http://www.alrm.org.au/latest%20news/Annual%20Report%202006-07.pdf>, accessed 5 November 2007.



Simon Boyce, the men's support worker in the Towilla Purruputtiappendi (the community and social health team of workers) at Nunkuwarrin Yunti of SA Aboriginal Medical Service (AMS), decided to explore the possibility of a support group in Adelaide in March 2006.

Yerli Birko was a product of both Nunkuwarrin Yunti of SA and the Aboriginal Sobriety Group (ASG) working collaboratively, and building on their existing programs and expertise.²⁶⁹

Text Box 7: Profile of services offered by Nunkuwarrin Yunti and the Aboriginal Sobriety Group

Nunkuwarrin Yunti of SA Aboriginal Medical Service

Nunkuwarrin Yunti²⁷⁰ of SA Aboriginal Medical Service (AMS) was established in 1971. It employs about seventy workers (from doctors through to administrative staff). Services include: primary health care, child and maternal health services; a clean needle program; dental services; diabetes services; a link up program for members of the Stolen Generation; a methadone program for recovering heroin addicts; a homeless person's service (No Pugli); a prison health service; a gambling program; a sexual health program and the Counselling and Social Health Team.

From the Adelaide centre, Nunkuwarrin Yunti of SA operates outreach programs and clinics operate in outer suburbs (notably Elizabeth and Noarlunga), and a transport service operates to bring people to the centre and outreach clinics.

Towilla Purruputtiappendi ('healing the spirit') is an important part of Nunkuwarrin Yunti of SA, offering counselling, and mental health and social work services. It operates from the Adelaide centre, but has an extensive outreach program that works in correctional facilities, detention centres, shelters and hospitals.

Aboriginal Sobriety Group²⁷¹

Founded in 1973 as a volunteer-run self-help group, the Aboriginal Sobriety Group (ASG) shares the same building as Nunkuwarrin Yunti of SA, and like the AMS operates a substantial outreach program across the Adelaide Metropolitan Area. It provides integrated intervention, prevention, diversion, treatment and rehabilitation services for Indigenous people whose lives have been adversely affected by alcohol and substance misuse.

Intervention occurs through a Mobile Assistance Patrol that patrols almost constantly (24 hours a day, five days a week; 12 hours in the evening, two days a week) within a 45 kilometre radius of the Nunkuwarrin Yunti of SA looking for people under the influence of alcohol and other substances in public places. What is offered varies: to some it is simply transport home (or to homeless shelters) or to medical or welfare services; for others, this is the first step towards stabilisation and rehabilitation programs. This occurs through the drug and alcohol awareness education provided as a part of the patrol's services. In 2006-07, 12,215 instances of transport were provided.²⁷²

269 Interview with Simon Boyce, Men's Support Officer, Community and Social Health Team, Nunkuwarrin Yunti of SA, 23 October 2007. Also Simon Boyce, unpublished material on *Yerli Birko* prepared for the Cultural Reference Group, 2007.

270 Meaning 'working together'.

271 Interview with Basil Sumner, CEO of the Aboriginal Sobriety Group (23/10/07), supplemented with information from: Aboriginal Sobriety Group (ASG), *Annual Report 2006/07*, ASG, Adelaide 2007; Aboriginal Sobriety Group (ASG), *Annual Report 2005/06*, ASG, Adelaide 2006.

272 Aboriginal Sobriety Group (ASG), *Annual Report 2006/07*, ASG, Adelaide 2007, p10.



For Indigenous men, Cyril Lindsay House offers a short-term residential stabilisation program based in the Adelaide CBD. A non-medical 'dry' hostel, it caters for up to 12 men at one time, and is staffed 24 hours a day, seven days per week. Over 2006-07, it provided 157 instances of care.²⁷³ While there, men are encouraged to devote time to gaining physical fitness at the Nunkuwarri Yunti centre gym. 'The Shed' an outer suburban ASG centre also contains a fitness centre. They had a total of 217 clients in 2006-07.²⁷⁴

ASG Talking Circles are also conducted at the Lakalinjeri Tumbetin Waal (LTW) rehabilitation program. LTW (meaning 'clan, family, community, healing place') is a non-medical 'dry' residential centre at Monarto. Ten people at a time, men and women, live there for a twelve week period and are assisted through a number of programs to both fully recover from alcohol or other substance misuse lifestyles, and make positive steps towards living productively in the community. The program encompasses traditional cultural methods of teaching and learning. A Manager, Caseworker/Counsellor, and a Senior Rehabilitation Care worker are available to assist clients on site. Over 2006-07, 112 clients used the service, with 35 people undertaking the 4-month program.²⁷⁵

As set out above, the ASG had experience in running men's Talking Circles with a specific focus on breaking drug and/or alcohol dependency. It also employed a Cultural Adviser, a respected Ngarrindjeri elder, to assist with this part of the program. The sharing of personal stories with other addicts in Talking Circles is an important part of its stabilisation program; and this would often involve discussing family violence and the links to alcohol and substance abuse.

Towilla Purruputtiappendi at Nunkuwarri Yunti of SA AMS offered counselling using narrative therapy. Using this, Towilla Purruputtiappendi already provided individual counselling to men and women to address issues of family violence, relationship breakdown and effective parenting. It also had experience in running support groups: already running one for women.

The first step towards the creation of *Yerli Birko* was the forming of a Cultural Reference Group in April 2006, which included Elders working with the ASG and other's experienced with working with Indigenous young men from the health and social services. It was decided that cultural learning would be an important part of the group's activities.

It was decided that *Yerli Berko* would also operate in part as an outreach program to enable the many males living in outer suburban Adelaide to participate. The ASG Mobile Assistance Patrol bus was made available to transport men to meetings wherever they occurred. It was decided that a regular feature of the group was the provision of a healthy meal to participants.

In April 2006, the name '*Yerli Birko*' was approved by the Kurna Warra Pintyandi (the Kurna peoples' language committee based in Adelaide). Flyers were printed and distributed to potential referral sources. An official launch was held in Victoria Square on National Sorry Day: 26 May 2006. Initial referrals were from the ASG,

273 Aboriginal Sobriety Group (ASG), *Annual Report 2006/07*, ASG, Adelaide 2007, p12.

274 Aboriginal Sobriety Group (ASG), *Annual Report 2006/07*, ASG, Adelaide 2007, p13.

275 Aboriginal Sobriety Group (ASG), *Annual Report 2006/07*, ASG, Adelaide 2007, p15.



the Nunkuwarri Yunti of SA Prison Health program, and the Link Up program and from the Towilla Purruputtiappendi itself.

The stated aims of *Yerli Birko* are:

- to increase the participant's knowledge and to develop a greater understanding of their own social and emotional well being issues
- to discuss health issues that directly affect Aboriginal males;
- to encourage and discuss self-determination and empowerment so males can take control over their own lives;
- to invite and link in with other service providers and specialist services and to build on those relationships; and
- to promote and support other Aboriginal males within the community who need guidance and support.²⁷⁶

Ground rules for the group were also established at the second meeting:

- that members treat each other with respect;
- that meetings are drug and alcohol free;
- that the men were not 'clients' but men;
- that the group would be open to new members; and
- that whatever was said in the group stayed in the group.

An initial concern of the Cultural Reference Group was attracting critical numbers of men. One concern expressed by possible attendees was that the group was 'therapy', and they did not want to disclose personal information in this setting. Because of this, from the start it was decided that the group would be informal and relaxed, and not be overtly 'therapeutic'. Instead, the emphasis would be on culture and learning.

Anecdotal experience from other men's groups suggested that over time the men would share their stories and work towards more therapeutic outcomes, but that it was important to establish a relaxed atmosphere first. One issue that was identified as needing to be addressed at an early stage was the false perception that the group was solely for "initiated" Indigenous 'men'; and hence, the term 'males' (over men) is used to avoid confusion in publicity materials.

From the start, the males showed great enthusiasm for cultural events. A cultural program evolved over time (guided, in part, by the males themselves), with visits to the Kurna Cultural Centre in Warriparinga, to some of the galleries and museums in Adelaide with Indigenous collections of note, and to the screening of films like *Ten Canoes*. Indigenous 'art classes' were also held at the Nunkuwarri Yunti centre. Didgeridoo making has also proved extremely popular. Currently, the collecting of oral history and the revival of traditional Indigenous games are some of the cultural activities occupying the group.

Two fishing trips were organised. Elders participated in these, and told stories about the traditions and history of the Adelaide region. Drug and alcohol awareness, as well as nutrition and healthy food education featured in these events. In line with this educational focus, the males in the group were also sponsored to attend the 4th Indigenous Male Health Conference that took place in Adelaide in October 2007.

²⁷⁶ Nunkunwarri Yunti of SA, *Community Connections, positive stories, positive voices*, Nunkuwarri Yunti of SA Social and Emotional Wellbeing Newsletter, Vol 3, Issue 5 (5 December 2006), p5.



The cost of running the group annually (including wages for Towilla Purruputti-appendi workers) is approximately \$65,000. This is mostly provided by Nunkuwarrin Yunti of SA. Volunteer services are also essential to the running of the group: for example, the Cultural Reference Group are all volunteers, and volunteers are needed for cooking the group's lunch.

Yerli Berko is now permanently based at 'The Shed', the ASG facility in the northern outer suburbs of Adelaide. As the group has matured, it has taken a more proactive role in addressing community issues. In particular, the men have taken opportunities to mentor younger Indigenous males who otherwise may drift into contact with the criminal justice system. There have also been some efforts to assist homeless Indigenous people living on the streets in Adelaide.

Therapeutic elements are entering the program. The men are planning to record their stories on DVD, in part to ensure that their children have a record of these. This has also provided an opportunity for bringing narrative therapy to the group.

Family violence (and other issues) are addressed through Talking Circles, usually led by an Elder or facilitator. This discussion often involves the recounting of personal experiences and the men's struggles with violence in their families. Anger management techniques and narrative therapy are also used. From this has emerged a clear cultural norm for the men to hold to – family violence is not acceptable now, and never was a part of Indigenous men's culture. Tolerance of family violence is challenged in the group.

The males in *Yerli Berko* have begun to network with males from across the State: meeting with the Spirited Men men's group based in Murray Bridge, for example, and taking part in the first SA Gathering of Males (discussed further below). Visiting Elders from other tribal groups in the State also talk to the group.

The group also plans to hold workshops around parenting, and Aboriginal male family role models as well as a camp for fathers and their children, with other agencies involvement in the future.

Impact of *Yerli Birko*

Formal assessment of *Yerli Birko's* impact on family violence and other community issues in Adelaide is difficult, particularly given the problems assessing the extent of family violence in the first place. However, the group has made a mark on Indigenous men, and the organisation of the men, in Adelaide in its initial year.

Around a rotating core group of 10-15 men, 170 men took part in *Yerli Birko* activities within the first 3-months; with 590 men attending one or more of the group's activities in the first 12-months.²⁷⁷ That is almost one in six of the Indigenous male population aged over 15 in Adelaide being exposed to the strong, culturally supported, anti-family violence norm established in the group.²⁷⁸ Text box 8 below shares the experience of one man who has benefitted from this aspect of the program.

277 Interview with Simon Boyce, Men's Support Officer, Community and Social Health Team, Nunkuwarrin Yunti of SA, 23 October 2007, supplemented by internal Nunkuwarrin Yunti of SA documents.

278 There were 3,622 Aboriginal and Torres Strait Islander males over 15 years of age in Adelaide at the Census 2006, Australian Bureau of Statistics, *Population Distribution, Aboriginal and Torres Strait Islanders*, ABS cat. no. 4705.0, ABS, Canberra p4.



Text Box 8: Shane from *Yerli Birko* shares his story

I am 31-years-old and already I have had a hard life. My mother died of a heroin overdose when I was 15. My brother and sister and an aunt and an uncle are also dead from drugs. I never really recovered from all the deaths in my family. I was full of rage and anger and got into drugs myself soon after Mum died: heroin and methamphetamine (ice). I was in and out of jail, involved in gangs, street violence and crime.

I have two boys by two different mothers. My last girlfriend walked out on me because I couldn't get my life together. I've been trying for years to get her back, but all I did was get wilder.

I got out of prison eight months ago. As well as going the Talking Circle at the Aboriginal Sobriety Group, my probation case manager took me along to *Yerli Birko*. I got a lot out of it right from the start; sharing and talking to the other men – Nunga to Nunga – broke down my sense of being alone in the world, as if it was all down to me.

In fact, many Aboriginal men share the same problems and have similar stories, but we keep it all bottled up. I see myself in many of the other men in the group. I am learning to express my feelings. In the past I held it all in, it would only come out when I was drinking or on drugs and letting it out with the 'wrong mob', not the mob in *Yerli Birko*.

It's also great to share information, share what helps. The Elders in the group talk about way back [in time]. And I notice the fellas in the group taking it in. Sometimes, traditional men come to the group as they're passing through Adelaide. A lot of Aboriginal men haven't been educated on family violence or our culture. They don't know that our culture doesn't support men beating up on their women. They don't know how to treat our women, how to talk to them better, and show them respect.

Sometimes I feel that I am the most positive person in the groups, but I notice the fellas in all leave with a smile on their face, and I know when they go home that they are going to be nice to their missus, nice to their kids.

I still have no job, but I have friends on the street, and I spend a fair bit of my time working with them to help them turn their lives around too. I try to get them to join *Yerli Birko*.

My life is a lot better since I joined the group. I've been off drugs for eight months and I'm still working hard to get my girlfriend back. I want to be a good role model for my boys. For the first time, I feel optimistic about my future.²⁷⁹

279 Interview conducted 30 November 2007.



Lessons from Yerli Birko

Build on existing community strengths

Yerli Birko evolved from established Indigenous institutions in Adelaide, drawing on their strengths and networks to get up and running, and to attract men to the group.

Addressing drug and alcohol use by Aboriginal men is an essential part of any response to Indigenous family violence

Family violence, when it occurs, is strongly associated with alcohol and drug use by Aboriginal men. Tackling drug and alcohol use is an essential component of, or compliment to, programs aimed at Indigenous men with the purpose of reducing family violence. Yerli Birko shows the linkages that can be drawn between alcohol and family violence interventions.

Promoting traditional Aboriginal male culture helps promote a strong anti-family violence norm of behaviour among Aboriginal men

Traditional Indigenous cultures did not tolerate family violence. And that for Indigenous men suffering cultural dislocation, connecting with traditional cultures also connects them with a strong anti-family violence norm of behaviour, and positive male role models that encourage the treating of women and children with respect.

Connecting up Aboriginal men helps to break down social isolation and mitigate other stressors that can contribute to family violence

Breaking down the social isolation suffered by many Indigenous men, and encouraging them to work together to heal their problems and their communities' problems, creates social capital that can mitigate the impact of psychosocial and other forms of chronic stress caused by negative long-term situational factors facing them (for example, racism and poverty) and that can, in turn, contribute to family violence.

ii) **The Spirited Men Group and the Tau Ngaraldi Program**

Spirited Men is an Indigenous men's group that is based in Murray Bridge, South Australia, but that includes men from across the region including from Mannum, Tailem Bend, Meningie, the Coorong and Victor Harbour.

At the 2006 Census, 749 Indigenous people (396 males and 354 females) lived in the ABS Murray Bridge Local Statistical Area.²⁸⁰ This is an area including the city and 1,831 square kilometres around the city. The total population was 17,677 people; with Indigenous people comprising 4.2% of the total population. There were 19 Torres Strait Islanders or people who identified as both Aboriginal and Torres Strait Islander.²⁸¹

Anecdotal reports suggest that family violence is a significant problem in Murray Bridge. No hard data exists. A soon to be published report by Wendt: *Responding to Domestic Violence in Murray Bridge, 2007*, highlights some of the data issues

280 Hereon referred to as Murray Bridge when referring to the 2006 Census data.

281 Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC) (SLA 420105040) Indigenous status by sex* (Table 02). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 9 November 2007.



in relation to this in Murray Bridge and recommends this issue is addressed as a priority.²⁸²

There are differences between the Indigenous communities in Murray Bridge and Adelaide that may have some bearing on the causes of family violence in Murray Bridge and also work to shape different responses:

- The *Spirited Men* group was established in a community which has less evident cultural dislocation than the Adelaide community. Murray Bridge is on Ngarrindjeri Land. The Ngarrindjeri Nation has fought hard to protect their people, land and culture. In 1923, they unsuccessfully petitioned the SA Government to stop the passage of legislation that would allow it to remove their children;²⁸³ Ngarrindjeri women initiated the legal challenge to the Hindmarsh Island Bridge – and fought all the way to the High Court.²⁸⁴ The establishment of Camp Coorong at the mouth of the River Murray, including the Ngarrindjeri Cultural Centre, in 1985 was an important milestone in the revival and preservation of Ngarrindjeri culture. The NATSISS 2002 reported that in Murray Bridge, approximately 7% of the population speak an Indigenous language, approximately double that in Adelaide.²⁸⁵
- The community presence of both male and female Ngarrindjeri Elders is reported to be strong in Murray Bridge, with an Elders Group already taking an active role in community affairs. However, among the men they are spread thinly. Similarly to Adelaide, there is a big male youth cohort. At the 2006 Census in Murray Bridge approximately 47% of the 396 males were reported to be under 19-years of age.²⁸⁶
- There is a slightly different family profile in Murray Bridge when compared to Adelaide's: approximately 30% of the 256 'households with Indigenous persons' were 'couple family with children' and 30% 'one parent families' (significantly less than in Adelaide).²⁸⁷ Also in contrast to Adelaide, in Murray Bridge child-rearing is more evenly spread between the sexes

282 Wendt, S., *Responding to Domestic Violence in Murray Bridge*, University of South Australia and Centacare (Murray Bridge), Magill, 2007, unpublished.

283 For further information, see the website of the Ngarrindjeri Nation, available online at: <http://ngarrindjeri.tripod.com/>.

284 See *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

285 Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC) (SLA 420105040) Language spoken at home by proficiency in Spoken English/Language* (Table 06). 15/10/07. Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 9 November 2007.

286 Calculated with reference to Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC) (SLA 420105040) Age by Indigenous status by sex* (Table 03). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.

287 Calculated with reference to Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC) (SLA 420105040) Number of persons usually resident by household composition and family composition by Indigenous status of household* (Table 22). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.



with, 'unpaid child commitments' being identified by 26% males and 29% females.²⁸⁸

- Unemployment among Indigenous males in Murray Bridge is significantly lower than in Adelaide. At the 2006 Census, of the 210 Indigenous people over 15 years of age reported as to be 'participating in the labour force' in Murray Bridge, (about half of the 446 strong adult population) unemployment was reported at a rate of 15.2% (8.8% for men – or 9 individuals, and 21.3% for women – or 23 individuals).²⁸⁹

In *Responding to Domestic Violence in Murray Bridge*, Wendt examined the services that address domestic violence in the city. She reported that although services exist that could be utilised in relation to addressing domestic and family violence (for example, supported accommodation, counselling services, and so on) these services are spread throughout agencies, and there is a need to develop more effective links between them to provide a coordinated response.

After interviewing many staff involved in these agencies, she also notes the need for education about the differences between domestic and Indigenous family violence.

Wendt reported that there is no dedicated family or domestic violence services in Murray Bridge (no women's crisis shelter, for example). She recommends that a lead agency be appointed to establish dedicated services, and also to coordinate services that could otherwise be utilised in a response to domestic and family violence.²⁹⁰

Description of the *Spirited Men Group and the Tau Ngaraldi Program*

The Spirited Men Group

The *Spirited Men* group is an initiative of the Lower Murray Nungas Club and Kalparrin Community Inc, both long established Aboriginal community controlled and operated services operating in the Murray Bridge area.²⁹¹

The Lower Murray Nungas Club was started in 1974. It began as a drop-in centre for young people. Today the club building is used to provide a range of primary health care and welfare programs functions. There are Aboriginal youth workers, a family support worker and cultural resources at the centre.

Kalparrin Community Inc. (Kalparrin) operates about ten kilometres out of Murray Bridge. It was established in 1975 to provide a supported residential rehabilitation program for Indigenous men and women with alcohol or drug problems. It is also

288 Calculated with reference to Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC) (SLA 420105040) Unpaid child commitments by age by sex for Indigenous persons* (Table 17). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.

289 Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC), Selected Person Characteristics by Indigenous Status by Sex* (Second Release Processing) (Table 27). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.

290 Wendt, S., *Responding to Domestic Violence in Murray Bridge*, University of South Australia and Centacare (Murray Bridge), Magill, 2007, unpublished.

291 Source: interview with Bony Gibson, Manager of the *Spirited Men* program, supplemented with information from unpublished documents about the *Spirited Men* group.



a 'dry' community, with about 45 permanent residents. Kalparrin provides services to Indigenous people from the Murray Bridge area but also from as far away as Adelaide, the Coorong and Meningie.

In mid 2005, the community development worker based at the Lower Murray Nungas Club applied for funding from the Family Violence Regional Activities Program,²⁹² (operated by the Commonwealth Department of Families, Communities Services and Indigenous Affairs) for both a pilot men's and women's support group for specifically addressing family violence. Kalparrin agreed to manage the funding and the project. The application for the men's group was successful, although the application for funding for the women's group failed. Graham 'Bonny' Gibson was employed to get the pilot project up and running.

The first men met at Kalparrin and many were involved in the rehabilitation program there (it became a condition for men entering the rehabilitation program at Kalparrin that they attend the group). Men from the ASG's Lakalinjeri Tumbetin Waal Centre are also encouraged to attend.

After a year of operating as a pilot, Kalparrin applied for funding to secure the program. As a part of this process, community consultations about the group were held, attended largely by workers in social services and health, but also by community members and Elders who identified ways forward they would like to see the group take – in particular, for the men to have more involvement with the communities' young people and children.

Kalparrin secured approximately \$500,000 to fund the continuance of the group for three years. The funds pay for (among other things) four staff: Bonny Gibson, the full-time manager of the group who is also a group facilitator; Mack Hayes, who works two days a week; and Kym Schellen, a 'Bringing them home' counsellor from Kalparrin, who devotes one day a week to the group. Darren Mundy also works one day a week as a peer support worker. Darren began as one of the men in the group, but has 'graduated' to this role.

Because it was easier for more men to get to, the group is now established at the Lower Murray Nungas Club, just outside of Murray Bridge. Between 10 and 25 males attend the weekly meetings with up to three of the facilitators present (who are also active members of the group).

The group provides an emotionally and culturally safe space for dealing with a range of issues that pertain to family violence – including drug and alcohol misuse, anger, self destructive and harmful behaviours and trauma. The group is an alcohol and drug free space.

The stated aims of the *Spirited Men's* group are to:

- operate as a family violence intervention program;
- as men, address the social, emotional and cultural wellbeing of the whole community;
- develop the community's capacity to respond to family violence through early intervention, prevention and crisis intervention

292 For further information, see the website of the Commonwealth Department of Families, Communities Services and Indigenous Affairs, available online at: <http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-fvp.htm>, accessed 22 October 2007.



- strategies, and promote and support community based ways of reducing and preventing family violence in Indigenous communities;
- consider traditional approaches to family relationships including traditional law;
 - foster collaboration between local agencies and community based organisations and individuals in the prevention of family violence;
 - provide community education and improve awareness of the effects of family violence and develop strategies to ensure family violence is recognised as unlawful and unacceptable; and
 - develop strategies that engage communities in openly talking about family violence.

Information sharing is an important group activity, and men from support services visit the group so the men know what is available in the area. Quite a lot of time is spent discussing the role of men in the local community (and Indigenous community in particular) and the positive contribution the men can make to it. Outside of the group, the facilitators offer counselling and support to the men. There is a strong anti-family violence message that comes through in the group.

In the future, it is hoped to establish a parallel *Spirited Men* program for young Indigenous men in the Murray Bridge area. Currently, Bonny Gibson is working with the SA Department of Education to that end. *Spirited Men* is also looking to sponsor family events and cultural camps and play a dynamic part in the life of the Murray Bridge community.

In recent months, the men from the group have been renovating a derelict house boat that was left to the Murray Bridge Indigenous community. The *Nana Laura* (named after a much-loved Murray Bridge Elder, now deceased) is now fully operational. It is intended that local Indigenous families use the facility, as well as the community itself. The Ngarrindjeri have traditionally had strong cultural links with the Murray River, and it is expected that the boat will help an ongoing effort to preserve and revive that relationship.

Tau Nagaraldi

Tau Nagaraldi grew from the *Spirited Men* group. It is an eight-week anger management and family violence program developed by Mack Hayes, one of the facilitators. It utilises narrative therapy techniques to help the men understand their anger. It does not invalidate their feelings (for example, of injustice at racism) but aims to teach the men to stop and think before acting on their anger.

It aims to show positive ways for Indigenous men to be able to stand their ground and be respected for who they are without resorting to violence. As with *Spirited Men*, there is a strong cultural element to the program that emphasises that traditional culture (Ngarrindjeri and otherwise) did not tolerate family violence, and it will not be tolerated now. A strong, culturally supported anti-family violence norm has developed in the group.



A member of my staff attended a meeting of *Tau Ngaraldi* in preparing this part of the Social Justice Report. He describes it as follows:

About 25 Aboriginal men including two facilitators, an Islander and two non-Aboriginal and Torres Strait Islander men (one of them from a parenting program who was keen to develop links and share information with the group) were present.

The group began with a traditional smoking ceremony in the open air led by Bonny Gibson, and the setting of ground rules: basically, that what is said in the group stays in the group, and that respect should be shown to each other at all times.

The morning session was devoted to information sharing; the non-Indigenous man who runs the parenting program talked briefly about what his service could offer the men, and I gave a brief presentation on human rights. The men asked quite a few questions, and then lunch was served – salad, sausages and chops. Over lunch the men sat and talked.

After lunch, the anger management began led by Bonny Gibson and Darren Mundy. The men were asked to share recent events that had made them angry. One man described an experience of racism in being served that had occurred the previous day, and how angry it had made him feel. Men began contributing their own similar stories. Bonny uses the first man's example to encourage the men to think about anger and all the tell tale signs that can lead up to a violent response. He pointed out that they do have a choice as to how they react. Different men had different things to say about it; no one's opinion or experience is trivialised.

The feeling in the room is warm and friendly, with understanding being shown even when anger is being expressed. There was a strong sense of brotherhood and a 'healing energy' in the room, a sense of spirit, which was acknowledged by many of the men. The men appeared to be good friends, or rapidly becoming good friends, and there was a tremendous sense of camaraderie among them.

Several of the men have brought their sons to the group. I spoke to one of the sons and he said the group had changed his life, helped him at school, as well as helped heal his relationship with his father. He loved the group and being with the men. I spoke to several men after the group and they all believed that the group had had an extremely positive impact on their lives.

Impact of the *Spirited Men Group and the Tau Ngaraldi Program*

Formally assessing the impact of the group on family violence is difficult, but anecdotal reports suggest that the Indigenous women in Murray Bridge are extremely supportive of the project and report positive changes in the way the men behave, and the belief they have in themselves.

In total, between 40-45 men have had fairly regular contact with the group. In an area with only 241 Indigenous males over 15 years of age,²⁹³ that means that in a two-year period up to approximately one in six of the city's and surrounding area's Indigenous men have potentially had contact with the strong, culturally supported, anti-family violence message and norm that the group has. Text Box 9 below highlights the individual impact that the group has had.

293 Australian Bureau of Statistics, *2006 Census of Population and Housing, Murray Bridge (RC), (SLA 420105040) Selected Person Characteristics by Indigenous Status by Sex* (Second Release Processing) (Table 27). Available as a download from the ABS website (Community Profile Series) at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.



Text Box 9: Hearing from the *Spirited Men*

Dave's story²⁹⁴

There was violence in my family when I was a kid. I grew up surrounded by violence. I was violent too back then, although now I can't stand it. I've been surrounded by racism too all my life. I've experienced, and continue to experience, discrimination against me in relation to employment and being served in various places.

I was a country kid, but I ended up living in Adelaide. I grew up feeling suppressed and held back – by white society, by the police, by government. I still do, although things are getting better. I led a crazy life in Adelaide. I used to do amphetamines and dope. But it got to the point where I couldn't stand it. The police were raiding my home and I was under surveillance. I even attempted suicide.

In the past I have been guilty of domestic violence. One of my missus was wild; she would attack me and I would attack her back. I have four children by three different mothers. I want to set them a good example, not like when I was a kid. In particular, I don't want my ten-year-old boy to have a bad role model for a father. I'm very anti-domestic violence. I stick my beak into people's lives if I hear there's violence happening.

In the end I got out of Adelaide, and back to the country: to Murray Bridge. I much prefer it out here. Christianity helped me too, helped me to see that there was a better way of life. I've been drug free for four years now. I still drink a little, although not how I used to. I work for the local drug and alcohol services – that's how I got involved with *Spirited Men* and *Tau Ngaraldi*. I took a client to the group and saw straight away that it could do me good too.

Anger management has been useful to me. Overall I am not as angry as I used to be, although I still get angry. When I experience racism, I still think people need to be taught lessons, but I know my old way [violence] isn't the answer.

I think the group works because many Aboriginal men don't have anyone to talk to. Sharing and talking helps so much. You realise you're not alone; that we all have similar struggles, similar stories – with drugs, with alcohol, with violence. We've all been there.

There's a brotherly bond that develops among the men. We respect each other's views. I also like the fact that white men sit in on the group from time to time. It's good to share with them our stories because many just don't understand what we've been through. It's also good to know that we have things in common. White guys have problems too.

People around me have noticed the change. Five years ago I would smacked you in the head if you looked at me. Now, I don't worry. And I've got a new girlfriend – I feel like I've won the lottery!²⁹⁵

294 'Dave' is a pseudonym, and he has been otherwise de-identified as a condition of telling his story.

295 Interview conducted 30 November 2007.



John's story²⁹⁶

I grew up with violence; there was a lot of drinking and violence around me as a kid in my home. I experienced a lot of discrimination too – at school, I used to get into fights. I used to bottle it all up; let it build up.

My father passed away in 1985; my older brother in 89 or 90; my younger brother died in 2002; and my mother passed away in 2004. But I was very private. I didn't like talking about myself, or what I thought or felt, but I was letting things build up. Although I wasn't violent, I was worried that one day there would be crunch point and I would explode.

I got involved with the group through Kalparrin. I like the camaraderie of the group. Men talking to other men about their life experiences. People say I am a lot calmer now, and easier to talk to. Things still build up, but it's easier to talk about them and let them go. I think the group is great. I want the group to develop links with Aboriginal men across SA and the country so we can all interact as males.²⁹⁷

Lessons from the *Spirited Men Group and the Tau Ngaraldi Program*

Build on existing community strengths

Spirited Men, like *Yerli Berko*, evolved from established Indigenous institutions in Adelaide, drawing on their strengths and networks to get up and running, and to attract men to the group.

Addressing drug and alcohol use by Aboriginal men is an essential part of any response to Indigenous family violence

Family violence, when it occurs, is strongly associated with alcohol and drug use by Aboriginal men. Tackling drug and alcohol use is an essential component of, or compliment to, programs aimed at Indigenous men with the purpose of reducing family violence.

Promoting Aboriginal male culture helps promote a strong anti-family violence norm of behaviour among Aboriginal men

Even in areas where there is a strong connection to culture in place, the strong anti-family violence norm of behaviour, and positive male role models in traditional culture that encourage the treating of women and children with respect can, by being highlighted in a group setting, still play an important role in reducing family violence.

Connecting up Aboriginal men helps to break down social isolation and mitigate other stressors that can contribute to family violence

That breaking down the social isolation suffered by many Indigenous men, and encouraging them to work together to heal their problems and their communities' problems, creates social capital that can mitigate the impact of psychosocial and other forms of chronic stress caused by negative long-term situational factors facing them (for example, racism and poverty) and that can, in turn, contribute to family violence.

296 'John' is a pseudonym, and he has been otherwise de-identified as a condition of telling his story.

297 Interview conducted 30 November 2007.



iii) The Gathering of Males at Camp Coorong²⁹⁸

The need to get Indigenous men involved with addressing family violence and other community problems has been recognised by Indigenous women in SA. The theme of the 2006 SA Aboriginal Women's Gathering was 'Indigenous Family Violence – Local Community Solutions'. Among other things, it recommended that the SA Govt support a Men's Gathering, so the women and men could continue to work together to address family violence.²⁹⁹

In the end, Nunkuwarrin Yunti of SA, ASG, Families SA, the Yorke Peninsula Aboriginal Health Services, the Central Northern Adelaide Health Region, and Tauondi College³⁰⁰ all contributed to the approximately \$20,000 funding needed for the Gathering of Males to take place.

In December 2006, the Gathering took place at Camp Coorong on Ngarrindjeri Land. Thirty-six males made their way to the Gathering drawn from across the State. The areas and groups represented included the Riverland, Point Pearce, Koonibba, Ceduna, Port Lincoln, Mount Gambier, Raukkan, and Kalparrin Community. This included men from the Aboriginal Sobriety Group, Tauondi College, the Lower Murray Nungas Club, the *Spirited Men* group, Lakalinjeri Tumbetin Waal as well as *Yerli Berko*.

A DVD presentation by the Minister Jay Weatherill (the SA Minister for Families and Communities and Minister for Aboriginal Affairs and Reconciliation, among other ministerial responsibilities) was played to the men that evening commending them for the Gathering and the leadership emerging among the Indigenous men's community in SA.

The camp opened with a traditional welcome to Ngarrindjeri country by Tom Trevorrow, the respected Elder, and then a welcome lunch was held. The men then visited significant Ngarrindjeri cultural sites. The next day, cultural activities began. Men from various tribal groups talked about their own clan group symbols and each came up with a design for their message stick also to be used in a design for a T-shirt.

Indigenous male health was the theme of the gathering. The men gathered food from traditional Ngarrindjeri sources, led by Elders, including by fishing and collecting cockles. Formal presentations were given about: suicide and mental health; the harmful effects of alcohol and new drugs like methamphetamine ('ice'); health and related services that are available and culturally appropriate for Indigenous men in SA; living with diabetes; and the role of the health centre and GP in assisting Indigenous men manage any illnesses they might have.

The problems that face SA Indigenous communities as well as personal and family issues and how they could be addressed were also recurrent themes. It was

298 Interview with Basil Sumner, CEO of the Aboriginal Sobriety Group and Simon Boyce, Men's health worker, Towilla Purrupttiappendi, Nunkuwarrin Yunti AMS, 23 October 2007, supplemented with internal (Nunkuwarrin Yunti) documents about the Gathering of Males at Camp Coorong.

299 SA Office for Women, *Snapshots, Women's safety strategy 2005–07*, Government of South Australia, 2007, p8, available online at: http://www.officeforwomen.sa.gov.au/files/WomensSafetyStrategy_SnapShots_April2007.pdf, accessed 12 November 2007.

300 An independent Indigenous college based in Pt Adelaide offering 'cultural teaching' and a range of qualifications, accredited courses and Adult Community Education activities for the Aboriginal and Torres Strait Islander community in SA.



recognised that drugs, alcohol and violence have caused Indigenous communities across the State to lose a good deal of its culture. The men began to think about ways that these negative influences can be addressed. It was agreed that too many young Indigenous men have died from these things, and that community safety was vital if communities were to thrive.

In that context, the group looked at the role of males, and how groups for males could assist in promoting males in a positive light within the community. A strong theme was about promoting respect for Indigenous men against the tide of negative stereotyping, and men taking up the responsibility to provide a safe secure environment for their women and children. The role that groups for males can play in supporting men through education in areas such as drugs and alcohol use, employment, relationships, reducing conflicts between people and family violence was discussed.

As a group of males, they agreed that if one message was to come from the gathering it would be 'No to Drugs, Alcohol and Violence'. It was agreed that the men would take this message back to their communities.

It was recommended by the Gathering that a National Register of Groups for Indigenous Males be set up in order to facilitate greater interaction among Indigenous males across the country.

Initial plans for holding a State-wide Corroboree of Males were discussed at the Gathering. The Corroboree is intended as a vehicle for a number of cultural events: with each tribal group presenting their own dance in a competition. The promoting of tribal languages through song was also discussed. During the course of the week each group designed a message stick that included a totem or symbol that represented their respective clans. The sticks were exchanged between the groups present, and are designed to be taken to future Gatherings (or Corroborees) of Males, and male gathering in the future.

The *Yerli Berko* males created a dance that could be performed at future Gatherings (or Corroborees) of Males and that was inclusive of all the State's tribal traditions. In this way, it was hoped that men without tribal affiliation would be able to participate fully in the Gatherings.

Lessons from the Gathering of Males at Camp Coorong

Promoting men's leadership

Men's groups and other ways Aboriginal men can come together can help build leadership capacity in communities and across communities and facilitate the spreading of a strong anti-family violence norm of behaviour among Aboriginal men.

The Gathering drew on existing groups for males to bring together men from across the State to make decisions about the future directions their communities might move, and to begin a process of organising men's business at a State level. Such a model, as already demonstrated by Aboriginal women in SA, holds enormous potential for the emergence of State Aboriginal leadership, and taking part in the State policy cycle in relation to matters that affect Indigenous peoples in SA. Like a feedback loop, it also enables a consistent, State-wide norm of anti-family violence to emerge and reinforce the anti-family violence norm being promoted in the men's groups.



These case studies highlight the importance of Indigenous men actively engaging in addressing family violence and other forms of dysfunction in their communities.

The case studies highlight:

- That family violence is strongly associated with alcohol and drug use. Tackling drug and alcohol use is an essential component of, or compliment to, programs aimed at Indigenous men with the purpose of reducing family violence.
- That traditional Indigenous cultures did not tolerate family violence. And that for Indigenous men suffering cultural dislocation, connecting with traditional cultures also connects them with a strong anti-family violence norm of behaviour, and positive male role models that encourage the treating of women and children with respect.
- That breaking down the social isolation suffered by many Indigenous men, and encouraging them to work together to heal their problems and their communities' problems, creates social capital that can mitigate the impact of psychosocial and other forms of chronic stress caused by negative long-term situational factors facing them (for example, racism and poverty).

And beyond addressing family violence, organised Indigenous males can offer leadership in the formulation of a wide range of solutions to problems affecting their communities in a similar way to which organised Indigenous women have already demonstrated.

The message is clear to policy-makers: if you do not address the situation of Indigenous men you are only likely to be providing a band-aid for a solution, not the least being in relation to family violence. It is bad policy to focus on Indigenous family violence as a problem facing women and children only.

It is not possible to treat the situation of Indigenous men as a separate issue from the health and well-being of Indigenous communities. Resources and planning need to be devoted to policies and programs for males and balance provided to the programs that focus exclusively on Indigenous women and children needs to be ensured. We all have to move together on this road towards healing.



e) Keeping Children Safe: Family Support and Child Protection

Child welfare and protection services have a long and troubled history with Indigenous Australians. The landmark *Bringing them home* report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families documents the experiences of the stolen generation, forcibly removed from their families under the guise of welfare, as well as the impact of contemporary removals of Indigenous children through the care and protection system.

State and Territory governments have responsibility for child protection. In recognition of Indigenous children's right to maintain a connection to their family, community and culture all Australian jurisdictions recognise the Aboriginal Child Placement Principle (ACPP). The ACPP recognises that Indigenous children should be placed with Indigenous carers. Children should firstly be placed with the child's extended family; if that is not available they should be placed within the child's community; failing that they should be placed with other Indigenous people. However, the overriding principle is that the placement be *in the best interests of the child*.

By 1997 all jurisdictions had incorporated the ACPP into either legislation or policy. The ACPP seems to have increased the number of Indigenous children with an Indigenous out of home carer. In 2006 at least 62% nationally were placed with an Indigenous carer or relative, in NSW it was as high as 86%.³⁰¹

Despite this, there remains an imbalance in how Indigenous child safety issues are dealt with.

Prevention and early intervention to support families is a far more successful and cost effective way of addressing child abuse. Recognising this, the child protection system incorporates a continuum of intervention, from primary prevention, early intervention, family support and finally statutory intervention.

In reality there are not enough resources or programs aimed at primary prevention, early intervention and family support. This means that more cases progress through to statutory intervention.³⁰² For instance, an Indigenous child is six times *more* likely to be involved with the statutory child protection system than a non-Indigenous child but four times *less* likely to have access to a child care or preschool service that can offer family support to reduce the risk of child abuse.

The case studies in this section provide examples of promising practice across this continuum of care as follows:

- i The *Cherbourg Critical Incident Group* is an example of **primary prevention** because it aims to prevent abuse and violence before it happens by raising community awareness and creating an environment where abuse will not be tolerated.

301 Australian Institute of Health and Welfare, *Child Protection 2005-2006*, Child welfare series no. 40. Cat. no. CWS 28, Canberra: AIHW, 2007, p58.

302 Secretariat of National Aboriginal and Islander Child Care, *Briefing to State and Territory Governments. Development of a National Action Plan for Aboriginal and Torres Strait Islander communities to prevent and respond to child abuse and neglect*, 2006.



- ii The *Strong Young Mums Program* in Bourke (NSW) is an example of a **family support/early intervention program** that supports young women to increase their parenting ability and confidence to reduce the risk of child abuse.
- iii The *Safe Families program* in Alice Springs is also an **early intervention program** that works with families and communities to try and avoid statutory intervention.
- iv The *Lakidjeka Aboriginal Child Specialist Advice and Support Service* in Melbourne works during the **statutory intervention phase** to provide culturally appropriate advice and placement options for Indigenous young people who come to the attention of statutory authorities.

International comparisons

There is some similarity in the history and contemporary situations of Indigenous people in countries like Canada and the United States of America that provides valuable lessons in relation to providing quality, appropriate child protection services.

The United States of America is often considered to lead the way in the provision of child protection services to Native American children. The *Indian Welfare Act 1978* is 'premised on a recognition of limited sovereignty and the collective interest of tribes for children.'³⁰³ The Act gives authority to Tribal courts to make decisions over child welfare for children living on reservations and shared authority with State courts where children are living off reservations. There are provisions to involve the family and tribe, similar to the Aboriginal Child Placement Principle and there is preference for children to be placed within family and community.

Canada has also taken steps to restore Indigenous control over child protection matters. Since the 1980s agreements and policies have been developed with First Nations groups that reflect self determination and control in child protection. The Canadian situation shares commonalities with Australia in terms of history and government structure and is a better fit for policy comparison. One notable example which may offer directions to Australian governments are developments towards Indigenous controlled services in Manitoba. Text Box 10 below provides a detailed case study on reforms over the past decade in the Canadian province of Manitoba by Terri Libesman (an expert on Indigenous child protection issues).

303 Libesman, T., 'Child welfare approaches for Indigenous communities: International perspectives', *Child Abuse Prevention Issues*, vol 20, Autumn 2004, National Child Protection Clearinghouse, Australian Institute of Family Studies, 2004, p8.



Text Box 10: International Best Practice: Manitoba, Canada by Terri Libesman

The delivery of child welfare services in Manitoba, Canada has been reformed with a thorough and planned process for devolving responsibility for First Nations children to First Nations authorities across the Province.³⁰⁴ Like Australia, Canada has a federal system of governance, with child welfare being the primary responsibility of Provinces and Territories.

The Aboriginal Justice Inquiry released a report in 1991 which found that the Province was not delivering child welfare services to First Nations children in Manitoba effectively and that there should be an overhaul of the system. They recommended amongst other matters that the provision of child and family services in a manner that respects Aboriginal peoples' unique status, and their cultural and linguistic heritage be enshrined in legislation; that existing Indian agencies be expanded to enable them to offer services to band members living off reserves; and that an Aboriginal child and family service agency be established to handle all other Aboriginal child welfare cases in Manitoba.³⁰⁵ The recommendations from this report catalysed the reforms which are part of the Aboriginal Justice Inquiry – Child Welfare Initiative outlined below.

The Aboriginal Justice Inquiry – Child Welfare Initiative negotiations were from the start a joint initiative between the Manitoba Metis Federation, the Assembly of Manitoba Chiefs, Manitoba Keewatinowi Okimakanakwere and the Province. The comprehensive inclusion of all parties in the negotiations has created a firm foundation for effective reform. The negotiations have resulted in shared responsibility between Aboriginal peoples and the Province for child welfare. This initiative has resulted in the expansion of Aboriginal child welfare services which had already been established to service Aboriginal children on reserves and the establishment of new Aboriginal agencies to service Aboriginal children throughout Manitoba.

The restructuring of child welfare in Manitoba commenced with the signing of Memorandums of Understanding and then Service Protocol Agreements between the Province and the Manitoba Métis Federation, the Assembly of Manitoba Chiefs and the Manitoba Keewatinowi Okimakanakwere.³⁰⁶

The Manitoba initiative is different to all previous reforms in that the policy-making process was jointly developed, and the government, rather than being the primary policy maker, was one of four policy-making partners.

Under the *Child and Family Services Act* 2003 (Manitoba) four umbrella child welfare authorities have been established. Two of the authorities are First Nations; there is one Metis Child and Family Service Authority and a General Authority which is responsible for the delivery of services to other (non-Aboriginal) children and families. It is the responsibility of each Authority to develop policy and to fund local agencies to deliver culturally appropriate child support and protection services. The authorities are all working under the *Manitoba Child and Family Services Act* 1985 (CSF) and the *Adoption Act* while new more culturally attuned legislation is being developed.

304 A more detailed review is found in Bell, T. and Libesman, T., *Aboriginal and Torres Strait Islander Child Protection Outcomes Project Report*, SNAICC and DHS, Victoria, 2005.

305 McKenzie B & Morrissette V., 'Social Work Practice with Canadians of Aboriginal Background: Guidelines for Respectful Social Work', (2003) 2(1) *Envision: The Manitoba Journal of Child Welfare*, pp13-39.

306 Holnbeck, C., De Jaegher, S., and Schumacher, F., Metis Child and Family Services, 'Developing Child Welfare Services from the Ground Up: A Multidisciplinary Approach' (2003), 2(2) *Envision: The Manitoba Journal of Child Welfare*, 2003, pp17-27.



A Detailed Implementation Plan (DIP) was designed to provide a framework to implement the restructure of child welfare in Manitoba. A key feature of this plan is that it is a 'rolling document' designed to accommodate any changing circumstances. Caseloads, resources, and assets are being transferred from the previous child welfare departments to the most culturally appropriate authority and their agencies. Under the old system non-Aboriginal agencies provided services to Aboriginal families. The 'general authority' and their associated agencies will be downsized as cases are transferred to the mandated First Nations and Metis authorities. This will only occur once the Aboriginal authorities and agencies are ready to assume these responsibilities.

The intake services are structured in such a way that the four authorities jointly manage the services but through designated agencies. In Winnipeg there is a joint intake response unit as the first point of contact and outside of Winnipeg a number of designated agencies are charged with the responsibility. There is a separate agency designed to provide emergency services, identify the Authority which holds records and refer clients to the ongoing services. It is also envisaged that information sharing including information regarding abuse will take place and that common registries will be established for that purpose. Funding is also being transferred to the new Authorities. The Manitoba government provides funding to the Authorities and this is then distributed to their agencies. An additional one-off payment was also made to cover additional expenses for things such as training, transitional costs, transfer of caseloads and other administrative costs.

A large body of opinion suggests that Aboriginal people have a right to define and deliver their own services.³⁰⁷ The Manitoba restructure is based on the right of First Nations and Metis peoples to culturally appropriate services and the concepts of collaboration, participation and righting the wrongs of the past are at the core of the initiative.³⁰⁸ The restructured system was driven by First Nations and Metis peoples and it is unique in that regard. Another striking feature is that the Manitoba government has been willing to share some aspects of its child welfare jurisdiction.

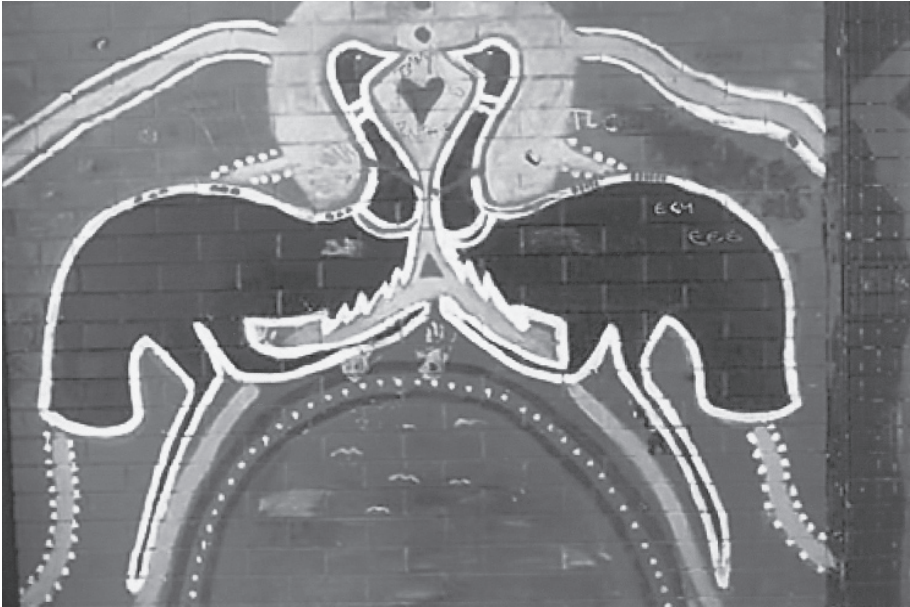
The Manitoba initiative was developed as a five phase plan with timelines that can be updated and amended to ensure that the reform is flexible and is not compromised by artificial constraints. The transfer stage appears to be well thought out with transfers being made on a region-by-region basis, with the aim that each authority and agency will have time to prepare and ensure they are ready to accept the responsibilities entrusted to them. This is particularly relevant to the Métis Authority because it had to be established from scratch unlike the mandated First Nations agencies which have been set up in some form for over two decades.³⁰⁹

One of the benefits of the Manitoba initiative is that it is highly adaptable and can therefore be structured around regional differences. Although some issues may have been missed at the conceptual stage, the structure means it can more readily accommodate changes in the future. It also appears to offer a structure that can be adapted to other contexts and countries.

- 307 See The Aboriginal Justice Inquiry – Child Welfare Initiative Report of the MKO 22nd Legislative Government House Annual General Assembly Opaskwayak Cree Nation September 9-11 2003, available online at: <http://www.mkonorth.com/ajichildwelfare.html>, accessed 23 November 2007.
- 308 Blackstock, C. and Trocme, N., *Community Based Child Welfare for Aboriginal Children: Supporting Resilience through Structural Change*, 2004, available online at: <http://www.cecwcepb.ca/DocsEng/communityBasedCWAboriginalChildren.pdf>, accessed 23 November 2007.
- 309 Bennett M., Blackstock, C., and De La Ronde, R., *A Literature Review and Annotated Bibliography Focusing on Aspects of Aboriginal Child Welfare in Canada*, First Nations Research Site of the Centre of Excellence for Child Welfare, 2005, available online at: http://www.fncfcs.com/docs/AboriginalCWLitReview_2ndEd.pdf, accessed 7 November 2007.



i) Cherbourg Critical Incident Group



An artwork painted on the walls of Cherbourg State School.

The *Cherbourg Critical Incident Group (CCIG)* was created by a small group of Indigenous women concerned about abuse and family violence in their community. It works as a primary prevention and advocacy service by 'taking a stand against violence'³¹⁰ and working with government and service providers to improve responses. The *Cherbourg Critical Incident Group* has been used as an example of 'things that work' in the Productivity Commission *Overcoming Indigenous Disadvantage Key Indicators 2005*³¹¹ and the NSW *Breaking the Silence*³¹² report.

Cherbourg is an Indigenous community approximately 250 kilometres north-west of Brisbane. It has a permanent population of around 2,500 people. Cherbourg is a former mission, established in 1906. People from 13 different tribal groups were forcibly moved to Cherbourg. The conditions on Cherbourg were amongst some of the worst recorded in the *Bringing them home* report.

Like many Indigenous communities, Cherbourg has a youthful population. 40% of the population is between 0-14 years and the median age of all residents is 21 years. Although Cherbourg is not considered a remote community, access to services are still limited. For instance, most patients, including children, needing specialised care still have to travel to Brisbane to be treated.³¹³ There are limited

310 Stanley, G., *Communication with Social Justice Commissioner's Office*, 7 November 2007.

311 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra, p137.

312 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department, Sydney, 2006.

313 Dugdale, A., 'Town or Country: the ARIA index is not an accurate level of access to health services', *Medical Journal of Australia*, Vol 187, no 6, 371-372, 2007.



employment opportunities in Cherbourg and a majority of community members were employed under the CDEP through the Cherbourg Community Council.

Despite indicators of social and economic disadvantage, the community has a reputation for dealing with difficult issues. A notable example is the success achieved by Cherbourg State School while it was under the leadership of Dr Chris Sarra. During his time as principal Dr Sarra worked with the community to reduce unexplained absences by 94% over an 18 month period.³¹⁴ These improvements have been largely sustained with the Cherbourg State School experience becoming a model for quality Indigenous education.

Description of the *Cherbourg Critical Incident Group*

CCIG is a small collection of respected women from Cherbourg who donate their time to be involved with the work of the group. This means being available for monthly group meetings and bi-monthly meetings with government agencies through the 'negotiating table' process.³¹⁵ It also means being available for the community 'whenever something happens'.³¹⁶

CCIG was established in the wake of a particularly horrific case of child sexual abuse. In Cherbourg, according to Grace Stanley, Chairperson of the *CCIG*: Six or seven ladies got together and decided that we were not taking this anymore. We were very angry that in these cases the men got off and nothing was being done.³¹⁷

CCIG works with the community to prevent abuse. Part of the role is getting the message out that abuse will not be tolerated and encouraging local people to report abuse. In many cases, Grace Stanley says that people will come directly to her or other group members and tell them about abuse:

People come to us if they think something is happening to a family, a child, they'll come to us, because there's about seven of us in this group. Like I live in Murgon, but the other ladies live out at Cherbourg, and they live in different areas of the community. And we know what's going, you know.³¹⁸

The *CCIG* also works closely with the Night Patrol and are available to 'sort things out' if necessary. Grace Stanley points out that the *CCIG* is not the only group of community members taking a stand against violence. A men's group in Cherbourg has also been established which reinforces that abuse is not acceptable, works to support men and break down negative stereotypes.

CCIG has been particularly successful in garnering support and services from the Queensland state government. From the very outset the group gained media attention and challenged politicians to deliver much needed services and reforms.

314 Sarra, C., 'Stronger Smarter School Outcomes through Aboriginal perceptions of being Aboriginal', *Griffith Review*, Autumn, 2006.

315 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department, Sydney, 2006, p 281.

316 Stanely, G., communication with author, 7 November 2007.

317 Stanely, G., communication with author, 7 November 2007.

318 Grace Stanley quoted in transcript 'Child abuse tackled by local women', *The World Today*, ABC Radio, 26 June 2007, available online at: <http://www.abc.net.au/worldtoday/content/2007/s1962040.htm>, accessed 15 October 2007.



Then Premier Peter Beattie met with the group and made a number of commitments which were followed through by high level bureaucrats in the state government.

The group also made use of the existing *negotiation table mechanism* where all relevant government and non government agencies raise issues and develop action plans with the local community.³¹⁹

Impact of Cherbourg Critical Incident Group

Grace Stanley believes that *CCIG* has helped reduce abuse in Cherbourg. This is because:

We've let people know that they're on notice, you know, that we're watching, you know. And, if we hear of anything, or know of anything, we'll soon deal with it.³²⁰

The *Breaking the Silence* report documents that:

As at April 2005, twelve months since its inception, there had not been a single reported incident of sexual abuse in Cherbourg. While this does not mean it does not exist, significant progress has been made in raising awareness of, and addressing, the abhorrent issue of child sexual abuse.³²¹

CCIG has made government more accountable to the community. *CCIG* made 58 recommendations to the Queensland government across a range of areas. A majority of these recommendations have been met. Some of the key outcomes include:

- revised procedures for dealing with sexual assault cases in the Cherbourg hospital;
- workshops to inform women about forensic procedures following sexual assault;
- development of a Safe Haven for children effected by abuse and violence; and
- additional child safely counselling positions.³²²

Lessons from the Cherbourg Critical Incident Group

Community generated

The *CCIG* shows that change must come from within the community. The *CCIG* members have used their positions of respect to build on the desire for change. Grace Stanley believes that most people were 'fed up and angry'³²³ about abuse and wanted to take action but just needed some leadership. However, this leadership needs to be from within the community. According to Lillian Gray, another member of *CCIG*:

319 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department, Sydney, 2006, p 281.

320 Grace Stanley quoted in transcript 'Child abuse tackled by local women', *The World Today*, ABC Radio, 26 June 2007, available online at: <http://www.abc.net.au/worldtoday/content/2007/s1962040.htm>, accessed 15 October 2007.

321 Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future, Addressing child sexual assault in Aboriginal communities in NSW*, Attorney General's Department, Sydney, 2006, p281.

322 McCabe, K., *Communication with Social Justice Commissioner's Office*, 22 November 2007.

323 Stanely, G., *Communication with Social Justice Commissioner's Office*, 7 November 2007.



If they're going to be doing something, they need to have the people do it there that live there. They must be people living in the community, like the women of Cherbourg, like the men of Cherbourg, that'll stand up and help fight these things if there is abuse going on.³²⁴

Partnership approach

The *CCIG* have achieved a lot by engaging the community and reinforcing anti-violence messages to prevent abuse. They have also agitated for a number of changes at a government level. It is not enough to get the message out that violence and abuse is unacceptable. The social conditions that prevent abuse also needed to be created. In the case of Cherbourg, services were limited and there was little coordination between government departments and service providers. The *CCIG* developed recommendations to address this and have worked in partnership with government to ensure the recommendations are addressed.

The *CCIG* have strategically used the media and mechanisms like the *negotiation tables* to make government accountable for actually implementing many of the recommendations.

324 Lillian Gray quoted in transcript 'Child abuse tackled by local women', The World Today, ABC Radio, 26 June 2007, available online at: <http://www.abc.net.au/worldtoday/content/2007/s1962040.htm>, accessed 9 November 2007.



ii) The *Strong Young Mums Program* in Bourke



Strengthening Indigenous families: Members of the Strong Young Mums Program in Bourke.

Strong Young Mums is an early intervention/family support service for young mothers and their children living in Bourke, far Western New South Wales. *Strong Young Mums* is run by Centacare, a Catholic social services organisation. *Strong Young Mums* is not an Indigenous specific program but 93% of the clients so far have been Indigenous.³²⁵ Given the immense need and lack of services in the Bourke area it was decided that the program would not exclude non-Indigenous clients.

Over the last two years, *Strong Young Mums* has had considerable success in the community and made very positive changes in the lives of women and children. They provide an example of how a non-Indigenous service can adopt culturally appropriate practices to strengthen Indigenous families.

Bourke is a regional town of 3,096³²⁶ people in far western NSW. Around 30% of the population is Indigenous.³²⁷ Bourke is part of the Murdi Paaki Regional Council COAG trial. The Murdi Paaki COAG trial goals include improving the health and wellbeing of children and young people; improving educational attainment and school retention; and helping families to raise healthy children.³²⁸

325 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

326 Australian Bureau of Statistics, *2006 Census Quickstats: Bourke (A) Statistical Local Area*, available online at: <http://www.censusdata.abs.gov.au>, accessed 19 October 2007.

327 Australian Bureau of Statistics, *2006 Census Quickstats: Bourke (A) Statistical Local Area*, available online at: <http://www.censusdata.abs.gov.au>, accessed 19 October 2007.

328 Urbis Key Young, *Evaluation of the Murdi Paaki COAG Trial*, 2006 pi.



There has, however, been no direct connection between the COAG trial and *Strong Young Mums* Program, despite the relevance of the COAG trial aims around child wellbeing. The Murdi Paaki Regional Authority's Regional Plan includes initiatives around families³²⁹ which may provide an opportunity for cooperation in the future.

Bourke has been hit hard by the drought. The drought is in its fifth year, severely limiting the already scarce employment options for unskilled workers. Bourke is a relatively isolated community, with the closest regional centre 375 kms away. Some locals describe the 'levee bank syndrome' which refers to:

a sense of enclosure created by the levee which surrounds Bourke but also reflects the geographic isolation they experience.³³⁰

Like all Indigenous communities across Australia, there is a high fertility rate. 40% of all babies delivered in Bourke are born to mothers aged 15-25, a high proportion of these mothers are Indigenous.³³¹ Most of these mothers have left school as a result of becoming pregnant and face a number of social disadvantages. According to the *Strong Young Mums* coordinator, Dorothee Crawley, most of the women are affected by 'incomplete education, unemployment, geographic and social isolation, low income, drug and alcohol abuse and domestic violence.'³³²

Description of the *Strong Young Mums* Program

The *Strong Young Mums Program* targets mothers aged between 15-25 years. The aims of the program are:

- engagement;
- social and emotional support; and
- accredited training.

The *Strong Young Mums Program* is run by Centacare. As the Families First provider in Bourke, Centacare also delivers services relating to parent groups, play groups and home visiting.

According to Dorothee Crawley, Centacare has a very good reputation with the Indigenous and wider community in Bourke based on their good work through Families First.

The *Strong Young Mums Program* was developed following extensive consultations with the Indigenous community by Centacare. *Strong Young Mums* was developed before the system of Community Working Parties was established under the Murdi Paaki COAG trial. This meant that Centacare did not have a central body to consult with but instead identified key stakeholders such as the Aboriginal Medical Service, Aboriginal Preschool, community health services and local community members. This process included discussion about the circumstances and needs of these young women and their children, what should be included in the program and some strategies to engage the target group.

329 Murdi Paaki Regional Assembly, *Murdi Paaki Regional Plan*, February 2007.

330 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

331 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

332 Presentation by Crawley, D., Cunningham, B. and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.



Following the development of a program model funding was applied for under the 'Stronger Families and Communities Local Answers strategy' of FACSIA. Funding of \$298,828 was granted for 34 months, commencing in September 2005.³³³

There are two workers allocated to *Strong Young Mums*. The formal aspects of the program runs over two days each week. Monday focuses on engagement, guest speakers and playgroup and Tuesday is dedicated to TAFE training sessions.

Strong Young Mums accepts referrals from other agencies (eg. hospitals, health services, Department of Community Services, family support services) and increasingly, recommendations from existing participants. *Strong Young Mums* is outreach focused, with staff even 'scanning the streets for mums or expectant mum'³³⁴ and then explaining the program and inviting them to attend the next session.

• Engagement

Given that women are often reluctant to access services, engagement is a crucial component of the *Strong Young Mums Program*. Engagement involves building up trust with the workers to create a safe and appealing space for the women.

One part of the engagement process is offering fun activities to attract women to the program. Scrap booking and beading workshops have been very popular with the women as it is a chance to do something creative and enjoyable with other mums. At the same time, it gives workers the chance to build up relationships and trust in a non threatening situation. According to Belinda Cunningham:

Many mothers have built a wall around themselves and this must be chipped away before they are able to trust and feel comfortable. Giving mums these creative sessions is a way for us to all get to know each other.³³⁵

These sort of activities are also part of creating an accessible, youth friendly atmosphere for the women.

Engagement is also an individual process, with workers taking time out to visit each of women on Monday morning in their 'encouragement drive'.³³⁶ Workers are able to 'have a chat'³³⁷ and tell the women what the day's activity will be.

Women will also be offered transport to and from sessions. This is crucial as not many have access to transport and public transport is virtually non existent.

Engagement is also aided by having an Indigenous worker on staff. This can make the program more accessible to women and develop culturally appropriate service across the program.

333 Stronger Families and Communities Strategy (SFCS) 2004-2008 Round 2 Funding Approved Projects – NSW, available online at: http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/sfsc-lap_r2_nsw.htm, accessed 6 November 2007.

334 Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.

335 Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.

336 Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.

337 Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.



• Social and Emotional Support

Support is provided through the group and individual components of the program. The home visiting service is an opportunity for the women to get some assistance and parenting education in a very respectful and unobtrusive manner. The workers are trained in parenting education techniques such as 'Triple P Positive Parenting Program' and 'Parents and Teachers'. More importantly, they understand that:

A gentle way is needed. Workers offer help when it is needed, and give some ideas. They don't lecture the mums... what the mums really want is to be accepted as experts with their own children, they don't want to be judged.³³⁸

Home visits, parenting support and education are protective strategies that help minimise the risk of involvement with child protection services by providing support and monitoring in the home.

Support is also about building the women's self esteem, confidence and getting used to different responsibilities and commitments. Belinda Cunningham explains that:

It is important to remember that these mums are very young and may not be used to routine in their lives, it takes time to establish the idea of being on time and ready, we work on this together... some mums need constant encouragement to keep them engaged, usually when they are experiencing personal hardships, when everything gets too hard and it is easier to stay under the blankets and block out the world. This is when Fallon or myself say, 'I'll be back to get you in 10 minutes'. Ten minutes might turn into 20 while mum gets her hair just right but it is worth it to see her come out to the car and be part of the group for the day.³³⁹

The support that other mothers provided to each other during the program is invaluable. The women develop strong networks of peer support. This is important because they have often lost these friendships when they become mothers.

Play group, held fortnightly, encourages interaction between mothers and their children and provides an opportunity for socialisation. Guest speaker sessions, held on alternate weeks, are designed to give women information about other services and support that is available to them. Agencies such as health, legal services, and parenting organisations provide very informal sessions, based around what the women want to hear.

Developing support from the Indigenous community is also very important. Initially the women were resistant to older women such as elders, aunts and grandmothers coming along to the group. Dorothee Crawley puts this down to the 'shame factor' and not feeling confident as mothers yet. However, as the program has developed and the participants have grown in confidence, they have been keen to have elder women come to the group and share their experience and cultural knowledge.

These mothers, grandmothers and aunts work in a mentoring capacity. They explain the history and impact of the stolen generation and try and break down negative stereotypes of Indigenous people as poor parents. They build cultural connection and reinforce the whole of community approach to child rearing.

338 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

339 Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.



• Accredited Training

Strong Young Mums aims for all the women to attain year 10 or year 12 equivalency certificates. Specific courses are run at TAFE which prepare women for these qualifications by reintroducing them to a classroom environment, bearing in mind that most have left school early and have had poor educational experiences. During these courses teachers are also able to assess their literacy and numeracy so any further education or training is tailored to their individual needs and abilities.

Courses have been run in clothing production, with women making items like doona covers and curtains for their children. Cooking classes focus on nutritious food for their children. The next course will be computer skills.

While the mothers are attending TAFE classes, the children are placed in child care. This is good for the mother and child:

Childcare is a foreign ideal to many of the mums, it takes a while for them to get used to the idea of strangers looking after their children. After they become used to the childcare centre they refer to it as their child's school. This is enriching for the child and the mother.³⁴⁰

Impact of the *Strong Young Mums* Program

Since being established in 2005 *Strong Young Mums* has filled an important need in the Bourke community and become a 'household name',³⁴¹ attracting strong referrals and achieving positive results. To date, 44 mothers and their children have participated in the program.

Strong Young Mums has not been formally evaluated as yet. No additional funds were provided for formal evaluation and the emphasis has been on service delivery instead of measuring success.

Strong Young Mums has recently been selected as one of six Local Answers projects, out of 120 state-wide, to be presented as an exemplary project to the federal minister for Indigenous Affairs. *Strong Young Mums* has also been awarded the Norma Parker Award through Catholic Social Services for the most innovative program.

One of the success factors of *Strong Young Mums* has been its ability to identify and respond to the unique needs of young Indigenous mothers and their children. This is no small task, with many services in the area labelling young mothers as 'unreachable' and simply 'too hard'.

340 Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.

341 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.



Young mothers who come to *Strong Young Mums* tend to have experienced a range of disadvantages. Belinda Cunningham, case worker with the *Strong Young Mums*, states that:

Many of these mums have had a less than ideal childhood; they have no real bond with their parents and therefore have little support from their families. They have little confidence and poor self-esteem and an unfinished education... a pretty rough start for a new parent, having no role models and very little life experience.³⁴²

Many of the mothers have used drugs and alcohol. Experiences of family and domestic violence are not uncommon.

This set of social circumstances paints the background for understanding the needs of these women. Centacare staff have been able to go further to look at the social dynamics that influence their choices to access services. Dorothee Crawley states that for many, there is a 'shame factor about being a young mum',³⁴³ constantly having to put up with disapproving attitudes and negative perceptions about their ability to parent. This undermines their confidence in their parenting abilities and can lead to feelings of 'embarrassment with older women'³⁴⁴ that prevents them from attending services for older women.

Many of the young women are caught 'between being a mother and wanting to be a normal teenager', still wanting to hang out with peers, go out and have fun. This has meant that *Strong Young Mums* has had to create an environment that is closer to a youth centre with opportunities for age appropriate fun, not just parenting support.

Staff have noticed significant changes in the women and children who have participated in the program. The story of Liz,³⁴⁵ below in Text Box 11, is one example of the impact *Strong Young Mums*.

Liz, like many of the women participating in the program, comes from a very disadvantaged background with little family support, parental role modelling, poor educational outcomes and a history of substance use. She has gone from a mother potentially at great risk of involvement with child protection services, to a mother who is able to provide a very loving, supportive environment for her child, with greater community support and goals for the future.

342 Presentation by Crawley, D., Cunningham, B. and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.

343 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

344 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

345 Names have been changed to protect the identity of the client and her family. Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.



Text Box 11: Success stories: Liz³⁴⁶

Liz was born in Bourke. Her mother had problems with drugs, so she was given to her Aunty to raise. Liz felt that she didn't have much of a family or mother figure growing up, even though her Aunty tried to do the best by her. Her Aunty didn't have much money and collected cans from the streets to make ends meet.

Liz enjoyed going to school. She felt happy to get away from some of the troubles at home and enjoyed the attention she got at school. It was the only time Liz was able to play with toys as she didn't have any at home.

As Liz grew up she became influenced by her older cousins who wagged school on a regular basis. Liz was lucky to attend school twice a week. Liz stopped attending school all together in year 5. By the age of 11 she was regularly using cannabis. By the age of 13 she was using a variety of drugs and was sexually active.

When she was 19 Liz met her long term partner. Liz fell pregnant at 20. This was her first connection with the *Strong Young Mums* program. She attended Monday sessions and then all of a sudden stopped coming. Staff later found out that she has miscarried. When asked if she needed to talk to someone she said, 'no thanks, that's life.'

Liz approached staff some months later and asked if they could pick her up on Monday. She was pregnant again. Liz showed interest in the cooking course on Tuesdays at TAFE. She said she wanted to learn how to cook healthy meals for her family. She was sick of buying hot chips and coke and wanted to start learning before her baby is old enough to eat.

Liz also attended Monday sessions. By coming to the guest speakers she learnt about the dangers of drinking and smoking and gave up drugs.

Liz had a baby girl named Sarah. She was born at Dubbo Base Hospital. Liz didn't have a good experience at hospital and didn't get on with the nurses who she felt didn't understand her. She found it hard to bath, feed and care for Sarah and had difficulty bonding.

Once Liz was settled at home with Sarah and her partner, she continued to come to *Strong Young Mums*. Staff introduced Parents as Teachers to Liz during regular home visits. Parents as Teachers helps parents understand child development. It has helped Liz understand how important her role is as a mother, especially as she didn't have that role model in her life.

The Parents as Teachers program has helped Liz bond with Sarah. Simple things like learning nursery rhymes have made a difference in how Liz is able to interact and stimulate Sarah.

Staff noticed that Liz was having trouble with literacy. She came around to the office one day and staff gave her some old baby clothes. Someone asked Liz what size they were and she said, '6 or 7' just guessing rather than reading the labels. Liz was later asked if she would like to learn how to read and write and she enthusiastically accepted help. *Strong Young Mums* have now set up private TAFE tutoring for Liz in basic literacy and numeracy.

346 Names have been changed to protect the identity of the client and her family. Presentation by Crawley, D., Cunningham, B., and Ord, F., 'Strong Young Mums Going Strong' at the SNAICC National Conference, Ngadluko Ngartunnaitya, Adelaide, 19-21 September 2007.



Looking at Liz's circumstances, Liz was considered a high risk parent by child protection services given her age, lack of support and history of disadvantage. With the support of *Strong Young Mums* she and Sarah have no involvement with the Department of Community Services. Liz has grown to be loving and caring woman, a friend to other mums and a wonderful mother.

Some of the common impacts of the *Strong Young Mums* program are:

- increased parenting skills and confidence;
- better bonding and attachment between mother and child;
- socialisation for mothers and babies;
- development of peer support networks with other mothers;
- learning about child development;
- decreased alcohol and drug use;
- better access and information about family violence and legal rights;
- re familiarisation with education and training; and
- better knowledge of support services available.

Anecdotally, the consequences of all these positive impacts have led to less involvement with child protection services and an increase in healthy, non-violent relationships for women participating in the program.

Strong Young Mums has also improved the way these women access other services in the community. Through the guest speaker session's women have built up familiarity and increased confidence in accessing a range of services, including health, family support, early childhood, legal and childcare. This means that when their involvement with Strong Young Mums comes to an end, they are in a better position to access support. This is also a positive for the services as many have difficulty reaching Indigenous clients, particularly young women.

Strong Young Mums has overcome a number of challenges in developing a culturally appropriate program built of community consultation and partnership. The challenge for the future, like with so many innovative programs, is finding secure funding to continue their good work.

Strong Young Mums has been funded under the Local Answers strategy. Local Answers provides funding for:

local, small-scale, time limited projects that help communities to identify opportunities to develop skills, support children and families and foster proactive communities.³⁴⁷

This means that Local Answers is one off funding and no further funds can be applied for. This is based on the assumption that the program should be self-sustaining by the end of the funding period.

347 Stronger Families and Communities Strategy 2004-2009, Local Answers \$137 million over 5 years, available online at: http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/sfsc-local_answers.htm#5, accessed 6 November 2007.



Whilst the *Strong Young Mums* program has developed strong partnerships in the community that helps make the program sustainable, much of the success still depends on the two workers who are 'the glue holding the program together'.³⁴⁸ The workers provide the consistent engagement and support that make the women feel comfortable, as well as coordinating other service participation.

Strong Young Mums is now pursuing alternate funding, including corporate sponsorship to continue the program.

Lessons from the *Strong Young Mums* Program

Building on existing strengths

Strong Young Mums has built on the solid foundation and reputation of Centacare in the Bourke area and their existing work with Indigenous families. This placed them in a good position to build partnerships with community and other services reasonably quickly so that the majority of the time has been spent on program development and client engagement.

Effective Consultation

Centacare is a mainstream service. This could have posed considerable risks in developing a culturally appropriate service. *Strong Young Mums* have overcome these risks through effective consultation with the local Indigenous community and service providers. Consultation has provided advice on the circumstances that these young women face, as well as strategies to get them involved in the program.

Importantly, *Strong Young Mums* continually consults with the mothers in the program. Women are asked what sort of information they need, what sort of environment is most comfortable and who should be invited to groups. This creates ownership and builds confidence through control.

Connecting to Culture

Strong Young Mums is aware that many of the women may have lost connection with their culture through a chaotic childhood and adolescence. Some may feel judged as young mothers and unsure of how to reconnect. The use of elders in a mentoring capacity has provided opportunities to bridge this gap. This approach views Indigenous culture as a source of resilience and supports Indigenous children's right to culture.

Outreaching to the Community

Strong Young Mums is well known in the community and has taken a proactive response to finding clients. The workers are out and about doing home visits and providing transport rather than being stuck in an office. These practical measures of support make the program much more accessible.

Partnership approach

Strong Young Mums works in partnership with other organisations. They do not aim to provide all the services or all the answers to women. Instead, they introduce other services so that there is a broader network of support. This means that if the *Strong Young Mums* service isn't available women have the resources to tap into other support if necessary.

348 Crawley, D., *Communication with Social Justice Commissioner's Office*, 16 October 2007.



Safe Families Project: A snapshot of a town camp in Alice Springs.

Safe Families, auspiced by Tangentyere Council, is an early intervention approach to keeping Indigenous young people from Alice Springs and the town camps out of the child protection system. It has been operating for the last five years providing a holistic, community centred, Indigenous response to child abuse.

Safe Families has recently been recognised by the Australian Institute of Family Studies and the Secretariat of National and Aboriginal Islander Child Care (SNAICC) as a promising practice in *out of home care* for Indigenous children.³⁴⁹

Alice Springs is the major centre for around 260 central desert communities across the Northern Territory, South Australia and Western Australia. Alice Springs has a population of close to 24,000 people. The 2006 Census estimates that around 20% of the Alice Springs population is Indigenous.³⁵⁰ However, there are problems in accurately measuring the Indigenous population in Alice Springs due to the highly mobile nature of the Indigenous population and underestimation of the population of the town camps.

Around 3,000 people, including residents and visitors, live in the town camps of Alice Springs.³⁵¹ There are 21 town camps in Alice Springs (19 legally established and 2 without leases) which were originally established on the outskirts of town. As

349 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007.

350 Australian Bureau of Statistics, *Census2006 Quickstats: Alice Springs (T) Local Government Area*, available online at: <http://www.censusdata.abs.gov.au>, accessed 8 November 2007.

351 Foster, D., Mitchell, J., Ulrik, J., and Williams, R., *Population and Mobility in the Town Camps of Alice Springs, A report prepared by the Tangentyere Council Research Unit, Desert Knowledge Cooperative Research Centre, Alice Springs, 2005.*



Alice Springs has grown, many of the town camps are now within in the main areas of Alice Springs. Town camps were set up in places that are traditional camping and ceremonial grounds³⁵² and reflect a strong connection to country.

The town camps are diverse, with each camp having dominant family and language groupings. However, one thing that all the town camps have in common is poor access to services and overcrowding.³⁵³ This is reflected in a range of social problems identified by the Alice Springs Town Camps Taskforce including:

- poor health outcomes;
- lower educational outcomes and higher unemployment;
- family violence;
- crime, including the highest homicide rate in Australia; and
- high levels of alcohol use and related harm.

Despite these problems 'many people prefer to live on town camps among family who continue to provide strong social support systems.'³⁵⁴

The Town Camps are serviced by Tangentyere Council. The Council was established in 1974 to help Indigenous people secure land tenure over camping sites to provide housing, infrastructure and basic services.

Tangentyere Council provides a diverse range of services and programs to town camp residents. Although the core business is the provision of housing, other basic services are the 'one stop shop' that brings together Centrelink, banking services, financial management and counselling, a food voucher system, rental collection and postal services. Tangentyere have also developed youth and family services.

The *Safe Families Program* is just one of a suite of programs run by the Council. Other programs include:

- Yarrenyty Arltere Learning Centre at the Larapinta Valley town camp;
- Early Childhood Intervention Program's Mobile Playgroup – that services six of the eighteen town camps. Approximately half of the sessions are done in collaboration with the Toy Library which contributes staff resources and its extensive library of toys;
- Youth Activity Services – structured sport, recreational, cultural, social and creative activities for up to 600 children and young people living on town camps operating after school, at evenings, on weekends and during vacation times up to six days per week throughout the year;
- Central Australian Youth Link Up Service (CAYLUS) – works with remote communities and Alice Springs to address inhalant substance misuse and youth related needs from both a community and regional perspective;

352 Foster, D., Mitchell, J., Ulrik, J., and Williams, R., *Population and Mobility in the Town Camps of Alice Springs, A report prepared by the Tangentyere Council Research Unit, Desert Knowledge Cooperative Research Centre, Alice Springs, 2005*, p3.

353 Alice Springs Town Camps Taskforce, *Alice Springs Town Camps Review Taskforce Report 2006*, Department of Local Government, Housing and Sport, 2006, p16.

354 Alice Springs Town Camps Taskforce, *Alice Springs Town Camps Review Taskforce Report 2006*, Department of Local Government, Housing and Sport, 2006, p2.



- Social and Emotional Wellbeing programs – providing family and individual counselling and support to deal with family violence, problem solving skills and self-development;
- Aged Care Program;³⁵⁵
- Tangentyere Artists cooperative; and
- Tangentyere Night Patrol and Youth Patrol – providing dispute resolution to resolve conflict in ‘Aboriginal way’ and intervene in family violence situations. The Night Patrol liaises with Territory health, alcohol and drug workers, legal services, family, children, youth and women’s services.³⁵⁶

The snap shot of living conditions in Alice Springs and the town camps shows that many Indigenous young people are at risk, either as victims of abuse, family violence or the consequences of poverty and overcrowding.

In 2001 Tangentyere Council commenced consultations with local Indigenous leaders, people living in the town camps, service providers, community groups and funding bodies to develop a solution to these problems.

There was no doubt during the consultations that there was a need to provide something for children at risk. The question quickly became what would be the most appropriate form of assistance. There was an existing crisis accommodation service for young people in Alice Springs but it was ‘misused by parents as a child-minding service’³⁵⁷ and didn’t actively increase parenting capacity or reduce risk in a sustainable way.

Description of the *Safe Families Program*

As a consequence, *Safe Families* has developed as a residential service, offering respite through short and medium term accommodation to children at risk of involvement with the child protection system, as well as a strong family work focus. This means that where possible, families are supported and strengthened, with long-term alternative placements with kinship carers and ultimately, children are kept out of the child protection system.

The *Safe Families* vision statement reflects principles developed in consultation with the community. It aims to:

- provide kinship care wherever possible as it is crucial to the physical, emotional and spiritual wellbeing of all young people;
- support families to preserve their traditional obligations to nurture and provide care to young people;
- foster and preserve community connectedness and the cultural integrity of Aboriginal families; and
- ensure young people grow up strong, safe, resilient and healthy in their transition to adulthood.

355 Alice Springs Town Camps Taskforce, *Alice Springs Town Camps Review Taskforce Report 2006*, Department of Local Government, Housing and Sport, 2006, p32.

356 Alice Springs Town Camps Taskforce, *Alice Springs Town Camps Review Taskforce Report 2006*, Department of Local Government, Housing and Sport, 2006, p46.

357 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p20.



Tangentyere Council approached the Commonwealth and Northern Territory governments and is currently funded at approximately \$700,000 per year. Funding commenced in 2002.

There are three service delivery components of the *Safe Families* Program:

- family work;
- a safe house for young people; and
- a safe house for families.

The safe house for families usually operates independently of family work and accommodation for children at risk and will not be the focus of this case study.

Safe Families provides services to children between the ages of 7-14 years. There is flexibility to work with clients outside of these ages, particularly if the child or young person is particularly vulnerable or unable to access other services. *Safe Families* accept referrals from child protection agencies, the police, youth services, courts, night patrols, health services and self referral. The common criteria are that the young person is at risk of involvement with child protection services, or already involved with child protection services.

Although *Safe Families* was originally conceived as an early intervention program to divert children away from the child protection system, as the program has developed a number of the clients have already been under child protection orders. Before *Safe Families* was established many Indigenous children were placed with non-Indigenous foster carers and serviced by non-Indigenous agencies. A decision was made to include these young people as well to keep them engaged within their communities:

If a child comes into care they don't necessarily have to leave their community... We take a human rights approach [to child welfare]. It's a right to be brought up within your community.³⁵⁸

Once a referral is received an assessment is undertaken by staff about what sort of support the child needs. Some children are identified just for family support. Family workers engage families to increase their ability to care for their child and thus reducing the risk of formal intervention.³⁵⁹

Where there is a more urgent need the child may need to enter the safe house accommodation. This can be as either as respite where the family needs a break, or as a medium term placement while long term placements are found. Ideally, clients only stay up to six weeks but if no other accommodation can be found they are able to stay at the *Safe Families* House longer as:

the service takes the perspective that it is better to keep the child until a suitable placement is found, rather than placing the child in a situation that may not be a good match or satisfactory in the longer term.³⁶⁰

358 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p19.

359 Examples of how the program works are provided in Text Box 12 further below.

360 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p23.



The *Safe Families* House has full time staff in the house to support the children. All of staff working for the program are Indigenous and have strong ties to local communities. Approximately 60-70% of the additional youth support services are staffed by Indigenous workers.

Safe Families provides a safe, supported placement for children but it is not a locked facility. Children are free to 'hop over the back fence anytime they like, we're not a jail'.³⁶¹ Up to six children can stay at the house at any one time.

Children on the *Safe Families* program are provided with extensive case management that is individually tailored to their needs. Depending on their individual case plan children may receive support through:

- counselling services;
- advocacy to ensure other services and government departments deliver services;
- mediation;
- referral for on-going assessment for health, mental health or cognitive disabilities;
- support accessing Centrelink payments;
- development of life skills;
- participation in recreational activities;
- meeting cultural needs;
- education support; and
- finding long term accommodation.

Safe Families works in partnership with other Indigenous organisations such as the Central Australian Aboriginal Congress (the local Aboriginal community controlled health services) and non-Indigenous services to ensure these needs are met.

Safe Families maintain a link with family. Families are central to the wellbeing of children and their knowledge, skills and support are crucial in moving children forward. A comprehensive family mapping process is used to identify what is the best medium to long term placement option for a child.

Impact of the *Safe Families* Program

Safe Families has made some significant changes in the lives of the children, young people and families that they have worked with over the last 5 years. Although the program has not been formally evaluated it has received recognition from the Australian Institute of Family Studies and the Secretariat of Aboriginal and Islander Child Care as an example of promising practice. The combination of individual successes and good processes are testament to the positive impact *Safe Families* has made in Alice Springs.

In the absence of a formal evaluation, the stories of how *Safe Families* has worked with children and young people demonstrate its impact on an individual and family level. Text Box 12 below contains a selection of client case stories which show the diversity of clients that walk through *Safe Families*' doors and approaches that the program takes.

361 Adams, J., *Communication with Social Justice Commissioner's Office*, 20 September 2007.



Text Box 12: Client case stories from the *Safe Families Program*³⁶²

a) Family support and early intervention

A six year old boy was referred to *Safe Families* by child protection services due to concerns around neglect. The boy lived in overcrowded public housing in the Alice Springs, with around 15 people living in the small house.

He was under the primary care of his mother and grandmother but there were a lot of other people in the house. His mother and grandmother cared deeply for the boy, were non-drinkers and tried to meet his needs, but in this over crowded house it was a struggle. Other family members were drunk and he was exposed to family violence.

The boy was very underweight and there were concerns about his health. He had also never attended school.

The *Safe Families* family worker engaged the mother and grandmother to develop a case plan for the boy. The first priority was looking after his health. The family worker took the boy to Congress for a check up. During the check up his ears were looked at by the doctor. They were full of dirt and even dead flies, causing infection. If he hadn't seen the doctor at this time he would have suffered permanent hearing loss in at least one ear.

The family worker recognised the mother and grandmother's strengths but identified that they needed support in learning about proper nutrition. The boy had grown up drinking tea which had lowered his iron levels and contributed to his low weight. The family worker provided education and support to put healthier meals in place. This is now supported by the other family members in the house as well. As the family worker noted:

They'll tell him now; you've got to drink your orange juice, no tea for you. At the same time they'll probably still be eating junk food but at least they are looking out for him.³⁶³

The family worker was also able to advocate for the family to the Department of Housing to get extra accommodation. This has resulted in a number of people moving out and a marked reduction in alcohol and violence in the boy's home environment.

Perhaps most importantly, the family worker has been able to get the boy to school. Much of his reluctance to start school stemmed from his inability to hear and lack of confidence. By consistent encouragement and addressing underlying health problems he was:

hearing better, and feeling better and one day when I said do you want to go to school – I'd ask him every day – he just said yes.³⁶⁴

The boy continues to attend school and child protection is satisfied that his living circumstances have improved enough that he is no longer at risk of intervention.

b) Transition to long term placement

A six year old boy was referred to the *Safe Families* House after coming under a child protection order. He became involved with child protection services after exposure to family violence and abuse. Earlier attempts to engage his parents had failed and

362 Stories from *Safe Families* staff at meeting on 30 October 2007. No names have been used to protect the identity of the young people involved.

363 Marron, M., *Communication with Social Justice Commissioner's Office*, 30 October 2007.

364 Marron, M., *Communication with Social Justice Commissioner's Office*, 30 October 2007.



the child protection service decided that he would be at too great a risk of harm if he remained with his parents.

Family and Community Services could not find a family or kinship placement for the boy. The next most culturally appropriate placement in Alice Springs was the *Safe Families* program. There was a hope that they would be able to use their networks to discover a suitable carer, while providing a supportive environment to minimise the harm he had already suffered.

When the boy came to the *Safe Families* House he was initially very cheeky and his behaviour was challenging for staff to manage. Workers recall that he was often climbing the roof of the house and would constantly tease other residents.

Staff worked hard to put boundaries in place and establish routine. Like many of the children at *Safe Families*, he had a chaotic upbringing with family lurching from crisis to crisis, so routine was a foreign concept. Simple things like getting out of bed every morning, having breakfast and being ready for school took time to get used to. *Safe Families* staff created a predictable environment, where he knew what would happen if he acted out, but he also knew he was safe.

Through the extensive networks of staff working at *Safe Families*, a family placement was found in South Australia for the boy, after about six months in the House. This has been a successful placement so far. This is because it is with family members but also because he has become an easier child to look after. He is now much calmer and his behaviour has dramatically improved from the boy who was always climbing the roof to a polite but still energetic and fun loving boy who directs his energy into positive activities like soccer.

Safe Families have helped the boy maintain his connection with family and culture in Alice Springs. He comes back to visit family out bush three times a year and will stay in the *Safe Families* House for a few days each time while in transit. His family out bush have helped him keep up his language skills and provide a link to country.

c) Special needs

An adolescent girl from one of the town camps was referred to the *Safe Families* House as she was not considered safe in her community. The young woman has a cognitive disability. She was living with her grandmother, but as her grandmother's health deteriorated she was no longer able to provide the high level of care that she needed. She did not have the ability to use protective strategies to keep her safe from others and was therefore vulnerable to abuse.

The young woman had received very limited support and intervention from the Department of Disability Services who considered her disability too mild to receive significant service. She was attending a special school sporadically. She really enjoyed school but had difficulty getting there and needed support to attend.

Whilst in the *Safe Families* House she was provided with a safe environment, supported to attend school and taught living skills and protective behaviours. It is acknowledged that she was a very high needs client and outside the usual service capacity of a program like *Safe Families*. However, if they had not stepped in she would have remained at very serious risk of harm.

She remained in the house for around 14 months. A placement was finally negotiated with a disability service after much advocacy from *Safe Families* staff. *Safe Families* have also managed to get the NT Department of Disability Services involved so that long term support is available.



The success of *Safe Families* is built on the commitment and skill of the staff; however, there are challenges, particularly for Indigenous people working in this area. Tangentyere Youth and Community Services Manager, John Adams is realistic about the toll that this kind of work can take:

It's a big call for such a small community to be involved in statutory work... Some Indigenous organisations don't want anything to do with out of home care. It's very hard work and if it's your community and your family, you don't just clock off at the end of the day.³⁶⁵

Although *Safe Families* has a relatively low staff turn over, it can still be difficult retaining talented staff, especially where there are a lack of career advancement opportunities.

Safe Families struggles to cope with the structural gaps in the system. *Safe Families'* success is dependant on partnership with other agencies and service providers. This is severely compromised while there are so few accommodation services, a reluctance of child protection and disability services to fund proper support and of course chronic overcrowding in the community and town camps.

Sustainable funding is also an issue for *Safe Families*. Funding is currently sourced from a combination of Commonwealth and Northern Territory money. Funding is due to expire in March 2008 and it is not certain whether further funding will be provided.

Lessons from the *Safe Families* Program

Indigenous staff expertise and networks

The *Safe Families Program* provides a model of how Indigenous staff make the crucial difference in providing culturally appropriate child protection services. The high rate of Indigenous staff makes the service more comfortable for the children. Workers are often aunts or uncles. Between the full staff complement most of the local languages are represented. The importance of children being able to communicate in their own language when entering a new and alien environment after traumatic experiences should not be underestimated. Melanie Marron, Family Support Worker, describes the situation as:

A bit more relaxed. It's not a white home which is a totally different culture for these kids. It's like if you were put in a Japanese home, you'd get some things but not everything.³⁶⁶

Indigenous staff prove the difference in the family mapping process and finding long term placements as they are able to tap into their own networks and community knowledge. John Adams notes:

If you have to come to work everyday with a kid who is a little bit rambunctious because he's been in placement too long and you're part of an extended family network, you are highly motivated to ask everyone in your extended family about placement for this kid... our staff have a big network, government can't match that. They have trouble just keeping Aboriginal staff.³⁶⁷

³⁶⁵ Adams, J., *Communication with Social Justice Commissioner's Office*, 20 September 2007.

³⁶⁶ Marron, M., *Communication with Social Justice Commissioner's Office*, 30 October 2007.

³⁶⁷ Adams, J., *Communication with Social Justice Commissioner's Office*, 20 September 2007.



Indigenous staff also use their networks to increase client safety. John Adams outlines one situation where *Safe Families* was working with a teenage girl who was a promised bride. Family and Community Services decided that it would be best for her to live with extended family in another community, away from her promised husband. However, through *Safe Families* worker networks, they were able to find out the man had actually moved to the community where the girl was about to be sent, thus jeopardising her safety. They were then able to advise Family and Community Services and find an alternate placement. This is the sort of detailed knowledge about relationships that non-Indigenous services struggle to access and can unwittingly place children in harm's way.

Support for staff

Safe Families management recognises the personal toll that this sort of work can have on staff members and provides a supportive environment. They also recognise that staff are also active members of their own Indigenous communities and will have various cultural responsibilities from time to time. *Safe Families*, as part of Tangentyere Council has a culturally appropriate Enterprise Bargaining Agreement which has contributed to relatively low staff turn over.³⁶⁸

Connecting to culture

Safe Families is premised on providing cultural safety for the children and young people that they work with. This means:

Workers take the view that while children can be physically unsafe they can also be culturally unsafe. For example, culturally inappropriate responses may incorporate judgmental views about issues such as allowing a child access with family members who may be materially disadvantaged. Culturally unsafe practices compromise the child's ability to remain connected with family, community and culture.³⁶⁹

In practice, workers maintain culture and connection to country with activities like weekend trips out bush to get bush tucker. According to Melanie Marron, this gives the children a 'sense of pride in country and self'.³⁷⁰ Where possible, extended family members are involved as well.

Flexibility

As the client stories indicate, *Safe Families* has the capacity to 'respond to whatever need comes through the door'.³⁷¹ This means dealing with the day to day needs of children and families and not enforcing a strict eligibility criteria or program. In a community like Alice Springs, where culturally appropriate children's services are few and far between, the need is always going to be great. Without *Safe Families* many of the children and young people would simply be cycled through the child protection system, from one foster carer or placement to another.

368 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p20.

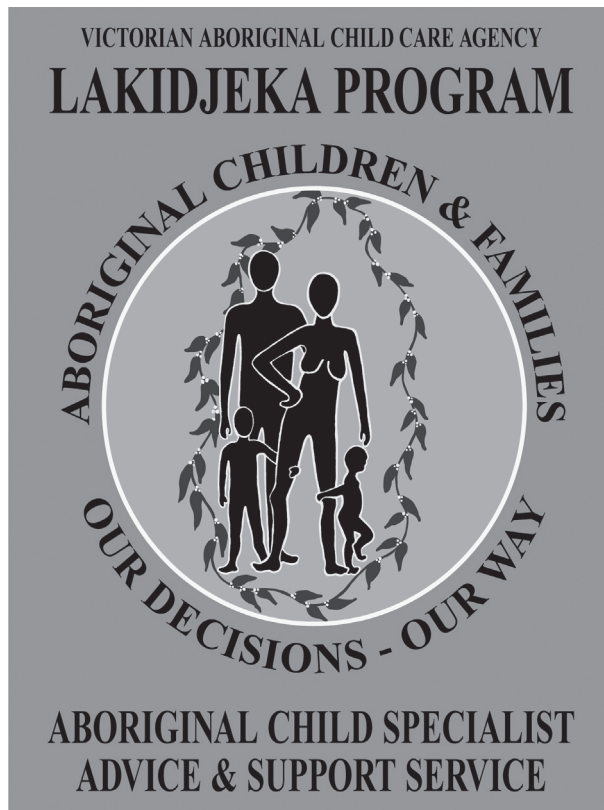
369 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p23.

370 Marron, M., *Communication with Social Justice Commissioner's Office*, 30 October 2007.

371 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p22.



iv) *Lakidjeka Aboriginal Child Specialist Advice and Support Service*



The Lakidjeka Aboriginal Child Specialist Advice and Support Service provides an independent and culturally appropriate service to families.

The *Lakidjeka Aboriginal Child Specialist Advice and Support Service (ACSASS)* is operated by the Victorian Aboriginal Child Care Agency (VACCA). It is an Indigenous initiative to ensure statutory child protection services are culturally appropriate for Indigenous children and families.

ACSASS³⁷² is the only independent service of this type operating in Australia. *Lakidjeka ACSASS* has been recognised as a promising practice by SNAICC and the Australian Institute of Family Studies.

The Victorian Aboriginal Child Care Agency is an established, well respected Indigenous controlled service that is recognised for its good programs and governance. It was established in 1977 to provide state-wide family support and child protection services for Koorie families. It has developed a diverse range of protection and support services including:

- home visiting, family support;
- Aboriginal family decision making;
- family preservation;
- residential family reunification program;

³⁷² The ACSASS program is delivered by Lakidjeka in the State of Victoria with the exception of the Local Government Area of Mildura where it is delivered by the Mildura Aboriginal Co Operative.



- supported playgroups;
- foster care;
- Koorie Cultural and Support program;
- Link Up – Reunion services for Stolen Generations;
- residential care; and
- youth homelessness and leaving care services.³⁷³

The original Lakidjeka Crisis Service was established by VACCA in 1992 following the development of a protocol with the Department of Human Services (Victoria) to respond to Indigenous children involved in child protection.

Initially this service was funded by the Commonwealth and employed four Indigenous workers to provide consultation and advice across the entire state. This level of resourcing was clearly inadequate, with over 1,000 notifications about Indigenous children a year.³⁷⁴

In 2001 the Victorian government committed to consulting VACCA for all Indigenous notifications and allocated commensurate funding for VACCA to take on this function. Consultations were undertaken with Indigenous communities about how to best provide advice and respond to Indigenous children involved with child protection. This was initially a contentious process as:

some communities wanted to take responsibility for child protection issues themselves, but once they understood Lakidjeka's role they opted for their role to be a support service to the families.³⁷⁵

At the end of the process, the government funded VACCA to provide a state-wide service except for the local government area of Mildura. The Mildura Aboriginal Co-operative is funded to provide a service to the Mildura local area. A limited after-hour's state-wide service is also provided by VACCA.

A protocol was developed between the Department of Human Services' Child Protection Service and the VACCA to ensure that consultation occurred consistently for all Indigenous children.³⁷⁶ Following the signing, in 2002 the Victorian government allocated \$2.4 million over four years to establish the processes to successfully implement the protocol.

The role of VACCA in providing advice and consultation to the Department of Human Services' Child Protection Service is now enshrined in the *Children, Youth and Families Act 2005 (Vic)*.

373 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p7.

374 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p9.

375 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p9.

376 *Protocol between the Department of Human Services Child Protection Service and Victorian Aboriginal Child Care Agency*, available online at: http://www.office-forchildren.vic.gov.au/child_protection/library/publications/indigenous/protocol, accessed 31 October 2007.



Description of the *Lakidjeka Aboriginal Child Specialist Advice and Support Service*

Lakidjeka ACSASS is fully operational across Victoria (apart from Mildura Local Government Area). The program employs around 30 staff to provide specialised support and advice to the Department of Human Services' Child Protection Service on all significant decisions in relation to Indigenous children involved in the child protection system.

The protocol sets out clear roles and responsibilities for Child Protection and *Lakidjeka ACSASS* staff from the very beginning of the notification process, through investigation, case planning, and informing placement where necessary, until the case is closed by Child Protection.

Lakidjeka ACSASS staff are required to be involved in all significant decisions. This includes making decisions about:

- whether to proceed to an investigation of a notification;
- what other agencies and services should be involved with the family or child;
- whether to substantiate a notification;
- what type of protective intervention is required during an investigation;
- the overall case planning direction;
- whether an application to proceed to court should be made;
- what contact arrangements should exist between the child and family if the child is removed;
- input into the type of placement that is most appropriate for a child;
- whether a child should be removed;
- whether and when a child should be returned to their parents care;
- whether breaches of existing orders occur;
- whether extensions of orders occur;
- addressing critical health and welfare issues; and
- whether the case should be closed.

The Department of Human Services' responsibilities are also outlined in the DHS Practice Instruction Advice no. 1059 *Responding to Aboriginal Children*.

The step by step process for *Lakidjeka* and Department of Human Services cooperation, based on the Protocol between the Department of Human Services and VACCA, is outlined in Text Box 13 below. This means that there is role for *Lakidjeka* workers at each point of intervention.



Text Box 13: Protocol for child protection and engagement with *Lakidjeka ACSASS*³⁷⁷

1. When a notification is received by the Child Protection Intake Team of the Department of Human Services, they must first ascertain if the child is of Aboriginal or Torres Strait Islander descent. If the child is Aboriginal or Torres Strait Islander, Lakidjeka must be notified as soon as possible, and be provided with client information and details of notification concerns.
2. Child Protection Intake Team staff seek cultural advice to inform assessment of identified risk factors and determine whether the matter will require investigation by Department of Human Services child protection staff or referral to another support agency. *Lakidjeka ACSASS* operates an essential intake system.
3. If the decision is made that Department of Human Services child protection staff will investigate, the case is referred to the relevant local ACSASS team for action. Department of Human Services child protection staff must continue to seek advice and consultation from ACSASS in order to obtain an ongoing Indigenous risk assessment.
4. *Lakidjeka ACSASS* staff are the key Indigenous advisors in the planning and investigative process. Lakidjeka staff will be consulted on any significant decisions made by the Department of Human Services in relation to Indigenous children, such as issuing protective orders and determining outcomes for Indigenous children involved in all allegations of abuse in care processes and in case planning decisions including the decision for permanent care.
5. The Department of Human Services will continue to involve Lakidjeka Case workers as cultural consultants and partners in the case management of an Aboriginal child. *Lakidjeka ACSASS* tasks include undertaking joint home visits with child protection, providing input into cultural support plans, attending case planning meetings, involvement in the court processes and assisting referrals to Indigenous services.
6. If an out of home placement is needed for the child, Lakidjeka will provide information and advice on the extended family and community placement options. Appropriate placements are sought in line with and according to the hierarchy of placement options prescribed in the Aboriginal Child Placement Principle. In the first instance the child should be placed with family, extended family or community. Where this is not possible ACSASS will continue to provide advice as to whether a placement can meet the cultural needs of child and what needs to happen to ensure this occurs. The development of Cultural Support Plans is crucial to this process – particularly where it is envisaged that the placement is to be of a longer term duration.

377 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p11.



As part of this process, Lakidjeka workers also offer support to children and families, in particular to help them 'understand the legal jargon and feel supported from their own culture.'³⁷⁸ Not all families agree to Lakidjeka support as they are aware that Lakidjeka are also required to report relevant information to the child protection services.

However, according to Suzanne Cleary, Program Manager of *Lakidjeka ACSASS*, this is only a very small percentage of all clients and many of the families that initially refuse support often change their minds when they realise that there are serious consequences for their action leading to child protection involvement such as Court Orders and particularly when removal becomes apparent.³⁷⁹ If parents or young people do not want Lakidjeka involved, the service must provide cultural advice to the Department on a secondary consultation basis.

Impact of *Lakidjeka ACSASS*

Lakidjeka ACSASS has grown from a small program providing ad hoc advice and support to be an integrated component within the Victorian child protection system. There is about a 95% compliance rate with the protocol by Department of Human Services staff³⁸⁰ (at the point of notification/report). From the period of October 2002 to July 2007 Lakidjeka provided consultation and advice on 10,136 notifications. Of this 4,418 were further actioned and investigated by the Department of Human Services, with Lakidjeka being expected to provide advice and consultation on key decisions throughout the length of a child protection intervention.³⁸¹

Although Lakidjeka has not been formally evaluated,³⁸² staff believe that it has resulted in less Indigenous children being removed from their families through better understanding of cultural issues and referral to appropriate family support services. Where children are removed, there seems to be a higher compliance with the Aboriginal Child Placement Principle.³⁸³

Lakidjeka ACSASS also acts as an early intervention service with some notifications of Indigenous children being diverted away from formal child protection investigation at the point of intake. Through family, community and cultural knowledge, *Lakidjeka ACSASS* workers are often able to ascertain whether the notification should be taken further, or whether local support services might provide enough assistance to the family to address the reported concerns.

378 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p9.

379 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

380 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p12.

381 Unpublished *Lakidjeka ACSASS* document. Information provided by *Lakidjeka ACSASS* to the author.

382 *Lakidjeka ACSASS* is currently being reviewed by Department of Human Services.

383 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p13.



Lakidjeka workers challenge notifications that do not take account of cultural and social circumstances for Indigenous families. For instance, notifications are sometimes made about children living in houses where there are a lot of people, or that children are sleeping on mattresses on the floor.³⁸⁴ This may not necessarily be an indicator of risk, but just reflect the realities of many Indigenous people's lives where communal living is still a part of their lifestyle or a result of poverty.

Lakidjeka has been able to use their position of authority to challenge the Department of Human Services to respond appropriately. One example of how Lakidjeka advocates for families is described in Text Box 14 below.

Text Box 14: An example of Lakidjeka client support³⁸⁵

The Department of Human Services received a notification about a baby at risk of harm. As the notification concerned an Indigenous child, *Lakidjeka ACSASS* were contacted and became involved.

The mother was from interstate and had arrived in Victoria after a falling out with her mother. She has two other children, both still being cared for by the grandmother. She was diagnosed with psychiatric problems and appeared to be low functioning, with the notifier concerned that she may also have a cognitive disability. The mother had very little support in Victoria, the baby was failing to thrive and the family was at risk of homelessness.

Lakidjeka Intake agreed that further investigations should take place and where possible support be put in place.

The local *Lakidjeka ACSASS* worker, along with Child Protection, visited the mother and advocated for intensive in-home support to be provided to help the mother bond with her baby, improve parenting skills and monitor any mental health issues. However, the in-home support was not immediately available. A decision was made to place both mother and child in a residential mother and child unit to provide some parenting support.

Lakidjeka recognised that the residential service was not well set up for Indigenous women but there was no alternative. Lakidjeka staff worked extensively with the mother to allay her anxieties about the unit. They also made sure that all the information given to her by child protection workers was appropriate, taking into account her low level of understanding.

What she did understand and communicate consistently with all involved, was that she wanted to go home.

Fortunately, everyone involved in the case agreed that the best outcome would be for her and her baby to return to live with the grandmother and her other children interstate. However, how this would be achieved was a point of contention with a great deal of bureaucratic red tape to be dealt with before her transfer to another state could be approved.

Despite all reports that the grandmother was a suitable person, who was already caring for the child's two siblings and who was recognised as a long term child care worker and respected community member, the Department of Human Services was not willing to let the mother and child return there until a full assessment was completed. This would take a substantial amount of time.

384 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

385 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.



During her stay at the residential unit, staff there assessed that the mother would be unlikely to be able to properly care for her baby without extensive long term support (which the Department of Human Services was not able to provide). The mother and baby were no longer able to stay at the residential unit and there were no suitable supervised accommodation options available for both the mother and baby. Given this, the Department of Human Services proposed temporarily removing the baby until assessments and long term options could be arranged.

Lakidjeka ACSASS staff recognised the harm that separation would cause to the mother and baby. The mother was already in a fragile state and ACSASS staff were concerned that she would 'fall apart' with the loss of her child. As an Indigenous woman she was particularly distrusting of 'welfare' and was convinced that Child Protection would take her child regardless of what she tried to do. Workers continued to explain to the mother what was actually happening and what processes were taking place.

Lakidjeka also made direct contact with the grandmother and Indigenous services, local to where she lived, in order to set up supports and assessments.

Lakidjeka exerted considerable influence to convince child protection workers of the harm of separating mother and child and challenged their bureaucratic processes. They agreed that an assessment needed to take place, but it should be undertaken with the mother and baby together and interstate in her own country. Lakidjeka's knowledge of the department's rules and regulations meant that they were able to challenge their 'conservative line'³⁸⁶ and suggest this alternative approach, still within regulations but more client focused.

The Department of Human Services eventually agreed and the mother and baby were allowed to return home together to rejoin their family. The child was however, placed on an Interim Children Court Order in order to secure the transfer and planning. A 'Kith and Kin' Assessment was undertaken by the interstate Department and the baby is largely cared for by the grandmother and the mother receives family support and monitoring by the local child protection agency to improve her parenting skills.

In this example, Lakidjeka have been able to act as 'cultural interpreters'³⁸⁷ for the Department of Human Services to help explain why Indigenous families may respond the way they do. Suzanne Cleary believes that due to past history, people are 'brought up with the perception that the welfare will take their children away... so the very first knock on the door is going to bring responses that are angry, worried and scared'.³⁸⁸

Contextualising these responses means that child protection workers are less likely to just assume that this response is 'how the family is all the time'³⁸⁹ and use this information in Court or other decision making processes.

Although Lakidjeka has received significant staff and resource increases since its inception, they still do not have enough staff to keep up with demand. Long term involvement in case planning and being a part of all the key decisions related to Indigenous children places a substantial burden of time on staff. Suzanne Cleary also believes that many of their cases are extremely complex with greater emphasis on family reunification and 'much more emotional work with families'.³⁹⁰

386 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

387 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

388 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

389 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

390 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.



While most child protection staff work well with Lakidjeka there are still some problems in developing and maintaining the partnership. Some Child Protection workers fail to understand the importance of culture and the effects that past policies and practices have had on Aboriginal people. The need to listen to and consult with Aboriginal workers in ACSASS is crucial.

For example, one notable gap according to Suzanne Cleary is that the Department of Human Services is less likely to inform Lakidjeka when they are considering closure with a family and in many cases ACSASS staff don't find out until after the fact. Lakidjeka are in a unique position to advise the child protection workers about whether this is appropriate:

Some parents will agree to anything to get child protection out of their lives. There are things that they won't always know how to follow through on, or they might be referred to services that aren't responsive to Aboriginal people.³⁹¹

Closing a case prematurely often leads to further child protection notifications as issues have not been effectively dealt with.

Like most Indigenous organisations it is also difficult to recruit and retain Indigenous staff for this difficult work. Although the Department of Human Services are ultimately responsible for any decisions it can be a 'no win situation' for Lakidjeka workers, especially when family and community wrongly perceive that Lakidjeka's role is to always prevent removal of children. Lakidjeka works in the best interest of the child, which sometimes means removal.

Lessons from Lakidjeka Aboriginal Child Specialist Advice and Support Service

Formal protocol

The protocol between the Department of Human Services and VACCA provides agreement to ensure that consultation with Indigenous people about child protection issues occurs systematically. This places Indigenous expertise in a central position within the child protection system, not an additional service that is consulted only if workers are motivated or there is time. The protocol also has a dispute resolution mechanism which facilitates constructive, professional relationships.

Placing Indigenous advice at the centre of the system slowly changes the culture of the child protection organisation. Through training provided by Lakidjeka³⁹² and constantly working in partnership, non-Indigenous staff become more confident in working with Indigenous families, or at least more likely to ask for help.

Effective consultation

Staff attribute the success of the Lakidjeka to the good name of VACCA and of efforts to continually engage the community. At one level this has occurred through community consultation but at another level it involves the day to day work that Lakidjeka staff do to engage and empower families:

391 Cleary, S., *Communication with Social Justice Commissioner's Office*, 12 November 2007.

392 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p12.



Families and children feel that the power has shifted and now they have a real say in what is happening to and with their children.³⁹³

Especially given the stolen generation, communities are wary of child protection services and feel under attack so any attempts to build a bridge too are welcome.

Indigenous staff expertise and networks

Like *Safe Families*, Lakidjeka uses local Indigenous networks and relationships to find placements in compliance with the Aboriginal Child Placement Principle. Crucially, they also use cultural knowledge to help child protection workers make culturally appropriate decisions in the best interests of the child.

Independence

The independent status of Lakidjeka strengthens their voice to advocate and challenge policy and practice in the Department of Human Services. They also try and keep the Department of Human Services accountable for the actions that they commit to during case planning.

393 Higgins, J.R. and Butler, N., *Indigenous responses to child protection issues – Promising Practices in Out-of-Home care for Aboriginal and Torres Strait Islander Carers, Children and Young People* (booklet 4), Australian Institute of Family Studies, Melbourne, 2007, p9.



f) Safe Houses: A tool against family violence

Safe houses, also known as women's shelters or refuges, are a form of crisis accommodation. They are typically communal houses providing short term, after-hours accommodation for women and children facing the threat of family violence. Often categorised as an 'early reactive program' a safe house service operates as an immediate response to violence occurring but intervening before possible police involvement.³⁹⁴

Most women typically stay overnight but some women can stay for up to a few weeks.³⁹⁵ They are mostly run by a small number of full time staff with additional support provided by volunteers and senior women.³⁹⁶

This type of community run crisis accommodation has been identified as particularly crucial in remote Indigenous communities where there are often no accommodation alternatives for women attempting to escape violence.

Safe houses emerged as a community initiative to combat Indigenous family violence in the late 1980's and early 1990's.³⁹⁷ Many were started by women in the community initially volunteering their own homes to shelter women and children escaping situations of family violence.³⁹⁸

Community controlled safe houses in Indigenous communities recognise that the safety of women and children is a paramount concern. They reflect the preference of Aboriginal women to adopt strategies against violence that encourage a change in the behaviour of the male offenders while maintaining the family unit.³⁹⁹

394 Memmott, P., 'Community-based strategies for combating Indigenous violence' (2002), 25(1) *UNSWLJ* 220, p224.

395 'The Safe House Project' Report – Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p17, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.

396 'The Safe House Project' Report – Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p18, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.

397 'The Safe House Project' Report – Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p18, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm accessed 21 September 2007.

398 'The Safe House Project' Report – Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p18, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.

399 Blagg, H., *Crisis Intervention in Aboriginal Family Violence: Summary Report*, Crime Research Centre UWA, Commonwealth of Australia, 2000, p3.



The community safe house model can also reinforce traditional roles of women in the community, particularly the Elder women with responsibility for caring and protecting the women.⁴⁰⁰ The traditional authority demands respect from the men and ensures the security for safe house clients.⁴⁰¹

Many community safe houses are owned and controlled by an incorporated community based organisation or by an Aboriginal community council.⁴⁰² The model and specific operation of a safe house will depend on the traditions and characteristics of a particular community. As such the safe house concept continues to evolve and develop on a community by community basis.⁴⁰³

Indigenous women may access a safe house for a number of reasons including: to escape immediate situations of violence; to prevent violence from occurring or to experience some time out.⁴⁰⁴ In addition to providing essential emergency accommodation for women, the presence of a community controlled safe house can also serve to empower women and reinforce the view that family violence in the community is unacceptable.

Establishing a safe house can also be the impetus for education or awareness raising programs on family violence in the community. Research into thirteen Safe Houses in North Queensland⁴⁰⁵ observed:

...that almost all services were involved in a range of activities outside the narrow functions of the 'safe house' and the scale of activities involved was unexpected.⁴⁰⁶

400 'The Safe House Project' Report –Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p46, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.

401 Rosser, B. and Coconut, M., *The Safe House Project, Remote North Queensland Communities*, The National Indigenous Homeless Forum 2003, Melbourne, 4-5 March 2003, p59.

402 Rosser, B. and Coconut, M., *The Safe House Project, Remote North Queensland Communities*, The National Indigenous Homeless Forum 2003, Melbourne, 4-5 March 2003, p59.

403 Blagg, H., *Crisis Intervention in Aboriginal Family Violence: Summary Report*, Crime Research Centre UWA, Commonwealth of Australia, 2000 p24; Orana Far West Women's Safe House Project: Stage 1 Report 2006, p77, available online at: <http://www.wrrc.org.au/currentprojectsissues/current/ourprojects/oranareport/view>, accessed 21 September 2007.

404 'The Safe House Project' Report –Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p17, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.

405 'The Safe House Project' Report – Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.

406 'The Safe House Project' Report – Sustainable service responses to family violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland, funded by the Commonwealth Department of Family and Community Services under the National Homelessness Strategy, 2004, p28 available online at: http://www.facsia.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-safe_house_project.htm, accessed 21 September 2007.



This research found that most Safe Houses engaged in programs such as 'child protection, childcare and cultural and social activities'.

Blagg notes that women's shelters in Indigenous communities 'have become a key part of the policy landscape in parts of Australia.'⁴⁰⁷ The *Little Children are Sacred* Report⁴⁰⁸ recognised the Safe House as a 'critical' feature of community family violence prevention strategies to protect people from immediate threats of violence.⁴⁰⁹

407 Blagg, H., *Crisis Intervention in Aboriginal Family Violence: Summary Report*, Crime Research Centre UWA, Commonwealth of Australia, 2000, p15.

408 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007.

409 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p92.



i) Yuendumu Safe House



The *Yuendumu Women's Centre* established the *Yuendumu Safe House* in 2003 to address the growing problem of family violence in the community.

The red dusty town of Yuendumu, one of the largest remote communities in Central Australia, is situated 290 km northwest of Alice Springs in the Tanami desert of the Northern Territory. The area has a population of 692 persons⁴¹⁰ and 83.7% of the Yuendumu population is Aboriginal; the majority of which are Warlpiri people. The land of the Warlpiri stretches from north of the Tanami Rd to the West Australian border.

Yuendumu was originally established as a government rations depot in 1946 with a Baptist missions arriving in 1947. An area of 200sqkm was proclaimed as an Aboriginal reserve in 1952 which later became Aboriginal land under the *Aboriginal Land Rights Act (Northern Territory) 1976* in 1977. By 1955 many local Warlpiri groups had settled in Yuendumu. Administration of the town was assumed by the first Yuendumu Council in 1978.

The town centre comprises a few main streets with local services such as the Yuendumu Council, the Health Centre, the Police station and local school. Yuendumu is also home to Warlpiri Media, the Warlukurlangu Art Centre and the Yuendumu Magpies who this year took out the Central Australian Football League (CAFL) premiership. Warlpiri culture remains strong in Yuendumu; traditional hunting and ceremony is a integral part of the community.

410 Australian Bureau of Statistics 2006 Census QuickStats: Yuendumu (CGC) (Statistical Local Area), available online at: <http://www.censusdata.abs.gov.au>, accessed 25 September 2007.



The main languages of the area are Warlpiri and English, with Warlpiri spoken by 82.2% of people. The town has a young population with 25.9% of the population aged between 0-14 years; the average age of people in the area is 26.⁴¹¹ School attendance remains low in the town and the average age of first time mothers is 15 years old.

Statistics suggest that the people of Yuendumu experience considerable disadvantage. The median individual income is \$227 per week.⁴¹² The average household size in Yuendumu is 4.9 compared to the national average of 2.6. Of the 196 people in the labour force in the community, 36.2% are employed full time and 40.8% are employed part time. The most common occupations for those employed in the town are community and personal service workers, professionals and labourers.

The following case study of the operation of the safe house in Yuendumu was developed through community visits and interviews with staff of the *Yuendumu Safe House* as well as key stakeholders and the general Yuendumu community.

Indigenous family violence in Yuendumu

Family violence was identified as a significant issue in the community by all consulted in Yuendumu. Many people indicated that family violence had been a problem for a number of years.

Pam Malden, coordinator of the Women's Centre and *Yuendumu Safe House*, describes the problem of domestic violence in the community as 'huge'.

The Yuendumu Police report 1-2 domestic violence incidents per week and identify alcohol abuse and domestic violence as the two main policing issues in the community. The Health Service report that they see a handful of domestic violence related clients every week.

Under reporting of physical violence in the community may be compounded due to the size of the town and the complexity of familial relationships.

Ned Hargraves, Community Liaison Officer and member of the Yuendumu-Willowra Council, identified depression and alcohol abuse as causal factors relating to family violence in the community.

When there is drinking the attitude is not controlled and there is no respect for the Elders.⁴¹³

The Police also identified most domestic violence incidents in the town as the result of alcohol abuse. Undiagnosed depression stemming from chronic disease was also identified by the Health Service as a major health issue affecting the community.

There was little information about incidents of sexual assault in the community. In Pam Malden's experience, sexual assault reports were from mostly older women. The Health Clinic also reported few instances of client sexual assault. Susanna Bady, the Domestic Violence Educator in Yuendumu, was aware of few reports of sexual

411 Australian Bureau of Statistics 2006 Census QuickStats: Yuendumu (CGC) (Statistical Local Area), available online at: <http://www.censusdata.abs.gov.au>, accessed 25 September 2007.

412 Australian Bureau of Statistics 2006 Census QuickStats: Yuendumu (CGC) (Statistical Local Area), available online at: <http://www.censusdata.abs.gov.au>, accessed 25 September 2007.

413 Hargraves, N., *Communication with Social Justice Commissioner's Office*, 16 October 2007.



violence but believed there to be a general lack of reporting of these incidences due to general fears of the Police and welfare authorities. It appears that there is still very much a 'silence' around sexual assault in the community and a need for community based education and awareness about this aspect of family violence.

Description of the *Yuendumu Safe House*

The *Yuendumu Safe House* was established in 2003 as a service of the Yuendumu Women's Centre. The Yuendumu Women's Centre is a community controlled organisation that was established by the local women in the late 1970's.

The Women's Centre has provided a base for senior Warlpiri women over the years to gather together and devise strategies to address community problems. It provides a range of facilities such as meeting rooms, exercise and children's play equipment and access to phones and computers.

A large shaded area out the front of the Women's Centre allows women in the community to sit together during the day. Many of the senior women who attend the Centre are involved in leading cultural ceremonies, the Night Patrol or Management Committee of the Safe House.

In addition to running the Safe House, the Yuendumu Women's Centre organises the women's Night Patrol, sex and pregnancy education programs, a Laundromat service and an op shop. The Women's Centre also provides local women with general support such as taking young women to ultrasound appointments in Alice Springs and other resource and advocacy services.

Since the Women's Centre was established in the late 1970's the Warlpiri women have instigated a number of community controlled initiatives to address family violence and related substance abuse issues in the community.

The Yuendumu Women's Night Patrol was formed in 1991 in an attempt to stop the grog and the violence taking place around the community. It was operated by the Nulla Nulla Brigade; women with senior standing and kinship in the area. It is reported that when the night patrol was introduced, incidents of domestic violence dropped 80% in the community within the first year.

The Women's Night Patrol was the first remote night patrol in Australia and is now the longest serving night patrol in the Northern Territory. The Women's Night Patrol continues to be run by the senior Warlpiri women of Yuendumu (with an average age of 58) through the Women's Centre.⁴¹⁴

The *Mount Theo* program is another example of an initiative conceived and controlled by the people of Yuendumu to address substance misuse. Established by the senior men and women in 1994, the *Mount Theo* rehabilitation camp takes young petrol sniffers out of the community and teaches traditional culture on country. The program is known to be responsible for the eradication of petrol sniffing in Yuendumu.

The need for a safe house in response to the problem of family violence in the community was identified by the senior Warlpiri women in the late 1990's. They lobbied the government through the Women's Centre for five years before the safe house was finally established in 2003.

414 Malden, P., Coordinator, *Communication with Social Justice Commissioner's Office*, 25 July 2007.



The *Yuendumu Safe House* provides short term accommodation to women in the community who have experienced violence or who are escaping the threat of violence from their husbands or partners. The Safe House ensures women who have experienced family violence are able to access accommodation in a safe, secure and supported environment. The typical length of stay varies between one night to one week.⁴¹⁵

The Safe House is located on the main road on the outskirts of the town next to the Police station and up the road from the Women's Centre. It is surrounded by a three metre wall with barbed wire and entry to the Safe House is via a locked gate.

The Safe House itself is a large building with three large rooms of beds, a communal kitchen with cooking facilities and food, a bathroom and living areas. An intercom at the gate allows family members, most usually husbands, to talk with their wives or partners from outside of the Safe House.

Women in the community are able to gain access to the Safe House at any time of the day or night by contacting known people in the community who have keys to the building.

The Safe House is advertised on local radio in Walpiri which lets the community know about the service and what it is used for. A description of the radio ad appears below:

Kids are screaming and a woman says to another woman, 'What's wrong?' and she says, 'My husband and I, we've been arguing every night and the kids aren't getting any sleep and they're getting cranky'. And they talk about using the Safe House for that reason.⁴¹⁶

Georgina Wilson, a Walpiri woman, and senior worker at the Safe House describes it as:

A place where women can have peace, quiet, a good sleep and a rest.⁴¹⁷

In Yuendumu, the Safe House is mostly used as a preventative measure against physical violence; that is, women tend to access the Safe House before an assault has taken place.

Quite often they hear that he [a woman's husband/partner] is coming back drunk or they know that he is coming back drunk so they lock themselves up before he gets back.⁴¹⁸

The Safe House is guided by both formal and informal policy and rules. The house contains signs in Warlpiri and English outlining the rights and responsibilities of women using the Safe House.

The Safe House is open to any woman in the community who feels she needs to use it. The strictest rule of the Safe House is that a woman may not access the safe house if she is drunk and alcohol is strictly prohibited. Children are allowed to accompany their mothers to the Safe House however boys over the age of 14, who have been through traditional initiation, are not permitted in the Safe House.

415 Wilson, G., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

416 Malden, P., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

417 Wilson, G., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

418 Malden, P., *Communication with Social Justice Commissioner's Office*, 15 October 2007.



Central to the philosophy of the Safe House is the belief in the woman's right to make their own choices. This principle is practised by safe house workers providing women with comprehensive material about police processes, legal processes and healthcare to enable women to make informed decisions about their own interests.

One of the rules of the Safe House is that it is the woman's choice whether or not to report an incident of domestic violence. If a woman so chooses, Safe House staff will accompany the women to the Police station to make a statement or take out a non violence order. The staff strongly recommend clients to take out non violence orders although there is no pressure to do so.

The Safe House works closely with a number of services in the community. In particular, Ms Malden reports the Safe House to have a close and effective working relationship with the Police.

Susanna Bady, provides follow up work with Safe House clients, training for Safe House staff, referrals to legal services and Centrelink and legal education. Clients of the Safe House are referred to the Health Service for check ups. Referrals are also offered to the Central Australian Aboriginal Family Legal Unit for legal advice and the Alice Springs Shelter.

The senior Warlpiri women were instrumental in establishing the initial rules and policies of the Safe House. The Management Committee of the Women's Centre determines the ongoing program priorities and funding decision of the Women's Centre and the Safe House. The Committee are elected by the members of the Women's Centre and all members are eligible to hold office.

The Committee engages in both formal and informal decision making processes. They meet formally to discuss financial reports, staffing arrangements, funding submissions, major purchases and use of the Centre's vehicle. The senior women also brainstorm ideas for the Women's Centre and crime prevention strategies in an informal manner.

Increased participation in the Women's Centre is facilitated by hosting special days which are particularly aimed at getting the younger women involved and encouraging a continued sense of community ownership.

In Yuendumu an intimate level of understanding of the local families and the language is essential in effectively supporting local women accessing the Safe House at a time of great stress or conflict. All Safe House staff have a deep understanding and knowledge of the families and issues of the community. Pam Malden recognises that the management of the Safe House needs to be in the hands of the Warlpiri Safe House workers.

Georgina Wilson is the Safe House senior worker and has been in this role for five years. She has lived in Yuendumu her whole life and attended school in Alice Springs. Her role is to let women into the Safe House when notified by Pam Malden, the health clinic or the Police and organise the Safe House and night patrol workers.

In addition to Georgina, there are also 12 women in the community who can be called upon to work in the Safe House. The Safe House workers are trained in providing support to women using the Safe House and are subsequently employed as support workers.



Pam Malden believes one of her main roles as coordinator of the Safe House is to encourage the Safe House workers to take on an active decision making roles regarding how the Safe House is managed. For example, she encourages the senior workers to choose the most appropriate worker to stay in the Safe House with a woman accessing the Safe House rather than establishing a roster. She also encourages the women to make planning decisions around day trips to Alice Springs. The aim is to encourage decision making at a level that is comfortable and slowly expand so that eventually the management of the Safe House will be entirely in the hands of the Warlpiri women workers.

Impact of the Safe House

It is clear that the Safe House is well respected and valued by the Yuendumu community. All community members consulted in Yuendumu believed the Safe House to be very effective in addressing family violence in the community. Ned Hargraves, the community liaison officer and member of the Yuendumu Willowra Council believes that the Safe House provides a safe place for both the women and children to go.⁴¹⁹

Georgina Wilson believes that the Safe House has been good for the community, although obviously:

Some men don't like it when their women go to the Safe House but others don't mind.⁴²⁰

There is widespread awareness of the Safe House in the community, particularly due to the radio ads in Walpiri promoting awareness of it.

The *Yuendumu Safe House* represents a community conceived and owned solution to the problem of family violence in the community. Senior Warlpiri women have overseen the establishment of the Safe House and continue to have an active role in its management via the Management Committee of the Women's Centre.

In addition, it appears that the senior Warlpiri men have consistently supported the operation of the Safe House since its inception. The standing of the Safe House in the community is such that there has been no need for extra security. The men in the community are generally aware that must stay away and not approach the Safe House. This support and understanding has been crucial to the respect that the Safe House currently enjoys.

The result is that the Yuendumu community is aware that, in seeking refuge in the Safe House, women have the support of the senior women and men of the community when they choose to access the Safe House and protect themselves from violence.

In this way Pam Malden believes that the Safe House has been instrumental in empowering and supporting women in the community. The Safe House ensures women are supported in their decision to take a stand against such violence and reinforces that such violence is unacceptable. In her experience:

419 Hargraves, N., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

420 Wilson, G., *Communication with Social Justice Commissioner's Office*, 15 October 2007.



...if the women didn't have the Safe House to go to then the odds are that they would be assaulted.⁴²¹

The domestic violence education worker, Susanna Bady, describes the Safe House as an 'essential tool for crisis management' and 'an automatic community reflex response to domestic violence.'⁴²² In her experience

...everyone [in the community] knows what it is and how to use it.⁴²³

The Police believe the Safe House to be:

good as it allows the parties to be separated and the victim can choose to put themselves in the Safe House as a preventative measure.⁴²⁴

They describe the Safe House as 'helpful' in tackling family violence in the community.

The need for an equivalent men's Safe House was identified by a number of people in the community:

We need also a safe place where men can go to sober up and talk about Dreaming and family problems with the senior men.⁴²⁵

The Safe House does, however, face many complex challenges in its operation. These include:

- *Client confidentiality:* Maintaining client confidentiality is a clear challenge of social services employing local residents and operating in a small community environment where family ties are strong. Client confidentiality is an ongoing challenge for the operation of the Safe House in Yuendumu. Pam Malden states that the importance of confidentiality is continually raised and talked about amongst the staff and safe house workers.
- *Tensions between the private and the professional:* There are clear tensions between the private and the professional roles of Safe House workers. The multiple roles the women safe house workers assume in the community produce significant familial challenges with most having to try to balance the responsibilities of both their family, wider community pressures and work at the Safe House. As coordinator of the Women's Centre, Pam Malden plays an important role in attempting to recognise and manage the multiple responsibilities of the workers whilst ensuring that the Safe House service is not compromised.
- *Operational challenges:* The Safe House has encountered operational issues over the three years it has been in existence. Some of these have included communication issues between the safe house and the police as to who is accessing the Safe House and record keeping by past Safe House coordinators. The Women's Centre aims to act quickly to put in place processes to address such issues as they arise. The Domestic

421 Malden, P., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

422 Bady, S., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

423 Bady, S., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

424 Yuendumu Police., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

425 Hargraves, N., *Communication with Social Justice Commissioner's Office*, 16 October 2007.



Violence Educator believes the Safe House provides a necessary service to the community however in her view the Safe House service needs to professionalise to ensure that it provides a consistent and appropriate 24 hour service for women in the community.⁴²⁶

- *Funding:* Each program run by the Women's Centre is funded from a difference government source.⁴²⁷ The Family Violence Prevention Unit through the local Indigenous Coordination Centre funds the Safe House. This funding is due to cease in December 2007.⁴²⁸ For each of the four programs run by the Women's Centre, the centre is required to provide a funding submission, a quarterly performance report, a quarterly financial report and an annual financial report. Frustration is expressed at the very time consuming reporting procedures required to secure relatively small amounts of money. These reporting requirements are made more onerous given that no additional funding is provided to assist in this process. Pam Malden observes:

government funding requirements make it almost impossible to employ people who cannot read or write. The red tape is getting worse instead of getting better.⁴²⁹

In regard to the funding requirements for the Safe House, Pam Malden reports some dissatisfaction with the outcome based criteria used to measure crisis support accommodation. The numbers of women accessing emergency accommodation are prone to fluctuation and the outcome based criteria does not take into account the largely preventative effect the safe house has on domestic violence in Yuendumu.

Pam Malden also expresses disappointment at the lack of support she has received from the funding bodies in regards to the Safe House and the other programs run by the Women's Centre. Pam Malden reports that for the two and a half years that The Safe House has been running she has been visited by the government funding body on only two occasions.⁴³⁰

- *Stakeholder relationship issues:* The Domestic Violence Educator was initially able to use the Safe House for domestic violence education in the community. At the time of the author's visit the Women's Centre and the Domestic Violence Educator were no longer working together in this manner. This is perhaps unfortunate given the valuable and complementary work both are achieving in the community.

426 Bady, S., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

427 For example the women's night patrol is funded by the Attorney General's department through the ICC, the 'Strong Women, Strong Babies' program is funded by the Department of Child and Maternal Health through the NT government and the Women's Centre is funded by a multi purpose grant through the Department of Health and Ageing, Malden, P., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

428 At the time of the interview, Noel Mason, the newly appointed government Business Manager in Yuendumu (as part of the Northern Territory intervention) has assured Pam Malden that funding would be found for the continued operation of the Safe House.

429 Malden, P., *Communication with Social Justice Commissioner's Office*, 15 October 2007.

430 Malden, P., *Communication with Social Justice Commissioner's Office*, 15 October 2007.



Lessons from the *Yuendumu Safe House*

Building on existing community strengths

In the small community of Yuendumu family violence is perceived as not just a problem for the female victim but as a problem for the whole community.

Over the past three decades the senior women of Yuendumu have built up a tradition of successfully identifying issues affecting their community and addressing them through their own initiatives. The Women's Centre has provided a base for the women to devise strategies to address community problems. It is a prominent and safe gathering place in the community which allows the women to sit and meet and facilitates informal discussion.

The establishment of the Safe House has emerged from this strong culture of leadership which the senior women have been gradually building up in the community over a number of years. The policies and rules that govern the Safe House reflect the traditional culture of the Warlpiri people. The involvement of the senior women gives the Safe House credibility and respect.

Support of the men

The support of the men in the community was continually emphasised as crucial to the formation and successful operation of the Safe House.

The men were involved in building the Safe House and attended the opening in larger numbers than women. The men appear to acknowledge that women and children in the community need a safe place to go when their husbands or partners are being drunk or violent. Since the opening of the Safe House there has been no need for security to be employed and there have been no major security breaches.

Community generated

Given that the concept of the Safe House originated from the community itself, community participation and ownership has been crucial to the success of the Safe House. The Safe House workers have knowledge of the language and the familial relationships of the community and are therefore best placed to provide support to the clients of the Safe House. The Safe House workers are encouraged to take on active decision making roles in the management of the service. This is fundamental to ensuring that the day to day operations of the service remain in the control of the Warlpiri women.

Partnership approach

The *Yuendumu Safe House* has the respect and recognition of the Police as an essential service providing safety for women and children, with Police working in strong partnership with the service.

Pam Malden believes that the Safe House is well supported by the Police and she is confident to contact them at any time of the night to respond to an incident. This support is crucial to maintaining the standing of the safe house in the community, ensuring that the policies of the Safe House are respected and to guaranteeing women's safety when accessing the service.



g) Working with perpetrators of family violence

Family violence and abuse are serious crimes under all state and territory legislation, with distressing consequences for the victims and communities. Equally distressing is the revolving door of custody that sees many Indigenous offenders cycle in and out of the criminal justice system without any meaningful opportunities for rehabilitation and long term behaviour change.

There remains a pressing need for programs working with Indigenous offenders. Testament to this is the profound over-representation of Indigenous people in the criminal justice system. Indigenous adult prisoners make up 24% of the total prison population as of 30 June 2006,⁴³¹ making them almost 13 times more likely than non-Indigenous Australians to be imprisoned.⁴³² Recidivism rates remain unacceptably high, with too many Indigenous peoples leaving prison only to re-enter it soon after.

The Little Children are Sacred Report makes numerous recommendations about the need to focus on offender rehabilitation programs in any sustained response to family violence.⁴³³ Despite this, the need to provide support to offenders has not been addressed as part of the Australian government's emergency response in the Northern Territory.

The need to focus on offender programs is also required in all other states and territories. With some exceptions, the majority of offender treatment programs nationally are not culturally appropriate for Indigenous peoples and those that are, often service only a fraction of those in need.

Evidence suggests that cognitive behavioural programs that aim to change how people think are most likely to reduce recidivism. The existing research, largely developed in the United States of America and Canada largely obscures contextual factors namely, 'cultural factors such as interdependence, spirituality and discrimination',⁴³⁴ culture, history and experience of racism, as well as structural disadvantages of poverty, poor housing and unemployment that are often faced by Indigenous offenders.

These programs are now firmly rooted in corrections services around Australia. Some adaptations have been made to try and make them more culturally appropriate but these largely cosmetic changes are a poor substitute for programs that are flexible, have actually been developed by and for the Indigenous community and incorporate connection to culture.

Most offender treatment programs run in custody are also only available for sentenced offenders that are serving longer terms of imprisonment. Compared with other offenders, Indigenous prisoners are usually in custody for shorter

431 Australian Bureau of Statistics, *2006 Prisoner Census*, ABS series cat. no. 4517.0, Commonwealth of Australia, Canberra, 2006, p18.

432 Australian Bureau of Statistics, *2006 Prisoner Census*, ABS series cat. no. 4517.0, Commonwealth of Australia, Canberra, 2006, p5.

433 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p134.

434 Day, A. 'Reducing the risk of offending in Australian indigenous offenders: What works for whom? (2003), 37 (2), *Journal of Offender Rehabilitation*, p11.



periods of time. That means that these offenders are usually in and out of custody without any meaningful intervention and access to programs.

Despite these general concerns, recent years have seen some promising developments and community generated partnerships to work with Indigenous offenders. We have chosen two locally based case studies to highlight these successes:

- i The *Northern Territory Indigenous Family Violence Offender Program* in Nguiu, Tiwi Islands; and
- ii The Murri Court family violence initiatives in Mount Isa.

Both of these programs deal with family violence, not sex offences. However, some of the lessons around program development and processes will be applicable to this group. Consideration is also given to international models of Indigenous sex offender treatment.

To understand effective practice with Indigenous family violence offenders we need to return to an understanding of what family violence means in Indigenous communities. Unless we reflect on the differences to non-Indigenous mainstream domestic violence, we are likely to construct programs and interventions that are inappropriate.

Family violence involves a greater, more fluid range of victim – offender relationships than mainstream domestic violence. It also breaks from feminist conceptions of violence that criminalize men's behaviour. In contrast, Blagg argues:

While not ignoring the need for men to take responsibility for their behaviour, the family violence paradigm stresses collective Indigenous experience of powerlessness and, at the level of practice, leans towards finding pathways to family healing, rather than new routes into the criminal justice system.⁴³⁵

This emphasis on healing recognises the slippage between offender and victim in the cycle of violence. The *Little Children are Sacred* report cites the unpublished thesis of Caroline Atkinson-Ryan to illustrate this connection. Through her interviews with prisoners she found that over a third of the men in her sample had been sexually abused, and of these most could be diagnosed with post traumatic stress symptoms.⁴³⁶ One account from her research reflects the experience of abuse shaping offending behaviour:

And you know like; I suppose the biggest part in my life was the sexual abuse. You know that happened from not long after the old man grabbed me, a friend of the family, and I put up with it till the age of 14, when I said no enough's enough. It started about four or five years old. Now, like with my crime now, [rape] like when I see these programs mob and they say 'hang on, you talk about empathy. Now let's put on your shoes, putting yourself in the shoes of the victim' and I said hang on,

435 Blagg, H. 'Restorative Justice and Aboriginal Family Violence: Opening a Space for Healing' in Strang, H. and Braithwaite, J., (eds), *Restorative Justice and Family Violence*, Cambridge, UK: Cambridge University Press, 2002, p193.

436 Atkinson-Ryan, C. cited in Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p67.



woo, pull up, I was a victim. So I've seen both sides of the fence and I can comment to you as a victim and as a perpetrator of the crime.⁴³⁷

We also need to consider the specific needs and backgrounds of Indigenous female offenders. Although a numerically small group, making up only 7% of the total prison population,⁴³⁸ Indigenous women are grossly over represented in our prisons. Indigenous females are 23.1 times more likely than non-Indigenous females to be in prison,⁴³⁹ and the imprisonment rate for Indigenous females has increased by 34% during the years 2002 to 2006.⁴⁴⁰ The 2002 and 2004 Social Justice Reports have highlighted the extreme disadvantage faced by Indigenous female offenders, in particular, the high rate of victimisation.⁴⁴¹ A NSW study, *Speak Out, Speak Strong*, found that:

- 70% of Indigenous women in prison had reported being sexually abused as children;
- 78% reported being physically abused as adults; and
- 44% reported sexual assault as adults.⁴⁴²

As with male offenders, these high levels of victimisation can be linked to trauma and further violent behaviour. For instance, a Queensland profile of female offenders revealed that 45.3% of all Indigenous female offenders were sentenced for a violent crime.⁴⁴³

As noted in the introductory section of this chapter, violent offending as an expression of trauma goes beyond the individual experience. Individuals are also influenced by 'inter-generational trauma'⁴⁴⁴ which stretches back to first colonisation and reaches into the contemporary experiences of marginalisation and dispossession.

Blagg⁴⁴⁵ elaborates to describe 'narratives of loss' which contribute to family violence. These are historical and social losses that manifest in contemporary disadvantage. Loss of land and culture, breakdown of community, breakdown of kinship systems

437 Atkinson-Ryan, C. cited in Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p68.

438 Australian Bureau of Statistics, *Prisoners in Australia 2007*, ABS series cat. no. 4517, Commonwealth of Australia, Canberra, 2007, p3.

439 SCRGSP (Steering Committee for the Review of Government Service Provision) 2007, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission, Canberra, p128.

440 SCRGSP (Steering Committee for the Review of Government Service Provision) 2007, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission, Canberra, p129.

441 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2002*, Human Rights and Equal Opportunity Commission, Sydney, 2003, pp135-177; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission, Sydney, 2004, pp11-65.

442 Aboriginal Justice Advisory Committee, *Speak out, Speak Strong*, Aboriginal Justice Advisory Committee, Sydney, 2003, p5.

443 Department of Corrective Services (Women's Policy Unit), *Profile of female offenders under community and custodial supervision in Queensland*, Queensland Government, Brisbane, 2003, p13.

444 Atkinson, J. *Trauma Trails, The Transgenerational effects of trauma in Indigenous communities*, Spinifex Press, Melbourne, 2002.

445 Blagg, H., *Working with adolescents to prevent domestic violence: phase 2 the Indigenous rural model*, National Crime Prevention, Canberra, 2002; Blagg, H., *It Breaks All Law: Models of intervention at the point of crisis in Aboriginal family violence*, Domestic Violence Prevention Unit, Perth, 1999; Blagg, H., *Crisis Intervention in Aboriginal Family Violence: Summary Report*, Domestic Violence Prevention Unit, 2000.



and customary law, the effects of the Stolen Generation have all lead to entrenched poverty, racism, alcohol and drug abuse and of course, family violence.

International best practice – Canadian healing circle programs

High levels of family violence and sexual abuse are common to other countries where the Indigenous population has been exposed to colonisation, loss of culture and pervasive disadvantage. In particular, New Zealand and Canada have developed effective interventions by and for Indigenous sexual offenders.

The most well known program is the pioneering *Hollow Water Community Holistic Circle Healing Program* in Manitoba, Canada. This program works with victims, offenders and community members. Over the past 15 years, 107 offenders have completed the program with less than 1% recidivism, and at a saving of \$15 million dollars over 10 years to the Canadian government.⁴⁴⁶

While Hollow Water is certainly an inspirational success, a recent Churchill fellowship study by Mandy Young (Coordinator of the NSW *Breaking the Silence* report into Aboriginal sexual abuse) analysed a selection of Canadian programs with development for Indigenous Australian communities in mind. That report examines the *Biidaaban Community Healing Model*, which was considered a more transferable model for Australian Indigenous communities and government structures than the Hollow Water program.

An edited extract from Mandy Young's report is found at Text Box 15 below.

Text Box 15: Community Based Healing Circles to Address Child Sexual Assault in Canada – by Mandy Young⁴⁴⁷

In 1995 the Mnjikaning community decided to begin addressing child sexual assault within the community. They looked at a number of native healing models and decided that the Hollow Water was the most suitable for their community.

Biidaaban is a Mnjikaning community based healing program based on accountability, restitution and reconciliation to restore balance in the lives of those people who have been affected. It is a victim driven process that promotes healing rather than punishment. The Biidaaban Circle promotes community wellness, breaking the cycle of abuse within families and within the community, respecting individuals not only for their personalities, but also their beliefs and values. The philosophy is to '*label the behaviour not the person*'.

The implementation of the program has taken a number of years. In 1995/96 extensive training in community healing began as well as community education, outside agency education and working with families. In 1997 the first community gathering was facilitated and the first sentencing circle was undertaken in 1999 following the securing of funding from Aboriginal Correction, Public Safety Canada in 1998.

446 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p132.

447 Young, M., *Aboriginal Healing Circle Models Addressing Child Sexual Assault, An examination of community based healing circles used to address child sexual assault within Aboriginal communities in Canada*, The Winston Churchill Trust of Australia, 2007.



To become involved, persons who have harmed others (offenders) need to take responsibility for their actions and commit to making amends. In addition, those who have been harmed (victims) must consent to the offender participating in the program even if the people who were harmed are not yet ready to go through the process themselves.

The core of the healing model is the Biidaaban Protocol, a detailed process that provides explicit procedures to follow when there is a disclosure of sexual abuse. The Protocol is a signed agreement between Biidaaban Circle, Mnjikaning First Nation and the Simcoe County Crown Attorney's Office. The protocol details the referral processes, information sharing agreements, diversion agreement, and consent issues...

The community, as a whole, then works toward healing through extensive counselling sessions. Should there not be willingness on the part of the victim or the offender to participate, the case is handled by the mainstream justice system. Once the offender accepts responsibility, the community will work with all affected individuals to develop a treatment plan that it will submit to the mainstream courts. This plan focuses on the offender working with the Biidaaban team towards the healthy resolution of the victimisation...

Biidaaban run a variety of programs to assist in the support and healing of clients. They include:

- an anger management program, 'Keep it Cool';
- 'Building healthy relationships' – a holistic 12 week program to address family violence, anger and self care;
- 'Strengthening the family circle' – a 12 week parenting program that can be attended by the whole extended family as per traditional child rearing practices;
- Men's and Women's circles;
- a cultural program which looks at traditional practices and ceremonies; and
- a youth circle (conducted weekly).

The circle process consists of a ceremonial opening, declaration of purpose and introductions, explanation of wrongful behaviour, acceptance of responsibility by the person who has offended for their actions, an opportunity for all participants of the gathering to speak, drafting of a treatment plan by the participants, an apology and acceptance of the treatment plan by the person who has offended, a (six monthly) review process date is set, a ceremonial closure occurs and finally there is a debriefing for all participants. Following this gathering, the treatment plan/healing contract is implemented.

Biidaaban believe that this circle process can be used for many things including criminal behaviour or addictions. The holistic focus of the healing is used to emphasis the spiritual, mental, emotional and physical healing rather than compartmentalising people and bringing balance back into the lives of the individual, family and community. The circle also provides a sense of belonging that gives confidence and increases community functioning...

Since its implementation the service has dealt with approximately 90 offenders, primarily for assault. Of the 53 who elected to proceed with the Biidaaban Circle, 30 have completed the program and none of these 30 have reoffended.



It has been a long process, taking over 10 years with the development of developed strict protocols and guidelines. This ensures that there is accountability for both themselves and other agencies involved in the program. This level of agreement and protocol has been critical to the success of the program. Whilst it may have taken longer to develop, it means that the process will be more effective for the community in the long run...

The more structured Biidaaban is likely to be more accepted by existing service providers because of the clear protocols and accountability mechanisms. Whilst it has not been in operation for as long as Hollow Water, it has been able to adapt the principle of Hollow Water and apply them to their community successfully. The higher level of structure has meant that it has been able to be implemented more quickly as each stakeholder is clear on their responsibilities within the model.

The *Little Children are Sacred* and *Breaking the Silence* reports both suggest that the Canadian healing circle model could be adapted for Australia.



Mangroves around Nguiu, Tiwi Islands.

The *Indigenous Family Violence Offender Program (IFVOP)* is a community based offender program run by Northern Territory Community Corrections. It has a strong community focus and has achieved good results since it began in 2005.

The *IFVOP* has been run in 6 remote communities in the Northern Territory (Nguui, Oenpelli, Daly River, Pirlingimpi, Milikapati and Galawinku) but the primary focus of this case study will be the program in Nguiu in the Tiwi Islands. Nguiu was the first community to implement the program and a majority of the program participants have been from Nguiu.

The *IFVOP* was originally piloted in 1999 in Darwin Correctional Centre with the Council for Aboriginal and Alcohol Programs Unit. The Office of Women's Policy coordinated the pilot with Australian Government funding from the Partnerships Against Domestic Violence program.

The custodial program is still being run at Darwin Correctional Centre but in 2005 a community based program was trialled by the Department of Justice. This required substantial adaptations, with a re-write of the program manual to ensure that it was appropriate for a community setting. The pilot program was run in Nguiu, Ntaria (Hermannsburg), Yuendumu and Kunberllanjnja (Oenpelli).

The *IFVOP* undertook consultation with all of the communities to discuss the issues of family violence generally, explain the program aims, develop program content and identify suitable local Indigenous people to be trained as facilitators for the program.



The facilitators were provided with a 50-hour accredited training program run by the Council for Aboriginal and Alcohol Programs to enable them to lead the program. Two Coordinators, based in Darwin and Alice Springs, provides 24 hour support to the facilitators.

The first program was run in Nguiu on 26 April 2005. Since then programs have been running regularly in Nguiu and expanded to other Tiwi Island locations, Pirlingimpi (Garden Point) and Milikapti (Snake Bay). This expansion has been relatively smooth because facilitators in the other communities have been able to get on the job training and support from the more established facilitators in Nguiu. In contrast, the programs in Central Australia have struggled to get established due to staffing issues.

Description of the *Indigenous Family Violence Offender Program in Nguiu*

Nguiu, located on Bathurst Island, is the largest community on the Tiwi Islands. Nguiu has a population of around 1,500 people, 60% of the Tiwi Islands population.

Nguiu has a missionary history. The mission was established in 1911 and soon grew with the school and flourishing market gardens attracting people from outlying areas. The priest also began a practice of 'buying' promised wives from their husbands and bringing them to live on the mission. This in turn, attracted young men to the mission who did not already have promised brides. The missionary history has created a very mixed population on Nguiu with eight different clan groups in addition to the traditional owners, the Mantiyupwi clan.

Nguiu has a young population with the median age of residents only 24 years. Other indicators show that Nguiu is a disadvantaged community:

- The average life expectancy of a Tiwi person is only 48.5 years, 30 years less than the non-Indigenous average;
- The unemployment rate on Nguiu from the 2001 Census is 17% for people aged over 15 years and as high as 37.5% for youth; and
- Living conditions are over crowded with an average of 12 Tiwi people per house.

On 30 August 2007, the Tiwi Land Trust signed a 99-year lease over the township of Nguiu. This gives the Commonwealth government through the Executive Director of Township Leasing, the head lease over the township. In return the Commonwealth have agreed to provide:

- \$5 million to cover the first 15 years of the lease;
- \$1 million for health initiatives;



- construction of 25 new houses within the next two years; and
- repairs and maintenance of existing houses.⁴⁴⁸

The signing of the 99-year lease has been a contested process, drawing criticism about whether in fact the majority of Tiwi people had been able to exercise free, prior and informed consent to the lease.⁴⁴⁹ The general impression formed during a visit to Nguiu is that to some extent, the Nguiu community remains divided about the decision, and at best, ambivalent about the consequences.

The *IFVOP* is a community based program for family violence offenders. The program is an alternative sentencing option available to the court to prevent Indigenous imprisonment. The aims of the *IFVOP* are:

- to reduce the incidence of Indigenous family violence in communities;
- to reinforce that family violence in any form is unacceptable and never has been an accepted part of Indigenous culture;
- to educate and provide alternatives strategies for addressing issues that result in anger and inappropriate responses to triggers;
- for offenders to be given the opportunity to actively practice skills being learnt while residing in the community; and
- for the community to facilitate and own the program themselves.⁴⁵⁰

Eligible family violence offences include, Assault Female – Offender Male, Assault, Aggravated Assault and Failure to Comply with a Restraining Order. More serious charges have to be heard by a higher court and are therefore ineligible for inclusion in the Program.

Although it is used as a diversionary option to imprisonment, volunteers are also encouraged to participate. Most of the volunteers are people who have been banned from the Nguiu Social Club and a requirement of the ban being lifted is that they address family violence/alcohol issues. This form of early, non mandated participation can be seen as an early intervention because it engages individuals before family violence has escalated.

Before the Court decides if the *IFVOP* is suitable, the facilitators undertake a comprehensive assessment with the offender and victim. The assessment covers:

- personal information, including family relationships, children and living arrangements;
- relationship history, including experiences and reasons for conflict and violence;
- family history, including experiences of abuse, or witnessing abuse and violence;
- expression of anger;

448 Agreements, treaties and negotiated settlements project: *Nguiu (Tiwi Islands) 99 year lease*, available online at: <http://www.atns.net.au/agreement.asp?EntityID=4116>, accessed 2 October 2007.

449 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2005*, Human Rights and Equal Opportunity Commission, Sydney, 2005, pp 51-107; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Submission to the Australian Senate, Community Affairs, Legislation Committee on the Aboriginal Land Rights (NT) Amendment Bill, 2006 (Cth)*, 13 July 2006, available online at: http://www.humanrights.gov.au/legal/submissions/sj_submissions/alra_amendments_senate_subjuly2006.html, accessed 9 January 2007.

450 White, D., Alimankinni, M., and Alimankinni, G., '*Indigenous Family Violence Offender Program: The Nguiu Experience*', *Positive Ways: An Indigenous Say*, Victims of Crime NT Conference, September 2006.



- self harming behaviour;
- mental health issues;
- alcohol and drug use; and
- available community support services.

Based on this information the facilitator will make a recommendation about the suitability of the offender to participate to the Court. The Court then makes a community based order 'to attend the *IFVOP* program and do nothing to cause his/her early discharge there from'. The Community Court usually sits in Nguiu and involves Elders who provide advice on sentencing options.

The *IFVOP* is a 50 hour program for offenders. It is structured slightly differently in each of the communities but in Nguiu it is run two days a week for a month.

One of the strengths of the program is that the facilitators have had significant input in designing the content, as well as the delivery of the program. Topics covered in the offender program include:

- what is Indigenous family violence;
- past life experiences;
- personal values and beliefs;
- the cultural context of violence;
- intergenerational aspects of violence;
- the law and family violence;
- recognising and responding to anger appropriately;
- violence and alcohol and drug use;
- motivation to change behaviour;
- controlling behaviours versus equality;
- power versus equality;
- dynamics of family violence;
- relationships and taking responsibility for behaviour;
- resolving conflict without violence;
- Indigenous spiritual healing and
- relapse prevention and revision.

A partner group is also offered on a voluntary basis for victims. The partner group is a six session program. Both groups are held at the Tiwi Land Council offices in Nguiu.

The partner group is a shorter, modified program. Partners are given information about what family violence is, their rights and legal remedies and strategies to manage their own anger, conflict resolution and good communication skills. There is also safety planning, helping women identify safe places they can go if required and information about accessing services.

Court referred clients are mandated to attend the *IFVOP*. If they do not participate they are in breach of their order and can be returned to court to be dealt with



further. A warning letter is given to offenders in the first instance. Facilitators are committed to improving attendance:

We send a letter out but sometimes people don't always come. So we get out there and let them know that the program has started and they have to come. If they don't come, we give them a warning letter and then we talk to them to come. It's really important to get the letter out instead of having to send them back to court; they can stay with their families hopefully.⁴⁵¹

According to facilitators, when the process and consequences for not attending are explained to the offenders, they usually comply with their legal order and further Court can be avoided.

The offender and victim are then formally interviewed at six and twelve monthly intervals to assess whether violence is still an issue. They are asked whether violence has ceased, decreased or escalated and whether they remember or use any of the strategies taught in the *IFVOP*. It also provides an opportunity for the facilitators to encourage the participants, go over any learning that may need refreshing and make any referrals for further support.

Impact of the *Indigenous Family Violence Offender Program*

Since the *IFVOP* commenced in Nguiv 69 men have completed the program and 12 women have attended the partner program. The Department of Justice has been collecting some recidivism data but it has not been publicly released. At this stage the numbers are too small and the follow up time is too short for the results to be statistically significant and reliable.⁴⁵² However, initial indications are that there is a low recidivism rate.

The initial indications of success are supported by the facilitators and community. Facilitators note that there is 'now not much reoffending'⁴⁵³ and they have received positive feedback about how the program has helped from community members and Elders:

Family just keep coming up to my house and say this fella has changed. Other family walk up and say you mob are doing a really good job... They've seen a lot of men change, helping out family, taking turns, responsibility at home.⁴⁵⁴

In the absence of formal evaluation, the stories and comments from community members demonstrate the personal impact of the program. Text Box 16 is the story of a couple who successfully completed the *IFVOP*.

451 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

452 Ogden, L., *Communication with the Social Justice Commissioner's Office*, 12 October 2007.

453 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

454 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.



Text Box 16: Case study of participant in the Indigenous Family Violence Offender Program

Mary and Sam⁴⁵⁵ were referred to the *IFVOP* following a serious assault on Mary by Sam. The Police attended the assault and charges were laid against Sam. Sam was required to attend the Community Court to have the charges dealt with.

Mary was initially uncomfortable and worried about the charge going to court. She wanted the violence to stop but was worried that they would lock Sam up. This wasn't the first time Sam had been to court for violence and they were both aware that there was a real chance that he would be locked up.

On the day of Court the solicitor suggested that Sam be assessed for the *IFVOP*. Elders were also involved in the Court process. According to Sam, this really helped as he felt like it:

was up to them to say if they want me on the program. They know me and they give me another chance.

The facilitators completed the assessment and found Sam suitable. In talking with Sam and Mary they found out that drugs and alcohol were a problem for both of them and contributed to their fighting. They would both go to the club drinking every night. In fact, drinking was the main focus of their days with neither of them working and 'not much to do' during the day.

Sam completed the program without any problems. He was happy with the facilitators as:

local people help a lot and explain what it is all about so it makes sense.

Sam remembers some of the anger management techniques. Both he and Mary say he has gotten better at walking away when he is angry.

Sam has also learnt to control his substance abuse, 'less drink, less smoke' and now only goes to the Club about once a week and only when he has money. Seeing Sam reduce his drinking, Mary has also cut down on her alcohol consumption and they have both reported 'more peace, less fighting' now.

The *IFVOP* has helped divert Sam away from negative, risky behaviours like drinking and encouraged positive activities. Although Sam isn't working yet, he is now hunting a lot and spending time on country. According to Sam, a lot of the men in the group would talk about camping and hunting as activities that helped relieve stress.

The *IFVOP* facilitators encouraged them to do these things and go to 'happy places' when things were 'building up at home'. Sam has found:

I don't get so angry now. No food at home, now I'm not drinking I go hunting instead. Wild geese, carpet snake, wallaby, oysters, fish, turtle eggs – better than the shop – and it is a good thing to do for me.

When Sam was drinking more he had stopped going hunting as he was so focused on drinking and felt bad. Now that he has cut down drinking, he said he feels 'better about myself' and more motivated.

Mary attended some of the partner sessions and thinks they helped her 'see what he is thinking' and how to walk away.

Since completing the program Mary says that Sam has not been violent towards her. They still fight sometimes but it is not as intense and one usually leaves before the situation escalates too far. Their relationship has improved and Sam has avoided going to gaol.

455 Names have been changed to protect the identity of the participants



The *IFVOP* is now well known in the community and seen as a good way of addressing family violence. Since the program started the reporting of violence seems to have increased as women are more confident that a report will result in community based intervention rather than imprisonment.⁴⁵⁶ There is still under reporting of violence and local Police are not notified in every occasion but there does seem to be a shift in attitude according to local justice workers.

The program is also contributing to the community stand against family violence. One of the workers says that he uses his position in the community to challenge people about violence:

When I come out and talk to people about violence, sometimes I get a rough responses. I ask them about violence and they say 'mind your own business.' I tell them that it is my business, it's everyone's business... having programs like family violence helps get the message out.⁴⁵⁷

Facilitators also challenge what reporting to the police means:

When the woman goes to the Police, I tell the man that it is a good thing because it means they want you in the community. They want you to do the program and change your behaviour for your family... If she reports it it means she wants you here and you're going to have to change.⁴⁵⁸

Significantly, the *IFVOP* is skilling victims and offenders up to communicate anti-violence strategies to others in the community. The facilitators are very proud of the program's ability to stretch beyond the individuals and 'plant a seed in the community'⁴⁵⁹. Gilbert Alimankinni, one of the original *IFVOP* facilitators recounts one experience:

I know this one fella that in 2004-2005 he was in the program. At six months we went to check on him, make sure things are still in place and he was telling me 'we don't have any family problems.' His two eldest daughters have moved out and got their men. He had been going there because *they* were having family problems and violence. He would get there and take his book [program worksheets and manual] and help them work it out... I was encouraging him, saying you have to show other people how to stop the violence and then more people will look up to you. That's one of the best stories because we have helped one person to help his family and his community. This sort of thing is a big rap for us. This man has been coming to report [to Community Corrections] for a long time and had lots of problems but now he can help.⁴⁶⁰

This story highlights the broader potential that this sort of program has to break the cycle of violence.

The program does, however, face many challenges. In particular:

- *Burden on workers*: The use of local workers is integral to the success of the *IFVOP* but it is also one of the challenges in managing the program. The nature of the work can be a huge burden on workers, as they are

456 White, D., Alimankinni, M., and Alimankinni, G., 'Indigenous Family Violence Offender Program: The Nguui Experience', *Positive Ways: An Indigenous Say*, Victims of Crime NT Conference, September 2006.

457 Tipuamantumirri, L., communication with author, 10 October 2007.

458 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

459 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

460 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.



unofficially on-call 24 hours a day, 7 days a week because they are in the community and well respected. The works load that the staff manage may also point to the lack of other appropriate and accessible services.

- Taking a stand against family violence can also come at a personal cost. One of the facilitators has 'copped some flak from men when I encourage the women to go to the police'⁴⁶¹ and one of the female facilitators states that she has only undertaken the role as she has the support of her husband and son to stay safe from threatened violence.
- *Structural gaps:* Workers believe that the effectiveness of the *IFVOP* is hampered by the structural gaps in the community. This is summed up:

Over crowding, no job, no house, how can you have self esteem? The program can help but you still need to fix the big issues.⁴⁶²
- Other notable service delivery gaps are the lack of mental health services to deal with the increasing incidence of drug induced psychosis that leads to violence and self harming behaviours.
- *Expanding Program:* In the Northern Territory Government *Closing the Gap of Indigenous Disadvantage, Generational Plan*, \$5.4 million has been allocated to extend the *IFVOP*.⁴⁶³ This additional funding and recognition is warmly welcomed however, there are concerns that expanding the program too quickly could lose the community connection and control that has made it so successful.

Lessons from the *Indigenous Family Violence Offender Program*

Community generated

The implementation of the *IFVOP* has been based on consultation and input from the community. Importantly, facilitators have been able to adapt the program for their own community:

If you have your own people working, they understand them and they understand you. So we look at the manual and see if it makes sense for us, our culture, and then explain it our way.⁴⁶⁴

This means that there are subtle differences in how the program is run across the different communities, depending on their needs. This level of flexibility also involves Indigenous people in the development and implementation of the program, handing some control and ownership back to the communities. In this way the program moves from being a justice intervention, to a community intervention.

Culturally appropriate

The *IFVOP* is not only culturally appropriate because it employs Indigenous workers. Conscious attempts have been undertaken to include the cultural context of family violence in all aspects of the program.

461 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

462 Tipuamantumirri, L., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

463 Northern Territory Government, *Closing the Gap of Indigenous Disadvantage, Generational Plan of Action*, available online at: http://www.action.nt.gov.au/fact_sheets/safety-police_justice_family_violence.shtml, accessed 12 October 2007.

464 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.



The program looks at issues that would be considered outside the scope of mainstream criminogenic need but are crucially important to understand the context of how family violence happens and how it can be prevented. For instance, there are modules on the history of Indigenous people, the impact of colonisation and how this impacted on traditional law and cultural norms. Elders are often invited to conduct the sessions on history:

They talk about how we used to live before the first settlers came, comparing to today. They talk from a long time. We had lots of wives, there was no grog, no substance abuse and no violence – just live in harmony. Now things gone really big now and we have to teach ourselves to get back to harmony.⁴⁶⁵

A traditional healing session is also run by a local healer.

Elders and respected community members like the facilitators are also in a unique position to assist men to negotiate change in gender roles that have impacted on men's feelings of loss of power. According to Luke Tipuamantumirri, local corrections officer who works with many of the *IFVOP* participants:

traditionally women walked behind the man. Now we are walking shoulder to shoulder. They don't like it but they have to deal with it.⁴⁶⁶

Facilitators and Elders continually reinforce that violence is not acceptable. Facilitators believe that the message means more coming from them than it would from non-Indigenous people as they 'don't take any excuses'⁴⁶⁷ and don't let men 'hide behind culture'.⁴⁶⁸

The *IFVOP* also deals with contemporary issues in a responsive way. Apart from alcohol, the biggest issue related to family violence put forward by the facilitators is jealousy:

Violence comes from jealousy, people always going back over the past, old boyfriends, old girlfriends, and bringing it all up again and again... This is the men and the women but we tell them that it is about power and control.⁴⁶⁹

The mechanism of separate men's and women's groups allows the program to work through this issue in a safe, appropriate way that makes sense for both men and women.

Holistic

Most family violence offender programs only work with the offender. From an Indigenous perspective, this is like treating only half the problem. Although offenders are always encouraged to take responsibility for their violent behaviour, it is acknowledged that dynamics such as jealousy often lead to violence. The partners are encouraged to look at their own behaviours and are taught strategies to communicate better and resolve conflict. The fact that both partners are working on their behaviour can lead to a supportive environment for change and strengthen the relationship.

The *IFVOP* facilitators in Nguui are also trying to work with children around family violence. In partnership with the Council for Aboriginal Alcohol Program Services, they have developed an interactive learning tool to teach school age children about family violence, protective strategies and how to understand and share feelings about experiencing family violence.⁴⁷⁰ This program will soon be run in the local school.

465 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

466 Tipuamantumirri, L., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

467 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

468 Alimankinni, G., *Communication with Social Justice Commissioner's Office*, 10 October 2007.

469 Puaatujimimi, J., *Communication with Social Justice Commissioner's Office*, 9 October 2007.

470 Document provided to the author.



Community based

The *IFVOP* is a community based diversion from custody. The commitment to keep offenders in their community is not only in line with the principle of imprisonment as a last resort, but also an effective practice. Offenders remain connected to their families and communities and are able to put behaviour change and learning into practice, rather than being sent away with little, if any, rehabilitative intervention. As previously mentioned, the community and the women in particular, are supportive of the program because it keeps families and communities together.



Members from the Murri Men's Support group.

Left to right kneeling: Paul Hill, Elston Dick, David Roebuck, Dudley Sailor.

Left to right standing: Alquin Williams, Fabian Ogden, Lionel Stretton, Brendon Moon, Warren Percy, Tim Shaw (group facilitator), Barry Johnny, Matty Ned, Neville Barclay, Charlie Ryan, Vincent Body, Robert Smyler.

The *Mount Isa Murri Court* is an Indigenous Court that is using men's and women's business groups to assist with family violence offences. Like the Indigenous Family Violence Program in the Northern Territory, the *Mount Isa Murri Court* provides an alternative to detention through culturally appropriate intervention for offenders and victims.

Murri Courts have been operating in Queensland since 2002. The first Murri Court was established at the Brisbane Magistrates Court. Based on the South Australian Nunga Court, it is a modified Magistrates court that includes culturally appropriate elements and involves Elders and respected persons from the offender's community in the Court process. The role of the Murri Court is explained further in Text Box 17 below.



Text Box 17: What is the Murri Court?⁴⁷¹

The Murri Court is a Magistrate Court or a Children's Court constituted by a Magistrate which is designed specifically for Aboriginal and Torres Strait Islander offenders.

The Murri Court involves Indigenous Elders or respected persons in the court process.

The role of Elders and respected persons can include:

- a) advising the Magistrate about cultural issues;
- b) assisting the offender in understanding court processes;
- c) assisting the Magistrate to decide on a sentence that is more appropriate;
- and
- d) acting as a connection between the court and the local Indigenous community.

The Elders' and respected persons' role in the Murri Court is authorised under section 9 (2)(o) of the *Penalties and Sentences Act 1992 (Qld)*, that provides a court must have regard to relevant submissions made by community justice groups including Elders and respected persons, when sentencing Aboriginal and Torres Strait Islander offenders.

The Elders' and Respected Persons role in Youth Murri Court is authorised under section 20(1) and (7) of the *Children's Court Act 1992* and section 150 of the *Juvenile Justices Act 1992 (Qld)*.

Murri Courts are now in operation in Brisbane, Caboolture, Rockhampton, Townsville, Mount Isa, Cherbourg, Ipswich, Cleveland, Cairns, Coen and Cairns. To be eligible offenders must plead guilty to the offence and there is typically an expectation that the offender would be facing a prison sentence. Youth Murri Courts are also available for juvenile offenders in most areas.

There are subtle differences between the courts arising from local consultation between the magistrates and local communities. For instance, in Brisbane and Mount Isa, magistrates do not wear ceremonial dress or sit behind the bench, whilst in Townsville and Rockhampton communities have decided to retain traditional dress and seating to reinforce the seriousness of the process. This flexibility extends to allow innovations such as the *Mount Isa Murri Court's* use of men's, women's and community justice groups in the process.

Description of the *Mount Isa Murri Court*

Mount Isa is located in far North Western Queensland. Mount Isa was built on mining natural resources but has grown to a regional service centre with a population of approximately 20,000.

The Mount Isa area has a high Indigenous population making up 16.6% of district population.⁴⁷² The Kalkadoon are the traditional owners of the land around Mount Isa.

471 Extract from Parker, N. and Pathe, M., *Report on the Review of the Murri Court – Report to the Honourable Kerry Shine MP, Attorney-General and Minister of Justice and Minister Assisting the Premier in Western Queensland*, Queensland Department of Justice and Attorney-General, Brisbane, 2006.

472 Australian Bureau of Statistics, *Quickstats Census 2006 Mount Isa Statistical Area*, available online at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.



The Indigenous population of Mount Isa do not seem to have experienced the same benefits of the mining boom as non-Indigenous people. Indigenous people have a 15% unemployment rate compared to a 4.2% for non-Indigenous people.⁴⁷³ There is a severe shortage of accommodation in Mount Isa, exacerbated by a transient population drifting in from the Northern Territory. Many more people have been arriving from areas like Alice Springs and Lake Nash since the alcohol bans as part of the Northern Territory Emergency Intervention.

Due to this influx of people and accommodation shortage there is a sizable population of Indigenous people that camp on the riverbed with resultant issues of alcohol abuse and family violence.

The *Mount Isa Murri Court* deals with a very high number of family violence offences. Lyn Roughan, *Mount Isa Murri Court Case Coordinator*, estimates that at least 75% of the offences before the Murri Court in Mount Isa are related to family violence. Although the Murri Court is not only aimed at family violence offences, these initiatives all have the dynamics of family violence offending in mind.

All the adult participants in Murri Court are facing potential custodial sentences. However, very serious matters (including family violence offences which have resulted in very serious physical assaults) are not dealt with by the Murri Court and are referred to the general Magistrates Court and District Court. This was a deliberate strategy when setting up the Murri Court in Mt Isa (different elsewhere in Queensland) so that Elders would not be mistakenly perceived as sending community members to prison. As defendants may not appreciate that the Elders have no sentencing role when they sit with the magistrate, it has been less problematic to send matters that are to receive custodial sentences back through the Magistrates Court.

The Murri Court program uses adjournments, with bail conditions to facilitate entry into rehabilitation before sentencing occurs. It is usually 3-6 months but can be longer. Lyn Roughan states that:

We've found that if there is only a short time frame until sentencing no changes are made to address offending causes. If offenders are sentenced shortly after referral to Murri Court any community based order made, like probation, may be breached because the underlying behavioural problems have not been addressed.⁴⁷⁴

Conditions of bail include attendance at men's (or women's) group, drug and alcohol counselling and involvement with the Community Justice Group. These sorts of conditions and use of court processes to supervise progress are consistent with broad shifts towards therapeutic jurisprudence in the legal system, where the Courts use their involvement to improve rehabilitative outcomes for offenders.

The *Mount Isa Murri Court* recognises the cultural need for separate forums for men's and women's business in the court process. Before the sentencing of the defendant separate men's and women's business may be convened with relevant stakeholders in separate rooms. Non-Indigenous court staff leave the Court to maintain cultural integrity for the process.

473 Australian Bureau of Statistics, *Quickstats Census 2006 Mount Isa Indigenous Area*, available online at: <http://www.censusdata.abs.gov.au>, accessed 15 October 2007.

474 Roughan, L., *Communication with Social Justice Commissioner's Office*, 3 October 2007.



This process allows the offenders and partners to open up to the Elders involved in the respective men's and women's business and share their stories. Victims are able to talk about the impact of violence without the fear of speaking in front of the perpetrator. Elders then take this information into account when they are providing advice to the magistrate.

Men's and Women's groups are an integral part of the success of the *Mount Isa Murri Court*. Offenders are usually mandated to attend either the men's or women's group to deal with issues around family violence and past events in their lives which may contribute to offending. Partners and family members are also encouraged to attend the relevant group.

The Murri Men's Support Group is currently held once a week, although there are plans to expand it to three times a week. It has been facilitated for two and half years by Tim Shaw, a local man who also has significant ties with Indigenous communities in the Northern Territory as well. This is significant given the transient nature of the population before the Murri Court.

Compared to the Northern Territory *Indigenous Family Violence Offender Program (IFVOP)*, the men's group is quite informal. There is no strict program outline, instead it is an opportunity for men to 'come together and talk about some deep issues in a safe place'.⁴⁷⁵ However, there is an overlap with the content covered by *IFVOP*, with the group talking about drinking, violence and pressures from family, ways to manage anger and general anti-violence messages, without women present.

Not all of the participants of the Men's group are mandated. Older Indigenous men attend to mentor and offer support to participants from court. These men and the facilitator offer stories, experiences and solutions from their own lives 'which mean more than anything from a white counsellor, out of a text book'.⁴⁷⁶ This informal 'yarning style' of the group is responsive to the needs of the group and despite the lack of formal structure, seems to be very effective in engaging men.

The Murri Men's Support Group aims to be holistic and works in partnership with other services. For instance, Aboriginal health workers attend the group from time to time to provide health checks and health education. Local alcohol and drug services also attend to promote their program and provide information about harm minimisation.

The Murri Women's Support Group also meets once a week although it has a more general focus than the men's group. The women's group is more activity focused, with a range of life skills programs around cooking, nutrition, caring for your children, arts and crafts, budgeting and support and mediation with tenancy issues. However, female Elders from the Murri Court attend the group and the issue of family violence often comes up informally as the women are in a comfortable, safe environment.

The local Community Justice Group is the third component of how the Murri Court works with family violence offenders. The Community Justice Group is funded through the Queensland Department of Justice and Attorney-General. Presently,

475 Roughan, L., *Communication with Social Justice Commissioner's Office*, 3 October 2007.

476 Shaw, T., *Communication with Social Justice Commissioner's Office*, 16 October 2007.



all Elders who sit in the Murri Court come through the Community Justice Group membership and are the 'eyes and ears of the court in the community'.⁴⁷⁷

The Community Justice Group has an important role in supporting and maintaining the Murri Court. Offenders on the bail component of the Murri Court program are not supervised by the local Probation and Parole Services as they do not supervise bail programs in Queensland. Instead, under the authority of the magistrate:

The (Indigenous) community, especially the community justice group members supervise the men and women.⁴⁷⁸

This supports the authority of the Community Justice Group and hands some control of justice and safety to the community.

Offenders are monitored by the Community Justice Group and offenders report back to Murri Court every two to three months. This is an opportunity for the offender's progress to be reported to the court, including whether or not they are attending the Murri Men's or Women's Support Group as required.

If participants are not complying with their conditions they are sent back to mainstream court, with a strong likelihood of a custodial sentence. However, intervention usually occurs before this, with Tim Shaw, Men's Group Facilitator or the Community Justice Group 'reading them the riot act'.⁴⁷⁹ Participants can also be sent to mainstream court if they are disrespectful to Elders during the Court or supervision process.

If the participant completes the period of bail without incident and has made substantial changes to their lives they are usually sentenced to a community based order, such as probation and/or community service.

Impact of the Murri Court Family Violence Initiatives

The Murri Court has been reviewed by the Queensland Department of Justice and Attorney-General with strong recommendations to retain the existing objectives and expand funding.⁴⁸⁰

The way individual courts like the *Mount Isa Murri Court* are operating through innovative partnerships to address family violence, have not yet been evaluated. However, the stories from workers on the ground indicate that there has been success in addressing the behaviour of some family violence offenders. One such story can be found below in Text Box 18 below.

477 Roughan, L., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

478 Roughan, L., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

479 Roughan, L., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

480 Parker, N. and Pathe, M., *Report on the Review of the Murri Court – Report to the Honourable Kerry Shine MP, Attorney-General and Minister of Justice and Minister Assisting the Premier in Western Queensland*, Queensland Department of Justice and Attorney-General, Brisbane, 2006.



Text Box 18: Men's and Women's business in a family violence situation⁴⁸¹

A couple was referred to the Murri Court. Both were facing violence charges against each other. The couple were accepted onto to Murri Court and men's and women's business processes were put in place to make each of the offenders feel more comfortable and able to speak with the Elders about any issues.

Both were mandated to attend the respective men's and women's group whilst they were on bail to discuss their issues with Elders and gain support. During the process it was revealed that the couple had lost a child and were blaming each other. This was the root cause of the family violence. Circumstances had not permitted proper cultural practices and sorry business to be followed. Neither of the partners felt like their grief could be resolved and were taking it out on each other.

It is unlikely that this story would have come out during mainstream processes but it has been crucial in understanding why the couple were being violent towards each other, and then addressing this in a culturally appropriate way. Elders helped the couple come to terms with loss and have helped them move forward. The violence has now stopped and their relationship has improved.

Tim Shaw, facilitator of the Murri Men's Support Group says that he has observed family violence drop significantly amongst men who have worked with his group and the Murri Court and estimated that 90% of the men have not reoffended again.

Preventing recidivism is not the only indicator of success. Tim Shaw views the problems of men holistically with issues around family violence:

hand in hand with alcohol, unemployment, not feeling good enough and low self esteem. If you can't get a job, you don't feel good about yourself and you can't move on until you feel good about yourself.⁴⁸²

The men's support group had built confidence and self esteem through culture and connection with other men. It has also helped in practical ways, with Tim Shaw assisting some of the men to go on and find employment in mining, local clubs and council. Many of these men have never worked before but:

I have seen big changes in them. They feel pride. For them, they have got back to culture, got wiser and take more responsibility.⁴⁸³

The *Mount Isa Murri Court* has become recognised as a tough but fair way to deal with family violence offences. It is not a 'soft option' and Lyn Roughan reports that some men 'would rather take their chances with mainstream court and custody' rather than go before the Elders in the Murri Court, where the push to take responsibility for their behaviour is so great.

The position of the Murri Court is becoming recognised and established. However, the Murri Men's Support Group which provides such a crucial service to the Court is more precarious. The Murri Men's Support Group has been run over the last two and half years on a voluntary basis by Tim Shaw with no specific funding.

481 Roughan, L., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

482 Shaw, T., *Communication with Social Justice Commissioner's Office*, 16 October 2007.

483 Shaw, T., *Communication with Social Justice Commissioner's Office*, 16 October 2007.



Tim Shaw has recently committed himself to providing a service for the Murri Men's Support Group full time and is currently seeking funding. He hopes to extend the service to three nights a week as well as establish a drop in centre where men can 'cool off' and receive support and counselling. A Department of Housing property has been made available for this purpose so the plans are looking promising.

However, like so many programs that are a product of extraordinary individual commitment and passion there is a real need to provide some long term support. Funding is essential to sustaining the program but it also needs to recognise the organic, community developed nature of the group and maintain flexibility.

Lessons from the Murri Court Family Violence Initiatives

Culturally appropriate

The modified Court process takes into account the cultural needs of the local community. Like all Murri Courts, Elders have an important role to play in the Court process, but the use of men's and women's business adds an extra layer of responsivity. Elders have also helped inform the Court about how to communicate effectively with Indigenous people and the circumstances which impact on their lives. For instance, the Murri Court recognises sorry business and where possible makes allowances for non-attendance at court as they are aware:

obligations to family come before any piece of paper that you can give to someone about being at court.⁴⁸⁴

These sorts of practices reduce the number of the Indigenous people being breached and then sent to custody.

Partnership approach

The success of the Murri Court is based on the strong partnership with the local Indigenous community through Elders, the Community Justice Group and the men's and women's groups. Without the Murri Men's Support Group in particular, the Murri Court can only provide half the solution to the problem of domestic violence. As important as culturally appropriate court processes are, it is additional support of the Murri Men's Support Group that makes the difference in challenging family violence. The Murri Men's Support Group shows that challenges are more successful when they are generated by the community, for the community.

Building on existing community strengths

The Murri Court has not had to start from scratch. The strong base of the Community Justice Group has provided a pool of respected and dedicated Elders to work with the Court and the necessary power and authority to support these initiatives in the community. There is a genuine role for the community in providing advice, input and monitoring of the offenders.

484 Roughan, L., *Communication with Social Justice Commissioner's Office*, October 16 2007.



The examples of offender programs provided here also share common elements for success. These include:

- *A Holistic approach:* Offender programs should look at offenders holistically and address all their needs. This also means looking at the offender's relationship with the victim. Some *Indigenous Family Violence Offender Programs* include the victim, recognising that family violence is a community problem, not just an individual problem. This is in stark contrast to non-Indigenous domestic violence paradigms, which locate the source of problem solely within the man.
- *Community-based:* Given the Royal Commission into Aboriginal Deaths in Custody and the continued over representation of Indigenous people in custody, community based options for rehabilitation are preferred *where the safety of the victim can be assured*. According to Blagg:

Breaking the cycle of violence in Aboriginal communities must include breaking the cycle of enmeshment in the criminal justice system.⁴⁸⁵

Custody is seen as a destructive force in Indigenous communities, with little rehabilitative impact.
- *Connection to culture:* Programs need to recognise and strengthen culture. There is a role for cultural recognition as well as expressions of customary law. According to a Yolngu Elder:

Jail is a resting place, a luxury and a place of no discipline. They come out and their course has not been changed, they cause more trouble and go back again. Traditional law is all about discipline and changing that person's course. That way they then set a good example to others.⁴⁸⁶
- *Indigenous staffing:* Indigenous workers are in a unique position to provide programs that are culturally secure as well as challenging. In cases where culture is used to justify violence, Indigenous workers, particularly men, are able to powerfully challenge these myths.⁴⁸⁷

485 Blagg, H., 'Restorative Justice and Aboriginal Family Violence: Opening a Space for Healing' in Strang, H. and Braithwaite, J., (eds), *Restorative Justice and Family Violence*, Cambridge, UK: Cambridge University Press, 2002, p193.

486 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred', Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Northern Territory Government, Darwin, 2007, p132.

487 Blagg, H., *Pilot Counselling programs for Mandated and non-Mandated Indigenous Men*, Domestic Violence Prevention Unit, Perth, 2001, p9.



Part 3: Learning from 'promising practices' to address family violence and abuse in Indigenous communities

This collection of case studies is about recognising and celebrating the outstanding successes in our Indigenous communities to tackle and prevent family violence and abuse. I have chosen these case studies to encourage individuals in communities by showing what can be achieved, often through the dedication of one person having a good idea; to inspire service providers to think critically about how effectively they are delivering these services; and challenge governments to be responsive and flexible to innovative programs and responses to family violence and abuse.

As the research has demonstrated, family violence and abuse are complex problems that require intervention in a range of different areas. The case studies deal with the diversity of responses to family violence and abuse, organised around the themes of:

- Community education and community development;
- Healing;
- Alcohol management;
- Men's groups;
- Family support and child protection;
- Safe houses; and
- Offender programs.

There are a number of commonalities between the case studies. In particular, all of the case study programs engage with the causes (and not just the consequences) of violence (as described by Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys, in their comprehensive report, *Violence in Indigenous Communities*).⁴⁸⁸ They argue that causes should be categorised as *underlying factors*; *situational factors*; and *precipitating causes*.⁴⁸⁹

Underlying factors relate to the historical experience of Indigenous people. All of the case study programs work within an awareness of past experiences, in particular those that deal with healing, men's groups, family support and child protection, and offender programs. Importantly, they recognise trans-generational trauma but also help individuals and communities make positive steps to break the destructive cycle of violence and abuse.

Situational factors contribute rather than cause violence. Many of the case study programs work with one or more of these situational factors at either an individual or community level. For example, alcohol management strategies reduce the likelihood and intensity of violence and abuse by regulating access to alcohol, whilst healing and offender programs work with individuals to help them manage their own alcohol and drug use. The community education case studies relate closely with the situational factor of a subculture that tolerates violence, or is not knowledgeable, about what child abuse entails.

488 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p11.

489 Memmott, P., Stacy, R., Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p11.



Precipitating causes are the triggers to violence and can be almost anything, but commonly jealousy⁴⁹⁰ and other affronts which can lead to conflict. There is no way that individuals can be insulated from the everyday events which can lead to disagreement, but they can be equipped with better skills for dealing with conflict. For instance, the men's groups help men work through anger management issues and the offender programs help men and women deal with jealous feelings through better communication skills.

This framework shows that interventions need to target all of the causes and factors holistically, from dealing with the trivial triggers through to history and entrenched social issues. Some of the case studies do address all of these factors and all certainly go beyond the superficial, band-aid approaches to family violence and abuse that seldom deliver long term results.

The case studies can all be placed along a continuum of intervention that incorporates:

- *Primary prevention*: preventing violence before it occurs through education and addressing the underlying factors that lead to family violence and abuse.⁴⁹¹
- *Early intervention*: targeting the early signs of violence and abuse by targeting support, skills development and behaviour change programs towards those at risk of violent or abusive behaviour.⁴⁹²
- *Intervention*: providing support and services to victims and offenders of violence after violence or abuse has occurred.⁴⁹³

So while community education may be the key to preventing family violence and abuse in Indigenous communities into the longer term, it is just as important that we have services at the other end of spectrum, such as offender programs, healing services and safe houses, that deal with consequences of violence and prevent further offending or victimisation.

It has been a hard road to develop the services and programs profiled in the case studies. There is an uncertain journey ahead for many as they still require long term, stable funding to continue their work. Even in the very few case studies where funding is secured, it is often not enough to meet the program objectives, doesn't allow for 'extras' like staff development, training and evaluation and comes with significant bureaucratic reporting requirements. Government funding agencies often seem to struggle to work with these programs in ways that are supportive, yet flexible.

490 Memmott, P, Stacy, R, Chambers, C., and Keys, C., *Violence in Indigenous Communities*, Attorney General's Department, Canberra, 2001, p21.

491 VicHealth, *A Public Health Model for the Prevention of Violence Against Women*, 2005, available online at: https://www.vichealth.vic.gov.au/assets/contentFiles/publichealthmodel%20VAW%20for%20campaign%20review_updated%20.pdf, accessed 11 January 2008.

492 VicHealth, *A Public Health Model for the Prevention of Violence Against Women*, 2005, available online at: https://www.vichealth.vic.gov.au/assets/contentFiles/publichealthmodel%20VAW%20for%20campaign%20review_updated%20.pdf, accessed 11 January 2008.

493 VicHealth, *A Public Health Model for the Prevention of Violence Against Women*, 2005, available online at: https://www.vichealth.vic.gov.au/assets/contentFiles/publichealthmodel%20VAW%20for%20campaign%20review_updated%20.pdf, accessed 11 January 2008.



It is of concern that very few programs incorporate formal evaluation and monitoring mechanisms. Evaluation helps ensure that outcomes and targets are being met; increases accountability to funders; and provides opportunities to learn from the experience of program implementation. This information can be shared with other Indigenous and non-Indigenous service providers to increase capacity across the sector. Evaluation and monitoring mechanisms need to be put in place from the very outset of program design and development, so that they are an integral part of how the program runs and data can be consistently collected over an extended period of time.

Although some of the programs have used community education models to good effect, it is not part of all family violence and abuse responses. Community education, particularly around human rights, needs to be part of a strategic approach to addressing family violence and abuse that will have outcomes beyond the reduction of family violence and abuse. Community education will help communities grow and develop capacity, creating safer environments for women and children.

All of the program successes have come at a high personal toll, be it through the immense burden that individuals have shouldered to get the programs off the ground with little or no formal support, or the consequent role of being one of a few Indigenous helping professionals available in a community. Working in the areas of family violence and child abuse is difficult work for anyone, but when the worker is Indigenous and part of a small community, it is a 24 hour job complicated by family and community ties.

The fact that these case studies have achieved success against all odds demonstrates the tenacity and commitment of individuals and communities. But it shouldn't be that hard. The lessons from the case studies provide guidance about what can be done to support innovation. Although funding seems to be the perennial issue, with a real need for flexible, needs based and long term funding, there are other important lessons we can learn. These relate to the process, necessary relationships and dynamics for successful family violence and abuse interventions.

The following characteristics run through the case studies and summarise lessons from the promising practices profiled.

- *Community generated:* The most successful programs are those that are developed by and for the community, as they promote self determination and respond to individual community needs. Sometimes they are developed in response to horrific incidents of violence, such as the *Cherbourg Critical Incident Group* and the *Blackout Violence* campaign. They also involve communities setting their own agendas. For instance, the *Aboriginal Healing Project* allows individual communities to describe healing in their own ways and run projects that reflect these needs. Community generated programs still require significant support. Unfortunately we see many programs start with a fantastic idea from the community but fail to thrive due to lack of support.
- *The importance of community engagement:* This means consulting the community through out the process of program development, especially when the initiative has come from a government department, rather than the community itself. Community engagement is more than just



consultation. Communities should be given real power to make decisions and have input into the program development and implementation.

- This can take time and requires flexibility and patience but ultimately reaps long term rewards. For instance, the 20 year process leading to the *Umbakumba Alcohol Management Plan* is an example of sustained community engagement leading to dramatic improvements in the quality of life of residents. On a smaller scale, the *Mildura Family Violence and Sexual Assault Awareness Campaign*, was a perfect example of allowing the community to 'take over the program and run it', creating a real sense of ownership and greater traction in the community.
- *Community development*: Community development and capacity building often needs to take place before communities are able to take ownership of family violence initiatives. For instance, men's groups and other ways Indigenous men come together can help build leadership capacity in communities and facilitate the spreading of a strong anti-violence norm. Community development should also run alongside therapeutic healing services recognising that not all problems can be solved through counselling alone.
- *A partnership approach*: All of the successful case studies were built on partnerships, be it with government departments or other agencies. Partnership can be seen in cooperation and accountability between parties. Often this is based on individual relationships, although it can be formalised. For example, the *Lakidjeka Aboriginal Child Specialist Advice and Support Service* has a formal protocol with the Department of Human Services that sets out how the partnership is to work.
- *Holistic*: The underlying, situational and precipitating factors of violence and abuse all need to be tackled, often simultaneously. So while a person participating in a healing program, might present with issues around alcohol or drug use, a whole range of practical, cultural, psychological and emotional needs might need to be dealt with as well. Working holistically also means involving more than just the offender. As seen in the *Indigenous Family Violence Offender Program*, working with partners looks at the circumstances of family violence systematically and helps keep families together.
- *Culturally appropriate*: This is demonstrated in a variety of different ways in the case studies, from the use of traditional values and communication strategies in counselling methods, incorporating traditional stories, to storytelling and yarning in education and men's groups.
- *Connection to culture*: Strong culture and respect for traditional law reinforces anti-violence messages and builds positive community identity. Men's groups, offender programs and family support services and community education programs involve Elders and respected community members to create a bridge between the past, cultural knowledge and solutions to family violence and abuse.

Family is a crucial part of Indigenous culture. Successful programs, especially in the realm of child protection, keep close and extended family involved wherever possible. So, for *Safe Families*, this might take the form



of weekend trips out bush with extended family members to get bush tucker to instil a 'sense of pride in country and self'.

- *Involving men in the solutions to family violence:* Initially, most services and responses to family violence were created by and for women, leaving some men feeling alienated and powerless. Men need to be brought back into the process and recognised as an integral part of the solution. Men's groups facilitate this process by connecting up men to break down social isolation, promoting traditional male culture and building pride.
- *Empowering women:* Likewise, women need to be actively involved and encouraged to generate their own solutions to family violence and abuse. Women's traditional culture and authority in the community needs to be recognised and promoted. An example of this is the *Balgo Women's Law Camp*, which blended traditional women's law and discussion to create an agenda for change in Balgo.
- *Building on existing community strengths:* There are often significant resources, networks and knowledge in communities. This means that programs start from a solid foundation and there is no need to reinvent the wheel. For example, part of the *Yuendumu Safe House* success comes from the strong leadership of senior women who have a tradition of successfully identifying issues affecting their community and addressing them in innovative ways. Formal networks like the Community Justice Groups in the *Mount Isa Murri Court* case study provided linkages between Elders and the Court.
- *Indigenous staff expertise and networks* – Indigenous staff make the crucial difference in successful services due to their connection with community and culture and ability to engage with clients. As seen in *Safe Families* and *Lakidjeka Aboriginal Child Specialist Advice and Support Service*, they are also in a unique position to use their networks to find placements in accordance with the Aboriginal Child Placement Principle. In the context of offender programs and men's groups, Indigenous workers are able to powerfully challenge myths that justify violence and abuse.

Successful programs recognise what a valuable resource their Indigenous staff are and provide appropriate support which includes training, career development and flexibility to meet cultural and family commitments.

- *Sustainability:* Successful programs are often the programs that have the necessary skills, commitment and resources to keep operating over a period of time. There might be other programs that are operating in areas of greater need but good governance, accountability and the ability to provide evaluation data to funder's leads to sustainability over the longer term.
- *Flexibility:* Because culturally appropriate services are usually few and far between, successful programs need to be flexible enough to deal with clients and situations that may be outside of their core business, as they may practically be the only option available. Flexibility is also required to meet the needs of the community. This can involve outreach services rather than expecting clients to attend an office, or at least help with transport.



- *Community – based rehabilitation options for offending:* Given the Royal Commission into Aboriginal Deaths in Custody and the continued over representation of Indigenous people in custody, community based options for rehabilitation are preferred *where the safety of the victim can be assured*. Custody is seen as a destructive force in Indigenous communities, with little rehabilitative impact. Based on the experience of the *Indigenous Family Violence Offender Program*, women seem more comfortable reporting violence if they think their men will remain in the community.

Although none of these lessons are necessarily new, taken together they provide a framework for developing good family violence interventions.

They also provide practical examples that reflect the key elements of a human rights based approach to program design and delivery. Table 5 below distils a number of principles and indicators from the case studies which outline what the human rights principles look like in practice.

Table 5: Key indicators of a human rights approach in programs addressing violence and abuse in Indigenous communities	
Principle	Indicators for programs addressing violence and abuse in Indigenous communities.
<p>Full and effective participation <i>Participatory processes are built into program planning, implementation and evaluation.</i></p>	<p>Does the program or service explicitly encourage participation from Indigenous people? Does the program have community consultation mechanisms?</p> <p>Are the participatory mechanisms accessible to all intended beneficiaries?</p> <p>Are Indigenous people involved in program planning, design and monitoring and evaluation? For example, with the program or service having an advisory committee with Indigenous community representation</p> <p>Does the program or service have feedback mechanisms for people using the service?</p> <p>Does the program or service use community volunteers?</p> <p>Does the organisation or service participate in local community events?</p>



<p>Accountability</p> <p><i>Program builds capacity of workers to respect, protect and fulfil rights.</i></p> <p><i>Program includes stakeholders in program delivery and evaluation.</i></p> <p><i>Program communicates evaluation results and outcomes to intended beneficiaries.</i></p>	<p>Does the program or service makes its decision making processes (minutes, annual reports) available to the community?</p> <p>Does the program or service have child protection and workplace harassment policies and procedures?</p> <p>Do the staff receive ongoing cultural awareness training and development with specific reference to Indigenous communities?</p> <p>Are program decisions and changes communicated to the community?</p> <p>Does the program or service have partnerships and links with local organisations?</p>
<p>Non discrimination and equity</p> <p><i>Program is accessible to its intended target group.</i></p> <p><i>Program explicitly targets most vulnerable and marginalised.</i></p>	<p>Is the physical environment culturally appropriate?</p> <p>Does the location of the service enable access by the intended beneficiaries?</p> <p>Do the service users reflect the intended beneficiaries of the service?</p> <p>Is the service or program affordable?</p> <p>Does the program have outreach strategies to target people who are marginalised?</p> <p>Does the program provide materials that are accessible and culturally appropriate?</p>
<p>Empowerment</p> <p><i>The participatory processes of the program builds the skills, knowledge and resources of the intended target group to exercise and claim rights.</i></p>	<p>Does the program allow the intended beneficiaries to make decisions about their own care?</p> <p>Does the program have culturally appropriate procedures for explaining confidentiality and consent processes?</p> <p>Does the program have accessible and culturally appropriate resources available to explain relevant rights?</p>
<p>Express linkage to human rights standards</p> <p><i>Program acknowledges the immediate and underlying causes of the non realisation of rights.</i></p> <p><i>Program assesses its impact on the realisation of rights.</i></p> <p><i>Program contributes to the progressive realisation of human rights for its intended beneficiaries.</i></p> <p><i>Program should at the very least protect existing rights and prevent any set backs within the control of the program.</i></p>	<p>Are the stated aims and objectives of the program consistent with human rights standards?</p> <p>Does the program have solid referral pathways and partnerships to provide a 'holistic' service?</p> <p>Does the service participate in local inter-agencies?</p>



The promising practices profiled here reveal practical lessons that can assist in responding more effectively to family violence and abuse in Indigenous communities. It has been heartening to share these stories of success, often achieved against great adversity. It has been encouraging as well, because it shows what can be achieved. I am optimistic that these lessons can help shape better policies and programs, and consequently build safer and more cohesive families and communities. The lessons from these case studies are also discussed further in the next chapter in considering how the Northern Territory intervention process might be remodelled so that it builds on community capacity and is more sustainable into the longer term.

I make the following recommendations to build on the lessons learnt in this chapter.

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

On 21 June 2007, the Australian Government announced a 'national emergency response to protect Aboriginal children in the Northern Territory' from sexual abuse and family violence.¹ This has become known as the 'NT intervention' or the 'Emergency Response'. The catalyst for the measures was the release of Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, titled *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'*.

In the following months the emergency announcements were developed and formalised into a package of Commonwealth legislation which was passed by the federal Parliament and received Royal Assent on the 17 August 2007.

The Human Rights and Equal Opportunity Commission welcomed the Australian Government's announcements to act to protect the rights of Indigenous women and children in the Northern Territory. In doing so, the Commission urged the government and Parliament to adopt an approach that is consistent with Australia's international human rights obligations and particularly with the *Racial Discrimination Act 1975* (Cth).²

This chapter provides an overview of the NT emergency intervention legislation and approach more generally. It considers the human rights implications of the approach adopted by the government. Many details of how the intervention will work remain to be seen, and so the analysis here is preliminary. It seeks to foreshadow significant human rights concerns that are raised by the particular approach adopted by the government, and proposes ways forward to ensure that the intervention is consistent with Australia's human rights obligations as embodied in legislation such as the *Racial Discrimination Act 1975* (Cth).

1 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007, available online at: http://www.fahcsia.gov.au/internet/minister3.nsf/content/emergency_21june07.htm, accessed 18 October 2007.

2 Human Rights and Equal Opportunity Commission, 'A human rights based approach is vital to address the challenges in Indigenous communities', *Press Release*, 26 June 2007, available online at: www.humanrights.gov.au/about/media/media_releases/2007/45_07.html, accessed 9 November 2007.



Part 1 provides background on the announcement of the intervention and the findings of the *Little Children are Sacred* report. Part 2 then provides an overview of the legislative package to implement the intervention, the scrutiny process at the time of its introduction and related issues. Part 3 then considers the human rights impact of the intervention. Part 4 considers how to ensure that any actions to protect Indigenous children and women are done in a manner consistent with the human rights of Indigenous peoples.



Part 1: Background – The *Little Children are Sacred* Report and the announcement of the ‘emergency measures’

On 21 June 2007 the Australian Government announced a series of broad ranging measures to be introduced in Aboriginal communities across the Northern Territory to address what it described as the ‘national emergency confronting the welfare of Aboriginal children’ in relation to child abuse and family violence.³ The Minister described the measures to be introduced as measures aimed at ‘stabilis(ing) and protect(ing) communities in the crisis area’ with all action ‘designed to ensure the protection of Aboriginal children from harm’.⁴ He described the measures as ‘a first step that will provide immediate mitigation and stabilising impacts in communities’.

The extent to which the proposed measures would shift the social, cultural and legal landscapes of Aboriginal communities in the Northern Territory was immediately obvious. The Government described the measures to be introduced as follows:

- 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;

3 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007.

4 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007.



- 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.⁵

The Government also noted that it expected the Northern Territory Government to undertake the following, complementary actions:

- Increase its efforts and resources to ensure the servicing and protection of its citizens in the range of areas of State and Territory responsibility and support, within the scope of its resources, the national emergency response;
- Develop a comprehensive strategy to tackle the 'rivers of grog' across the Territory;
- Resume all special leases over town camps in the major urban areas where lease conditions have been breached, with the Australian Government acting in this area if the NT Government fails to do so; and
- Remove customary law as a mitigating factor for sentencing and bail conditions.

The initial phase of the intervention is due to last for up to five years. It will apply in most Aboriginal townships and town camps in the Northern Territory (as 'prescribed' by the NT intervention legislation or subsequently by legislative instrument by the Minister for Indigenous Affairs). Initially, 73 communities were identified for application of the measures.⁶

The Government announced that the intervention would be overseen by a Taskforce of 'eminent Australians, including logistics and other specialists as well as child protection experts' to be chaired by Dr Sue Gordon AM.

In announcing the intervention, the Minister stated that:

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...."⁷

He also stated that the immediacy of the broad scale change being undertaken was justifiable from the perspective of the urgent need to 'stabilise' the situation in Northern Territory communities, and that:

5 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007.

6 Department of Families, Community Services and Indigenous Affairs, *Transcripts: Mal Brough discusses the Northern Territory National Emergency Response Legislative Program*, 6 August 2007, available online at: http://www.facsia.gov.au/internet/minister3.nsf/content/nter_6aug07.htm, accessed 15 January 2008.

7 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007. Note that this and other statements by the Minister do not cite the full recommendation from the *Little Children are Sacred* report, which is significantly different in process.



I could not live with myself and I know that not one member of this House would want to live with themselves knowing that we sat on a report like this for eight weeks and then said for another six or eight weeks that we would wait and try and come up with some answers and then start to implement them.⁸

The Minister has consistently stated that: 'All action at the national level is designed to ensure the protection of Aboriginal children from harm.'⁹

The *Little Children are Sacred* report

Our appointment and terms of reference arose out of allegations of sexual abuse of Aboriginal children. Everything we have learned since convinces us that these are just symptoms of a breakdown of Aboriginal culture and society. There is, in our view, little point in an exercise of band-aiding individual and specific problems as each one achieves an appropriate degree of media and political hype. It has not worked in the past and will not work in the future...

What is required is a determined, coordinated effort to break the cycle and provide the necessary strength, power and appropriate support and services to local communities, so they can lead themselves out of the malaise: in a word, **empowerment!**¹⁰

Pat Anderson and Rex Wild QC, Little Children are Sacred report

The catalyst for the NT intervention was the findings of the report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, titled *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'* (herein the *Little Children are Sacred* report). This had been presented to the Chief Minister of the Northern Territory on 30 April 2007 and publicly released on 15 June 2007.

The *Little Children are Sacred* report was commissioned by the Chief Minister of the Northern Territory on 8 August 2006. It involved extensive research and community consultation by members of the Board of Inquiry into instances of sexual abuse in Aboriginal communities in the Northern Territory. The report took over eight months to complete.

The *Little Children are Sacred* report found that child sexual abuse is serious, widespread and often unreported in Aboriginal communities. It also found that:

- Most Aboriginal people are willing and committed to solving problems and helping their children. They are also eager to better educate themselves.
- Aboriginal people are not the only victims and not the only perpetrators of sexual abuse.
- Much of the violence and sexual abuse occurring in Territory communities is a reflection of past, current and continuing social problems which have developed over many decades.

8 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *Hansard*, House of Representatives, 21 June 2007, p76.

9 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), *National emergency response to protect children in the NT*, Media Release, 21 June 2007.

10 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, Darwin 2007, p12.



- 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.
- Existing government programs to help Aboriginal people break the cycle of poverty and violence need to work better. There is not enough coordination and communication between government departments and agencies, and this is causing a breakdown in services and poor crisis intervention. Improvements in health and social services are desperately needed.
- Programs need to have enough funds and resources and be a long-term commitment.¹¹

Throughout the report, the Board of Inquiry emphasised the importance of entering into genuine partnerships with Aboriginal communities if there is to be progress in addressing child abuse and family violence issues in those communities. In introducing the recommendations, the report states:

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. We have been conscious throughout our enquiries of the need for that consultation and for Aboriginal people to be involved...

The thrust of our recommendations, which are designed to advise the Northern Territory Government on how it can help support communities to effectively prevent and tackle child sexual abuse, is for there to be consultation with, and ownership by the communities, of those solutions. The underlying dysfunctionality where child sexual abuse flourishes needs to be attacked and the strength returned to Aboriginal people.¹²

The Report called for there to be 'a radical change in the way government and non-government organisations consult, engage with and support Aboriginal people'.¹³ The Report states that it 'was a common theme of discussions that many Aboriginal people felt disempowered, confused, overwhelmed, and disillusioned' with this situation leading to:

communities being weakened to the point that the likelihood of children being sexually abused is increased and the community ability to deal with it is decreased.¹⁴

Recommendation 1 of the report reflects the need for immediate action as well as ongoing effective dialogue with Aboriginal people in designing initiatives that address child sexual abuse:

11 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007.

12 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, p21.

13 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, p50.

14 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, p50.



Recommendation 1: That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

The report also identified a series of principles to guide engagement with Aboriginal communities in addressing the scourge of child abuse and family violence. It stated that these 'rules of engagement' must be central to any policy formation and implementation in Indigenous communities:

- **Principle One- Improve government service provision to Aboriginal people.** Including genuine whole-of-government commitment to improving service provision to Aboriginal communities, and a significant fiscal outlay, much better infrastructure and improved provision of resources.
- **Principle Two: Take language and cultural 'world view' seriously.** Much of the failure to successfully address the dysfunction in Aboriginal communities has its roots in the "language barrier" and the "cultural gap" and this is widening among the younger generations. A common theme in consultations was that many Aboriginal people did not understand the mainstream law and many mainstream concepts, including sexual abuse.
- **Principle Three: Engage in effective and ongoing consultation and engagement with Aboriginal Communities.** Many government policies are formulated without the active involvement of the very Aboriginal people whose lives and livelihoods are going to be affected by them, and whose support is needed for their success. The result is that these policies have not had the "on the ground" impact that it was hoped they would. The Inquiry believes that effective and ongoing consultation and engagement is an essential principle in reform.
- **Principle Four: Maintain a local focus and recognise diversity** There cannot be a one-size fits all approach to reform in Aboriginal communities. The Northern Territory Aboriginal population is made up of many culturally diverse groups. Recognition of this diversity demands that government initiatives have a local focus and that generic programs have sufficient flexibility to adapt to the cultural dynamics of individual Aboriginal communities.
- **Principle Five: Support community-based and community-owned initiatives.** There is now sufficient evidence to show that well resourced programs that are owned and run by the community are more successful than generic, short term, and sometimes inflexible programs imposed on communities. The Inquiry recognises the significant challenge for bureaucrats and politicians to avoid reverting to the familiar habits of seeking to control, incorporate and assimilate. The Inquiry takes the view that the government must offer realistic and useful support for local initiatives rather than: 'only seeking to re-orient communities toward better acceptance of existing mainstream legal processes and institutions'.



- **Principle Six: Recognise and respect Aboriginal law, and empower and respect Aboriginal people.** An overwhelming request from both men and women during community consultations was for Aboriginal law to be respected, recognised, and incorporated within the wider Australian law where possible.
- **Principle Seven: Maintain balance in gender, family and group representation.** For policies and programs to truly reflect the needs of the whole of community, consultations must include representatives from all different groups. In developing new structures and in engaging with community, care must be taken that all family groups have an equal role, that men and women are equally represented, and that the old and the young are equally represented.
- **Principle Eight: Provide adequate and ongoing support and resources.** There is a need to overcome the lack of ongoing support for many programs. While initial support to commence a program could often be obtained, continuing support was much more difficult to obtain.
- **Principle Nine: Commit to ongoing monitoring and evaluation of programs.** An increased understanding and accommodation of an Aboriginal cultural perspective is required in order to effectively evaluate service provision in Aboriginal communities. Further, there is a need to acknowledge Aboriginal people's history of being "researched on", and to develop culturally appropriate collaborative partnerships, where Indigenous communities share ownership of the research (and service provision) process.¹⁵

The *Little Children are Sacred* report includes 97 recommendations in relation to government leadership; family and children's services; health crisis intervention; police; prosecutions and victim support; bail; offender rehabilitation; prevention services; health care as prevention of abuse; family support services; education; alcohol; substance abuse; community justice; employment; housing; pornography; gambling, and cross cultural practices.

In particular, the recommendations emphasise that education is the key to helping children and communities foster safe, well adjusted families. It emphasised that school is the way to keep future generations of Aboriginal children safe, and getting children to school every day is essential. Education campaigns are also needed about sexual abuse, the impact of alcohol and pornography, and on the importance of schooling for a child's future.

The report also emphasises the need for urgent action to be taken to reduce alcohol consumption in Aboriginal communities.

15 Anderson, P. and Wild, R., *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred' Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007, pp50-56. These principles were drawn from the Western Australian Law Reform Commission's final report into Aboriginal Customary Law: Western Australian Law Reform Commission, *The Interaction of Western Australian Law with Aboriginal Law and Culture*, WALRC Perth, 2006, pp34-40.



Part 2: The Northern Territory 'emergency response' legislation

The Australian Government's emergency intervention was announced hastily. There was six days between the public release of the *Little Children are Sacred* report and the government's announcement of the intervention measures.¹⁶ The Northern Territory government were informed of the intervention measures at the same time that they were announced at a press conference by the Minister for Indigenous Affairs and the Prime Minister.

The majority of measures announced by the government require legislation to proceed. The substantive provisions of the government's 'Emergency Response' are contained in the following legislation:

- *Northern Territory National Emergency Response Act 2007* (Cth);
- *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth);
- *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth);
- *Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007-2008* (2007) Cth; and
- *Appropriation (Northern Territory National Emergency Response) Act (No. 2) 2007-2008* (2007) (Cth).

Overview of content of the legislation underpinning the intervention

Text Box 1 below provides an overview of the content of the *Northern Territory National Emergency Response Act 2007* (Cth).

Text Box 1: Contents of the *Northern Territory National Emergency Response Act 2007* (Cth)

Part I

Part I identifies the areas of the Northern Territory to which the legislation is to apply as:

- Aboriginal land, within the meaning of Aboriginal Land in the *Aboriginal Land Rights Act 1976* (Cth) including roads and rivers on Aboriginal land;
- Aboriginal community living areas;
- town camps as declared by the Minister; and
- other areas declared by the Minister.

Part I identifies that the operation of the Act is for **5 years**.

¹⁶ The Minister for Indigenous Affairs stated publicly that neither he nor the federal government had seen the report prior to its public release.

**Part II**

Part II prohibits the sale, consumption or purchase of alcohol in prescribed areas, and enacts new penalty provisions for those activities. It also makes new laws in relation to liquor sales in the Northern Territory, making the collection of information compulsory for purchases over \$100 or 5 litres of alcohol.

Part III

Part III mandates that any computer in a prescribed area owned by an individual or agency that receives government funding to be installed with a filter that has been accredited by the Telecommunications Minister. It also mandates that records be kept for three years of each person that uses the computer and the time and purpose for which they use it. Penalties apply for not complying with this requirement.

Part IV

Part IV outlines the Commonwealth's compulsorily acquisition of leases over 65 Aboriginal communities, and mandates the Minister to further acquire leases by use of legislative instrument.

Part V

Part V empowers the Minister for Indigenous Affairs to control the activities of 'community service entities', which are defined as a local government council, incorporated association or Aboriginal corporation. The Minister also has the power to declare any person or organisation operating within the boundaries of the Northern Territory as a 'community services entity'. The scope of the Minister's control over the entity's activities extends to the complete direction of its funding, assets, and business structures.

Part VI

Part VI provides that a court or bail authority must not consider any customary law or cultural practice as a mitigating factor in determining either sentencing or bail applications.

Part VII

Part VII sets up a licensing scheme for stores operating in prescribed areas whose main purpose is the provision of food or groceries. The licensing scheme requires the stores to participate in the income management scheme introduced by the *Social Security (Welfare Reform) Act*. The owner of such a store may apply for a license, or the Commonwealth can declare that such a store will be required to apply for a license. Where a license is not granted, the Commonwealth has the power to acquire the assets of the community store.

Part VIII

Part VIII excludes the operation of a range of Commonwealth and Territory laws in relation to the matters covered in the legislation. This includes excluding the operation of section 49 of the *Northern Territory (Self Government) Act 1978* (Cth), any law of the Northern Territory that deals with discrimination and Part II of the *Racial Discrimination Act 1975* (Cth). It also excludes provisions relating to the acquisition of property contained in section 50(2) of the *Northern Territory (Self Government) Act 1978* (Cth) and section 128A of the *Liquor Act 1978* (NT).



Text Box 2 below provides an overview of the content of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).

Text Box 2: Content of the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth)

Schedule I

Schedule I bans pornographic material, such as videos and materials that have been refused classification or identified as restricted material by the Classification Board, in 'prescribed areas' (as identified by the Northern Territory National Emergency Response Act (Cth) 2007). It makes the possession, control, or supply of such materials a federal offence.

Schedule II

Schedule II extends the mandate of the Australian Crime Commission to allow it to deal with child sexual abuse and Indigenous violence.

Schedule II also deploys Australian Federal Police as 'special constables' to the Northern Territory Police Force.

Schedule III

Schedule III grants the Commonwealth an ongoing legal interest in infrastructure on Aboriginal land if it funds their construction or maintenance to the value of \$50,000 or more.

Schedule IV

Schedule IV modifies the existing permit system for Aboriginal land in the Northern Territory set out by the *Aboriginal Land Rights Act 1976* (Cth) (ALRA) by giving the Northern Territory Legislative Assembly the power to make laws authorising entry onto Aboriginal land.

Schedule IV also gives the administrator of the Northern Territory the power to declare an area of Aboriginal land to be an area not requiring a permit for entry.

Text Box 3 below provides an overview of the content of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth).

Text Box 3: Contents of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth)

Schedule I

Schedule I establishes an income management regime that suspends between 50 and 100% of welfare payments that would otherwise be paid to:

- Individuals responsible for the care and protection of children
- Individuals subject to the jurisdiction of the 'Queensland Commission in Cape York'



- Individuals in 'prescribed areas' (as identified by the Northern Territory National Emergency Response Act (Cth) 2007).

The purpose of the measures is to quarantine the suspended payments to only be spent on food and other essential items.

Schedule II

Schedule II Provides that an individual who is subject to income management and who is eligible for the baby bonus will receive the payment in 13 fortnightly instalments, instead of in a lump sum. The instalments may also be subject to quarantining measures.

Schedule III

Schedule III ends all funding for CDEP arrangements in the Northern Territory, and moves all CDEP workers into the mainstream employment market. Provision is made for a one year transition payment to individuals transferring from CDEP to unemployment benefits, to make up the shortfall in the amount received.

The Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008 and Appropriation (Northern Territory National Emergency Response) Bill (No.2) 2007-2008 provided an additional \$587million to implement the first stage of the emergency measures¹⁷

This funding is for a mixture of services for Indigenous communities in the Northern Territory, as well as administrative and bureaucratic costs of implementing the measures.

For example, it includes the following costs which are predominately administrative:

- \$91.25 million to the Department of Employment and Workplace Relations to assist with implementing welfare reforms which aim to provide all Indigenous people in the Northern Territory with the capacity to work;
- \$10.1 million to Centrelink to implement the welfare payment reform through both staff deployment and activities;
- \$15.5 million to the Department of Defence for the initial rollout of the measures, including logistical support; and
- \$34.3 million to the Department of Families and Community Services and Indigenous Affairs for the purpose of addressing short-term accommodation needs of department staff in implementing the intervention.¹⁸

17 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), 'Second reading speech: Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008', *Hansard*, House of Representatives, 7 August 2007, p22.

18 Brough, M., (Minister for families, Community Services and Indigenous Affairs), 'Second reading speech: Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008', *Hansard*, House of Representatives, 7 August 2007, p23.



It also includes the following funds intended to provide services in communities:

- \$24.21 million to Indigenous Business Australia for investment and community initiatives in the Northern Territory, inclusive of \$18.9 million set aside for supporting existing community stores in the outback;
- \$212.3 million to the Department of Family and Community Services and Indigenous Affairs to assist with welfare payment reforms housing and land as well as additional support for children and families including the establishment of a diversionary scheme for Indigenous youth from the ages 12-18 to provide an alternative to alcohol and substance misuse;
- \$14.5 million to the Department of Families and Community Services and Indigenous Affairs to provide grants for the employment of child protection workers and the establishment of additional safe places for Indigenous families escaping violence; and
- \$10.5 million funding to the Attorney General's department to fund additional Night Patrol services in 50 Indigenous communities as well as financing extra legal services for Indigenous people.¹⁹

On 18 September 2007, the Minister for Indigenous Affairs announced a further \$100 million in funding over 2 years to be provided to support Indigenous health care services in the Northern Territory. This includes for additional doctors, nurses and to follow up on issues identified by the child health checks that were conducted in the initial phase of the intervention.²⁰

Timeline for introduction of the legislation and scrutiny by the Parliament

Table 1 below sets out the timeline for the introduction and consideration of this legislation.

Date	Action
15 June	The <i>Little Children are Sacred</i> report is publicly released by the Northern Territory government.
21 June	The Australian Government announces the introduction of the 'emergency measures'. The NT government is informed of the decision at the same time that the press conference by the Prime Minister and Minister for Indigenous Affairs.

19 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), 'Second reading speech: Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008', *Hansard*, House of Representatives, 7 August 2007, p24.

20 Australian Government, *Government delivers long-term commitment to housing, jobs, health and police as part of long term commitment to NT*, Media Release, 18 September 2007, available online at: http://www.facsia.gov.au/internet/minister3.nsf/content/funding_18sep07.htm, accessed 23 January 2008.



7 August	<p>The following legislation is introduced to federal Parliament to give legal authority for the intervention measures announced:</p> <ul style="list-style-type: none"> • Northern Territory National Emergency Response Bill 2007; • Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007; • Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007; • Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008; and • the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008. <p>The bills are 480 pages long. All five Bills pass through the House of Representatives on the same day they are introduced.</p>
8 August	<p>The Senate authorises the Legal and Constitutional Committee to conduct an inquiry into the legislation, with five days for the conduct of the inquiry.</p>
10 August	<p>The Senate Legal and Constitutional Committee conducts its sole public hearing for its inquiry into the intervention legislation.</p> <p>The authors of the <i>Little Children are Sacred</i> report provide a lunchtime briefing to members of the Committee after they are not invited to give evidence to the inquiry. Only non-government members of the committee attend the briefing.</p>
13 August	<p>The Senate Scrutiny of Bills Committee releases its <i>Alert Digest</i> raising a number of concerns about the NT intervention legislation and how it trespasses unduly on personal rights and liberties; make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers as well as non-reviewable decisions; inappropriately delegate legislative powers; and insufficiently subjects the exercise of legislative power to parliamentary scrutiny.</p> <p>Government ministers respond to the concerns raised in the <i>Alert Digest</i> on 15 August 2007.</p>
13 August	<p>The Senate Committee on Legal and Constitutional Affairs tables its report on the NT Emergency Response legislation.²¹</p>
17 August	<p>All five Bills pass through the Senate. They receive Royal Assent and are enacted as legislation on 17 August 2007.</p>

²¹ Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/index.htm, accessed 2 November 2007.



12 September	In its <i>Ninth report</i> the Senate Scrutiny of Bills Committee notes that a number of concerns raised in its <i>Alert Digest</i> of 13 August remain to be addressed in the legislation. The legislation has already been passed by Parliament by this time and so these concerns are not considered.
14 September	The <i>Northern Territory National Emergency Response Act 2007</i> (Cth) is amended by the <i>Northern Territory National Emergency Response Amendment (Alcohol) Act 2007</i> (Cth) to introduce exemptions for tourists to alcohol restrictions. The amendments came into force on 14 September 2007.

Table 1 shows that there was limited consideration of the legislation by the Parliament, with extremely circumscribed timeframes for analysis despite the complexity and potential implications of the legislation.

The legislative process had entirely concluded within 10 days of the bills being introduced to Parliament. The Parliamentary Bills Digest noted that '[t]he quick passage of these Bills has been unusual, if not unprecedented'.²²

The haste with which the measures were introduced is also demonstrated in Table 1 in the timeline for the conduct of an inquiry into the package of bills by the Senate Legal and Constitutional Committee.

The bills were referred to the committee on 8 August 2007, with a public hearing to be conducted on 10 August 2007 and the committee to table its report by 13 August 2007. In other words, it took a total of 6 days from commencement to finalisation of the inquiry's deliberations on perhaps the most complex legislative package to be placed before the Parliament in that term of office.

Almost every witness before the Senate Inquiry, as well as those that made written submissions to Parliament on the legislation, noted with regret the inability of the primary stakeholders to meaningfully interact with the process that was being set up to govern them.

Of the first 70 submissions to the Senate Committee inquiry, 67 voiced concerns with the Bills and requested that they either be subject to further amendment and consultation, or be rejected.²³ Organisations such as Reconciliation Australia, the Secretariat of National Aboriginal and Islander Child Care, the Combined Aboriginal Organisations of the Northern Territory and the Central Land Council called for a

22 Parliamentary Library, 'Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency response and Other Measures) Bill 2007, 13 August 2007, no.21, 2007-2008, p4.

23 Parliamentary Library, 'Northern Territory National Emergency Response Bill', 13 August 2007, Bills Digest, no.28, 2007-2008, p20.



delay to the passage of the legislation to allow for meaningful consideration and review.²⁴

The Senate Committee's inquiry revealed overwhelming support from all sides of politics that something needed to be done to tackle child sexual abuse in Indigenous communities. However, this was accompanied by significant concerns about the methods to be adopted for the intervention.

The then Opposition, the Australian Labor Party, acknowledged the importance of addressing child abuse as a matter of urgent national significance.²⁵ They emphasised that the goals of the intervention would not be realised unless they were part of a long term strategy with the following aims:

- the protection of children;
- the nurturing of children and ensuring they have access to appropriate health and education;
- strengthening Indigenous communities to take control of their own affairs; and
- assisting those communities to achieve economic independence.

They stated that these aims 'cannot be achieved unless the Commonwealth, after dialogue and genuine consultation with affected Aboriginal communities, sets out a comprehensive long term plan.'²⁶

They also noted that the 'intervention is silent on many of the recommendations set out in the *Little Children are Sacred* report' and argued that:

Any longer term plan should establish a framework for the achievement, in partnership with the Northern Territory Government and Indigenous communities, of the recommendations set out in the *Little Children are Sacred* report.²⁷

24 On requests for delay to the passing of the legislation to allow greater time for consultation, see: Central Land Council, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs*, 10 August 2007, p2, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/submissions/sub84.pdf, accessed 2 November 2007; Combined Aboriginal Organisations of the Northern Territory, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs*, 10 August 2007, p7, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/submissions/sub125.pdf, accessed 2 November 2007; Reconciliation Australia, *Reconciliation Australia calls for non-urgent aspects of legislation to be deferred*, Media Release, 7 August 2007; Secretariat of National Aboriginal and Islander Child Care, *Delay the Northern Territory Intervention Legislation: Our children deserve better*, Media Release, 7 August 2007.

25 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p37.

26 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p38.

27 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p38.



The ALP made a series of proposals relating to the legislation, including:

- **Permits on Aboriginal land:** That the blanket removal of the permit system on roads, community common areas and other places be opposed. That access without a permit for agents of the Commonwealth or Northern Territory Government to facilitate service delivery (such as doctors or other health workers) be supported, and greater public scrutiny of Aboriginal communities in the Northern Territory be facilitated by allowing access to roads and common town areas, without a permit, by journalists acting in their professional capacity, subject to restrictions relating to the protection of the privacy of cultural events (such as sorry business).
- **Compulsory acquisition:** That the Government should negotiate with affected communities prior to the acquisition of property. A twelve month review of the intervention measures should particularly focus on the compulsory acquisition of 5 year leases over communities due to their potential impact.
- **Compensation for acquisition of property:** That it is an absolutely fundamental principle that the Commonwealth Government should pay just terms compensation for the acquisition of property from anyone, anywhere in Australia. Any suggestion that services or infrastructure, which all Australians have the right to expect their governments to provide, should be considered as contributing to compensation for the acquisition of the property rights of Indigenous people should be absolutely rejected.
- **Welfare reform:** The effectiveness of the income management measures in stabilising communities, and stemming the flow of money to alcohol should be identifiable after 12 months. A review should focus on this issue, particularly given significant concerns about the practicality of welfare quarantining on the ability of Indigenous peoples to travel between outstations and homelands, and to go back to remote areas for cultural and ceremonial reasons (such as funerals).
- **Compliance with the Racial Discrimination Act:** Observing the integrity of the Racial Discrimination Act is a basic principle for this country and a basic principle for the Indigenous community of this country. Accordingly, the provisions in the bills suspending the operation of the Racial Discrimination Act should be opposed.²⁸

They subsequently announced that they would also reinstate the CDEP Program in the Northern Territory in a revised format.

The Australian Greens and Australian Democrats also noted that the failure of the government to consult with Indigenous communities about the proposed measures amounted to a failure to comply with the very first recommendation of

28 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, pp37-47.



the *Little Children are Sacred* report.²⁹ This was despite the government's claim, as cited above, that the basis of the intervention was this very recommendation.

The Senate Committee's report was tabled in Parliament on 13 August 2007. It contained the following recommendations:

1. That the operation of the measures implemented by the bills be continuously monitored and publicly reported on annually through the Overcoming Indigenous Disadvantage framework (para 3.17).
2. That the Northern Territory Emergency Taskforce make publicly available its strategic communications plan as well as other operational plans, within six months, and the long term plans being developed in relation to the intervention, within 12 months; and that information regarding significant revisions to these plans should be provided in the Overcoming Indigenous Disadvantage report (para 3.18).
3. That the operation of the measures implemented by the bills be the subject of a review two years after their commencement, particularly to ascertain the impact of the measures on the welfare of Indigenous children in the Northern Territory. A report on this review should be tabled in Parliament (para 3.19).
4. That a culturally appropriate public information campaign be conducted, as soon as possible, to allay any fears Indigenous communities in the Northern Territory may hold, and to ensure that Indigenous people understand how the measures in the bills will impact on them and what their new responsibilities are (para 3.20).
5. That the Australian Government develop, as a matter of high priority, explanatory material to assist people to understand what is meant in practical terms by the phrases 'a quantity of alcohol greater than 1350 millilitres' and 'unsatisfactory school attendance' (para 3.21).
6. That the Australian Government should closely examine the need for additional drug and alcohol rehabilitation services in the Northern Territory and, if necessary, provide additional funding to support those services (para 3.22).
7. That the committee recommends the Senate pass the bills (para 3.23).³⁰

The Government accepted recommendations 3-7 in full, and recommendations 1-2 in part. For recommendations 1-2, the government stated that they 'fully supported transparency and accountability and that the bills be continuously monitored' but that they had concerns 'over the appropriateness of the Overcoming Indigenous Disadvantage as a reporting framework'.³¹

29 'Dissenting Report by the Australian Greens', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, pp37-80.

30 Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/index.htm, accessed 2 November 2007.

31 Brough, M., (Minister for Families, Community Service and Indigenous Affairs), *Letter to Standing Committee on Legal and Constitutional Affairs*, 16 August 2007.



The Government also indicated that they did not consider that any amendments to the legislation were necessary to address the recommendations of the Senate Committee.

The bills were then passed by the Senate without substantial amendment on 17 August 2007. They received Royal Assent the same day.

Interaction of the legislation with the *Racial Discrimination Act 1975 (Cth)* and other protections against discrimination

One of the most significant aspects of the legislative package is the way in which it interacts with the *Racial Discrimination Act 1975 (Cth)* (RDA) and other protections against discrimination at the territory level.

Text Box 4 below outlines the provisions in the legislation relating to the *Racial Discrimination Act 1975 (Cth)*, as well as Northern Territory and Queensland anti-discrimination laws.

Text Box 4: Legislative provisions in the Northern Territory intervention legislation relating to racial discrimination

Northern Territory National Emergency Response Act 2007

Section 132 – Racial Discrimination Act

- (1) The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, special measures.
- (2) The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act 1975.
- (3) In this section, a reference to any acts done includes a reference to any failure to do an act.

Section 133 – Some Northern Territory laws excluded

- (1) The provisions of this Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply.
- (2) Any acts done under or for the purposes of the provisions of this Act have effect despite any law of the Northern Territory that deals with discrimination.
- (3) However, subsections (1) and (2) do not apply to a law of the Northern Territory so far as the Minister determines, by legislative instrument, that the law is a law to which subsections (1) and (2) do not apply.



Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007

Section 4 – Racial Discrimination Act

- (1) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the Racial Discrimination Act 1975, special measures.
- (2) Subject to subsection (3), the provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act 1975...

Section 5 – Some Northern Territory laws excluded

- (1) Subject to subsections (3) and (4), the provisions of this Act are intended to apply to the exclusion of a law of the Northern Territory that deals with discrimination so far as it would otherwise apply.
- (2) Subject to subsections (3) and (4), any acts done under or for the purposes of the provisions of this Act have effect despite any law of the Northern Territory that deals with discrimination.
- (3) Subsections (1) and (2) do not apply to a law of the Northern Territory so far as the Minister determines, by legislative instrument, that the law is a law to which subsections (1) and (2) do not apply.

Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007

Section 4 Racial Discrimination Act—Part 3B of the Social Security (Administration) Act
(NB: This is an extract from this section)

- (2) To the extent that this subsection applies, the provisions referred to in paragraph (1)(a), and any acts referred to in paragraph (1)(b), are, for the purposes of the Racial Discrimination Act 1975, special measures.
- (3) To the extent that this subsection applies, the provisions referred to in paragraph (1)(a), and any acts referred to in paragraph (1)(b), are excluded from the operation of Part II of the Racial Discrimination Act 1975.
- (4) The following are, for the purposes of the Racial Discrimination Act 1975, special measures:
 - (a) any acts done by the Queensland Commission in relation to the giving of:
 - (i) a notice referred to in paragraph 123UF(1)(b) or (2)(c) of the Social Security (Administration) Act 1999; or
 - (ii) a notice referred to in paragraph 123YM(2)(c) or 123YN(2)(c) of that Act; or
 - (iii) a direction referred to in section 123ZK of that Act;
 - (b) any provisions of any laws made by, or any acts done by, Queensland in relation to the establishment or operation of the Queensland Commission.



- (5) The following are excluded from the operation of Part II of the Racial Discrimination Act 1975:
- (a) any acts done by the Queensland Commission in relation to the giving of:
 - (i) a notice referred to in paragraph 123UF(1)(b) or (2)(c) of the Social Security (Administration) Act 1999; or
 - (ii) a notice referred to in paragraph 123YM(2)(c) or 123YN(2)(c) of that Act; or
 - (iii) a direction referred to in section 123ZK of that Act;
 - (b) any provisions of any laws made by, or any acts done by, Queensland in relation to the establishment or operation of the Queensland Commission.

Section 5 – Some Queensland and Northern Territory laws excluded—Part 3B of the Social Security (Administration) Act

- (2) To the extent that this subsection applies, the provisions referred to in paragraph (1)(a) are intended to apply to the exclusion of a law of Queensland or the Northern Territory that deals with discrimination so far as it would otherwise apply.
- (3) To the extent that this subsection applies, any acts referred to in paragraph (1)(b) have effect despite any law of Queensland or the Northern Territory that deals with discrimination.
- (4) However, subsections (2) and (3) do not apply to a law of Queensland or the Northern Territory so far as the Minister determines, by legislative instrument, that the law is a law to which subsections (2) and (3) do not apply.

Section 6 – Racial Discrimination Act—determining terms of relevant activity agreement for approved programs of work for income support

- (1) Subsections (2) and (3) apply in relation to the implementation of guidelines, or the doing of any other acts, for the purpose of determining the terms of a relevant activity agreement in relation to an approved program of work for income support payment, if the implementation or acts are done in the period:
 - (a) beginning on 9 July 2007; and
 - (b) ending 5 years after the commencement of section 1 of the Northern Territory National Emergency Response Act 2007.
- (2) Any such implementation, or other acts, are, for the purposes of the Racial Discrimination Act 1975, special measures.
- (3) Any such implementation, or other acts, are excluded from the operation of Part II of the Racial Discrimination Act 1975.



Each of these three Acts does two things in relation to the operation of the RDA.

First, they state that the measures contained in each Act are deemed to be 'special measures' in accordance with section 8 of the RDA.

Special measures are a form of positive discrimination whereby a group defined by race receives beneficial treatment. This is not considered discriminatory under the RDA. As discussed in part 3 of this chapter below, certain criteria must be met in order to establish that the measures in fact qualify as 'special measures'.

So in essence, the legislation states that **all** of the measures introduced through the legislation are to be characterised as 'beneficial' and therefore exempt from the prohibition of racial discrimination in Part II of the RDA.

Second, the Acts also suspend the operation of Part II of the RDA in relation to the provisions of these Acts, 'and any acts done under or for the purposes of those provisions'. Part II of the RDA makes it unlawful to discriminate against a person on the basis of their race.

In essence, this is a statement that if the intervention measures do not qualify as special measures and are in fact racially discriminatory, then the protections of the RDA do not apply. This has the consequence that individuals affected by the intervention measures have no right to bring a complaint under the RDA. They can also not challenge the validity of any laws introduced by the Northern Territory government under the auspices of this legislation (such as in relation to alcohol restrictions or changes to permits for entry into Aboriginal land) under section 10 of the RDA.

This exemption from the RDA is extremely broad as it relates not only to the provisions of the legislation but also to 'any acts done under or for the purposes of those provisions'. This means that there can be no challenge to any exercise of discretion by officials purporting to act in accordance with the legislation (for example, decisions of government business managers, variations of contract conditions, seizure of assets and so on).

At the Senate Legal and Constitutional Committee Inquiry into the legislation, the government indicated that the reason for excluding the intervention measures from the operation of Part II of the RDA was first, to provide 'legal certainty' for the intervention to progress without any delay caused by legal challenge, and second, to deal particularly with the provisions in section 10(3) of the RDA.³²

Section 10(3) of the RDA operates to deem that a law or provision which:

- authorises property owned by an Aboriginal or Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or
- 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; and
- is not a provision that applies to persons generally without regard to their race

32 Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory national emergency response*, August 2007, pp10-11.



contravenes s 10(1) of the RDA.³³ A law or provision that falls within s10(3) of the RDA can also **not** be a special measure under section 8 of the RDA.

Each of the NT intervention Acts also exempts the operation of anti-discrimination laws in the Northern Territory. This means there is also no right to review or a remedy through the Northern Territory Anti-Discrimination Act.

The social security amendments also remove the operation of both the RDA and anti-discrimination laws in Queensland in relation to the establishment of a Families Commission in Cape York.

Importantly, the provisions of the legislation provide that the federal Minister for Indigenous Affairs can determine that any law of the Northern Territory Parliament (or Queensland in relation to the social security amendments) is not exempt from these provisions. In other words, the Minister can reinstate the protections against racial discrimination at the state and territory level. However, no such power exists in the legislation in order to restore the application of the RDA.

HREOC had argued to the Parliament that the clauses of the legislation suspending the RDA should be removed, because upholding the values of the RDA is vital to ensuring community respect for government action and to maintaining Australia's reputation as a nation committed to equality.³⁴

The impact of these provisions and proposals for addressing the problems that they create are discussed in detail in part 3 of this chapter below.

Constitutional basis for the legislative package

The constitutional source of Commonwealth power relies on the legislative package is section 122 of the Constitution (the 'Territories Power'), which provides:

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

The High Court has traditionally interpreted section 122 of the Constitution as providing the Commonwealth Government with unqualified scope to legislate as it pleases in the Northern Territory, identifying the power as 'plenary in quality and unlimited and unqualified in point of subject matter'.³⁵

However, more recent cases heard by the Court seem to have adopted a far more 'integrationist' view of the Territories Power,³⁶ leaving the issue of whether it does operate independently of any other constitutional guarantee as an open question.

33 Pearce, D. and Geddes R., *Statutory Interpretation in Australia*, 6th edn., Butterworths, Sydney, 2006, para 4.36; *Mabo v State of Queensland (No 1)* (1988) 166 CLR 186, per Deane J, p232.

34 Human Rights and Equal Opportunity Commission, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs*, 10 August 2007, p18 available online at: http://www.aph.gov.au/senate/committee/legcon_ctte/nt_emergency/submissions/sub67.pdf, accessed 23 November 2007.

35 *Teori Tau v Commonwealth* (1969) 119 CLR 564, p570. This statement was approved by the full court of the High Court in *Northern Land Council v Commonwealth* (1986) 161 CLR 1, p6.

36 See for example: *Northern Territory v GPAO* (1998) 196 CLR 553; *Spinks v Prentice* (1999) 198 CLR 511; *Re Governor, Goulburn Correctional Centre, Goulburn; Ex parte Eastman* (1999) 200 CLR 322; and *Newcrest Mining v Commonwealth* (1997) 190 CLR 513.



If the legislative package is controlled by Constitutional guarantees external to section 122, certain aspects of the legislation, such as the acquisition of Aboriginal property, may be open to challenge in the High Court.³⁷

Even if the Commonwealth government's use of the Territories Power to enact the legislative 'Emergency Measures' package is entirely constitutionally competent, its compatibility with respect for the doctrine of representative government in the Northern Territory is, at best, highly questionable.

As the Bills Digest prepared on the Northern Territory National Emergency Response Bill noted:

[W]hile the Commonwealth [has] constitutional power to effect changes to any area of NT law, the approach raises questions about the wisdom of such a policy. It involves the Commonwealth intervening in the affairs of a self-governing territory to modify or disapply its laws. There are principles that suggest interfering with, and adding layers of complexity to the laws of, a self-governing polity, is inappropriate. Furthermore it can be argued that the legislature (which is answerable to Northern Territorians) should have the freedom to legislate in a particular way. These arguments have been rehearsed with respect to other decisions to over-ride Territory laws, but there is an unusually complex set of issues that the Commonwealth is intervening in through these Bills.³⁸

While the Commonwealth has stated it is relying upon section 122 of the Constitution as the basis of validly enacting the legislation, it is notable that there are provisions contained in the legislation relating to other states. Most notably, this includes provisions which enable the quarantining of income for carers of children identified as 'at risk' to come into force across Australia by 2009.³⁹

These measures cannot depend upon the territories power in section 122 of the Constitution for their validity.

In relation to the Queensland welfare reforms in Cape York, the Commonwealth uses the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* to set up a financial framework for the scheme, and has then encouraged the Queensland Parliament to legislate to enact the introduction of the 'Queensland Commission'.

However, by exempting this process from the operation of the RDA and Queensland discrimination law, the Commonwealth has stepped beyond a mere financial framework arrangement for this scheme. Accordingly, it would still need to justify how it has validly enacted these provisions.

This may pose some difficulty for the Commonwealth, since the federal government's power with respect to States is far more narrowly defined under the Constitution than it is with regard to Territories. Indeed, constitutional law expert George Williams has commented that the intervention measures stand as 'a clear example of the Commonwealth seeking to assert a national interest in a way that

37 At the time of writing, one such challenge had already been lodged by the Bawinanga Aboriginal Corporation on 25 October 2007.

38 Parliamentary Library, 'Northern Territory National Emergency Response Bill', 13 August 2007, Bills Digest no.28, 2007-2008, p19.

39 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), 'Second reading speech: Social Security and other Legislation Amendment (Welfare Payment Reform) Bill 2007', *Hansard*, House of Representatives, 7 August 2007, p6.



could not be done in the same way in the states, and in a way that undercuts self-government in the Territory.⁴⁰

In order to enact parallel legislative measures for the States, the Commonwealth would need to find authority in some of the narrower heads of power granted to it by section 51 of the Constitution.

Initial responses to the announcement of the 'Emergency Response' measures and legislation

Upon the announcement of the NT intervention measures, a consensus was quickly revealed among political parties, Indigenous peoples and the general community about the need for child abuse and family violence in Indigenous communities to be treated as a national priority.⁴¹

For many sectors of the community, there was hope that after a plethora of inquiries and reports into the occurrence and causes of violence in Aboriginal communities, something might finally be done to address it.

Unfortunately, while there was consensus about the government's **intentions**, concerns about the actual **methods** being adopted by the federal government to address these issues also quickly emerged.

Aboriginal leaders and organisations expressed significant concerns at the potentially adverse consequences of implementing a quick response to such a complex social problem without wide-spread consultation with the communities involved, and due to the lack of connection between the response announced by the government and the recommendations of the *Little Children Are Sacred* report that had initiated the process.⁴²

The Chief Executive Officer of the Co-operative Research Centre for Aboriginal Health, Mick Gooda, said, 'Anything we do to protect our kids I will support', but urged Canberra to 'engage with incentives rather than punishment'.⁴³

Former ATSIC chairwoman Dr Lowitja O'Donoghue commented that stripping people of control was not an appropriate measure to address child sex abuse, declaring 'You can't just come over the top of people, you've got to talk to them'.⁴⁴

Concerns were also aired about the practicality of many of the intervention measures. Dr Mark Wenitong, the President of the Australian Indigenous Doctors Association, commented that:

40 'Indigenous abuse crackdown earns mixed response', *ABC Online* 22 June 2007, available online at: <http://abc.net.au/news/stories/2007/06/21/1958547.htm>, accessed 22 November 2007.

41 See for example: Macklin, J., (Shadow Minister for Indigenous Affairs and Reconciliation), *Labor offers bipartisan in-principle support on Indigenous child abuse measures*, Media Release, 21 June 2007.

42 'Aboriginal leaders want more services', *The Sydney Morning Herald* (Sydney) 21 June 2007, available online at: <http://www.smh.com.au/news/National/Aboriginal-leaders-want-more-services/2007/06/21/1182019288480.html>, accessed 2 November 2007.

43 'National emergency: PM acts', *The Age* (Melbourne) 22 June 2007, available online at: <http://www.theage.com.au/news/national/howard-acts-on-nt-emergency/2007/06/21/1182019284327.html?page=3>, accessed 2 August 2007.

44 'National emergency: PM acts', *The Age* (Melbourne) 22 June 2007, available online at: <http://www.theage.com.au/news/national/howard-acts-on-nt-emergency/2007/06/21/1182019284327.html?page=3>, accessed 2 August 2007.



As medical professionals, we question the notion that you can treat poverty, dispossession, marginalisation and despair (the root causes of substance misuse and sexual, physical and emotional abuse) with interventions that further contribute to poverty, dispossession, marginalisation and despair.⁴⁵

Ian Anderson, the director of the Centre for Health & Society and Onemda VicHealth Koori Health Unit at the University of Melbourne, commented:

The Australian government response is framed as a top-down crisis 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...

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.⁴⁶

Despite the airing of significant concerns, there was a broad willingness from across all areas of society to work with the government to make lasting change in Indigenous communities. For example, an open letter was delivered to the Minister for Indigenous Affairs on 26 June 2007 signed by over 150 organisations from the Indigenous and community sector. It reads:

The safety and well-being of Indigenous children is paramount. We welcome your commitment to tackling violence and abuse in certain Indigenous communities. We are deeply concerned at the severity and widespread nature of the problems of child sexual abuse and community breakdown in Indigenous communities in the NT, catalogued in the *Little Children are Sacred* Report.

We wish to work collaboratively with Governments and the communities affected to ensure that children are protected. We would like to see greater investment in the services that support Indigenous families and communities, the active involvement of these communities in finding solutions to these problems and greater Federal Government engagement in delivering basic health, housing and education services to remote communities...

We note that the services which most Australians take for granted are often not delivered to remote Indigenous communities, including adequately resourced schools, health services, child protection and family support services, as well as police who are trained to deal with domestic violence in the communities affected. We endorse the call in the *Little Children are Sacred* Report for the Australian and Territory Governments to work together urgently to fill these gaps in services.

45 The Australian Indigenous Doctor's Association, *Indigenous doctors demand real and long term results in Aboriginal and Torres Strait Islander kids' health*, Media Release, 22 June 2007.

46 Anderson, I., 'Remote Communities: Unexplained Differences' *Australian Policy Online*, 26 June 2007, available online at: http://www.apo.org.au/webboard/comment_results.html?filename_num=161613, accessed 17 November.



There is also a need for a longer term plan to address the underlying causes of the problem, including community breakdown, joblessness, overcrowding and low levels of education.

Successfully tackling these problems requires sustainable solutions, which must be worked out with the communities, not prescribed from Canberra.

We are committed to working with the Government to ensure that in developing and introducing the proposed measures, support is provided to Indigenous communities' efforts to resolve these problems. The proposals go well beyond an 'emergency response', and will have profound effects on people's incomes, land ownership, and their ability to decide the kind of medical treatment they receive. Some of the measures will weaken communities and families by taking from them the ability to make basic decisions about their lives, thus removing responsibility instead of empowering them...

We offer our support to Indigenous communities and the Government in:

- developing programs that will strengthen families and communities to empower them to confront the problems they face;
- consulting adequately with the communities and NT Government, and community service, health and education providers;
- developing a long term plan to address and resolve the causes of child abuse including joblessness, poor housing, education and commit the necessary resources to this.⁴⁷

The Human Rights and Equal Opportunity Commission (HREOC) welcomed the Prime Minister's commitment to tackling violence and child and alcohol abuse in Indigenous communities in the Northern Territory, but also urged the government to adopt an approach in the NT intervention that was consistent with Australia's human rights obligations:

The complex issues being tackled and the proposed measures to be taken to overcome them raise a host of fundamental human rights principles. It is of the utmost importance to Australia's international reputation, and for community respect for our system of government, that solutions to all aspects of these matters respect the human rights and freedoms of everyone involved.

Every Australian woman, man and child has the right to live free from violence in a safe and supportive home and community. These rights are clearly spelt out in the Convention on the Rights of the Child (CRC) and the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Australia is a party. While these Conventions require government action to protect women and children against immediate harm, they also require government to address the broader social factors (such as health, education and housing) and disadvantage experienced within Indigenous communities.

The design and implementation of measures to address violence and child abuse should also respect the human rights principles embodied in the Racial Discrimination Act 1975 (Cth) (the RDA), which gives effect to Australia's international obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The RDA protects all Australians against discrimination on the grounds of race, colour, descent, or national or ethnic origin. Successive Australian governments for more than 30 years have proudly endorsed the objects

47 Open letter to the Hon Mal Brough MP, 26 June 2007, available online at: <http://www.acoss.org.au/News.aspx?displayID=99&articleID=2683>, accessed 5 December 2007.



of the RDA, and Australia has been a strong advocate for its principles on the international stage.

HREOC considers that the situation the government is confronting can and should be addressed consistently with the RDA. The RDA provides that its provisions are not contravened by special measures taken to ensure the enjoyment or exercise of the human rights of particular racial groups or individuals belonging to them. Special measures must be reasonable and proportionate to the risk of harm being addressed. These provisions give an avenue for laws to protect Indigenous women and children who are at risk.

For more than a decade HREOC has supported the introduction of alcohol restrictions in some Indigenous communities as a 'special measure' on the basis that social benefits are likely to result in reduced violence and abuse and improved public safety. However in giving this support, HREOC has indicated that the restrictions should be part of a broad range of measures to address the causes of alcoholism, rehabilitation and underlying social disadvantage.

Many Indigenous communities are crying out for support services to assist them in addressing the social conditions in their communities. HREOC has been advocating for some time that a proactive approach needs to be taken by governments to address Indigenous disadvantage. Successive Social Justice Reports to Parliament have recommended a human rights based approach to development in Indigenous communities and stressed the necessity of ensuring the effective participation of Indigenous peoples in decision making processes. This approach is important to ensure that measures have more than a temporary impact on Indigenous people and their communities.

It is crucial that the government thoroughly analyses barriers that exist within Indigenous communities to the full enjoyment of basic human rights, such as the right to an adequate standard of living, and to the highest attainable standard of health, education and housing and identifies the steps necessary to address these.

HREOC will continue to work constructively with governments, Indigenous communities and the broader Australian community by putting forward suggestions to ensure that proposals in this area are consistent with Australia's human rights obligations.⁴⁸

As Social Justice Commissioner, I also expressed some concerns about the capacity of the Government to implement the announced measures given the significant difficulties and failings that had occurred in its whole of government machinery for Indigenous affairs in the past three years. Upon the announcement of the NT intervention measures I stated:

Overall, the announcements and the commitments made by the federal Government for the NT raise a number of important and complex issues. Each of these issues in some way comes back to the **capacity** of the government to deliver on its commitments. And it is, of course, the capacity of the government through the new arrangements that has been the focus of successive *Social Justice Reports*.

Structural questions about *how* the government will achieve its objectives include, but are by no means limited to the following:

48 Human Rights and Equal Opportunity Commission, *A human rights based approach is vital to address the challenges in Indigenous communities*, Press Release, 26 June 2007, available online at: http://www.humanrights.gov.au/about/media/media_releases/2007/45_07.html, accessed 3 December 2007.



- **First, on what basis will the government intervene in one community as opposed to another?** As Rex Wild and Pat Anderson's report reveals, there is a lack of statistics that reveal the true extent of the problem. So, in the absence of any situational and needs analysis, how does the government decide?
- **Second, and related to this question, is how will the government decide the appropriate approach for the specific needs of individual communities?** I am concerned about a mismatch that has already revealed itself between the public debate on these issues and the findings of the *Little Children are Sacred* report.
- **Third, and of critical importance, is what role does the community have in this process?** I think it is intentional that the government has described its announcements as an 'intervention' as opposed to a 'partnership' with Indigenous communities. We are now coming on three years since the introduction of the new arrangements – so why has the government not built relationships with communities sufficiently that they can approach the announcements as a partnership?
- **Fourth, if the government intends to make lasting change – how will it know when such change has occurred?** In the absence of regional and local level planning how will the specific issues facing communities, and the connections between communities on a regional basis, be addressed? This is something that incidentally was intended to be a key feature of the new arrangements but which has by and large failed to materialise as yet.
- **And fifth, how does the NT announcement fit with the processes that are continuing to be introduced as part of the 'new arrangements' to date?** Will it require another re-engineering of processes that are yet to be bedded down? For example, the government has released an evaluation plan for whole-of-government activities to address the critical problem of lack of baseline data.⁴⁹ The evaluation plan identifies that in the coming year there will be reviews of some of the communities who have previously been designated as communities in crisis, and baseline data will be established for some new priority communities. What is the impact of the NT announcement on this plan? Does it re-direct these evaluation activities for new communities to the NT rather than to communities in other states, or will there be an expansion of the scope of the evaluative framework? This would appear necessary to be able to effectively understand the success or otherwise of the measures to be taken.
- Similarly, will the government seek to utilise and expand its program of Shared Responsibility Agreements and Regional Partnership Agreements as tools to implement its NT announcements? It has previously foreshadowed the importance of these as primary mechanisms for engagement. As the *Social Justice Report* notes, these processes offer the potential to embed a community development approach into the new arrangements, but there is no evidence of this occurring to date.

The *Social Justice Report* identifies the warning signs where the current federal system for Indigenous affairs is not capable of addressing these core issues due to significant policy errors.

49 See: www.oipc.gov.au/documents/OIPC_EvaluationPlan_23May.pdf. For commentary on the plan see: *Social Justice Report 2006*, pp64-68.



- The most significant problem with the new arrangements identified by the Report **is the lack of capacity for engagement and participation of Indigenous peoples**. This manifests as a lack of connection between the local and regional level, up to the state and national level; and as a disconnect between the making of policy and its implementation...

Indigenous peoples are treated as problems to be solved, not as partners and active participants in creating a positive life vision for the generations of Indigenous peoples still to come.

The greatest irony of this is that it fosters a passive system of policy development and service delivery while at the same time criticising Indigenous peoples for being passive recipients of government services!⁵⁰

Another important question I raised was:

Will the Government conduct child protection checks on volunteers and their personnel who enter Indigenous communities to assist in this process? As the Wild/Anderson report notes it is unfortunate that many offenders in communities are non-Indigenous support workers so this has to be addressed so as to not entrench longer term offending behaviours.⁵¹

Reconciliation Australia also cautioned that long term strategies would need to be implemented in order for the emergency measures to be successful:

It comes as somewhat of a relief that the Federal Government seems to be saying today that “enough is enough”. But what remains to be seen is firstly whether having made this wide ranging announcement, the Government has the measures and properly trained people in place to make it work. Then we must hope that the Prime Minister, and all our leaders, will work to move Australia beyond serial crisis intervention to take the systemic, long term action consistently called for by fellow Australians living the horror. This will be the test of the sincerity behind today’s announcement.⁵²

Aboriginal organisations in the Northern Territory, in conjunction with other community sector organisations across the nation (Aboriginal and non-Aboriginal), developed a formal response to the federal government’s proposed intervention measures on 10 July 2007.

The proposals were developed by the Combined Aboriginal Organisations of the Northern Territory (or CAO) representing Aboriginal organisations in Darwin, Alice Springs, Tennant Creek and Katherine, as well as community sector organisations from across the country.

Their document was titled: *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the*

50 Calma, T., *Continuity and change through the new arrangements – Lessons for addressing the crisis of child sexual abuse in the Northern Territory*, Speech – Launch, *Social Justice Report and Native Title Report 2006*, 3 July 2007, p7.

51 Calma, T, *Continuity and change through the new arrangements – Lessons for addressing the crisis of child sexual abuse in the Northern Territory*, Speech – Launch, *Social Justice Report and Native Title Report 2006*, 3 July 2007, p12.

52 Reconciliation Australia, *Statement by Reconciliation Australia in Response to National Emergency Measures to Protect Aboriginal Children*, Media Release, 22 June 2007.



*Australian Government's proposals*⁵³ released on 10 July 2007 and outlines steps to protect children in Northern Territory Aboriginal communities in both the short and long term.

The proposal outlined the willingness of a vast number of Indigenous organisations across the territory to work in partnership with the government to address family violence and child abuse issues. The report stated that:

The serious nature of Aboriginal child abuse and family violence in the Northern Territory demands an emergency response. However, in developing this response governments must show confidence and faith in Aboriginal communities to take ownership of these problems and support them to protect and nurture their children over the long term. This has been the expressed desire of Aboriginal communities...⁵⁴

A comprehensive approach to child protection in an emergency context gives priority to protection from immediate physical or emotional harm, but must go further. It should also address community safety and access to essential services including housing, health care and education. A failure to also commit to addressing these underlying issues will ensure the current risk factors contributing to existing child abuse and neglect will remain.⁵⁵

Accordingly, the CAO proposed a two stage response to the problems of child abuse in remote Aboriginal communities:

- 1) An emergency response over the first 3-6 months, on which agreement can be reached quickly between Governments and community leaders; and
- 2) A more comprehensive plan and costed financial commitment that addresses the underlying issues within specific timeframes and has bipartisan political support.

They noted that:

This plan would include specific objectives, timeframes and mechanisms that ensure transparency and ongoing independent rigorous evaluation. The performance of both governments and Aboriginal organisations would be included. This would also involve thorough planning and negotiation to ensure that the correct strategies are adopted, the substantial resources required are efficiently used, and funding is stable and predictable over the longer term. This plan should be developed and negotiated under a partnership approach with the targeted communities during the current emergency response phase and be implemented as soon as is practicable.

53 Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the Australian Government's proposals*, CAO Darwin 2007, available online at: <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>, accessed 12 December 2007.

54 Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the Australian Government's proposals*, CAO Darwin 2007, p1, available online at: <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>, accessed 12 December 2007.

55 Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the Australian Government's proposals*, CAO Darwin 2007, p3, available online at: <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>, accessed 12 December 2007.



These stages are not mutually exclusive. During the emergency response phase, the emphasis must shift from immediate child endangerment goals to the underlying and wider child protection goals of health, housing, education and ongoing community safety.

Funding must be organised so that short term needs are met and long term development funding is also available. In these ways the emergency measures provide a foundation for stable long term investment that results in longer term solutions...

The response should build on the knowledge base already available to Government, starting with the recommendations of the *Little Children are Sacred* Report.⁵⁶

Text Box 5 below provides a summary of the recommended approach as set out by the Combined Aboriginal Organisations of the Northern Territory.

Text Box 5: Summary of the proposed emergency response and long term development plan to protect Aboriginal children in the NT by the Combined Aboriginal Organisations of the Northern Territory

1. Guiding principles

- Relationships with Aboriginal communities must be built on trust and mutual respect. All initiatives must be negotiated with the relevant communities.
- Cultural awareness and appropriateness.
- Actions should draw from and strengthen governance and community capacity.
- Build on the knowledge base already there in communities and in Government.
- Flexibility and responsiveness to local needs rather than a 'one size fits all' approach.
- Aboriginal communities are entitled to receive the same benefits and services, and their children to the same protections, that are available to other Australians.

2. Emergency Response

Objectives

- Act in conjunction with local community representatives and services to reduce the immediate risks to children and to plan and commence investment in the services and governance systems required to address the underlying causes.
- Establish systems of planning, service delivery, and monitoring and evaluation at the Territory-wide and community level that are based on partnerships between the two Governments and Aboriginal community representatives and services.

⁵⁶ Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the Australian Government's proposals*, CAO Darwin 2007, p3, available online at: <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>, accessed 12 December 2007.



- Together with community representatives, assess the nature and scope of the problems and capabilities (strengths) within each community, both in terms of the direct risks to children (e.g. violence, overcrowded housing, and alcohol or substance abuse), and contributing factors (such as joblessness). Most of this information is available from previous reports, administrative data, and from local communities and there is no need to collect it yet again.

Priority actions – July to September 2007

Priority Actions in this period include:

- Consultations with all local communities to establish the scope and nature of risks to children, community needs including key service gaps, the resources available locally, and to establish bodies to coordinate the Emergency Response at the local level (see below);
- Recruitment and training of suitably skilled, culturally aware child protection staff and police, in consultation with local community representatives on the understanding that these positions will be filled permanently as soon as practicable;
- Where the capacity exists within communities or external agencies approved by them, funding to be provided for community controlled child safety services such as safe houses, night patrols and Aboriginal Community Police;
- Introduction of tougher restrictions on sale of alcohol outside the communities (including take away trade);
- Establishment of emergency treatment and rehabilitation services, where possible controlled by local communities, for people affected by the alcohol restrictions;
- Recruitment and training of voluntary and paid medical staff to assist Aboriginal Medical Services and clinics to assess the health and health service needs of Aboriginal children where their parents seek such assistance, using the auspices of the Aboriginal Medical Service Alliance of the Northern Territory to assist with selection and training, including cultural awareness training;
- Funding and recruitment to commence for community based family support and foster care services;
- Recruitment and training of appropriately qualified teachers and Aboriginal Education Workers to schools to fill gaps in schools on a priority basis;
- Construction on a priority basis of multipurpose family centres;
- Where local communities agree, establish community justice groups to assist authorities with education and administration on the law (e.g. night patrols, court support for victims);
- Commence extension of financial services (especially savings accounts) and financial education to Aboriginal communities and fund local community organisations to assist residents to use these facilities as well as the Centrepay system;
- Finance and establish school meals programs in communities, paid for in part by parents;



- Commit funds to a major upgrade and repairs and maintenance program along with construction of new housing on communities on a priority basis, and commence training of local Aboriginal people in home construction and maintenance.

3. Long Term Development plan – community capacity and governance

Objectives

- The Development Plan is a fully costed plan of action by the Australian and Northern Territory Governments with set goals and measurable targets to be achieved within fixed time frames.

Actions

The Plan should be developed in full negotiation with the relevant Aboriginal community organisations during the Emergency Response stage. It should include such actions as:

- the progressive roll-out of new housing built mainly by workers drawn from the communities;
- more effective employment development and assistance programs;
- expansion of school infrastructure and better training and career development for teachers and Aboriginal Education Workers;

Action in these areas should commence now, but will take more time to roll out than the Emergency Response. The Plan would also continue and build on the initiatives commenced during the Emergency Response phase.

Coordination and funding

- The Australian and NT Governments should jointly develop the Plan in consultation with Aboriginal community organisations. This work should be led by the Department of Prime Minister and Cabinet.
- It should provide adequate and stable funding for the services and infrastructure required to protect Aboriginal children in the communities, including special funding arrangements and components of mainstream funding programs.
- A permanent monitoring and evaluation body should be established after the Emergency Response phase.
- Aboriginal communities and services should continue to be fully resourced to engage with Government in the development and implementation of the Plan.

4. Planning and coordination for services in communities

A national lead agency is needed to oversight, co-ordinate and monitor co-ordination plan for the necessary for services and supports for communities in the Northern Territory to ensure that children are protected. The lead agency needs to take overall responsibility for the development and resourcing of the Emergency Response and Development Phases.

The lead agency should be accountable to Parliament to:

- ensure negotiations with Aboriginal communities are conducted in a fair, open and transparent manner;
- to improve standard setting, monitoring and advocacy ;
- establish and strengthen capacity and financial resources needed;



- establish training and vetting processes;
- to establish or improving access to services;
- develop and monitor a plan to address gaps in child protection including the provision of essential services in Aboriginal communities.

Governments should establish sector leads in each of the following sectors: child safety, community safety and services, health, education, housing and infrastructure. These should generally be drawn from relevant Australian and Territory Government Departments.

They should work closely with Aboriginal community organisations and prioritize the use of Aboriginal owned and controlled service providers. Their tasks would include developing clear targets and timelines for access to basic services, mapping community needs, service gaps, and the resources and capabilities of local regional and national actors, strengthening response capabilities (especially human resources), establishing links with other sectors to enhance the resources available, applying benchmarks to measure performance (in conjunction with the monitoring and evaluation body described below), and acting as a provider of last resort.

Sector leads should negotiate with representatives of Aboriginal communities, and consult with the providers of relevant services (child safety, police, community, health and education services), over the provision of services in each community as part of the Emergency Response. Regular community meetings should be organised and resourced to inform the community of proposed actions, progress, and to assist in local planning.

Communities must be properly resourced (including appropriate fulltime paid staff) to engage with the Emergency Response.

Monitoring and Evaluation

An independent monitoring and evaluation body should be established to report on the scope and nature of the problems identified, actions taken at local and Territory wide level, and their effectiveness and contribution to long term planning and solutions. This body should include the Aboriginal community as well as Australian and NT Government representatives, and independent experts.

Critical to the CAO's proposal is a transition from an emergency 'intervention style' approach to a community development process. As the CAO state in their proposal:

Strategies to resolve these problems are more likely to succeed if local Aboriginal governance and the capacity of communities to pursue their own solutions are strengthened. This does not preclude or excuse Governments from providing and administering services such as schools and health care, but it means that any 'takeover' of Aboriginal controlled services would be counterproductive...

there is broad agreement over many of the changes that are necessary (including safe places and better support for victims). To consult properly over these measures need not take long and it would improve the effectiveness of implementation...



In addition to an Emergency Response, a longer term community capacity and service development plan is needed to establish the basic services and facilities that are lacking in the communities, to build job opportunities and proper housing, and to strengthen community governance so that the communities themselves can take the lead in addressing their problems. It is vital that the governments and the communities work together to get these medium to long term strategies right from the outset, to avoid the demoralising cycle of 'stop-start' policy making and frequent changes of direction that have characterised Aboriginal affairs for many years.⁵⁷

Community engagement, and strengthening community cohesion, is critical to such an approach:

Consultation and engagement with community leaders is crucial to ensure that policy is informed by knowledge of local conditions, priorities are properly set and mistakes are avoided in implementation...

if the 'emergency measures' are implemented without community consent and ownership, there is a risk that the problems (e.g. alcohol addiction) will be driven underground and that initiatives to help prevent child sexual abuse and family violence will be resisted.

More fundamentally, a Government 'takeover' of community administration risks undermining local community leadership and initiative that is essential to resolve the problems of child abuse and neglect, alcohol misuse, joblessness and inadequate services.⁵⁸

As the timeline for the introduction of the legislation vividly demonstrates, the government was unwilling to enter into any dialogue, let alone negotiations, with Indigenous communities or the broader community about the methods to be adopted. The circumscribed process for debate and scrutiny also meant there was limited scrutiny prior to the introduction of the legislation.

The result was acrimonious public debate in which those who expressed concerns about the methods being adopted by the government were criticised (often in the most personal of terms) as if they were opposed to addressing violence and abuse.

From a distance, it appears inconceivable that a program to address issues as fundamental as family violence and child abuse should be the cause of community division. Such a process should have built partnerships across society and solidified a joint determination to address the scourge of family violence and child abuse in Indigenous communities.

57 Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the Australian Government's proposals*, CAO Darwin 2007, pp6-7, available online at: <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>, accessed 12 December 2007.

58 Combined Aboriginal Organisations of the Northern Territory, *A proposed Emergency Response and Development Plan to protect Aboriginal children in the Northern Territory – A preliminary response to the Australian Government's proposals*, CAO Darwin 2007, p6, available online at: <http://www.snaicc.asn.au/news/documents/CAOreport8july.pdf>, accessed 12 December 2007.



Instead, the approach adopted has created or exacerbated division and mistrust between the federal government, the Northern Territory government, Indigenous communities and numerous community organisations.

The introduction of the NT intervention has, as a result, been highly controversial. The responsibility for creating such division lies with those who led the process. The inability to develop a national consensus and partnership for addressing violence and abuse should be seen as one of the main legacies, and a significant failure, of the now former Minister for Indigenous Affairs.

The main victims of such conflict and division are, of course, Indigenous peoples themselves – with a noticeable increase in intolerance towards our communities and an increased stereotyping of all Aboriginal men (as violent, drunks or abusers).

Rebuilding trust and partnerships is a major challenge for the incoming Minister and government.



Part 3: The measures enacted in the NT emergency response and human rights standards

The NT intervention legislation and associated measures raise complex human rights challenges.

In introducing the NT intervention legislation, the Government clearly stated that the measures were intended to protect the rights of Indigenous children as set out in the *Convention on the Rights of the Child*, and were undertaken in furtherance of Australia's human rights obligations.

The Explanatory Memorandum for the *Northern Territory Emergency National Response Bill 2007* also states:

The impact of sexual abuse on indigenous children, families and communities is a most serious issue requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties.⁵⁹

As noted in the previous section, the legislation underpinning the intervention also deems the measures introduced to be 'special measures' and therefore non-discriminatory and consistent with Australia's human rights obligations. In apparent contradiction of this, however, the legislation also provides that in any event the measures are not subject to racial discrimination protections at either the territory or national level.

Many people and Indigenous communities have expressed concerns that the measures involve breaches of human rights. In particular, concerns have focused on the potentially racially discriminatory impact of the measures, the characterisation of the measures as 'special measures' accompanied by the exclusion from the protection of racial discrimination laws, and the lack of participation and consultation with Indigenous peoples in the formulation and implementation of the measures.

In response, Government officials stated before the Senate Inquiry into the legislation that:

Australia's international obligations go to the protection of children as well as its obligations in relation to the elimination of all forms of racial discrimination. In balancing those two measures, in the context of the emergency response, we have considered those matters and we consider that the legislation achieves that balance.⁶⁰

This section of the report provides an overview of the main human rights standards and legal obligations that are relevant to the Government's emergency intervention response to protect Aboriginal children in the Northern Territory. It considers established criteria (as set through processes of international law) for determining

59 Northern Territory Emergency National Response Bill 2007, Explanatory Memorandum, p76, available online at: www.austlii.edu.au/au/legis/cth/bill_em/ntnerb2007541/memo_0.html, accessed 20 November 2007.

60 Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory national emergency response*, August 2007, available online at: http://www.aph.gov.au/Senate/committee/legcon_cte/nt_emergency/index.htm, accessed 2 November 2007.



whether the 'balance' struck by the government is in fact consistent with Australia's human rights obligations or whether the intervention places Australia in breach of those obligations.

Australia's human rights obligations in relation to family violence and child abuse in Indigenous communities

Text Box 6 below provides a summary of the main human rights obligations undertaken by Australia that relate, directly or indirectly, to family violence and child abuse issues.⁶¹

Text Box 6: Human rights standards relevant to addressing family violence and child abuse in Indigenous communities

Convention on the Rights of the Child (CRoC)

- Governments shall respect and ensure the rights set out in the Convention are provided to each child within their jurisdiction without discrimination of any kind, including discrimination on the basis of race (Article 2).
- In all actions concerning children, the best interests of the child is a primary consideration, and the government has a duty of care to ensure that necessary protection is provided taking into account the rights of parents (Article 3).
- The family unit is recognised as fundamental for the growth and well-being of the child, and the government shall provide assistance to parents in meeting their child-rearing responsibilities and in the provision of services for the care of children (Articles 5 and 18).
- Children have a right to protection from all forms of violence, and governments must take protective measures to prevent, identify, and address violations. These measures include social programmes which provide necessary support for a child and his or her parents (Article 19).
- Children have a right to be protected from all forms of sexual abuse (Article 34).
- Governments must take measures to promote recovery and rehabilitation of children who are victims of neglect and abuse. This should be done in an environment that fosters the health, self-respect and dignity of the child (Article 39).
- Children have the right to the highest attainable standard of health and equal access to health care services. The government has a responsibility to diminish infant mortality, ensure the provision of necessary health care and combat disease and nutrition (Article 24).
- Indigenous children have the right to enjoy and practice their culture, in community with other members of their group (Article 30).
- Children must not be subjected to arbitrary interference with their privacy (Article 16).

⁶¹ This is not intended to be an exhaustive list. Note that many human rights are inter-related and inter-dependant, and so other rights not listed here may impact on the enjoyment of rights to be free from violence and abuse.



- Children have a right to benefit from social security (Article 26) and have a right to an adequate standard of living, with governments taking measures to assist parents, including through providing support programmes for nutrition, clothing and housing (Article 27).

International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

- Women have the right to be protected from discrimination on the basis of gender (Article 2).
- Gender-based violence and abuse is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. Violence against women includes acts that inflict mental or sexual harm. (Article 1; General Comment 19).
- Governments must ensure legal protection of the rights of women against acts of discrimination (Article 2).
- Governments shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (Article 5(a)).

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

- All people have the right to be protected against discrimination on the basis of their race (Article 2).
- Governments undertake not to engage in any act or practice of racial discrimination and must ensure that all public authorities and public institutions act in conformity with this obligation (Article 2).
- Governments must guarantee equality before the law without distinction as to race. This includes equality in relation to the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (Article 5(b)) and in relation to rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to housing, to public health, medical care, social security and social services and to education and training (Article 5(e)).
- 'Special measures' shall not be deemed to constitute racial discrimination (Articles 1(4) and 2(2)).

'Special measures':

- provide a *benefit* to some or all members of a group based on race; and
- have *the sole purpose* of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others;
- and are *necessary* for the group to achieve that purpose; and
- *stop* once their purpose has been achieved and do not set up separate rights permanently for different racial groups (Article 1(4)).



Special measures shall also be taken by governments in the social, economic, cultural and other fields to ensure the adequate development and protection of groups defined by race in order to guarantee them the full and equal enjoyment of human rights and fundamental freedoms (Article 2(2)).

International Covenant on Civil and Political Rights (ICCPR)

- All people have the right to enjoy rights and freedoms without discrimination, including discrimination based on their race or sex (Articles 2 and 26).
- All people have the right to be protected against arbitrary interference with privacy, family and the home and the protection of the family as the fundamental group unit of society (Articles 17 and 23).
- All children have the right to special protection as children, without discrimination of any kind (Article 24).
- All members of minority groups have the right to enjoy and practice their culture, in community with other members of their group (Article 27).
- In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the government may take measures derogating from their obligations under the treaty to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and does not involve discrimination on the basis of race (Article 4).

International Covenant on Economic, Social and Cultural Rights (ICESCR)

- All people have the right to enjoy rights and freedoms without discrimination, including on the basis of race (Article 2).
- Each government must take steps to achieve progressively the full realisation of the rights recognised in the ICESCR, to the maximum of its available resources (Article 2).
- All people have the right to social security (Article 9).
- All people have the right to protection of the family as the fundamental group unit of society. Special measures of protection should be taken on behalf of children and young persons (Article 10).
- All people have the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions (Article 11).
- All people have the right to the highest attainable standard of physical and mental health (Article 12), the right to education (Article 13), and the right to take part in cultural life (Article 15).



This text box reveals a complex range of human rights issues that the NT intervention measures raise.

It is important to acknowledge at the outset the overlapping and inter-connected nature of these different human rights. This reflects that human rights are **universal** and **indivisible**. I explained these concepts in last year's *Social Justice Report* as follows:

In simple terms **universality** means that (rights) apply to everyone, everywhere, equally and regardless of circumstance – they are intended to reflect the essence of humanity. They are the standards of treatment that all individuals and groups, irrespective of their racial or ethnic origins, should receive for the simple reason that we are all members of the human family. They are not contingent upon any factor or characteristic being met – you do not have to 'earn' rights or have to be 'deserving' for them to be protected.

And the **indivisibility** of human rights means that all rights – economic, social, cultural, civil and political rights – are of equal importance. There is no hierarchy or priority for the protection or enjoyment of rights. Similarly, this means that all rights are to be applied consistently – *you cannot claim to be performing an action in exercise of your rights if it causes harm or breaches the rights of another person.*⁶²

Ultimately, this means that governments (and individuals) should not privilege the enjoyment of one right over that of another, as if different rights are in competition with each other or subject to a hierarchy of 'more important' and 'less important' rights.⁶³

Article 5 of the *International Covenant of Civil and Political Rights* enshrines this principle. It states:

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

While this language is somewhat opaque, it reflects the principle that it is not legitimate to suggest that the reason for breaching a human right is in order to further the recognition of a different right.

Governments must apply human rights in a consistent manner and ensure that their efforts to promote the enjoyment of certain human rights do not (by design or impact) result in breaches of other rights.

In relation to the NT intervention, the implication of this should be clear: it is **not** appropriate to seek to justify discriminatory measures on the basis that they are undertaken in furtherance of another right (such as addressing violence). Human rights law requires that solutions be found that respect and protect *both* rights.

The relevant human rights issues raised by the NT intervention can be categorised into the following broad thematic areas:

- Equality before the law, non-discrimination and special measures;
- Rights to be free from violence and abuse;

62 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission, Sydney, pp3-5. Emphasis added.

63 There are some limited exceptions to this including protection of the right to life and limits on free speech.



- Rights to effective participation in decision-making and self-determination;
- Accountability and transparency measures in the implementation of rights; and
- Justifiable limits on the protection of rights (such as in times of public emergency).

There are also a range of specific economic, social and cultural rights that are related to preventing violence, such as the right to health, education, an adequate standard of living and to social security. These are discussed further below in relation to specific measures contained in the NT intervention.

A brief summary of the key human rights obligations in relation to each of these thematic areas is provided below.⁶⁴

i) Equality before the law, non-discrimination and special measures

- Non-discrimination, together with equality before the law, constitutes a basic and general principle relating to the protection of all human rights.⁶⁵
- These principles create a legal obligation on the government to ensure that every person is able to exercise and enjoy all of their human rights without discrimination of any kind, such as on the basis of their race or gender.
- For example, the *CRoC* makes clear that every right recognised by the convention must be applied to all children in a non-discriminatory manner.
- The right to non-discrimination has attained the status of *jus cogens* and is non-derogable. This means that under no circumstances can a government justify the introduction of discriminatory measures (including during a state of emergency). As a consequence, it is never permissible to attempt to 'balance' or justify a discriminatory measure against the enjoyment of a specific human right.
- 'Special measures' constitute an exception to the prohibition of racial discrimination. 'Special measures' are a form of preferential or 'beneficial' treatment that is aimed at enabling a group, defined by race, to fully enjoy their human rights.
- The *ICERD* sets out criteria for when an action qualifies as a 'special measure'. The action must:
 - provide a *benefit* to some or all members of a group based on race; and
 - have *the sole purpose* of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others; and

64 This list is not intended to provide an exhaustive or definitive list of human rights obligations – it merely reflects the main principles that are of relevance and application to the NT situation.

65 UN Human Rights Committee, *General Comment 18: Non-discrimination*, 1989, HRI/GEN/1/Rev.8, para 1, p185.



- be *necessary* for the group to achieve that purpose, and
 - *stop* once their purpose has been achieved and not set up separate rights permanently for different racial groups.
- As discussed further below, Australian courts have elaborated on the necessary aspects of a special measure and suggested that, in addition:
 - the consent of the intended beneficiary is important in determining whether an action should be classified as beneficial or not; and
 - that each proposed action or measure must be tested individually to establish whether it meets the criteria for a ‘special measure’.

ii) Rights to be free from violence and abuse

- The *CRoC* and *CEDAW* clearly provide that women and children have a right to be free from violence and sexual abuse.
- The *CRoC* requires government to ensure ‘to the maximum extent possible the survival and development of the child’. It includes an explicit requirement that governments ‘undertake to protect the child from all forms of sexual exploitation and sexual abuse’. Where children fall victim to any form of violence, neglect, exploitation or abuse, governments have a responsibility to ‘take all measures to promote physical and psychological recovery and social reintegration’ of those children.
- The *CRoC*, *CEDAW* and *ICERD* require that government’s take a range of proactive steps to ensure that children, women and groups of people defined by race can live free from violence of any kind:
 - *CRoC* requires governments to provide protection from ‘all forms of physical or mental violence’ while in the care of their parents or others. Where such violence occurs, governments have a responsibility to provide protective measures including the provision of appropriate support and follow-up services to children and their families.
 - *CEDAW* requires governments to take all appropriate measures to modify cultural and customary practices that are based on the idea of the inferiority or the superiority of either of the sexes.
 - *ICERD* requires governments to guarantee equality before the law without distinction as to race in relation to the right to security of person and protection by the State against violence or bodily harm. This right applies whether the violence is inflicted by government officials or by any individual group or institution. Accordingly, a failure of the government to act in relation to a known situation of violence and abuse that affects a particular racial group (such as was identified in relation to Indigenous children and women in the *Little Children are Sacred* report) would place them in breach of *ICERD*.



iii) Rights to effective participation in decision-making and self-determination

- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives, including participation and partnership in program planning, development, implementation and evaluation.
- *ICERD* has been interpreted as requiring that governments ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.⁶⁶
- Effective participation has also been found to be a central component of a non-discriminatory approach to implementing a range of economic, social and cultural rights (such as the right to health and education), as well as integral to the enjoyment of the right of minority groups to the enjoyment of their culture and the right of self-determination.
- The importance of ensuring effective participation has been reinforced through the recognition of the right to development. This recognises that the 'human person is the central subject of development and should be the active participant and beneficiary of the right'.
- The right to development encompasses the following issues for Indigenous peoples:
 - requires free and meaningful participation by affected indigenous people in defining the objectives of development and the methods used to achieve these objectives;
 - is directed towards the goal of realizing the economic, social, and cultural rights of indigenous people;
 - facilitates the enjoyment of indigenous peoples' cultural identity, including through respects the economic, social and political systems through which indigenous decision-making occurs; and
 - is self-determined development, so that peoples are entitled to participate in the design and implementation of development policies to ensure that the form of development proposed on their land meets their own objectives and is appropriate to their cultural values.
- Rights to participate have also begun to find expression in the policies of the UN agencies and the decision making of UN treaty bodies as the principle of free, prior and informed consent. Procedurally, this requires processes that allow and support meaningful and authoritative choices by indigenous peoples about their development paths, doing so on the basis of accurate and accessible information, and following consultation undertaken in good faith, and on the basis of full and equitable participation.

66 Committee on the Elimination of All Forms of Discrimination, *General Comment XXIII on the rights of indigenous peoples*, 1997, in HRI/GEN/1/Rev.8, para 4(d), p256.



iv) Accountability and transparency measures in the implementation of rights

- The realisation of economic, social and cultural rights (such as the right to health, housing and education) is subject to the 'progressive realisation' principle. This requires that governments justify that they are addressing the lack of full enjoyment of human rights within the shortest possible timeframe and to the maximum of available resources. This acknowledges that it takes time to address deeply entrenched situations of poverty and marginalisation.
- This requires that:
 - there exist specific, time-bound and verifiable benchmarks and indicators to ensure that progress can be tracked and measured over time;
 - these be set with the participation of the people whose rights are affected, to agree on what is an adequate rate of progress and set realistic targets; and
 - these are reassessed independently on their target date, with accountability for performance.⁶⁷

v) Justifiable limits on the protection of rights (such as in times of public emergency)

- Article 4 of the *ICCPR* sets out strict criteria for circumstances where a government may derogate from its human rights obligations. This is when:
 1. the situation involves a public emergency which threatens the life of the nation;
 2. the emergency is officially proclaimed;
 3. the restrictions on rights imposed are strictly required by the situation;
 4. the restrictions are not inconsistent with other provisions in international law;
 5. they may not involve discrimination solely on the basis of race;
 6. they must not breach certain provisions of the Covenant (as specified in Article 4); and
 7. the intention to enact emergency measures must be communicated to all other members of the treaty, via the UN Secretary-General.
- The United Nations Human Rights Committee has also noted that:
 - the government's actions during the state of emergency must be proportionate to the situation;

⁶⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission, Sydney, p7.



- to ‘officially proclaim’ a public emergency, the government must immediately inform the United Nations Secretary-General of the announcement of a public emergency, any derogations that have been made, why they have been made, and how long they will apply; and
- the declaration of a public emergency is ‘of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened’.⁶⁸

The Government’s stated position – how the NT Intervention measures are consistent with Australia’s human rights obligations

The federal government has consistently stated that the NT intervention measures are consistent with Australia’s human rights obligations.

The Government has emphasised that the measures ‘are all about the safety and wellbeing of children’⁶⁹, address a need that is ‘urgent and immediate’⁷⁰ and is backed up by the funding ‘necessary to achieve this goal’.⁷¹

Accordingly, they have characterised the intervention as an ‘emergency’ situation and argue that all of the measures introduced are necessary in order to adequately protect Indigenous children.

The Explanatory Memorandum for the *Northern Territory National Emergency Response Bill 2007* (Cth) sets out the government’s position on how the measures announced are consistent with Australia’s human rights obligations. An extract is contained in the Text Box below.

Text Box 7: The NT intervention legislation and human rights compliance – Extract from Explanatory Memorandum

The Northern Territory national emergency response announced by the government recognises the importance of prompt and comprehensive action as well as Australia’s obligations under international law:

- The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.

68 Human Rights Committee, *General Comment No.5*, 1989, HRI/GEN/1/Re.8, para 3, p166.

69 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), ‘Second reading speech: Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008’, *Hansard*, House of Representatives, 7 August 2007, p10.

70 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), ‘Second reading speech: Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008’, *Hansard*, House of Representatives, 7 August 2007, p16.

71 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), ‘Second reading speech: Appropriation (Northern Territory National Emergency Response) Bill (No.1) 2007-2008’, *Hansard*, House of Representatives, 7 August 2007, p16.



- Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when Governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.

The impact of sexual abuse on indigenous children, families and communities is a most serious issue requiring decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties. In doing so, it will take important steps to advance the human rights of the indigenous peoples in communities suffering the crisis of community dysfunction.

In the case of Indigenous people in the Northern Territory, there are significant social and economic barriers to the enjoyment of their rights to health, development, education, property, social security and culture.

The emergency measures in the bill are the basis of action to improve the ability of indigenous peoples to enjoy these rights and freedoms. This cannot be achieved without implementing measures that do not apply in other parts of Australia. In a crisis such as this, the measures in the bill are necessary to ensure that there is real improvement before it is too late for many of the children. The bill will provide the foundation for rebuilding social and economic structures and give meaningful content to indigenous rights and freedoms.

For example, in relation to limiting the availability of alcohol, some measures apply across the entire Northern Territory (sales over 1,350ml of alcohol and record keeping) while others apply in communities which are predominantly indigenous, referred to as 'prescribed areas'.

The bill strengthens and extends a number of prohibitions and offences under the Northern Territory Liquor Act in each of the prescribed areas. This will enable alcohol to be controlled in indigenous communities to address the related issues of alcohol misuse and child abuse. Although the alcohol measures apply generally to prescribed areas, individuals can apply for permits and the measures are subject to a five year sunset period.

The bill also grants five year leases to the Government over certain land in the Northern Territory as part of the measures to achieve the object of the Act of improving the well-being of communities in the Northern Territory.

Preventing child abuse depends upon families living in stable and secure environments. Indigenous communities cannot enjoy their social and economic rights equally with non-indigenous people, including their rights over their land, if living conditions in communities are dangerous and their children are subject to abuse. Sustainable housing is a key element to making lasting improvements to community living arrangements.

The leasing provisions are required to allow the Government to address the national emergency in the Northern Territory. The Government cannot build and repair buildings and infrastructure without access to the townships and security over the land and assets.



The leases will not prevent the indigenous communities from living on and using the land, or lead to limitations not connected with the Government's emergency intervention. The existing rights, title and interest of indigenous owners over the leased land are not removed but are preserved and compensation, on just terms, will be given whenever it is payable.

The leases are a short-term measure with the longer-term focus on putting residents of these communities in a position where they can buy their own homes.⁷²

In relation to the claim that the measures qualify as a 'special measure' and are consistent with the *Racial Discrimination Act 1975*, there is no material in any of the Explanatory Memorandum for the bills or in the 2nd Reading Speeches to explain how this is the case.

Dr Sue Gordon, the Chairperson of the NT Intervention Taskforce, has expanded on the government's position as to why the measures are consistent with Australia's human rights obligations. Her remarks to the Senate Legal and Constitutional Committee are extracted in the text box below.

Text Box 8: Dr Sue Gordon: Comments on the NT intervention and human rights

I would now like to bring to the attention of senators the fact that Australia ratified the United Nations Convention on the Rights of the Child, which came into force on 16 January 1991, but we are still not treating children as a priority for protection across Australia. Part 1, Article 1, deals with the notion of what a child is. Article 2.1 says:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 3.1 states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Both the Prime Minister and the minister, in relation to these interventions, said that all action at the national level is designed to ensure the protection of Aboriginal children from harm.

72 Northern Territory Emergency National Response Bill 2007, Explanatory Memorandum, pp76-77, available online at: www.austlii.edu.au/au/legis/cth/bill_em/ntnerb2007541/memo_0.html, accessed 20 November 2007.



Article 3.2 states:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

The legislation currently before the parliament addresses this. Article 6.1 states:

States Parties recognize that every child has the inherent right to life.

Article 6.2 states:

States Parties shall ensure to the maximum extent possible the survival and development of the child.

The legislation currently before the parliament addresses this—in particular, for improving child and family health. Article 19.1 states:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The permit system as it stands has not had this effect. Most abusers are known to the victims. The permit system as it stands has protected the offenders. The legislation before parliament addresses this. Article 19.2 goes on to state:

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The National Indigenous Violence and Child Abuse Intelligence Task Force, set up in October 2006 and based in Alice Springs, is addressing this, and the legislation currently before the parliament also addresses this. The measures related to pornographic DVDs, videos and government funded computers, which I raised with you this morning and which was brought to the attention of the government by the National Indigenous Council, also address this.

Article 24 refers to recognising the right of the child to the enjoyment of the highest attainable standards of health and to facilities for the treatment of illnesses et cetera. It also states that states parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to: diminish infant and child mortality; provide necessary medical assistance; combat disease; ensure appropriate pre-natal and post-natal health and care; and— more importantly—ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health, including hygiene, environmental sanitation and the prevention of accidents.



The legislation currently before the parliament addresses this. Article 24 goes on to state:

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Abuse by a minority—and, I repeat, a minority—of men in relation to customary law as it relates to promised marriages is being addressed as well, as part of promoting law and order, which includes protective bail conditions. Article 27.1 states:

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The employment and welfare reform addresses this point. The minister also links the five-year township leases to this. Article 28 states:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.

— and goes on to address various things. Enhancing education as part of the legislative measures is aimed at addressing this article. I was appalled when I went to a school in the Territory and I found out that, while it looks good on paper that Aboriginal students are attaining year 12 level, when I asked the principal what that meant in reality, she said, 'Year 8 or year 9.' That is not fair to Aboriginal people.

Article 33 states:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking substances.

This is currently being addressed by the drug desk in Alice Springs and the National Indigenous Violence and Child Abuse Intelligence Task Force. The permit system as it stands has not had this effect. Rather, it has protected the offenders.

I will not go through articles 34 and 36, but these are only some of the articles of the United Nations Convention on the Rights of the Child that relate to the Northern Territory emergency response.

I appreciate very much Aboriginal people's concerns regarding permits and the acquisition of townships for five years but believe that the protection of children, men and women in the communities who suffer violence and abuse on a daily basis has been completely lost in this debate.

I plan, as a chairperson of the task force and as a mother and a grandmother, to remain totally focused on the best interests of children in our Aboriginal communities, and I will continue to work with the communities in the Northern Territory and with the Commonwealth government to protect children.⁷³

73 Gordon, S., Chairperson, Northern Territory Emergency Taskforce, Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, pp77-78, available online at: http://www.aph.gov.au/Senate/Committee/legcon_ctte/nt_emergency/report/report.pdf, accessed 12 November 2007.



In its report on the NT intervention legislation, the Senate Legal and Constitutional Committee noted concerns that the legislation may be discriminatory. Ultimately however they did not address this point in detail. Instead, they state:

3.1... The committee is of the view that immediate and absolute priority must be given to addressing the issues that affect the welfare of Indigenous children in the Northern Territory. Indeed, the protection of these children from violence and abuse, and the establishment of conditions that will allow them to lead healthy and productive lives, in which they achieve their full potential, is of the utmost importance. More broadly, there is clearly a need for immediate action to address the disadvantage all Indigenous people confront.

3.2 The committee welcomes the policy changes contained in this suite of bills as a genuine and enduring commitment from the Australian Government to tackle critical issues in Indigenous communities in the Northern Territory. These issues include high unemployment, alcohol and drug dependency, poor health and education outcomes, inadequate housing and child abuse. In saying this, the committee acknowledges that many of the issues that the bills seek to address are complex and entrenched; however, this is no excuse for failure or neglect.

3.3 The committee commends the holistic approach taken by the Australian Government in its policy formulation in this challenging area. The legislation contains 'on the ground' practical solutions which the committee believes will go a long way to addressing some of the inherent problems in Indigenous communities. In this context, the committee notes the close cooperation that has taken place throughout the policy formulation process between all relevant Commonwealth agencies.⁷⁴

Do the measures enacted in the NT emergency response legislation comply with human rights standards?

While the government has expressed clearly its determination to tackle the problem of family violence and child abuse in Indigenous communities, it remains to be seen whether the specific measures adopted by the government to achieve this purpose are in fact consistent with Australia's human rights obligations.

In making this assessment, it is necessary to draw a distinction between the stated *intention* of the government and its chosen *method* for implementation.

Measures that violate the human rights of the intended beneficiaries are more likely to work in ways that undermine the overall well-being of these communities in both the short and longer term.

For example, the Government has clearly stated that the NT intervention seeks to address a breakdown in law and order in Aboriginal communities. And yet it potentially involves introducing measures that undermine the rule of law and that do not guarantee Aboriginal citizens equal treatment to other Australians.

If this is the case, then it places a fundamental contradiction at the heart of the NT intervention measures. This will inhibit the building of relationships, partnerships and trust between the Government and Indigenous communities. It would

⁷⁴ Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, pp31-32, available online at: http://www.aph.gov.au/Senate/Committee/legcon_ctte/nt_emergency/report/report.pdf, accessed 4 December 2007.



also undermine the credibility of the measures, and ultimately, threaten the sustainability and long term impact of the measures.

Similarly, if policy interventions are misconceived or poorly designed, then the possibility of constructing a truly effective long-term response to family violence and child abuse in Indigenous communities will be compromised.

a) Measures to tackle family violence and child abuse in Indigenous communities are necessary

The starting point for determining the human rights implications of the NT intervention measures is to recognise that they are intended to address family violence and child abuse in Indigenous communities.

When the NT intervention was announced in June 2007, the Human Rights and Equal Opportunity Commission welcomed the federal government's intention to treat family violence and sexual abuse in Indigenous communities as an issue of national importance that requires immediate action.⁷⁵

It is essential that governments undertake action to address violence and abuse, particularly when there is compelling evidence that it is widespread. As noted above, Governments that fail to act in these circumstances would be in breach of their human rights obligations under *CROC*, *CEDAW* and *ICERD*.

Australian governments have, from time to time, acknowledged the existence of a pervasive and serious pattern of sexual abuse and family violence in Indigenous communities. And yet, action had rarely been backed by resources or sustained action.

For example, as Appendix 2 of this report shows, the Prime Minister had convened a national roundtable on this issue in 2003 with limited follow up actions and the Council of Australian Governments had agreed on the urgency of addressing this issue several times in the past decade.

Accordingly, the NT intervention presents a historic opportunity to deal with a tragedy that has existed for too long, and that has destroyed too many families and too many young Aboriginal lives.

The Government's approach also blows out of the water – once and for all – one of the most significant problems that has beset Indigenous affairs over the past generation.

That is, the belief that an incremental approach to funding services for Indigenous communities is all that is needed to address the gross disparities in social and economic conditions faced by Indigenous people.

The scale of the NT intervention reveals that the absence of adequate service provision in Indigenous communities is something that is costly to rectify, difficult to address, that impacts on such basic issues as ensuring community safety and that ultimately, will require long term resourcing, effort and solutions.

75 See for example: Calma, T., (Aboriginal and Torres Strait Islander Social Justice and Race Discrimination Commissioner) *Race Discrimination Act is a Vital safeguard*, Media Release, 8 August 2007.



b) The NT intervention is not a situation that would justify introducing restrictions on the rights of Indigenous peoples

The focus of the government on the need for immediate action in communities is also to be welcomed. But I do have concerns about the rhetoric that the government has used in describing the intervention as an 'emergency' situation.

The government has described the measures introduced in the NT as an 'emergency response' and as an 'intervention'. This language has been used to justify why the measures have been introduced without consultation and engagement with Indigenous communities.

This description of the measures as an 'emergency' has also been used to justify why protections against racial discrimination should be sidestepped for added 'certainty' of the process – so that it can proceed without delay. As noted previously, the Government has also argued that the emergency nature of the measures is a justification for the 'balance' that has been struck between undertaking measures aimed at protecting children against violence and adopting a non-discriminatory approach.

The previous section outlined in summary form the relevant human rights obligations that apply to this situation. It tells us that:

- It is clearly established in international law that the principle of non-discrimination on the basis of race cannot be overridden by other considerations. The *CRoC* also makes clear that rights – such as for children to be protected from violence – are to be implemented in a non-discriminatory manner.
- As a consequence, it is not appropriate to claim that discriminatory measures are justified as they have been 'balanced' against the objective of protecting children from violence. Simply put, measures to address violence must also be non-discriminatory. It would lack credibility to suggest that it is not possible to meet this requirement while also providing effective protection against violence.
- Similarly, the *ICCPR* makes it clear that you cannot justify restrictions on certain rights by claiming that you are acting in furtherance of another right. So if the measures legitimately go towards the aim of protecting children against violence, this does not provide a justification for any other rights abuses that might result from the intervention measures.
- The *ICCPR* also establishes clear and strictly limited criteria for when some rights can be overridden because of the existence of an emergency situation. It is clear that the NT intervention – while still relating to a situation of great importance – does not reach the threshold to qualify as an emergency situation as that term is understood in international law. This means that any such restrictions on human rights that are contained in the intervention legislation cannot be justified.

The description of the NT measures as an 'emergency' situation does not exempt the government from its human rights obligations.



c) The NT intervention legislation does not provide Indigenous peoples with procedural fairness

The description of the NT intervention as an 'emergency' measure has also been relied upon by the government to justify the absence of many of the ordinary democratic protections and safeguards, such as rights to external review of decision making processes that we have come to expect in our Westminster system of government. In fact, the legislation also explicitly *disentitles* Indigenous peoples to many of these protections.

The government has repeatedly asserted that this is necessary to ensure the 'certainty' and smooth and rapid implementation of the measures, and that providing processes such as administrative review 'could jeopardise the Government's attempts in its emergency response' by slowing the ability to introduce the measures.

If we consider the scope of the measures and how they can intrude into the daily lives of Indigenous people in the NT, this is an entirely unacceptable situation. This is particularly so given that the measures are intended to apply for a period of up to five years.

The Senate Standing Committee for the Scrutiny of Bills has reported a number of concerns about the legislation to the Parliament. The Committee's role is to assess legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.⁷⁶

In its *Alert Digest* of 13 August 2007, the Committee noted a number of concerns relating to the NT intervention legislation including:

- The potential exercise of significant executive power without parliamentary scrutiny;
- The exclusion of merits review;
- Legislative non-compliance with the acquisition of property on 'just terms', guaranteed by section 51 of the Constitution;
- The unacceptable trespass of personal rights and liberties, particularly in relation to the *Racial Discrimination Act*; and
- The retrospective operation of parts of the legislation relating to social security status.⁷⁷

For example, sections 34(9), 35(11), 37(5), 47(7), 48(5) and 49(4) of the *Northern Territory National Emergency Response Act 2007* (Cth) declare that various determinations and notices by the Minister for Indigenous Affairs that relate to interests in land are not to be legislative instruments and therefore not subject to parliamentary scrutiny.

In essence, this treats such discretion by the Minister as administrative decision making. But the legislation does not provide that decision making under these sections is subject to merits review under the *Administrative Appeals Tribunal Act 1975* (Cth). The Government justifies this on the basis that:

76 See further details online at: <http://www.aph.gov.au/senate/committee/scrutiny/cominfo.htm>.

77 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest* No 9 of 2007, 13 August 2007.



It is not appropriate for these determinations and notices to be subject to merits review under the AAT Act. The potential for review by the Administrative Appeals Tribunal would create unacceptable delays for what are short term emergency measures.⁷⁸

The Senate Standing Committee for the Scrutiny of Bills has responded to this in the following terms:

In light of the possible duration of the emergency response, i.e. up to five years initially, the Committee remains concerned at the absence of merits review of these decisions. The Committee is of the view that these provisions may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions... and trusts that careful consideration will be given to the possibility of providing for merits review of these decisions when the Act is reviewed in two years time.⁷⁹

The Committee also expresses concern at the lack of merits review of decisions by the Minister to suspend all the members of a community government council,⁸⁰ and decisions of the Secretary of the Department of FACSIA to grant or refuse a community store licence, and revoke an existing community store licence.⁸¹

In addition to the concerns expressed by the Scrutiny Committee, there are a range of other matters that are of concern in the legislation.

- *Determination of Important Matters by Legislative Instrument*

In order for Parliament to function effectively, it is common practice that much of the legislation passed by the government of the day only provides a skeleton for policy operation, with the detail of operative practices often being worked out by the relevant executive sector of government.

When such detail determines the law and impacts upon the rights and obligations of individuals, it gives rise to 'legislative instruments'. Such instruments are subject to the *Legislative Instruments Act 2003* (Cth). The objects of this Act include encouraging appropriate consultation by rule makers before making rules, and establishing improved mechanisms for Parliamentary scrutiny of legislative instruments (see further section 3 of the Act).

Significantly, the *Legislative Instruments Act 2003* (Cth) contains provisions for disallowance by Parliament of legislative instruments (see further: part 5, and particularly section 42 of the Act).

However, the NT measures that amend the *Social Security Act* contain a number of actions that are relegated to the status of delegated legislation but which are not subject to review and disallowance by Parliament.

78 Senate Standing Committee for the Scrutiny of Bills, *Ninth report of 2007*, 12 September 2007, Parliament of Australia, Canberra 2007, p369, available online at: www.aph.gov.au/senate/committee/scrutiny/bills/2007/b09.doc, accessed 29 January 2008.

79 Senate Standing Committee for the Scrutiny of Bills, *Ninth report of 2007*, 12 September 2007, Parliament of Australia, Canberra 2007, p369.

80 Senate Standing Committee for the Scrutiny of Bills, *Ninth report of 2007*, 12 September 2007, Parliament of Australia, Canberra 2007, p373.

81 Senate Standing Committee for the Scrutiny of Bills, *Ninth report of 2007*, 12 September 2007, Parliament of Australia, Canberra 2007, p373.



The *Social Security and other legislation amendment (Welfare Payment Reform) Act 2007* (Cth) inserts a new section 123(TE) into the *Social Security (Administration) Act 1999*. This allows the Minister to declare an area a 'relevant Northern Territory area' for the purposes of the legislation. Similarly, the proposed new paragraph 123UK (1) of the *Social Security (Administration) Act 1999* allows the question of whether an unsatisfactory school attendance situation exists to be ascertained in accordance with a legislative instrument made by the Minister.

Under section 19(1) of the *NTNER Act*, the relevant Commonwealth Minister also has the power to declare that alcohol restrictions in all or part of a prescribed area shall no longer have effect if he or she is satisfied that there is no need to keep the measures in place. Such a declaration is also a legislative instrument, but not subject to disallowance or sunset provisions of the *Legislative Instruments Act 2003* – which would ordinarily place time limitations on the operation of the instrument, subject to legislative review.

None of these determinations are disallowable when they are tabled in Parliament. The immunity of these sections from disallowance is justified by the fact that they are measures which are 'of national significance' and disallowance would 'create uncertainty' with respect to the administration of income management systems.⁸²

There are a number of objectionable characteristics of delegated legislation operating in this way. The first is that, as outlined above, our system of representative government demands that the substance of laws are made by the Parliament, and not by the unelected executive. The fact that delegated legislation itself may be seen as legitimate specifically hinges on Parliament retaining the power to unmake legislative instruments within a particular time frame. Once that power is removed, the legitimacy of the law making procedures surrounding legislative instruments is lost.

The second issue of concern is that in the case of the NTNER measures the Minister is given the unchecked administrative power to switch the entire operation of the legislation on and off for certain categories of people as he or she sees fit, and these decisions are not to be made the subject of legislative scrutiny by the parliament.

Third, the fact that the matters to be contained are of 'national significance' does not, on its own terms, provide a justification for the disallowance provisions, common to legislative scrutiny, being suspended.

On the contrary, the fact that the situation at hand is purportedly an emergency, does not mean that ordinary principles of legislative scrutiny cannot still be applied: indeed, the risk of misuse of power in an emergency situation potentially enhances the need for democratic checks and balances to be in place.

82 Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Cth), Explanatory Memorandum, available online at: http://www.austlii.edu.au/au/legis/cth/bill_em/ssaolaprb2007684/memo_0.html, accessed 24 November 2007.



- *Exclusion of Merits Review for income management of social security recipients*

A number of the Social Security aspects of the legislation are not subject to merits review of administrative decision making.

In cases where Centrelink has discretion to place (or not to place) individuals on income management, only a limited form of general merits review under the administrative arm of government will be allowed. The *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) inserts a new paragraph 144(ka) into the *Social Security (Administration) Act 1999*. This denies a person in a relevant Northern Territory area the right to seek a review by the Social Security Review Tribunal of decisions that relate to income management.

Ordinarily, the process of appealing a Centrelink decision would run as follows:

First Decision → Centrelink Agent → Centrelink Authorised Review Officer (ARO)
 → Social Security Appeals Tribunal (SSAT) → Administrative Appeals Tribunal (AAT)
 → Federal Court → High Court.

The NT legislation stops the merit review process at the internal Centrelink ARO level.

Effectively, the legislation therefore cuts out two levels of merits review, forcing anyone wishing to appeal the relevant administrative decision made about them to proceed straight to judicial review in the Federal Court.

Significantly, judicial review in the Federal Court does not allow for full review of the merits of a decision.

The Federal Court is also less accessible than merit review processes. The cost and formality of the Federal Court make the bringing of proceedings prohibitive for many applicants. This will particularly impact on Aboriginal people from remote communities affected under this legislation.⁸³

The effect of these changes could be substantial- of all Centrelink decisions that are appealed to AROs, over 25% go on to be appealed to the SSAT.⁸⁴ Of the decisions that are appealed to the SSAT, over 30% are reversed in favour of the applicant.⁸⁵

In other parts of the legislation, the applicability of administrative review to people other than the relevant minister who are vested with administrative decision making power under the Acts is also far from clear.

For example, the proposed new paragraph 123CU(b) of the *Social Security (Administration) Act 1999* allows a Child Protection Officer to give the Secretary of the Department a written notice requiring that a person be subject to the income management regime set up by Part 3B of the Act. It is unclear whether a Child Protection Officer is a specified person for the purposes of review of decisions made at the Social Security Appeals Tribunal. In other words, it is unclear as to

83 Ronalds, C. and Pepper, R., *Discrimination Law and Practice*, The Federation Press, 2004, Chapter 13: Conducting a Hearing; Margaret Thornton, 'Equivocations of Conciliation: The Resolution of Discrimination Complaints in Australia' (1989) 52 *Modern Law Review*, p752.

84 Australian Government, *Centrelink Annual Report 2005-2006*, Department of Human Services, Canberra, 31 August 2006, p86.

85 Australian Government, *Centrelink Annual Report 2005-2006*, Department of Human Services, Canberra, 31 August 2006, p86.



whether the person that is the subject to such a notice has any right to appeal the merits of the decision made about them by the Child Protection Officer.

Similar concerns apply with regard to a notice given by the 'Queensland Commission' under s 123UF (1) (b) of the Act that a person will be subject to income management. Indeed, in the case of the 'Queensland Commission' the rights of appeal seem to be entirely unknown, since the Act itself only provides the machinery for a commission to be set up, without prescribing its functions. Presumably, the 'Queensland Commission' will take the form of the 'Family Responsibilities Commission' outlined in the *From hand out to hand up* report, and if this is the case then the Commission would fall within the purview of the Administrative Appeals Tribunal and its decisions would be subject to merits review if applicants so desired.

However, future delegated legislation should be scrutinised for clarity on this matter, as the original mechanism prescribed by the NTNER package leaves this question unanswered.

In my view, the justification for removing merits review in relation to various measures in the NT intervention has not properly been made out.

The absence of such review creates barriers to access for justice for Indigenous peoples. In particular, it is inappropriate to disentitle Indigenous peoples to merits review processes and instead require them to take legal action in the Federal Court if they are to obtain a remedy.

Once again, the government's statement that the situation is an 'emergency' provides no justification for denying access to stages of the merits review process that are ordinarily available to all other Australians.

Such exclusion is discriminatory. It breaches Australia's obligations under Article 5(a) of *ICERD* that requires the government to guarantee the right of everyone, without distinction as to race, 'the right to equal treatment before the tribunals and all other organs administering justice'.

Rights to full merits review should be restored for all decisions made with regards to income management.

New paragraph 144(ka) of the *Social Security (Administration) Act 1999* (enacted by the *Social Security and other legislation amendment (Welfare Payment Reform) Act 2007* (Cth) should be repealed. This section denies a person in a relevant Northern Territory area the right to seek administrative review.

Upholding the values of the Westminster System of democratic government is fundamental to protecting the community at large from abuse by concentration of power, and to ensure that government action is carried out legitimately. When legislation is passed which circumvents ordinary democratic procedures and protocols, it undermines the very structure of the democracy on which any rights framework in Australia might be based. It is crucial that the sections that enact such shifts in ordinary practice are therefore immediately repealed.



d) The NT intervention legislation removes and creates confusion about protections against discrimination at the Territory level

In addition to removing merits review processes, the NT intervention legislation also disentitles Indigenous peoples to utilise other schemes for the protection of their rights.

Most notably, each the three primary acts exempt any acts done for the purposes of the legislation from the application of Northern Territory laws that deal with discrimination.⁸⁶

The scope of this exemption is extremely broad as it relates to 'any acts done under or for the purposes of the provisions of this' legislation. The exemption is also very general – the legislation does not specifying the particular legislation that does not apply, simply that any legislation 'that deals with discrimination'. This would include the *Anti-Discrimination Act 1992 (NT)*, but it may also include other provisions in legislation that is also not specified.

The absence of protection against discrimination at the territory level creates three main difficulties for Indigenous people in the Northern Territory, and specifically for those people in prescribed communities.

First, and most obviously, it removes any right to be protected from discrimination in relation to significant issues of decision making that affect individual's livelihoods. Such removal of rights is clearly applied on the basis of race.

Second, it creates ambiguities about the circumstances where protections of discrimination will still apply. An individual who feels they have their rights aggrieved will have to determine whether the action that has taken place constitutes an act 'done under or for the purposes of the provisions' of the NT intervention legislation in order to establish whether they have a right to pursue a complaint and ultimately to obtain a remedy.

It can be foreseen that there will be some situations where the connection of the action in question to the NT legislation is tenuous or at least very difficult to ascertain, and so making this judgement may ultimately require determination through formal processes such as the courts further delaying access to justice.

Third, it will not be easily comprehended by Indigenous peoples that they have rights to be protected from discrimination but only if the discrimination occurs in a certain location – and conversely that they *do not* have a right when they are in another location (such as within a prescribed community for example) or if it relates to certain activities (but not if those activities are authorised under the NT intervention legislation). The level of uncertainty that this creates will undermine confidence in utilising discrimination provisions, even where there is widespread discrimination.

The impact of the intervention legislation can be described as a 'swiss-cheese' effect on the protection of Indigenous communities from discrimination.

These provisions are clearly arbitrary in their operation, and they undermine access to justice for Indigenous peoples.

86 See for example: section 133, *Northern Territory National Emergency Response Act 2007* (Cth).



There is no justification for such a denial of justice – stripping the most vulnerable people in our society of basic rights cannot be seen as a reasonable or proportionate response to dealing with family violence.

As discussed further below in relation to exemptions from the *Racial Discrimination Act 1975* (Cth) they also undermine confidence in the system of justice as a whole. This is contrary to one of the purposes of the intervention, namely, building awareness and support for the operation of the rule of law in remote Aboriginal communities.

These provisions – such as those set out section 133 of the *Northern Territory National Emergency Response Act 2007* (Cth) should be repealed immediately.

It is notable that the NT intervention legislation also provides that the Minister for Indigenous Affairs can, by non-reviewable legislative instrument, declare that any Territory law related to discrimination continues to have effect in the communities.⁸⁷

It is my view that, as an interim measure prior to repealing these provisions, the Minister ought to exercise his/her discretion to declare that the *Anti-Discrimination Act 1992 (NT)* does apply across all communities in the Northern Territory and reinstate protections against discrimination in all locations of the NT.

e) The NT intervention legislation removes protections of just terms compensation for Indigenous peoples

The NT legislation also disentitles Indigenous peoples from benefiting from the ordinary protections that guarantee the payment of just terms compensation under NT law upon the compulsory acquisition of their property.

Sections 60 and 134 of the *Northern Territory National Emergency Response Act 2007* (Cth) specify that section 50(2) of the *Northern Territory (Self-Government) Act 1978* (Cth) does not apply in relation to any acquisition of property. That section provides that the acquisition of any property in the Territory must be on just terms.

The Explanatory Memorandum for the Bill explains the provisions as follows:

Except for an acquisition of property under Part 4 of the bill (which deals with the acquisition of rights, titles and interests in land), subsection 50(2) of the Northern Territory (Self Government) Act 1978 does not apply to an acquisition of property that occurs as a result of the operation of the terms of this bill.

The effect ... is that where subsection 50(2) of the Northern Territory (Self Government) Act 1978 would apply so as to require the payment of compensation on just terms for an acquisition of property that occurs as a result of the operation of the terms of this bill, that requirement does not apply unless the acquisition occurs under Part 4.

Subclause 134(2) provides that the Commonwealth is liable to pay a reasonable amount of compensation for acquisitions of property that occur other than under Part 4. Therefore, where an acquisition of property that occurs as a result of the operation of the terms of this bill is excluded from the requirement under subsection 50(2) of the Northern Territory (Self Government) Act 1978 to pay just terms compensation, subclause 134(2) nevertheless requires the payment of a reasonable amount of compensation.

87 See for example: section 133, *Northern Territory National Emergency Response Act 2007* (Cth).



Subclause 134(3) provides that where an amount is unable to be agreed, proceedings may be commenced in a court of competent jurisdiction for a determination of a reasonable amount of compensation.⁸⁸

There are two possible consequences of these provisions. First, in the situation where Indigenous people believe they have not been provided 'reasonable compensation' for the acquisition of property, they would have to pursue any claim for compensation through the original jurisdiction of the High Court as a constitutional matter.

This is a highly costly process and one with substantial barriers that may simply prove to be too difficult for Indigenous peoples to be able to meet – from a practical perspective.

Second, the Law Council of Australia has expressed concern that this provision may in fact have a very different impact and actually result in the Commonwealth not being required to pay compensation for any acquisition of property at all. They note:

The application of s51(xxxi) of the Constitution to provide compensation for an acquisition of property in the Northern Territory is not a foregone conclusion. Under current High Court Authority there is no requirement to pay compensation for an acquisition of property referable only to the s122 Territories power under the Constitution. The Bill makes it apparent (through reference to the non-application of s 50(2) of the *Northern Territory (Self Government) Act 1978*) that the power relied upon for the acquisitions is pursuant to the Commonwealth's s122 Territories power.

The Law Council notes that the legislation appears to shield the Commonwealth from its obligation to compensate the relevant Land Trust or pay rent, in circumstances where a lease is issued under section 31.⁸⁹

Both the government and non-government members of the Senate Legal and Constitutional Committee, and the members of the Senate Scrutiny of Bills Committee expressed concern about these provisions as lacking clarity as to the rights that they provide Indigenous peoples.

In their additional comments in the Senate Legal and Constitutional Committee's report the Australian Labor Party states that:

Labor Senators consider it to be an absolutely fundamental principle that the Commonwealth Government should pay just terms compensation for the acquisition of property from anyone, anywhere in Australia. Further, Labor rejects absolutely any suggestion that services or infrastructure, which all Australians have the right to expect their governments to provide, should be considered as contributing to compensation for the acquisition of the property rights of Indigenous people.⁹⁰

88 *Northern Territory National Emergency Response Bill 2007* (Cth), p78, Explanatory Memorandum.

89 Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p21, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/report/report.pdf, accessed 31 January 2008.

90 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, para 1.27, p42.



It is entirely unclear from the former Government's explanations of this provision why it exists. For example, to both the Senate Legal and Constitutional Committee and the Senate Scrutiny of Bills Committee the government has reassured Senators that a guarantee of 'just terms' compensation is preserved.⁹¹ While this is disputed by some, there is a more fundamental question that this raises: if the intention is to preserve a guarantee of 'just terms' compensation then why disentitle Indigenous peoples from that exact protection that exists in the *Northern Territory (Self Government) Act 1978* in the first place?

The inclusion of this provision in the NT intervention legislation is punitive and unnecessarily creates barriers to the exercise of basic rights for Indigenous peoples – and *only* for Indigenous peoples – in the Northern Territory. It is a measure that is blatantly discriminatory and has no place in the laws of a modern democratic nation.

The Government should amend the NT intervention to reinstate this protection to firstly guarantee that the protection of just terms compensation does in fact apply, and secondly, to provide the simplest and most accessible route to such protection (namely the application of the *Northern Territory (Self Government) Act 1978*).

f) The Racial Discrimination Act 1975 (Cth) and special measures

A major issue of concern in relation to the NT intervention relates to the manner in which the legislation underpinning it interacts with the *Racial Discrimination Act 1975* (Cth) (RDA). There are two aspects to this:

- The 'deeming' of the legislation as a whole to constitute a 'special measure' and therefore to be considered consistent with the RDA; and
- Despite this, the exempting of all the measures contained in the legislation from the protections of the RDA.

These two issues are inter-related. Section 10(3) of the RDA does not allow measures that involve the management of Aboriginal property by others without consent to qualify as 'special measures' under the RDA under any circumstances. Because of this, the legislation provides that these (and all other measures that it has deemed to be special measures) are exempt from the RDA entirely. This is justified by the government as providing certainty of process.

I begin by considering the appropriateness of 'deeming' the legislation as a whole to constitute a 'special measure'.

Text Box 4 earlier in this chapter reproduced the provisions in the legislation underpinning the NT intervention that relate to the *Racial Discrimination Act 1975* (Cth).

Section 132 of the *Northern Territory National Emergency Response Act 2007*, for example, deems the provisions of this Act, and any acts done under or for the

91 Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/report/report.pdf, accessed 31 January 2008; Senate Standing Committee for the Scrutiny of Bills, *Ninth report of 2007*, 12 September 2007, Parliament of Australia, Canberra 2007, p375.



purposes of those provisions, to be 'special measures' under the RDA and therefore not considered discriminatory.

- *Why is it necessary for the measures to qualify as a special measure?*

Section 9(1) of the RDA prohibits 'direct' discrimination on the basis of race. It provides:

It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.⁹²

Section 10 of the RDA also requires equality before the law on the basis of race. It states:

(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.

Section 8 of the RDA provides an exception to the prohibition of racial discrimination. It reads:

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 sub-section 10(1) applies by virtue of sub-section 10(3).

In basic terms, what this means is that the RDA allows for differential treatment on the basis of race for measures that provide a *benefit* to a group defined by race, so long as those measures are designed to lift that group into a situation where they can equally enjoy their human rights. Such treatment is called 'special measures'.

The NT intervention legislative measures clearly have a number of significant actual and potential negative impacts upon the rights of Indigenous people which are discriminatory. This includes through the introduction of alcohol bans, the quarantining of welfare payments, and compulsory acquisition of property through 5 year leases that only apply to Indigenous peoples.

In order for the laws generally to be consistent with the RDA, they must therefore be justifiable as a 'special measure' taken for the advancement of Indigenous people.

92 The RDA also includes specific prohibitions on direct discrimination in certain areas of public life: access to places and facilities (s.11); land, housing and other accommodation (s.12); provision of goods and services (s.13); right to join trade unions (s.14); and employment (s.15). Section 9(1A) of the RDA provides for what is generally known as 'indirect' discrimination. This section focuses on direct discrimination and does not consider the necessary elements for establishing indirect discrimination under the RDA. For information about the necessary elements for establishing indirect discrimination see: Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Implications of the Racial Discrimination Act 1975 with reference to state and territory liquor licensing legislation', *Speech – 34th Australasian Liquor Licensing Authorities' Conference*, 26-29 October 2004, Hobart, Tasmania, available online at: <http://www.humanrights.gov.au/speeches/race/LiquorLicensingAuthoritiesConference.html>, accessed 29 January 2008.



- *What is a special measure?*

Article 1(4) of *ICERD* states:

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 to have been achieved.

Article 2(2) of *ICERD* also obliges governments to take 'special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purposes of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms'.

There are four elements of a special measure, as follows. A special measure:

- provides a *benefit* to some or all members of a group based on race; and
- has *the sole purpose* of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others; and
- is *necessary* for the group to achieve that purpose, and
- *stops* once their purpose has been achieved and do not set up separate rights permanently for different racial groups.⁹³

To qualify as a special measure, an action must meet all of these criteria.

These criteria raises a number of matters of concern that must be addressed in relation to the measures contained in the NT intervention legislation if they are appropriately to be characterised as 'special measures'.

- *Do the measures provide a 'benefit'?*

First, the measures must be capable of being defined as providing a **benefit** to Indigenous peoples.

It is an unusual situation to seek to justify measures that negatively impact on Indigenous peoples as 'special measures'. For over a decade, however, HREOC has argued that negative restrictions on rights are capable of being characterised in such a way in limited circumstances.⁹⁴ These limited circumstances are where first, the restriction being introduced can be seen to impact beneficially on the community that it is designed to affect; and second, the measure is introduced with the consent of the affected community.

In the case of alcohol restrictions, for example, the Commission has argued that there are countervailing benefits in terms of community safety, freedom from violence, health status and the creation of an environment that positively impacts of education outcomes and so forth, that can justify characterising the introduction of restrictions on alcohol as a benefit. This is particularly where such restrictions are

93 See further: *Gerhardy v Brown* (1985) 159 CLR 70, per Brennan J., p133.

94 Race Discrimination Commissioner, *Alcohol report*, HREOC Sydney 1995.



accompanied by a range of support mechanisms/services that assist in mitigating any harm that may result from the restrictions.

For measures that may impact negatively on rights to be considered 'special measures' they must also be done after consultation with, and generally the consent of, the 'subject' group. Measures taken with neither consultation nor consent cannot meaningfully be said to be for the 'advancement' of a group of people, as is required by the definition of special measures.⁹⁵

To take any other approach contemplates a paternalism that considers the views of a group as to their wellbeing irrelevant. Such an approach in the context of Indigenous people is contrary to their right to self-determination as well as undermining their dignity. Such an approach could allow for measures to be taken that would be 'a step towards apartheid'.⁹⁶

The need for consultation is particularly important in the context of the rights of Indigenous people. The Committee on the Elimination of Racial Discrimination has, in its General Recommendation XXIII, called upon parties to *ICERD* to:

ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent...

At a practical level, such consultation can significantly improve the quality of the policy development and its implementation. As the *Social Justice Report 2006* states:

Indigenous peoples [like any other stakeholder group] need to be involved at the earliest possible stage in the policy design process, so that they can contribute their perspectives and ideas on the objectives and content of the policy as well as *how* the policy should be implemented. This is particularly important to ensure that:

- Indigenous cultural differences are respected and accommodated;
- the appropriate Indigenous peoples are involved;
- sufficient time is allocated to developing community support for the implementation process; and
- ultimately, Indigenous peoples feel a sense of *ownership* of both the process and the outcome.⁹⁷

Meaningful consultation with Aboriginal people upon the introduction of legislation affecting their community is hardly an untried concept in the Australian context. For example, when the Federal government sought to enact the *Native Title Act 1993* (Cth), leaders from the Aboriginal and Torres Strait Islander communities were actively involved in negotiations surrounding its development and introduction, and provided their consent to a number of tradeoffs in the legislative package.

95 *Gerhardy v Brown* (1985) 159 CLR 70, per Brennan J., p135. I note that a contrary view was taken by Nicholson J. in the Federal Court of Australia in *Bropho v Western Australia* [2007] FCA 519. That decision is currently on appeal to the full Federal Court and HREOC has submitted, as intervenor, that his Honour was in error on this point. See further: www.humanrights.gov.au/legal/submissions_court/intervention/bella_bropho.html.

96 *Gerhardy v Brown* (1985) 159 CLR 70, per Brennan J., p135.

97 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, Human Rights and Equal Opportunity Commission, Sydney, chapter 1, pp6-7.



The need for consent is clearest in the context of the laws that make provision for the management of property owned by Aboriginal people. The RDA excludes from the 'special measures' exemption any provisions that authorise management of property without the consent of Aboriginal and Torres Strait Islander people or prevent them from terminating management by another of land owned by them.⁹⁸ To be consistent with the RDA, the measures relating to the management of land must be undertaken with the consent of the landowners.

It is clear that the measures introduced through the NT intervention have no basis in consultation or consent of affected Aboriginal communities and people. Aboriginal people have also not had an active role during the initial 6 month emergency phase of the intervention. It is also unclear at this stage the extent to which Aboriginal peoples or their representative organisations will be able to participate effectively in the development of the longer-term phase of the Government's response.

- *Do the measures have a 'sole purpose'?*

Second, the measures must have the sole purpose of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others. The Courts have interpreted this requirement to mean that while it is appropriate to consider the effect of the package as a whole when determining whether it is a 'special measure', it is still necessary for its parts to be 'appropriate and adapted' to this purpose.⁹⁹

Justice Deane explain this as follows:

What is necessary for characterization of legislative provisions as having been "taken" for a "sole purpose" is that they can be seen, in the factual context, to be really and not colourably or fancifully referable to and explicable by the sole purpose which is said to provide their character. They will not be properly so characterized unless their provisions are capable of being reasonably considered to be appropriate and adapted to achieving that purpose. Beyond that, the Court is not concerned to determine whether the provisions are the appropriate ones to achieve, or whether they will in fact achieve, the particular purpose.¹⁰⁰

The consequence of this is that if one provision of a law which purports to be a special measure can not be properly characterised as being appropriate and adapted to achieving the sole purpose of securing the 'adequate advancement' of the intended beneficiaries of the special measure, then the provision may be read down or rendered inoperative by virtue of the operation of s10 of the RDA.

This approach is necessary to ensure that the special measures provision, as an exemption to the general prohibition against racial discrimination, is applied narrowly.

This approach is supported by comments of the full Federal Court in *Vanstone v Clark*.¹⁰¹ In that case, Justice Weinberg, with whom Chief Justice Black agreed, rejected the submission that once it is accepted that a particular provision of an act

98 See ss10(3), 8(1) *Racial Discrimination Act 1975* (Cth).

99 *Gerhardy v Brown* (1985) 159 CLR 70, Mason C.J., p105, and Deane J., p149.

100 *Gerhardy v Brown* (1985) 159 CLR 70, per Deane J., p149.

101 *Vanstone v Clark* [2005] FCAFC 189, per Weinberg J., pp208-209.



is a special measure, the different elements of the provision can not be separately attacked as discriminatory. Justice Weinberg stated, that such a proposition:

involves a strained, if not perverse, reading of s8 of the RDA, and would thwart rather than promote the intention of the legislature. If the submission were correct, any provision of an ancillary nature that inflicted disadvantage upon the group protected under a 'special measure' would itself be immune from the operation of the RDA simply by reason of it being attached to that special measure.¹⁰²

In relation to the NT intervention, widespread concern has been expressed by Aboriginal communities that certain measures are not appropriate and adapted to the end of child protection. These include the compulsory acquisition of property in circumstances where negotiations for a lease have not been sought from the landowners, as well as the changes made to the permit system. This limits the ability of these measures to be legitimately characterised as special measures under the RDA.

- *Other concerns about the NT intervention and the characterisation of the legislation as a 'special measure'*

As noted earlier, there is no justification or detail provided in the Explanatory Memorandum as to how the various measures qualify as special measures by addressing the criteria as set out in *ICERD* and section 8 of the RDA.

The Explanatory Memorandum to the Northern Territory National Emergency Response Bill instead makes the very generalised assertion that:

The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security.¹⁰³

As noted earlier, the obligations in *CRoC* must be read in light of the foundational principle outlined in Article 2 of the Convention. This requires that all measures designed to meet State Party obligations must not, in themselves, discriminate on the grounds of race.

This over-arching principle is not acknowledged by the Explanatory Memorandum or in any statements by the Government.

The pressing need to put in place a range of programs and policy initiatives to better protect the rights of children does not, on its own, justify the derogation from other human rights standards.

The legislation also provides no guidance to decision-makers as to the requirements of special measures, nor does it require that decision-makers who are authorised to conduct a range of activities under the Acts exercise their discretion consistent with the purported beneficial purpose.

102 *Vanstone v Clark [2005] FCAFC 189*, per Weinberg J., pp208-209.

103 Northern Territory National Emergency Response Bill, Explanatory Memorandum, p76, available online at: http://www.austlii.edu.au/au/legis/cth/bill_em/nterb2007541/memo_0.html, accessed 22 November 2007.



- *Can the NT intervention measures legitimately characterised as special measures?*

The NT intervention measures are, on their face, discriminatory in their impact. For this to be legitimate under the RDA they must be capable of being saved as 'special measures'.

If we look at individual measures contained within the legislative package, it is possible to conceive how some of them may meet the first component of the requirement that they be capable of being defined as beneficial.

For example, the welfare quarantining provisions introduced into the *Social Security Act* have the purpose of:

- stemming the flow of cash expended upon substance abuse and gambling;
- ensuring funds that are provided for the welfare of adults and children are spent on their priority needs; and
- promoting socially responsible behaviour, particularly in relation to the care and education of children.

As the Explanatory Memorandum for the Bill states, these measures address the obligation under *CRoC* for children to benefit from social security and provide the foundation for rebuilding social and economic structures in the community.

However, even if such a purpose can be characterised as beneficial, it is still necessary to demonstrate that consultation has occurred and community consent has been sought to the introduction of restrictive measures.

This is entirely absent from the NT intervention measures.

It is also not possible to see that several measures have the 'sole purpose' required to qualify as a special measure, as they are not appropriate or adapted to the purpose of the measure – namely, the protection of children and women from violence and abuse.

As a consequence, it is not possible to support the government's contention that all of the measures contained in the NT intervention legislation can be justified as special measures. It is therefore also not possible to say that in its current form the legislation is consistent with the RDA.

These concerns emphasise the need for extensive consultation with Indigenous communities to explain these measures and the objects of the legislation. Thereafter, it is of crucial importance that, in the administration of the proposed legislation, measures are delivered in ways that respect the wishes and aspirations of the relevant communities.

It also emphasises the need for effective monitoring and review of the implementation of the measures to ensure that only those that are appropriate and adapted to the purpose of child protection are maintained.

Proposals for how to adapt the NT intervention measures so that they are consistent with the RDA and can be legitimately accepted as 'special measures' is discussed in the final part of this chapter and in the accompanying recommendations.



g) The NT intervention legislation removes entirely the protection of the Racial Discrimination Act 1975 (Cth)

Despite having deemed the legislation to be a special measure, there are further provisions in each of the NT intervention acts that entirely exclude the operation of the RDA.

For example, section 132(2) of the *Northern Territory National Emergency Response Act 2007* states that:

The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the Racial Discrimination Act 1975.

Similarly, the amendments to the *Social Security Act* state that a number of measures within the broad scheme of the legislation are excluded from its operation, including: any act done with respect to income management under Part 3(B) of the *Social Security (Administration) Act 1999* (Section 4(3)); any order made by the Queensland Commission (s 4(4)), and any prescribed program of guidelines implemented for candidacy in terms of work support programs such as work for the dole (s 6(3)).

As noted above, the government has acknowledged that one of the reasons that this blanket exemption was inserted into the legislation is to address the consequences of section 10(3) of the RDA.¹⁰⁴ Section 10(3) of the RDA makes it unlawful to manage the property of Aboriginal and Torres Strait Islander people without their consent or prevent them from terminating management by another of land owned by them. Such a measure cannot also be classified as a special measure, according to section 8(1) of the RDA.

This affects the ability of the government to legitimately enact provisions relating to some of the powers of government business managers to be placed into Aboriginal communities, as well as provisions relating to compulsory acquisition of Aboriginal land and potentially also removing aspects of the permit system.

The inclusion of this exemption to the RDA demonstrates a deliberate intent on the behalf of government to overcome the specific prohibition on measures for the management of Aboriginal land without consent being considered 'special measures' for the purposes of the RDA.

It is also evidence that the government was aware that at least some of the measures in its proposed package would not meet the standard of special measures, making the exemption clauses necessary to legitimise the legislation.

There are a number of concerns about this action of exempting the RDA.

First, as the then Opposition stated in the Senate Legal and Constitutional Committee's report on the legislation:

Observing the integrity of the Racial Discrimination Act is a basic principle for this country and a basic principle for the Indigenous community of this country.

¹⁰⁴ Department of Families, Community Services and Indigenous Affairs, Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory national emergency response*, August 2007, pp12-15, available online at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nt_emergency/report/report.pdf, accessed 30 January 2008.



Accordingly, the provisions in the bills suspending the operation of the Racial Discrimination Act should be opposed.¹⁰⁵

Second, the exemption provided to the RDA is exceptionally broad in scope. It relates to ‘the provisions of this Act, and any acts done under or for the purposes of those provisions’. This covers any exercise of discretion on any aspect of the legislation.

As noted in previous sections of this chapter, the scope of this exemption is of increased concern when coupled with other provisions which limit or disentitle Aboriginal people from accessing merits review of decision making or provide other limitations on obtaining access to justice.

Similarly, as noted in the previous section, it would be more appropriate that in the exercise of all discretion under the legislation, the authorised decision makers be required to act consistent with the purported beneficial purpose of the legislation (and special measure).

To restore an appropriate balance to the legislation, the clauses exempting the RDA (as set out in section 132(2) of the *Northern Territory National Emergency Response Act 2007* and the related provisions set out in Text Box 4 in this chapter) should be immediately repealed.

These provisions should also be replaced by a new clause requiring all acts authorised under the legislation to be undertaken consistently with the RDA. To be effective such a clause – known as a *non-obstante* clause – should be unequivocal that the provisions of the NT legislation is subject to the provisions of the RDA.

There is precedent for this level of protection. The *Social Security Legislation Amendment (Newly Arrived Residents’ Waiting Periods and Other Measures) Act 1997* (Cth) contained an equivalent section defining the interaction of the RDA with Social Security legislation. It reads:

Section 4 – Effect of the Racial Discrimination Act 1975

- (1) Without limiting the general operation of the *Racial Discrimination Act 1975* in relation to the provisions of the *Social Security Act 1991*, the provisions of the *Racial Discrimination Act 1975* are intended to prevail over the provisions of this Act.
- (2) The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975*.

The ease with which the obligations under the RDA can be set aside by the NT intervention legislation reveals the weak status of protections of racial discrimination in our legal system.

It vividly demonstrates how the Commonwealth Parliament has the power to legislate to override any provision of the RDA with very little accountability. As the High Court noted in relation to the *Native Title Act 1993* (Cth) in 1995:

105 ‘Additional comments by the Australian Labor Party’, contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p39.



If the *Native Title Act* contains provisions inconsistent with the *Racial Discrimination Act*, both acts emanate from the same legislature and must be construed so as to avoid absurdity and to give each of the provisions a scope for operation.¹⁰⁶

The failure of the Australian government to encode an entrenched protection for the principle of non-discrimination beyond the level of a Commonwealth statute has led to extensive criticism from the Committee on the Elimination of All Forms of Racial Discrimination, which monitors and administers *ICERD* at the international level. They stated in their Concluding Observations of Australia's most recent reporting session to the Committee that:

The Committee, while noting the explanations provided by the delegation, reiterates its concern about the absence of any entrenched guarantee against racial discrimination that would override the law of the Commonwealth. (Article 2). The Committee recommends to the State party that it work towards the inclusion of an entrenched guarantee against racial discrimination in its domestic law.¹⁰⁷

These criticisms are particularly pertinent given the *jus cogens* status that the prevention of race discrimination has in international law.

The Australian Government has, however, consistently rejected calls to entrench any form of constitutional rights protection, taking the position that sufficient rights protection in Australia derives from:

- a system of representative and accountable government;
- an independent judiciary, a fair and accessible justice system and the common law;
- specific human rights legislation and a national human rights institution;
- State and Territory anti-discrimination and equal opportunity commissions; and
- an array of programs and initiatives at national, State and Territory levels directed at enhancing the enjoyment of human rights.¹⁰⁸

h) Specific human rights concerns relating to income management

There are a range of individual measures contained in the NT intervention legislation that raise other human rights concerns. One such measure is the income management regime. As with other provisions of the legislation, many of the concerns relate to the actual process chosen for achieving the aim of the legislation rather than the actual measure itself.

The *Social Security and other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) provides for the quarantining and control of welfare income available to Indigenous peoples in prescribed Northern Territory Communities for a period of 12 months, with the possible extension of this for up to five years. It also puts

106 *Western Australia v Commonwealth* (1995) 183 CLR 373, Mason C.J., Brennan, Deane, Toohey, Gaudron and McHugh J.J., pp483-484.

107 Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding observations of the Committee on Australia CERD/C/AUS/CO/14, March 2005; Committee on the Elimination of Racial Discrimination, Sixty-sixth session, 21 February – 11 March 2005.

108 Australian Government, *Australia's National Framework for Human Rights*, Attorney General's Department, Canberra, December 2004, p69.



in place the legislative framework for delegated legislation to be enacted to set up an administrative body called the Queensland Commission to regulate income management in Cape York.

The government states that the measures in the legislation relating to child protection and school attendance could take effect for both Indigenous and non-Indigenous people Australia-wide by 2009.¹⁰⁹

According to the new provisions in the *Social Security Act*, the purpose of the legislation is to:

- (1) stem the flow of cash expended upon substance abuse and gambling;
- (2) ensure funds that are provided for the welfare of adults and children are spent on their priority needs; and
- (3) promote socially responsible behaviour, particularly in relation to the care and education of children.

As has been noted previously, the *CROC* provides that children are entitled to *benefit* from welfare, so measures that are designed to achieve this can be seen to address a legitimate human rights concern.

- *How is the income management regime applied in the legislation?*

The legislation introduces an income management regime into the *Social Security Administration Act* (Part 3B Division 1, Item 17).

The income management regime applies to almost every form of welfare payment. It amends existing legislation including:

- *A New Tax System (Family Assistance) (Administration) Act 1999*;
- *Social Security Act 1991*;
- *Social Security (Administration) Act 1999*;
- *Veteran's Entitlements Act 1986*;
- *A New Tax System (Family Assistance) Act 1999*; and
- *Income Tax Assessment Act 1936*.

Under the legislation, a person may become subject to the income management regime because:

- A person lives in a declared relevant area (prescribed community) in the NT (s123UB). Income management involves quarantining 50% of all income support and family assistance payments.
- A state/territory child protection officer recommends to Centrelink that a person should be subject the income management because their child is considered to be at risk of neglect or abuse (s123UC). These measures are intended to apply nationally. In most cases, the principal carer will have 100% of their welfare payments income managed until such time as the risk to the child ceases (s 123XI and 123 XJ).

109 Brough, M., (Minister for Families, Community Services and Indigenous Affairs), 'Second reading speech: Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007', *Hansard*, House of Representatives, 7 August 2007, p6.



- A person, or the person's partner, has a child who does not meet school enrolment and attendance requirements (s123UD and s123UE). The trigger can be identified by either Centrelink or the State Education Authority. These measures will apply nationally starting in 2009. Income management will result in the principal carer having 50% of their income support and 100% of their family assistance payment quarantined for an initial period of 12 months. The principal carer will also have mandatory deductions from their welfare payments to cover the cost of their children's breakfast and lunch at school (Division 6).
- A person who is subject to the jurisdiction of the Queensland Commission, is recommended by the Commission for income management (s123UF).¹¹⁰ It is expected that a person would be recommended for income management because the Commission found their child to be at risk of abuse or neglect, or because their child was not enrolled or not meeting school attendance requirements.

A person who is subject to the income management provisions will have an income management account created for them. Amounts will be deducted from the person's welfare payments and credited to the person's income management account. A person subject to the income management regime can then be given a store value card capable of storing monetary value in a form other than cash, to purchase essential items at particular designated shops (s123YC).

Amounts quarantined from a person's income can be spent on 'priority needs' including food, beverages, clothing, basic household items, housing, household utilities, health, childcare and development, education and training and other specified items by legislative instrument (Section 123TH).

The measures will apply for a period of 12 months, upon which time they are able to be renewed by a legislative instrument at the discretion of the Minister.

The Minister has discretion to exempt people from income management in any circumstances that the Minister sees fit.

Income management can also apply to people who enter a prescribed area in the NT for any period of time, or if their partner enters for any prescribed period of time.

The category of people in the NT subject to income management can be expanded because the Minister may declare that a relevant Northern Territory area is a 'prescribed area' and will be subject to the Act (Section 123TE). This declaration can last for up to one year.

In couples where both parents receive income support, both parents' income support and family payments will be subject to income management. In couples where one parent receives a family income payment, the entire family income support could be subject to management (Section 123).

Other adults with at least a 14% or larger share of responsibility for care of a child may be subject to income management. However, Centrelink has the discretion to

110 It is expected that the jurisdiction of the QLD Commission will only cover the four Aboriginal communities in Cape York which have agreed to participate in the Cape York Welfare Reform Trials: Hope Vale, Aurukun, Mossman Gorge and Coen.



exclude parents on a case-by-case basis from income management where parents are only responsible for 14-34% care of children (Section 123UH).

Income management with respect to the carers of children who are identified by child protection authorities as 'at risk' will apply for as long as State Child Protection Authorities deem it necessary.

- *Is the income management regime consistent with the right to social security?*

The income management regime introduced by the NT intervention legislation raises many complex human rights issues. Chief among these is the right to social security as set out in Article 9 of *ICESCR*, as well as Article 5 of *ICERD*, Article 26 of *CROC* and Articles 11(1)(e) and 14(2)(c) of *CEDAW*.

Text Box 9 outlines the content of this right, as set out by the Committee on Economic, Social and Cultural Rights.¹¹¹

Text Box 9: Content of the right to social security

The right to social security covers the right to access benefits, through a system of social security, in order to secure adequate (i) income security in times of economic or social distress; (ii) access to health care and (iii) family support, particularly for children and adult dependents. It should be broadly – rather than narrowly – defined.

The right to social security contains both freedoms and entitlements. The freedoms include the right to be free from arbitrary and unreasonable interference with existing social security coverage, whether obtained publicly or privately. Furthermore, it includes the right to a system of social security that provides equality of opportunity for people to enjoy adequate protection from risks, by providing at least income security and access to health care and family benefits.

Key elements of the right to social security

Availability

(i) The right to social security implies that a system, whether composed of a single or variety of schemes, is available and in place to ensure that benefits can be accessed for the relevant categories of social security.

(ii) Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone can realize their rights to family protection, an adequate standard of living and access to health care as contained in Articles 10, 11 and 12 of the Covenant. In addition, State parties should be guided by the principle of human dignity, contained in the preamble, and the right to non-discrimination, which may influence the levels of benefits and the form in which they are provided.

Accessibility

(i) *Physical Accessibility – Coverage.* All persons should be covered by the social security system, including the most disadvantaged or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

¹¹¹ This is based on information contained in General Comment 20 on implementation of *ICESCR* by the United Nations Committee on Economic, Social and Cultural Rights: UN Doc: E/C. 12/GC/20/CRP. 1, available online at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>, accessed 7 January 2008.



(ii) *Economic Accessibility – Affordability.* If a social security scheme requires contributions by employees or other beneficiaries, then contributions should be defined in advance. The direct and indirect costs and charges associated with making contributions must be affordable, and must not compromise or threaten the realization of other Covenant rights.

(iii) *Information Accessibility and Participation.* Beneficiaries of social security schemes must be able to participate in the administration of the system and it must provide for a right of appeal. The system should be established under national law and permit the individuals and organizations the right to seek, receive and impart information concerning social security issues.

General issues

The obligation of States parties to guarantee that the right to social security is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus prohibits any discrimination on the grounds of race or other grounds which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.

Whereas the right to social security applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right.

Eligibility conditions for unemployment benefits must be reasonable and proportionate and the benefit must not be provided in a form that is onerous or undignified. The withdrawal, reduction or suspension of benefits should be circumscribed, must be based on grounds that are reasonable and proportionate, and be provided for in national law.

Benefits for families are crucial for realizing the rights of children and adult dependents to protection under Article 10 of the Covenant. The Convention on the Rights of the Child provides that “The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.” Family benefits should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, where appropriate.

States parties should take particular care that indigenous peoples and racial, ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions.

Legal Obligations relating to the right to social security

General legal obligations

States parties have immediate obligations in relation to the right to social security, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12.



There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources. The Committee will look carefully at whether (1) alternatives were comprehensively examined; (2) there was genuine participation of affected groups in examining proposed measures and alternatives that threaten their existing human right to social security protections; (3) the measures were directly or indirectly discriminatory; (4) the measures will have a sustained impact on the realization of the right to social security; (5) the individual is deprived of access to the minimum essential level of social security unless all maximum available resources have been used, including domestic and international; (6) review procedures at the national level have examined the reforms.

Specific legal obligations

The right to social security, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfil.

(a) Obligations to respect

The obligation to **respect** requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security, including refraining from engaging in any practice or activity that denies or limits equal access to adequate social security; arbitrarily interfering with self-help or customary or traditional arrangements for social security; or interfering with institutions that have been established by individuals or corporate bodies to provide social security.

(b) Obligations to protect

The obligation to **protect** requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to social security. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to social security schemes operated by third parties or others, imposing conditions or providing benefits that are not consistent with the national social security system; or arbitrarily interfering with self-help or customary or traditional arrangements for social security.

(c) Obligations to fulfil

The obligation to **fulfil** requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of the right to social security. The obligation to fulfil can be disaggregated into the obligations to facilitate, promote and provide.



The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national social security strategy and plan of action to realize this right; ensuring that the social security system will be adequate, accessible for everyone and covers risks and contingencies, namely income security, access to health care and family support.

States parties are also *obliged to fulfil (provide)* the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves within the existing social security system with the means at their disposal. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education and awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities.

Core obligations

States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to social security can be identified, which are of immediate effect:

- (a) To ensure access to the minimum essential level of social security that is essential for acquiring water and sanitation, foodstuffs, essential primary health care and basic shelter and housing, and the most basic forms of education.
- (b) To ensure the right of access to social security systems on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- (c) To adopt and implement a national social security strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include information on the right to social security indicators and benchmarks, by which progress can be closely monitored.
- (d) To monitor the extent of the realization, or the non-realization, of the right to social security;
- (e) To adopt social assistance or other programmes that protect disadvantaged and marginalized individuals and groups;

Implementing the right to social security

States parties are required to utilize "all appropriate means, including particularly the adoption of legislative measures". Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to social security, as soon as possible. Furthermore, any national measures designed to realize the right to social security should not interfere with the enjoyment of other human rights.

Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to social security, and should be repealed, amended or changed if inconsistent with Covenant requirements.



The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to social security. The strategy should: (a) be based upon human rights law and principles; (b) cover all aspects of the right to social security and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators.

The formulation and implementation of national social security strategies and plans of action should respect, *inter alia*, the principles of non-discrimination, gender equality and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security must be an integral part of any policy, programme or strategy concerning social security.

The national social security strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to social security.

Any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of violations of the right to social security should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudspersons, human rights commissions, and similar institutions should be permitted to address violations of the right.

These key features can be summarised as follows:

- the right is to be enjoyed without discrimination, including on the basis of race;
- access must be assured on a non-discriminatory basis to the minimum essential level of social security that is required for acquiring water and sanitation, foodstuffs, essential primary health care and basic shelter and housing, and the most basic forms of education;
- benefits should be provided in cash or in kind – determining the form that benefits take should be guided by the principle of human dignity and the right to non-discrimination;
- any national measures designed to realize the right to social security should not interfere with the enjoyment of other human rights;
- beneficiaries of social security schemes must be able to participate in the administration of the system and it must provide for a right of appeal;
- eligibility conditions for unemployment benefits must be reasonable and proportionate and the benefit must not be provided in a form that is onerous or undignified;
- the right to social security should ordinarily include provision for benefits for families and cover food, clothing and housing, where appropriate;
- governments are obliged to take steps to ensure that there is appropriate education and awareness concerning access to social security schemes, particularly among minorities and disadvantaged groups;



- all legislation and processes should be reviewed to ensure that they are compatible with obligations arising from the right to social security, and should be repealed, amended or changed if inconsistent with Covenant requirements;
- each government has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances, but has a duty to take whatever steps are necessary to ensure that everyone enjoys the right to social security, as soon as possible;
- the formulation and implementation of national social security strategies and plans of action should respect, inter alia, the principles of non-discrimination, gender equality and people's participation;
- the right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security must be an integral part of any policy, programme or strategy concerning social security; and
- access to effective judicial or other appropriate remedies at both national and international levels should be guaranteed, including with national ombudspersons, human rights commissions, and similar institutions being permitted to address violations of the right.

What these provisions reveal is a set of criteria for determining the appropriateness of adopting any particular approach to the delivery of social security entitlements.

The Explanatory Memorandum and related explanatory materials on the NT intervention measures, however, contain limited information on how such criteria are met.

The income management measures raise the following concerns relating to compatibility with the right to social security:

- The blanket application of the income management regime in the 73 prescribed communities in the NT means that the measures are applied to individuals that are not responsible for the care of children, do not gamble, and do not abuse alcohol or other substances. The criteria for being subject to the income management provisions is therefore solely on the basis of the race of the welfare recipient instead of being on the basis of need.
- The scheme is also established so that it is difficult for individuals to be exempted from the income management provisions. For this to occur requires a decision by the Minister. It would be more appropriate for the decision making about the applicability of the scheme to be inverted, so that for the scheme to operate in relation to a particular individual it would require a decision that the scheme should be applied based on clearly defined criteria.
- This also means that the method for delivery of welfare provisions is extremely costly, with significantly increased bureaucratic involvement and costs. It is questionable that this is the most appropriate approach for delivering welfare. The government would, in my view, obtain better outcomes at a more reasonable cost by focusing its efforts on meeting



its duty to take steps to ensure that there is appropriate education and awareness about social security issues in Indigenous communities.

- As the income management measures are so broadly applied, there is a tenuous connection between the operation of the scheme and the object of addressing family violence and abuse. When coupled with the lack of participation and consultation with Indigenous communities, this renders it very difficult to support the view that these measures are appropriately characterised as a special measure.
- If the measures were targeted solely to parents or families in need of assistance to prevent neglect or abuse of children, as they are in s123UC of the legislation, then some form of income management may be capable of being seen as an appropriate exercise of the governments 'margin of discretion' to ensure that families benefit from welfare and receive the minimum essentials for survival.
- It is difficult, however, to see how the quarantining of 100% of welfare entitlements can be characterised as an adapted and appropriate response, given the impact that benefits are being provided in a form that is onerous and potentially undignified.
- As discussed earlier, the limitations on reviewing decision making in relation to the income management regime, and especially the denial of external merits review processes, significantly undermines the ability to characterise the income management regime as an adapted and appropriate response. This is a clear denial of justice, is discriminatory in its impact and does not meet the requirement for the provision of effective judicial or other appropriate remedies that is integral to the right to social security. The absence of access to complaints processes such as under the RDA also breaches the right to social security.

It is arguable that some forms of income management could be undertaken consistent with the right to social security. For example, it is likely that the model proposed by the Cape York Institute in its report *From a hand out to a hand up* contains the appropriate procedural guarantees and participatory requirements to enable those proposed measures to potentially be characterised as a special measure and as consistent with the right to social security.

Notably, however, some of those procedural guarantees – such as access to merits review and to access Queensland discrimination laws – are removed in the provisions that are contained in the social security amendments in the NT intervention legislation and so it is not clear that the Queensland Commission that has been authorised actually complies.

Consistent with the right to social security, the provisions on income management in the NT intervention legislation should be reviewed and amended to ensure that these provisions are compatible with obligations arising from the right to social security.

Such a review should ensure that the right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security are made an integral part of the NT intervention process into the future.



Ultimately, the objective of income management is to ensure that money is being spent in a responsible way on family needs, with the overarching goal of ensuring children's needs are met. However, the irony of the system being implemented by the government's legislation is that it fosters a passive system of policy development and service delivery while at the same time criticising Indigenous peoples for being passive recipients of government services.

Controlling how a person spends their money is a drastic interference into the way a person manages his or her life and family, and human rights require a proportionate response to a problem. In the context of the NT legislation, this means that governments are obliged to consider less intrusive or voluntary option as a first response before moving to options as broad-reaching as compulsory income management.

There is evidence in a number of cases that alternative programs have been trialled in Aboriginal communities to assist in the management of income, often with substantial success. For example, Tangentyere Council (near Alice Springs) supports over 800 Aboriginal people to use Centrepay to pay bills and rent. Under this *voluntary* scheme, Centrepay provides part of people's welfare payment in the form of food vouchers.¹¹² This has become a successful scheme and allows participants to exercise choice and control over their money.

In contrast, implementation of a system that divests Aboriginal people of any power to make choices to govern their own financial affairs is severely out of step with principles of both self-determination, and self-responsibility.

- *Protecting the right to privacy*

International law provides that every person's right to privacy should be protected by law to ensure there is no arbitrary interference or unlawful interference.¹¹³

However, section 123 of the *Social Security Act* provides that in order to determine which individuals will be subject to income management, there will be a significant collection, use and disclosure of personal information occurring across Australia between: schools (both public and private); state and territory education authorities; child welfare agencies; and businesses that will act as 'triggers' or agents for income management in various circumstances.¹¹⁴ This may include sensitive information, such as child protection matters.

It is concerning that the ways in which personal information will be shared between government agencies such as State Child Protection Authorities, Centrelink, State Education Authorities FaCSIA and private sector agents has not been made explicit in the legislation.

Further, it is important to note that the Privacy Regulation Principles embodied in section 14 of the *Privacy Act 1988* (Cth) do not regulate the Northern Territory, State Government agencies, and most small businesses or individuals. This means that some of the handling of personal information that would occur under the

112 Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, 10 July 2007, p16, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007.

113 *International Covenant on Civil and Political Rights*, Article 17.

114 For example, community stores where food vouchers will be required to be used.



provisions in the various Acts would not be subject to the safeguards against misuse of information embodied in the *Privacy Act*, but only to State privacy regulations, which are not uniform.¹¹⁵

The NT intervention legislation must be amended to ensure that adequate protections are provided to protect the privacy of individuals in the handling of personal information.

- *The right to education*

A further objective of income management is to provide an incentive for Aboriginal families to ensure that their children attend school. However, the income management scheme as set forth in the NT intervention legislation presupposes that children in the Northern Territory could access ordinary educational opportunities if they so wished.

Research into the socio-economic conditions of many Aboriginal communities strongly indicates that this is not the case.

It is difficult to assess the exact numbers of students without access to primary and secondary education in the Northern Territory. There is no reliable public data about Indigenous school participation rates mapped against ABS population data. However, the Northern Territory's Minister for Education, Mr Paul Henderson, has conceded that the number of school-aged children without access to primary and secondary education is 'significant'.¹¹⁶

The Combined Aboriginal Organisations of the NT report a severe shortage of educational services, for example:

- In Wadeye there are not enough class rooms or teachers if all the students do attend school;
- 94% of Indigenous communities in NT have no preschool;
- 56% have no secondary school; and
- 27% have a local primary school that is more that 50kms away.¹¹⁷

In spite of these shortcomings, a number of innovative educational programs in the Northern Territory were in place prior to the intervention to encouraging student attendance and participation. For example, the Clontarf program in Alice Springs has increased attendance rates to 92% by using sport and motivational techniques to motivate students to stay at school. Other success stories include Cherbourg in Queensland, as well as Yirkala, Yipirinya and Barunga in the NT.¹¹⁸

115 The Australian Law Reform Commission has recently published a discussion paper recommending an overhaul of privacy legislation in Australia that would remove this non-uniformity: Australian Law Reform Commission, *Review of Australian Privacy Law*, Discussion Paper 72, 2007.

116 Minister Paul Henderson, *Claims many NT Indigenous kids get no mainstream schooling*, ABC The World Today, 21 March 2007, available online at: <http://www.abc.net.au/worldtoday/content/2007/s1877912.htm>, accessed 2 November 2007.

117 Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, 10 July 2007, p18, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007.

118 Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, 10 July 2007, p18, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007.



An emphasis on providing children with incentives to learn and developing methods of teaching that resonate with Indigenous students is preferable to measures that penalise parents. Along with extensive Federal and Northern Territory government financial commitments to improve the quality and availability of education, such measures should be extensively trialled before options as punitive as income management of 100% of welfare entitlement recipients are utilised.

i) Specific human rights concerns relating to the abolition of the CDEP scheme

As well as introducing income quarantining, the *Social Security and other Legislation Amendment (Welfare Payment Reform) Act 2007*(Cth) abolishes the Federal government's Community Development Employment Projects (CDEP) scheme in the Northern Territory.

According to official figures, this component of the Government's legislative package is likely to affect around 7,500 people across the Northern Territory.¹¹⁹

Because CDEP participants receive a wage (rather than a welfare payment) they are treated as employees. Abolishing CDEP and requiring people to register for Newstart, undertake training, or carry out work for the dole will mean that they will be treated as 'unemployed' and can therefore be subject to income management.

It should therefore be clearly recognised from the outset that irrespective of the benefits or disadvantages of dismantling the CDEP scheme, the purpose of doing so was to enable the Government to introduce a comprehensive process for the quarantining of welfare and income management.

CDEP was created under the Fraser government in 1977 as a form of community engagement in the job creation market. Essentially, the CDEP scheme is predicated upon the use of block grants (that total the equivalent of the unemployment benefits that would otherwise be available to Aboriginal people within certain communities) being made available to community controlled organisations. These organisations then have the capacity to manage their own projects and finances in line with the aspirations and skills of the community in which they operate.

The number of participants in CDEP schemes is capped with the number of available places consistently less than demand. This means that not all unemployed people in any given community were on CDEP.

Some of the many benefits attributed to the variety of programs that exist under the rubric of CDEP include community development, employment creation, income support, and the promotion of enterprise assistance. However, as was noted in the *Social Justice Report 2006*, CDEP has had variable results.¹²⁰

The legislative package abolishing CDEP also removes 'remote area exemptions' from Newstart Allowance activity requirements so that recipients must engage with a Job Network and other mainstream services, and either train or seek employment.

119 Altman, J., 'Neo-Paternalism and the Destruction of CDEP', *Arena Magazine*, 90, August – September 2007, p33.

120 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2006*, HREOC, Sydney 2006, p39.



According to Schedule 3 of the Social Security Act:

- The CDEP will gradually be abolished in the Northern Territory from September 2007. CDEP participants will become unemployed, and therefore subject to the income management regime. They will have to apply to Centrelink for income support payments (Newstart) and fulfil the normal participation requirements, such as looking for work, training or participating in Work for the Dole (Schedule 3).
- CDEP will progressively be replaced, community by community, by other services, including 'training', 'real jobs' or 'work for the dole' (Schedule 3).
- The measures in the legislation set up a CDEP transition payment, to ensure that CDEP participants' welfare payments are not less than they were earning as CDEP participants. This transition payment will end on 1 July 2008 (Section 1061ZAAR).

The Government has also stated that dismantling the CDEP scheme will promote interaction with the ordinary labour market, in a move to shift Indigenous people into the 'real economy'.

However, current research and statements by government ministers themselves reveal that the policy of dismantling CDEP is actually likely to result in increased unemployment. Currently, there are approximately 7,500 people in the NT on CDEP. The ideal situation would be that those 7,500 people would be transitioned through Newstart to jobs in the open workplace. However, the government expects that only about 2,000 CDEP participants will obtain 'real work'.¹²¹

It follows that the remaining 5,500 people are not expected to find sustainable employment and will remain on Work for the Dole.¹²² Further, it is estimated that the Indigenous unemployment rate in the NT will rise from its current level of 15.7% to over 50%.¹²³

The reason that relatively few CDEP participants are expected to find 'real jobs' is due to the fact that the overwhelming majority (90%) live in prescribed communities in remote areas of the NT.¹²⁴ These are small communities, in remote or very remote areas with a limited economic base. Most struggle to maintain a viable commercial economy.

According to the National Aboriginal and Torres Strait Islander Social Survey of 2002, 28.9% of people in remote Aboriginal communities in the Northern Territory are on CDEP, with over 50% on government pensions and allowances.¹²⁵

121 Brough, M., (Minister for Families, Community Services and Indigenous Affairs) and Hockey, J., (Minister for Employment and Workplace Relations), *Jobs and Training for Indigenous People in the NT*, Joint Media Release, 23 July 2007.

122 Altman, J., 'Neo-Paternalism and the Destruction of CDEP', *Arena Magazine*, No.90, August – September 2007, p33.

123 Altman, J., 'Neo-Paternalism and the Destruction of CDEP', *Arena Magazine*, No.90, August – September 2007, p34.

124 Australian Government, *CDEP in the Northern Territory Emergency Response: Question and Answers*, in Brough, M., (Minister for Families, Community Services and Indigenous Affairs) and Hockey, J., (Minister for Employment and Workplace Relations), *Jobs and Training for Indigenous People in the NT*, Joint Media Release, 23 July 2007.

125 Australian Bureau of Statistics, National Aboriginal and Torres Strait Islander Social Survey, Table 18.



An audit of employment opportunities for Indigenous people in 52 remote communities in the Northern Territory was undertaken by the Local Government Association of the Northern Territory (LGANT) in 2006.¹²⁶ Overall findings from the audit identified that there were only 2,955 'real jobs' across the 52 communities. According to the Audit Report, these positions were allocated across a reported population of 37,070 persons of which 2,722 were non-Indigenous.

Following the Minister's announcement that CDEP would be abolished in the NT, the Local Government Association of the Northern Territory (LGANT) commented that:

Remote Councils are already contacting LGANT with comments like 'CDEP is the backbone of our community and the ramifications to Indigenous business enterprises could be disastrous'. Some of our members are saying that this decision could well mean the beginning of the end for many remote communities. Most people currently employed by CDEP will not get a permanent job and will have their income reduced by 18 percent. On top of this, community stores without the benefit of CDEP labour will need to increase prices.¹²⁷

There is also concern that following the abolition of CDEP, people's income will be significantly reduced. This could occur for a number of reasons.

First, the vast majority (85-90%) of CDEP participants work more than the minimum 15 hours per week and earn on average about 60% more than the income of an unemployed person.¹²⁸ Secondly, once they become unemployed, if they do not fulfil the normal participation requirements, such as looking for work, training or participating in work for the dole programs, they will be 'breached' and have their social security payments frozen. In both cases this decline in income could have serious consequences for the ability of parents or carers to provide for their families.

It is worthwhile to note that the Social Security legislation does attempt to provide for the move from the CDEP scheme into the 'mainstream' employment market by its provision of a 'CDEP transition payment'. According to the legislation, the purpose of the payment is to ensure that general standards of living do not drop by meeting any shortfall in welfare payments that Indigenous people would otherwise receive had they been participating in the CDEP scheme.

This payment is only designed to be provided until 30 June 2008. After that time, former CDEP participants will be expected to have found employment, or else they will remain on regular levels of income support. It seems unlikely that this is a sufficient time period to expect local economies to have adapted to cope with the additional numbers of individuals seeking employment.

The abolition of CDEP raises a range of human rights concerns.

126 Local Government Association of the Northern Territory, *Audit of Employment Opportunities in Indigenous Communities in the NT*, 2006, available online at: http://www.workplace.gov.au/NR/rdoonlyres/8ECC6349-A689-4685-A954-663A3E29D977/0/nt_FINALREPORT.pdf, accessed 2 November 2007.

127 Local Government Association of the NT, 'Local Government Association calls for re-think on CDEP changes', Media Release, 24 July 2007, available online at: http://www.lgant.nt.gov.au/home/about_lgant/news_events/media_releases/local_government_association_calls_for_re_think_on_cdep_changes?PHPSESSID=48a46a425dfc9f25a944e0a02e044084, accessed 2 November, 2007.

128 Altman, J., 'Neo-Paternalism and the Destruction of CDEP', *Arena Magazine*, No.90, August – September 2007, p34.



It affects the right of Indigenous people to an adequate standard of living. This can primarily be tied to an acceptable level of income as well as unemployment. It is well known that unemployment can create additional family pressures and general social unrest in a community, especially when the effects of long-term unemployment such as depression and a sense of hopelessness are evident. It is therefore possible that increased unemployment in communities will increase, rather than decrease, the risk of family violence.

As well as CDEP programs providing employment, many communities rely on CDEP organisations to provide essential services. Some services currently provided by CDEP organisations are critical to improving law and order or the health of the community, such as night patrols, nutritional programs, garbage collection and sanitation programs. To the best of the available information, no new funds have been diverted to infrastructure and capacity building in the communities which will eventually find their primary service providers phased out as a result of the loss of CDEP.

The removal of CDEP and lack of alternative employment options in Indigenous communities could lead to some people deciding to move into urban areas such as Darwin, Katherine and Alice Springs. This would exacerbate the current pressures in those areas in relation to available and appropriate housing and other essential services, all of which would also suffer unless significant funds are diverted into improving the basic infrastructure and utilities of those locations.

The flexibility of the CDEP scheme has allowed Indigenous people considerable choice in deciding when and for how long they work each week. This in turn has allowed people to undertake a range of cultural activities such as participation in ceremonies, fishing and hunting, as well as art. It is credited with facilitating the sustainability of a flourishing Indigenous art industry in the NT. It is estimated that most of the 5,000 Indigenous artists in the NT, as well as 400 community-based rangers in the Top End, are all CDEP participants.¹²⁹

This flexibility and opportunity to structure employment around cultural pursuits is not characteristic of mainstream employment opportunities. There is concern that these cultural responsibilities and the associated economic independence they have brought will be significantly curtailed by the abolition of the CDEP program.

The government has said that the abolition of the CDEP program is part of its 'normalisation' policy.¹³⁰ This policy encourages Indigenous people to leave remote communities and settle in 'emerging towns' where services such as housing, schools and healthcare can be provided more cheaply. However, the 'urban drift' which is likely to occur as Indigenous people find that they are unable to access employment on their traditional country will adversely impact on their ability to fully enjoy their cultural rights and fulfil the associated responsibilities.

129 Altman, J., 'Neo-Paternalism and the Destruction of CDEP', *Arena Magazine*, No.90, August – September 2007, p35.

130 Brough, M., (Minister for Families, Community Services and Indigenous Affairs) and Hockey, J., (Minister for Employment and Workplace Relations), *Jobs and Training for Indigenous People in the NT*, Joint Media Release, 23 July 2007.



The CDEP or a similar scheme should be available in communities to provide purposeful work on useful community projects for people who otherwise lack it.

While problems may exist within certain individual CDEP organisations, given the enormous success of others in stimulating both employment and cultural opportunities within communities, it is clear that the dismantling of the entire CDEP program is throwing the baby out with the bathwater.

It is highly questionable that every community will be able to generate the 'long-term prospects for economic independence' that the government intends. Therefore, any reform of CDEP programs must be done on a case-by-case basis, after consultation with the specific communities that it will affect, and in line with their aspirations.

I note the importance and desirability of supporting people to progress towards mainstream employment where such employment is available, and believe that substantial training and mainstream work experience components should be built into CDEP programs where such projects would be appropriate. Those who already have the skills to operate local community service programs should be employed through mainstream funding arrangements rather than CDEP. Further, any new funding arrangements for employment services operating in the communities should acknowledge the benefits of local community control and involvement, the 'distance from employment' of many of their clients, and their need for ongoing support (including mentoring) to sustain jobs once they obtain them.

Nevertheless, any reform of the CDEP scheme should be done with recognition of the fact that CDEP programs provide more than simply an alternative model of employment for Aboriginal people. In particular, the development of a stable paid workforce within the communities should be supported through:

- adequate and sustained funding of services including both traditional infrastructure and services and management of traditional lands;
- employment of local Aboriginal people to improve housing in the communities;
- support for local business and employment development initiatives;
- obligations and support for mainstream employers such as mining companies to employ local Aboriginal people rather than 'fly in-fly out' arrangements; and
- by assisting community members to live in areas where jobs exist but return regularly to their communities.

Fundamentally, any policy changes being made to CDEP must come with a concomitant commitment to government accountability to monitor how any proposed shifts will proceed and who they will affect.

It is highly undesirable for Aboriginal people in regional and remote communities to be placed in a position where they are unable to access the labour market, and also do not have the support of a program such as CDEP. This concern becomes manifest when it is considered that there seems to be little evidence that the mainstream job and unemployment markets are adequately equipped to cope with the specific needs and numbers of Indigenous people that will be moving into their systems.



If the government is to continue their program to move people into the 'mainstream' economy, it is desirable that they put in place monitoring and review processes that demonstrate whether over time such arrangements are having a negative or a positive impact on Indigenous people's employability and job retention rates.

Such consistent monitoring should also be applied to the provision of the sorts of services which in the past have been provided by CDEP programs. In past statements, the government has said that critical services in communities will continue to be provided by CDEP until other arrangements are in place.

However, in light of the Northern Territory and Federal governments' poor record of providing and maintaining services such as schools, roads and health services, it is desirable that there be an immediate plan detailing how such infrastructure and services will be rolled out in communities over time. Any such plan should include both immediate and long term commitments to funding, and should include inbuilt monitoring and review processes assessing the viability of any new programs over time.

j) The introduction of alcohol bans in prescribed communities

The *Northern Territory National Emergency Response Act 2007* (Cth) makes it illegal to bring; possess; or consume alcohol in a 'prescribed area' (s 12(2)). It also makes it illegal to supply; transport with intent to supply; or possess with intent to supply alcohol to another person in a 'prescribed area' (s 12(4)).

When the legislation refers to 'prescribed areas', it identifies the 73 Aboriginal communities identified as the subject of the NTNER measures generally. Of these communities, the legislation acknowledges that they are primarily townships on Aboriginal land, Aboriginal 'Community Living Areas' excised from pastoral leases and Aboriginal 'town camps' (s 4).

In spite of the broad applicability of these measures, the legislation also contains a number of exemptions in certain situations:

- There is an exemption for recreational boaters and commercial fishers while in a boat on waters in a 'prescribed area' (ss 12(3), 12(5)).
- There is an exemption for 'recreational activities' organised by tour operators in prescribed areas, as long as alcohol is consumed in a responsible manner (ss 12(3A) – (3C), 12(5A)-(5C)), and as long as the area is subject to a Ministerial declaration that such an exemption can apply (s12(8A)).
- Alcohol may still be available in 'prescribed areas' where there is an existing license or permit (ss 13, 14). The effect of this provision may be that the bans might not be applied to licensed roadhouses or venues, but only be enforced against outlets providing takeaway alcohol for consumption on traditional lands. The existing licenses or permits may, however, be overturned by the Commonwealth Minister or limited (ss 13(4), 13(5), 14(3)).
- The Commonwealth Minister has the power to declare that alcohol restrictions in all or part of a prescribed area shall no longer have effect, if he or she is satisfied that there is no need to keep the measures in place (s19(1)).



In order that the sale and consumption of alcohol can be monitored, Part 2 of the Act declares that people selling take-away alcohol in the Northern Territory must require the purchaser to produce proof of identity; record the name and address of the purchaser; and record the place where the purchaser proposes to consume the alcohol (s 20). This applies if the transaction involves a purchase price of \$100 or more; or more than 5 litres of wine in a single container; or 2 or more containers of wine of at least 2 litres (see Division 3A of Part 2).

In addition to the alcohol bans, in mid-2007 the Minister for Health also removed the existing licensing approvals for the importation of kava (which has used by many Indigenous communities in the East Arnhem land region predominately as an alternative to alcohol). This negates the strict usage regime that exists under the *Kava Management Act 1998* (NT) and will have a flow on impact to alcohol usage in this region.

The introduction of bans on alcohol in Indigenous communities through the NT intervention has received a lot of public notice. It has been criticised for a range of practical reasons, including the ineffectiveness and burden of the system for registering all alcohol purchases, as well as the clearly racially based nature of the scheme (exemplified by the introduction of exemptions for tourists and by boaters on waters).¹³¹

The reality of the approach adopted by the federal government is, however, that it is misconceived and has threatened undoing more than two decades of achievements in Territory communities in dealing with alcohol.

As Maggie Brady, an internationally renowned researcher on the impacts of alcohol in Indigenous communities, explains:

A fair amount of grandstanding accompanied Minister Mal Brough's announcement of the bans on alcohol on Aboriginal land, as if to suggest that all were thoroughly soaked in grog, or that they allowed easy access to alcohol.

This is a little strange considering that most Aboriginal land in the Territory was already dry. There were already 107 general restricted areas, all on Aboriginal land, and all in non urban areas (except for one town camp in Alice Springs). Only 15 of these 107 allow for liquor in any shape or form. Some of the 15 have permits allowing consumption at home, or for sale away from the premises; some have clubs or canteens with on-premises sales only, while others have both on and off-premises sales. Of the 'new' bans imposed by the Minister, the only genuinely new regulation is that which imposes an alcohol free status on the 'town camps' (living areas within town boundaries such as Alice Springs and Tennant Creek); there has been resistance to this from the relevant representative bodies.¹³²

131 Maggie Brady notes the extraordinary nature of the exemptions in the NT intervention measures for recreational and commercial fishers and those on boats on waters near prescribed communities. She argues that these exemptions contradict the National Alcohol guidelines prepared by the National Health and Medical Research Council which explicitly state that alcohol should not be consumed 'before or during activities involving a degree of skill or risk, such as... water sports': Brady, M., 'Alcohol regulation and the emergency intervention: Not exactly best practice', *Dialogue*, Vol.26, No.3, Academy of the Social Sciences Canberra 2007, p61.

132 Brady, M., 'Alcohol regulation and the emergency intervention: Not exactly best practice', *Dialogue*, Vol.26, No.3, Academy of the Social Sciences Canberra 2007, p60.



Prior to the intervention, alcohol has been managed through a system of permits. This is discussed in the case study of the Umbakumba community alcohol management plan in Chapter 2 of this report.

Communities with permits have controlled individual access to alcohol through Permit Committees involving representatives from across the community such as the police, the local school and council. As Brady explains:

Their decisions are grounded in the principle that access to alcohol is a privilege and not a right, so that access to alcohol comes with conditions attached. Committees have the power (which is frequently enacted), to recommend to the NT Licensing Commission that a person's permit be cancelled immediately if he/she causes drinking trouble.

Arrangements such as these have come about after years of trial and error, consultation and experiment, and are an attempt to balance the rights of drinkers and non-drinkers alike. In a sense, they constitute a work-in-progress around the dilemma of trying to 'live with alcohol' in circumstances where people's consumption is often heavy and explosive.¹³³

The NT intervention placed these processes at risk of continuing:

Brough's original plan for prohibition across Aboriginal lands would have swept all these permits and licences away. After representations from his own department and the NT Government, he has had to refine the plan to allow for the eight existing licensed clubs and the permits to continue. The NT Licensing Commission has since reviewed all existing licences and permits on Aboriginal-owned land and recommended that they stay in place. The Minister apparently has still not formally decided whether to accept these recommendations, and the NT has had to go ahead anyway and renew all existing permits, as time was running out for their renewal. The Minister has the power to override all these renewals – but so far has chosen not to do so.¹³⁴

In the 2006 publication *Ending violence and abuse in Aboriginal and Torres Strait Islander Communities*, HREOC noted that efforts to redress problems concerning alcohol from the side of reducing 'supply' could only be regarded as a situational crime prevention technique, rather than an underlying crime prevention technique.¹³⁵

What this means is that without a regime of programs to address the underlying factors that contribute to alcohol abuse, restrictions on the supply of alcohol to communities can only be of limited effect in reducing the associated criminal behaviour that is sought to be regulated.

Simply restricting the supply of alcohol has also been shown to exacerbate existing social problems, such as displacement of violent offenders to areas where alcohol is more readily available, increased incarceration rates if measures to limit alcohol are strictly policed, increased use of substitute drugs that are potentially more harmful

133 Brady, M., 'Alcohol regulation and the emergency intervention: Not exactly best practice', *Dialogue*, Vol.26, No.3, Academy of the Social Sciences Canberra 2007, p61.

134 Brady, M., 'Alcohol regulation and the emergency intervention: Not exactly best practice', *Dialogue*, Vol.26, No.3, Academy of the Social Sciences Canberra 2007, p61.

135 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence in Aboriginal and Torres Strait Islander communities*, Human Rights and Equal Opportunity Commission, Sydney, p113-144.



such as petrol sniffing and methamphetamine ('ice'). Such an approach needs to be one of a suite of measures to tackle the effects of alcohol in NT communities.

Maggie Brady notes that this approach adopted by the NT intervention legislation goes against international best practice and evidence about what works. She notes that the World Health Organisation has identified six policies to guide reducing alcohol related harm in measurable terms as follows:

- Regulating the physical availability of alcohol – such as having a minimum age, restrictions on hours and days of sale, outlet density restrictions;
- Dealing with taxation and pricing – price is the single most important determinant of per capita consumption;
- Drinking and driving counter measures;
- Treatment and early intervention – brief interventions for hazardous drinkers;
- Education and persuasion – community mobilisation around abuse; and
- Altering the drinking context – serving practices, training, enforcement.¹³⁶

She notes, 'the Emergency Intervention (in the NT) has not addressed any of these!'¹³⁷

In order for alcohol bans to be effective in a long-term sense, they must be accompanied by significant investment in programs and infrastructure in the health sector. The necessity of these measures is underscored by the very real medical dangers that exist for Aboriginal people if bans are introduced without necessary services and expertise to help people safely withdraw from alcohol addiction.

Accordingly, I remain concerned that the current measures dismiss much of the good work achieved by communities to restrict alcohol and ignore the root causes of alcohol abuse.

HREOC has taken the position for over a decade that alcohol restrictions implemented with the full support of communities can qualify as a special measure under the RDA. Any initiative to overcome alcohol abuse must be taken as a part of a long term strategy, and with the support of the communities involved in its design and implementation.

In responding to the NT intervention measures when announced, the Combined Aboriginal Organisations of the Northern Territory have also recommended that a community-based approach be taken to restrict alcohol consumption in the NT.

136 Edwards, G., Anderson, T., Babor, T., Casswell, S., Ferrence, R., Giesbrecht, N., Godfrey, C., Helder, H., Lemmens, P., Makela, K., Midanik, L., Nortstrom, T., Osterber, E., Romelsjo, A., Simpura, J., and Skog, O., *Alcohol policy and the public good*, World Health Organisation, Oxford, Oxford University Press, 1994; Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K., Grube, J., Gruenewald, P., Hill, L., Holder, H., Homel, R., Osterberg, E., Rohm, J., Room, R., Rossow, I., *Alcohol: no ordinary commodity. Research and public policy*, World Health Organisation, Oxford, Oxford University Press 2003 as cited in Brady, M., 'Alcohol regulation and the emergency intervention: Not exactly best practice', *Dialogue*, Vol.26, No.3, Academy of the Social Sciences Canberra 2007, p60.

137 Brady, M., 'Alcohol regulation and the emergency intervention: Not exactly best practice', *Dialogue*, No.26, Vol.3, Academy of the Social Sciences Canberra 2007, p60.



They propose a long-term, preventative approach that is grounded in Indigenous participation and consent, and draws on successful community models.

The CAO also emphasises the importance of culturally appropriate community education that is delivered by Indigenous staff, who are trained in how to offer young people active and healthy alternatives to drug and alcohol abuse.¹³⁸

Accordingly, given the extent of problems that can be caused by alcohol misuse, the objective of creating 'dry' communities is a worthwhile one for the Government to commit to. However, the approach adopted in the NT intervention legislation of blanket alcohol bans is a clumsy tool to effect this change and its effectiveness is in question.

This aspect of the legislation should be subject to extensive review to consider whether the Commonwealth should instead take a stronger role in funding support measures to accompany dry community restrictions and the permit systems that have been introduced by the NT Liquor Commission over recent years.

Consideration should be given as to whether the imposition of blanket bans on alcohol through the NT intervention legislation operates counter to its purpose and distorts existing efforts in communities. This could occur, for example, by encouraging migration into larger centres such as Alice Springs and exacerbating alcohol related issues in those centres, and alternatively by undermining existing community initiatives and disempowering communities in their efforts.

138 Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, 10 July 2007, p15, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007.



Part 4: Ways forward – modifying the NT intervention measures so that they comply fully with Australia’s human rights obligations

No one wants to see children abused, families destroyed, and the aspirations for a bright future dulled because hope has been overwhelmed by despair.

Aboriginal children – wherever they live in Australia – deserve a future in which they have the same opportunity as other children to thrive, develop and enjoy life. They are entitled to such a future for no other reason than that they are human, born with dignity and in full equality to all other Australians.

Such equality involves being able to live and grow in safety, without fear of violence or intimidation, within a thriving, caring and loving family unit, and according to your culture.

It also involves living in an environment where individuals are able to exercise control over their own lives. Where they are able to make decisions and are responsible for those decisions and their impact on their family and the community in which they live. And where their choices are meaningfully backed up by the means to achieve them, such as access to basic services and the provision of education to both build dreams and hope, and create the personal capacity to achieve these.

For many Indigenous children across Australia, such equality is a pipedream. For some, overwhelmed by environments of dysfunction, it is not even dreamed of.

It is a tragic fact that an Aboriginal or Torres Strait Islander child born today does not have the same life chances as other Australian children.

This is something that should not exist in 21st century Australia. And it is the defining challenge for our nation.

All Australian governments should be committed to ensuring an equal start in life for Indigenous children. Without this, the most vulnerable members of our society are required to overcome adversity merely to access what others take for granted.

It is with this challenge in mind that this report has analysed the intervention into Aboriginal communities in the Northern Territory.

The NT intervention measures and human rights

The particular focus of this report has been whether the NT intervention measures meet Australia’s human rights obligations and by doing so ensure that Aboriginal children and their families are treated with dignity and equality.

The NT intervention measures raise many more complex issues than have been dealt with in this report. Some of those issues, particularly as they relate to building



on the lessons of recent years for whole of government service delivery, have been addressed in other forums.¹³⁹

The starting point for determining the human rights implications of the NT intervention measures is to recognise that they are intended to address family violence and child abuse in Indigenous communities.

The NT intervention has revealed a determined commitment across society to address the horrors of family violence and child abuse in Aboriginal communities in the Northern Territory and to create a better future.

It is essential that governments undertake action to address violence and abuse, particularly when there is compelling evidence that it is widespread. Governments that fail to act in these circumstances would be in breach of their human rights obligations.

The NT intervention presents an historic opportunity to deal with a tragedy that has existed for too long, and that has destroyed too many families and too many young Aboriginal lives.

Accordingly, the intention of the NT intervention does not come into challenge in this report.

What does come into question is whether the approach adopted to achieve this aim is suitable.

Human rights obligations are not merely technical matters that sit distant from the day to day realities of life for Indigenous children and their families. The ability of children, their families and their communities to enjoy their human rights has a profound impact on the environment in which they live, grow and develop.

It fundamentally impacts upon their hopes and aspirations, in empowering or disempowering them, and in supporting or restricting different life paths and ultimately the choices that people make about their futures.

The haste with which the legislation underpinning the NT intervention measures was introduced has meant that there has been limited opportunity to consider the human rights implications of the approach adopted.

The objective of this report, therefore, has been very narrowly focussed to scrutinise the legislative framework underpinning the NT intervention measures to establish their compliance or otherwise with human rights standards.

The report has raised significant concerns about the consistency of the legislation underpinning the NT intervention with Australia's human rights obligations.

Throughout this report I have stressed that it is entirely inappropriate to seek to justify measures that breach human rights on the basis that they are taken in furtherance of other human rights considerations.

139 See for example: Calma, T., *Continuity and change through the new arrangements – Lessons for addressing the crisis of child sexual abuse in the Northern Territory*, Speech – Launch, *Social Justice Report and Native Title Report 2006*, 3 July 2007, p7; Calma, T., *The role of local government in achieving social justice for Aboriginal peoples in the Northern Territory*, Speech, Northern Territory Local Government Association Annual Conference: "Planning for the future", Darwin, 22 November 2007; and Calma, T., *Can the end ever justify the means? Achieving equality for Aboriginal & Torres Strait Islander peoples & the Northern Territory intervention*, Speech, The 2007 Don Dunstan Oration, Adelaide, 18 September 2007. All speeches are available online at: http://www.humanrights.gov.au/about/media/speeches/social_justice/.



Such a claim is not supported by human rights law, whether the measures are classified as an 'emergency response', as 'special measures' or more broadly as measures to protect the rights of children or rights to be free from violence.

In particular, human rights law is clear that any measures must be non-discriminatory in their application and impact. This obligation is non-negotiable and unable to be deviated from.

Put simply, all measures to address family violence and child abuse should themselves respect human rights. It would be outrageous to suggest that it is not possible to achieve this.

The Human Rights and Equal Opportunity Commission maintains that the rationale behind the legislation – to protect children and to build capacity in Aboriginal communities – is one which can be undertaken without the need to resort to discrimination.

The main concerns identified about the NT intervention legislation from a human rights perspective are as follows:

- *The NT legislation is inappropriately classified as a special measure.* It is not possible to support the government's contention that all of the measures contained in the NT intervention legislation can be justified as special measures. It is therefore also not possible to say that in its current form the legislation is consistent with the RDA.

The measures contained in the legislation are 'deemed' to be special measures despite there being no justification provided as to how the measures, individually and collectively, meet the specific criteria for a special measure.

While it is possible to conceive how some of the individual measures contained within the legislative package may meet the first component of a special measure (namely, that they are capable of being defined as beneficial, even though they impose restrictions) it is still necessary to demonstrate that consultation has occurred and community consent has been sought to the introduction of restrictive measures. This has not been provided for any of the measures, such as restrictions on alcohol and income management measures.

Certain measures also do not meet the second criteria for a special measure as they are not appropriate and adapted to the end of child protection. These include the compulsory acquisition of property in circumstances where negotiations for a lease have not been sought from the landowners, as well as the changes made to the permit system. The scope of income management provisions – such as quarantining of 100% of welfare in some circumstances – may also not be an appropriate and adapted response. This limits the ability of these measures to be legitimately characterised as special measures under the RDA.



- *The NT intervention legislation contains a number of provisions that are racially discriminatory.* There are also a number of provisions in the legislation that deny Aboriginal people in the Northern Territory democratic safeguards and human rights protections that exist for all other Territorians and Australians.

Examples include the lack of merits review of decision making (often accompanied by the removal of Parliament's scrutiny role over delegated legislation); removal of access to schemes for just terms compensation; exemptions from the application of all laws that deal with discrimination at the federal and territory level; and the removal of requirements to obtain consent for the management or control of Indigenous property.

These provisions deny Aboriginal people in the NT procedural fairness and access to justice. They fundamentally undermine the integrity of the NT intervention and contradict the stated purpose of building respect for the rule of law.

- *The NT intervention removes protections against discrimination that occurs in the implementation of the intervention measures.* Immunity is provided for any act of discrimination that occurs under the provisions of the legislation, as well as any act done 'under or for the purposes of those provisions'. This impact is provided by explicitly preventing the application of the RDA, the Northern Territory Anti-Discrimination Act and in relation to the operation of welfare reform in Cape York, the Queensland Anti-Discrimination Act. It provides an extraordinarily broad exemption from protections of discrimination. It also does not require that acts that implement the legislation do so in a manner consistent with the stated purpose of the purported 'special measure'.

The report additionally identifies a range of specific concerns about the consistency of the income management regime with the rights to social security, privacy and non-discrimination; and the alcohol management regime with the right of non-discrimination.

It also expresses concerns about the absence of effective participation of Indigenous peoples in decision making that affects them. While this concern applies to all the measures contained in the NT intervention legislation, it is of greatest concern in relation to dealings with Indigenous property (where the legislation exempt these measures from the requirement in section 10(3) of the RDA that no such measures be introduced that involve the management or control of Indigenous property without consent).

The report also identifies a range of options to modify the intervention to ensure that it proceeds in a manner that is consistent with Australia's human rights obligations.



Modifying the NT intervention measures so that they comply with human rights – a ten point action plan for the future of Aboriginal children in the Northern Territory

In this final section of this report I outline a **Ten Point Action Plan** for modifying the NT intervention so that it respects the human rights of Aboriginal people and treats us with dignity.

This ten point plan is as follows:

- Action 1:** Restore all rights to procedural fairness and external merits review under the NT intervention legislation;
- Action 2:** Reinstate protections against racial discrimination in the operation of the NT intervention legislation;
- Action 3:** Amend or remove the provisions that declare that the legislation constitutes a 'special measure'
- Action 4:** Reinstate protections against discrimination in the Northern Territory and Queensland
- Action 5:** Require consent to be obtained in the management of Indigenous property and amend the legislation to confirm the guarantee of just terms compensation
- Action 6:** Reinstate the CDEP Program and review the operation of the income management scheme so that it is consistent with human rights
- Action 7:** Review the operation and effectiveness of the alcohol management schemes under the intervention legislation
- Action 8:** Ensure the effective participation of Indigenous peoples in all aspects of the intervention – Developing Community Partnership Agreements
- Action 9:** Set a timetable for the transition from an 'emergency' intervention to a community development plan
- Action 10:** Ensure stringent monitoring and review processes.

In putting forth this plan, I note that the newly elected federal government has emphasised the importance of ensuring that the NT intervention proceeds in a manner that is consistent with Australia's human rights obligations. For example, they have stated that 'Observing the integrity of the Racial Discrimination Act is a basic principle for this country and a basic principle for the Indigenous community of this country'.¹⁴⁰

Accordingly, this action plan provides a platform for the newly elected government to meet their stated commitments in relation to the NT intervention.

The overall objective of this action plan is to remove the discrimination from the legislation and in its operation.

¹⁴⁰ 'Additional comments by the Australian Labor Party', contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p39.



There are three main ways that the NT intervention can be modified:

- amending the NT intervention legislation;
- utilising the powers provided under the legislation (predominately through powers to make non-reviewable legislative instruments, vested in the Minister for Indigenous Affairs); or
- in the operation of the measures in communities.

So long as the NT intervention legislation permits the conduct of racially discriminatory actions, it will lack legitimacy among Aboriginal people and communities as well as the broader Australian society. It will also leave Australia in breach of its international human rights obligations.

In addition to identifying the necessary actions to be undertaken, I have also formally provided recommendations to the Attorney-General at the end of the chapter to implement these.

Action 1: Restore all rights to procedural fairness and external merits review under the NT intervention legislation

It is entirely unacceptable for the legislation to remove, or fail to provide, rights to external merits review of administrative decision making. This is particularly so given the significant impact that such decision making has on the lives of individuals who are affected. For example, a decision to quarantine 100% of your welfare entitlement, based on very loose criteria, would not be eligible for external administrative review.

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.

Action 2: Reinstate protections against racial discrimination in the operation of the NT intervention legislation

The removal of the protection of the RDA undermines the credibility of the NT intervention measures and contradicts their intended beneficial purpose.

It is entirely unacceptable to remove the protection of the RDA for any acts performed under or for the purposes of the NT intervention legislation. This is particularly given the broad discretion that the legislation vests in decision makers at various levels.

For the RDA to apply to the exercise of discretion under the NT intervention legislation it would additionally require the insertion of a new clause requiring all acts authorised under the legislation to be undertaken consistently with the RDA. To be effective such a clause – known as a *non-obstante* clause – should be unequivocal that the provisions of the NT intervention legislation are subject to the provisions of the RDA.



Action 3: Amend or remove the provisions that declare that the legislation constitutes a 'special measure'

As they presently stand, numerous measures introduced under the NT intervention legislation do not meet the criteria for a special measure. Accordingly, it is inappropriate for the following provisions to be retained in the legislation in their current form:

- 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).

The importance of these provisions is that they 'deem' the measures to qualify as special measures.¹⁴¹

If these provisions are to be retained, then they should:

- a) be amended to clarify that the measures in the legislation are *intended* to qualify as special measures, rather than deeming that they are in fact special measures; and
- b) be amended to require that in implementing the provisions of the legislation (including in the performance of 'any act done under or for the purposes of those provisions'), all actions must be undertaken consistently with the intended beneficial purpose of the legislation – or in other words, consistent with the intended special measure.

There is a need to ensure effective monitoring and review of the implementation of the measures to ensure that only those that are appropriate and adapted to the purpose of child protection are maintained.

Accordingly, it is necessary that provisions relating to income management, alcohol bans, changes to the permit system and compulsory acquisition are reviewed to establish whether they are appropriate and adapted responses to the objectives of the legislation. On the basis of this review, these provisions should be modified or repealed so that they comply with this requirement.

As noted earlier in this chapter, I am of the view that the blanket removal of the permit system on roads, community common areas and other places is not an appropriate measure and does not have sufficient relationship to the purpose of the legislation to qualify as a special measure. In the absence of contrary evidence, these provisions should be repealed.

There is also a pressing need for extensive consultation with Indigenous communities to explain these measures and the objects of the legislation. Thereafter, it is of crucial importance that, in the administration of the proposed legislation,

¹⁴¹ It is uncertain whether 'deeming' provisions in this way would be of effect or whether the courts would simply apply the criteria for a special measure and note this deeming provisions as indicative of the intention of the Government.



measures are delivered in ways that respect the wishes and aspirations of the relevant communities.

Accordingly, the Minister for Indigenous Affairs should also direct that provisions relating to income management and alcohol bans be implemented with the full participation of Indigenous peoples. In particular, the Minister should direct all government officials that in implementing these provisions, processes for seeking consent of Aboriginal communities should be sought.

Action 4: Reinstate protections against discrimination in the Northern Territory and Queensland

The following provisions should be repealed to ensure the operation of Northern Territory laws that protect against discrimination in Aboriginal communities affected by the intervention measures:

- 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).

The NT intervention legislation also provides that the Minister for Indigenous Affairs can, by non-reviewable legislative instrument, declare that any Northern Territory or Queensland law related to discrimination continues to have effect in the communities.¹⁴²

As an immediate interim measure prior to repealing these provisions, the Minister should exercise her discretion to declare that the *Anti-Discrimination Act 1992 (NT)* does apply across all communities in the Northern Territory and reinstate protections against discrimination in all locations of the NT. The *Anti-Discrimination Act 1991 (Qld)* should similarly be reinstated in relation to welfare reforms in Cape York.

Action 5: Require consent to be obtained in the management of Indigenous property and amend the legislation to confirm the guarantee of just terms compensation

The Minister for Indigenous Affairs should direct public servants and Government Business Managers to conduct negotiations with Aboriginal communities to obtain access to Aboriginal land for infrastructure and related purposes rather than utilise the extensive powers to compulsorily acquire Aboriginal land through 5 year compulsory leases.

The Minister should also exercise her discretion under Part 5 of the *Northern Territory National Emergency Response Act 2007* (Cth) in a manner that does not affect the management or control of Aboriginal property without having obtained their consent. The Minister should also direct Government Business Managers to

142 See for example: section 133, *Northern Territory National Emergency Response Act 2007* (Cth).



perform their duties in a manner that does not affect the management or control of Aboriginal property without having obtained their consent.

The obtaining of consent in relation to Aboriginal property is necessary to ensure compliance with section 10(3) of the RDA. Measures which involve the management or control of Aboriginal property cannot be classified as a 'special measure' and so such consent is required to ensure consistency with the RDA.

Similarly, sections 60 and 134 of the *Northern Territory National Emergency Response Act 2007* (Cth) should be amended in order to:

- clarify that in the event of the compulsory acquisition of property, Aboriginal people have an entitlement to just terms compensation; and
- provide the simplest and most accessible route for claiming just terms compensation (by removing the exemption from the *Northern Territory (Self Government) Act 1978*).

Action 6: Reinstate the CDEP Program and review the operation of the income management scheme so that it is consistent with human rights

The government should continue to support the conversion of CDEP placements into paid employment or 'real jobs'. Such a measure will only be possible for a small percentage of CDEP placements in remote communities and will also need to be supported by economic development strategies into the longer term.

Accordingly, the CDEP scheme should also be reinstated in communities on a case by case basis.

The Government should also explore introducing voluntary income management measures for CDEP participants. The *Centrepay* program in the Alice Springs Town Camps; the Cape York Family Income Management (FIM) project, and financial literacy programs operated by the Fred Hollows Foundation and Ian Thorpe's Fountain for Youth provide some models for consideration.

The provisions on income management in the NT intervention legislation should also be reviewed and amended to ensure that:

- a) these provisions are compatible with human rights obligations, such as those outlined in this report arising from the right to social security and to ensure that adequate protections are provided to protect the privacy of individuals in the handling of personal information;
- b) the participation of individuals in decision-making processes that affect their exercise of the right to social security is made an integral part of the NT intervention process into the future; and
- c) provisions relating to quarantining of welfare in circumstances of neglect or abuse, or poor school attendance, are appropriately targeted to achieve their stated purpose.

I am confident that many Aboriginal communities would voluntarily participate in income management and financial literacy support programs that are appropriate and not punitive in character.



Given the substantial administrative costs involved in administering the current income management process, and its widespread application without sufficient targeting of those in need, it may prove more beneficial into the long term to explore voluntary income management approaches. The significant administrative costs associated with the current process could then be re-directed to better targeted strategies to invest in communities and support their capacity.

The Minister for Indigenous Affairs has powers under the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth) to exempt individuals from the mandatory income management regime. The Minister also has powers under the *Northern Territory National Emergency Response Act 2007* (Cth) to remove communities from the list of 'prescribed communities' to which such arrangements apply.

The Minister should exercise these powers and remove the application of the mandatory income management regime where individuals or communities as a whole have entered into voluntary income management arrangements which are targeted to need. This will provide communities with the incentive to negotiate voluntary arrangements so as to avoid the capricious application of the mandatory regime enacted through the NT intervention legislation.

In particular, an emphasis on providing children with incentives to learn and developing methods of teaching that resonate with Indigenous students is preferable to measures that penalise parents. Such measures should be extensively trialled before options as punitive as income management of 100% of welfare entitlements are utilised.

Action 7: Review the operation and effectiveness of the alcohol management schemes under the intervention legislation

The process for banning alcohol in prescribed communities is complex and potentially works counter to measures that have been developed over time by the Northern Territory Liquor Commission in conjunction with Aboriginal communities. It is notable that the Liquor Commission process was in operation in nearly all of the communities subject to the NT intervention and that it is non-discriminatory in its application – whereas those provisions of the NT intervention legislation relating to alcohol bans are not.

The provisions in the NT intervention legislation should be subject to extensive review to consider their workability and to provide an evidence base for determining whether the Commonwealth should instead take a stronger role in funding support measures to accompany dry community restrictions and the permit systems that have been introduced by the NT Liquor Commission over recent years.

Consideration should be given as to whether the imposition of blanket bans on alcohol through the NT intervention legislation operates counter to its purpose and distorts existing efforts in communities. Consideration should also be given to the range of support measures, such as detox programs and counselling, needed in communities to complement alcohol management processes.



Action 8: Ensure the effective participation of Indigenous peoples in all aspects of the intervention – Developing Community Partnership Agreements

Many of the criticisms raised in this report share in common a concern about the lack of participation and involvement of Indigenous peoples in the design and implementation of the intervention measures.

It is essential that the government modify the current approach to the intervention and ensure the participation of Indigenous peoples in its design, implementation and monitoring.

Given the absence of this participation to date – especially in the formulation of the legislation – it is essential that Indigenous peoples in the NT can fully participate in the formal and informal evaluation of the intervention. Such participation will no doubt reveal practical issues about the implementation of the measures and will also enable better evidence to understand what works and why.

There can be little doubt that Aboriginal people and their representative organisations across the Northern Territory would willingly be involved in a genuinely consultative process. Communities have consistently expressed their desire to be active participants in the longer-term measures that the Australian Government plans to take to prevent child abuse in their communities. On various occasions, Aboriginal leaders have pointed out the importance of acknowledging, learning from and building on the success stories that exist in many communities, whether they are in relation to night patrols, running dry communities, or mother and babies programs. They have also called on the Government to consult with them to develop:

(a) more comprehensive plan and costed financial commitment that addresses the underlying issues within specific timeframes and has bi-partisan support....(with) (t)he performance of both governments and Aboriginal organisations... included. This would also involve thorough planning and negotiation to ensure that the correct strategies are adopted, the substantial resources required are efficiently used, and funding is stable and predictable over the longer term. This plan would be developed and negotiated under a partnership approach with the targeted communities during the current emergency response phase and be implemented as soon as is practicable.¹⁴³

Aboriginal organisations in the Northern Territory have also emphasised that ultimate success in addressing child abuse and other manifestations of dysfunction in their communities will only be possible if Indigenous people in those communities have a real sense of ownership of and involvement in the measures that are taken. Ensuring that services and programs are designed and delivered in a manner that respects and incorporates Indigenous cultures and authority structures will be an important first step in this regard.

143 Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals*, 10 July 2007, p3, available online at: <http://www.rachelsiewert.org.au/files/campaigns/extras/CAO-report-10%20july.pdf>, accessed 2 November 2007.



Action 9: Set a timetable for the transition from an ‘emergency’ intervention to a community development plan

Complementary to Action 8 above, the Government should set a timetable for transitioning the emergency intervention from its stabilisation phase to a community development phase.

The community development phase should, as recommended by the Combined Aboriginal Organisations of the NT, involve the development of a more comprehensive plan and costed financial commitment that addresses the underlying issues within specific timeframes and has bi-partisan political support.

A key feature identified in previous action items is also transitioning the intervention from a mandatory to a voluntary process. This is a transition from intervention to partnership.

Such a partnership could be formalised through local level **Community Partnership Agreements**.

The utilisation of such agreement making processes would enable a more holistic approach to the issues being faced by individual communities. It would also assist in ensuring transparency, identifying lines of accountability and aid formal evaluation within communities.

The entering into *Community Partnership Agreements* could also provide the trigger for the Minister for Indigenous Affairs to exercise the ministerial discretions available under the intervention legislation to variously:

- Remove the relevant community from the list of ‘prescribed communities’;
- Remove the application of the alcohol management regime;
- Remove the application of the income management regime;
- And so forth.

This could be done on the basis that the Minister is satisfied that alternative, community based and supported mechanisms are in place to deal with the issues of child protection, family violence and related community development needs.

This would provide an **incentive based model** to reacting to violence and abuse, grounded in community development principles and the taking of ownership and responsibility by communities in partnership with the federal and territory governments.

It is notable that the new government has stated that the aims of the intervention ‘cannot be achieved unless the Commonwealth, after dialogue and genuine consultation with affected Aboriginal communities, sets out a comprehensive long term plan’. They have also acknowledged that:

Any longer term plan should establish a framework for the achievement, in partnership with the Northern Territory Government and Indigenous communities, of the recommendations set out in the *Little Children are Sacred* report.¹⁴⁴

144 ‘Additional comments by the Australian Labor Party’, contained in Senate Standing Committee on Legal and Constitutional Affairs, *Report on Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 and four related bills concerning the Northern Territory National Emergency Response*, August 2007, p38.



Community Partnership Agreements could provide a vehicle to meet these objectives.

Action 10: Ensure stringent monitoring and review processes

Give the complexity of the NT intervention measures and their potential to negatively impact on the human rights of Indigenous peoples, it is essential for transparent monitoring and evaluation processes to be set in place and for regular review to take place.

In order for the intervention measures to meet the 'special measures' criteria they must also be monitored over time to ensure that the specific measures which are enacted are appropriate and adapted to enhancing the rights of children, and that they protect against family violence in the prescribed communities to which they apply.

12 months after the enactment of the legislation, an independent review should take place to ensure that the goals of the legislation are being achieved in a manner that is consistent with human rights, and allow for any negative consequences to be identified and addressed as soon as possible. Such a review should cover the efficacy of the substance of all legislative provisions which comprise the intervention legislation and their operation.

Such monitoring is essential given the intent that some aspects of the legislation relating to income management might be adopted nationally from 2009.

The terms of reference of such a review should be broad in scope so that it can consider:

- Whether the legislation is achieving its intended purposes;
- Whether there have been unintended negative consequences;
- Assess appropriate alternative approaches or mechanisms that would enhance the ability of the legislation to achieve its purpose; and
- Require consultation with Indigenous peoples in the review process.

Fundamental to the success of such a review will be the involvement and input of Aboriginal people from the communities involved. Ongoing participation from individuals on the ground will not only ensure the legitimacy of the measures undertaken, it will also help to contribute to their ongoing success as the needs and aspirations of communities change over time.



Conclusion and recommendations

As it stands, there is a need for substantial change for the NT intervention measures to be considered consistent with Australia's international human rights obligations. This report has outlined ten steps to modifying the intervention so that it is consistent with these obligations and ensures Indigenous individuals in Aboriginal communities in the NT equal treatment and full human dignity.

I make the following recommendations for implementing this ten point action plan, and to ensure consistency with Australia's human rights obligations.

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 governments 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.

Appendix 1



Chronology of events relating to the administration of Indigenous affairs: 1 July 2006 – 30 June 2007

Date	Event/summary of issue
July 2006 <i>Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in Western Australia signed.</i>	A Bilateral Agreement on Indigenous Affairs was signed by the State of Western Australia and the Australian Government. The Agreement establishes an agreed framework and priorities for intergovernmental cooperation and enhanced effort in Indigenous affairs. ¹
1 July 2006 <i>Community Development Employment Projects (CDEP) programme for 2006-07</i>	The Australian Minister for Employment and Workplace Relations, today officially launched a guide for Community Development Employment Projects (CDEP) organisations to improve their capacity to lead, govern and manage their business to deliver outcomes for Indigenous people. The Minister also announced that there would be two hundred and twelve organisations providing the Community Development Employment Projects (CDEP) for 2006-07. ²
2 July 2006 <i>NAIDOC week 2006 commences</i>	NAIDOC week commenced today with the theme of <i>Respect the past – Believe in the future.</i>

1 The full text of the Bilateral Agreement is available online at: http://www.dia.wa.gov.au/Publications/Files/Bilateral_Agreement.pdf, accessed 24 January 2008.

2 Andrews, K., (Minister for Employment and Workplace Relations), *CDEP 2006-07 To Build On Success*, Media Release, 1 July 2006.



<p>7 July 2006 <i>Early childhood focus for Indigenous education</i></p>	<p>The Australian Minister for Education, Science and Training has been joined by her state and territory counterparts in agreeing to make early childhood education a priority for young Indigenous Australians.³</p> <p>At the meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) today, education ministers from across the country endorsed a draft paper titled <i>Australian Directions in Indigenous Education 2005-2008</i>.⁴</p> <p>This paper will be provided to inform the Council of Australian Governments (COAG) of the critical importance of early childhood education in improving the 'school readiness' and successful participation in primary school education.</p>
<p>12 July 2006 <i>Funding to protect the Indigenous past for future generations</i></p>	<p>The Australian Minister for the Environment and Heritage today announced that the 2006-2007 Indigenous Heritage Programme will provide \$2.96 million for 50 projects throughout the nation.⁵</p>
<p>14 July 2006 <i>The Council of Australian Governments' (COAG) meet in Canberra</i></p>	<p>COAG have agreed to adopt a collaborative approach to addressing the issues of policing, justice, support and governance in Indigenous communities. The bilateral agreements between the Commonwealth and the States and Territories will be the key to ensuring that this proceeds.</p> <p>The Commonwealth has agreed to make available funds of \$103 million over four years to support the bilateral actions.⁶</p> <p>A communiqué from COAG states that the law's response to family and community violence and sexual abuse must reflect the seriousness of such crimes.</p> <p>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'.⁷</p>

3 Bishop, J., (Minister for Education, Science and Training), *Early childhood focus for Indigenous education*, Media Release, 7 July 2006, available online at: <http://www.dest.gov.au/Ministers/Media/Bishop/2006/07/B001070706.asp>, accessed 24 January 2008.

4 The full text of the report *Australian Directions in Indigenous Education 2005-2008* can be found online at: http://www.mceetya.edu.au/verve/_resources/Australian_Directions_in_Indigenous_Education_2005-2008.pdf, accessed 24 January 2008.

5 Australian Minister for the Environment and Heritage, *Funding protects Indigenous past for future generations*, Media Release C158/06, 12 July 2006.

6 Council of Australian Governments (COAG), *Council of Australian Governments Meeting*, 14 July 2006, available online at: <http://www.coag.gov.au/meetings/140706/index.htm>, accessed 24 January 2008.

7 Council of Australian Governments (COAG), *Council of Australian Governments Meeting*, 14 July 2006, available online at: <http://www.coag.gov.au/meetings/140706/index.htm>, accessed 24 January 2008.



	<p>COAG also 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.</p> <p>The COAG meeting followed the recommendations of the <i>Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities</i> held on 26 June 2006.⁸</p>
<p>14 July 2006 <i>National Indigenous Violence and Child Abuse Intelligence Task Force established</i></p>	<p>The Australian Crime Commission (ACC) will lead a joint agency intelligence task force to address violence and child abuse in Indigenous communities.</p> <p>The National Indigenous Violence and Child Abuse Intelligence Task Force will be resourced by the Commonwealth, States and Territories Governments and will comprise personnel from the ACC, the Australian Federal Police (AFP), every State and Territory Police Force, and the Australian Institute of Criminology.</p> <p>The objectives of the National Indigenous Violence and Child Abuse Intelligence Task Force include:</p> <ul style="list-style-type: none"> • Enhancing the national understanding of the nature and extent of violence and child abuse in remote and urban Indigenous communities. • Providing intelligence and other advice to relevant Commonwealth, state and territory organisations on violence and child abuse in remote and urban Indigenous communities, including organised criminal involvement in drugs, alcohol, pornography and fraud. • Conducting research into the impact of improved intelligence and information coordination and into the identification of good practice in the prevention, detection and responses to violence and child abuse in Indigenous communities.⁹
<p>18 July 2006 <i>The Australian Government responds to the Indigenous Higher Education Advisory Council Policy Paper</i></p>	<p>The Australian Government's response to a report by the Indigenous Higher Education Advisory Council (IHEAC) includes the implementation of initiatives aimed at building partnerships between education sectors to work for the advancement of Indigenous students in higher education.</p>

8 *Crimes Amendment (Bail and Sentencing) Bill 2006 (Cth)*. Explanatory Memorandum, p1.

9 Brough, M., (Minister for Indigenous Affairs) and Ellison, C., (Minister for Justice and Customs), Joint Media Release, *National Indigenous Violence and Child Abuse Intelligence Task Force*, 14 July 2006, available online at: http://www.facsia.gov.au/internet/Minister3.nsf/content/indigenous_violence_and_child_abuse_intelligence_14jul06.htm, accessed 24 January 2008.



	The Minister for Education, Science and Training launched the Council's policy paper <i>Improving Indigenous Outcomes and Enhancing Indigenous Culture and Knowledge in Australian Higher Education</i> , ¹⁰ and announced an immediate \$1.73 million investment to support several key priorities in the Council's paper. ¹¹
18 July 2006 <i>The Registrar of Aboriginal Corporations appoints an Administrator to Mutitjulu</i>	The Australian Minister for Families, Community Services and Indigenous Affairs has confirmed that the Registrar of Aboriginal Corporations has appointed an administrator to run the Mutitjulu community at Uluru. ¹²
19 July 2006 <i>ACT Health Minister releases the Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-2011</i> ¹³	The ACT Minister for Health today released the <i>Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-2011</i> . ¹⁴ The ACT <i>Aboriginal and Torres Strait Islander Health and Family Wellbeing Plan 2006-2011</i> is the ACT's response to the Australian Government's <i>National Strategic Framework for Aboriginal and Torres Strait Islander Health (NSFATSIH)</i> (July 2003) requirement that each state and territory jurisdiction develop a local implementation plan. ¹⁵
20 July 2006 <i>The Native Title Amendment (Technical Amendments) Act 2007 receives Royal Assent</i>	The <i>Native Title Amendment (Technical Amendments) Act 2007</i> received Royal Assent today. The <i>Technical Amendments Act</i> includes measures to: <ul style="list-style-type: none"> • improve the workability of the Native Title Act by making a series of minor and technical amendments • make minor amendments to provisions applying to Native Title Representative Bodies (NTRBs) to complement measures in the <i>Native Title Amendment Act 2007</i>, and • partially implement two of the recommendations from the Report on the Structures and Processes of Prescribed Bodies Corporate (PCBs).

10 The full text of the policy paper *Improving Indigenous Outcomes and Enhancing Indigenous Culture and Knowledge in Australian Higher Education* is available online at: http://www.dest.gov.au/sectors/indigenous_education/publications_resources/profiles/improving_indig_outcomes.htm, accessed 24 January 2008.

11 Bishop, J., (Minister for Education, Science and Training), *Supporting Indigenous Higher Education*, Media Release, 18 July 2006, available online at: <http://www.dest.gov.au/Ministers/Media/Bishop/2006/07/b002180706.asp>, accessed 24 January 2008.

12 ABC News Online, *Administrator appointed to 'dysfunctional' Mutitjulu*, 18 July 2006, available online at: <http://www.abc.net.au/news/newsitems/200607/s1689735.htm>, accessed 24 January 2008.

13 Gallagher, K., (Minister for Health), *Plan for Aboriginal and Torres Strait Island Health and Wellbeing*, Media Release, 21 July 2006, available online at: <http://www.chiefminister.act.gov.au/media.asp?section=53&media=1481&id=1481&title=>, accessed 24 January 2008.

14 The full text of the report is available online at: <http://www.health.act.gov.au/c/health?a=da&did=10107160>, accessed 24 January 2008.

15 The full text of the report is available online at: <http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-oatsih-pubs-healthstrategy.htm>, accessed 24 January 2008.



	<p>Some of the amendments, including those relating to PBC's and NTRBs, came into force the day after Royal Assent. Most of the technical amendments to the <i>Native Title Act</i> will come into effect on 1 September 2007. The delayed commencement of these provisions will ensure all parties are aware of, and take into account, the relevant changes.¹⁶</p>
<p>23 July 2006 <i>The New South Wales Government releases its Indigenous child sex abuse report "Breaking The Silence: Creating The Future"</i></p>	<p>The New South Wales Government report into child sexual abuse in Indigenous communities: <i>Breaking the Silence: Creating the Future. Addressing child sexual assault in Aboriginal communities in New South Wales</i> is released.¹⁷</p> <p>The report reaffirms that the problem of child sexual abuse is not limited to remote communities in the Northern Territory and is a problem that exists in urban and rural locations in New South Wales.</p>
<p>25 July 2006 <i>Indigenous Youth Mobility Programme (IYMP) launched in Perth</i></p>	<p>The Minister for Education, Science and Training launches the Indigenous Youth Mobility Programme (IYMP)¹⁸ for Western Australia.</p> <p>The programme is one element of the Australian Government's Indigenous Australians Opportunity and Responsibility commitment, and will provide \$23.1 million over 4 years to enable 600 young people from remote Australia to accept training and employment opportunities that are available in major centres around the country.¹⁹</p>
<p>25 July 2006 <i>Australian Prime Minister urges local action on reconciliation</i></p>	<p>The Prime Minister has launched a national program of Reconciliation Action Plans at a function in Melbourne today. Reconciliation Action Plans (RAPs) are an initiative of Reconciliation Australia that are intended to assist organizations (both governmental, non-government and from the corporate sector) to turn good intentions into actions.²⁰</p> <p>The overarching objective of all Reconciliation Action Plans is to close the 17-year life expectancy gap between Indigenous and non-Indigenous children. Individual RAPs are a tool for organisations to demonstrate actions they will take to pursue this goal and reconciliation generally.</p>

16 Australian Government, Attorney-Generals Department Website, *Native Title Reform*, available online at: <http://www.ag.gov.au/nativetitlesystemreform>, accessed 24 January 2008.

17 The full text of the report is available online at: <http://www.lawlink.nsw.gov.au/acsat>, accessed 24 January 2008.

18 The full text of the Indigenous Youth Mobility Programme can be found online at: http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/iymp/default.htm, accessed 24 January 2008.

19 Bishop, J., (Minister for Education, Science and Training), *Indigenous Youth Mobility Programme (IYMP) launched in Perth*, Media release, 24 July 2006, available online at: <http://www.dest.gov.au/ministers/media/bishop/2006/07/b012240706.asp>, accessed 24 January 2008.

20 More information on Reconciliation Actions Plans is available online at: <http://www.reconciliation.org.au/i-cms.isp?page=256>, accessed 24 January 2008.



<p>25 July 2006 <i>ABSTUDY report released by the Australian Minister for Education, Science and Training</i></p>	<p>The Australian Minister for Education Science and Training last week released the final report of the <i>Review into the impact of ABSTUDY policy changes that came into effect in 2000</i>.²¹</p> <p>The report finds that almost the entire decline in Indigenous higher education enrolments in 2000 is accounted for by the decline in numbers commencing study, and that three quarters of this is due to reductions in numbers in enabling (pre degree courses) and diploma courses.²²</p>
<p>27 July 2006 <i>The Australian Government announces three new initiatives to improve the health of Indigenous people in the Torres Strait and far North Queensland</i></p>	<p>The Australian Government today announces three new initiatives to improve the health of Indigenous peoples in the Torres Strait and far North Queensland.</p> <p>The initiatives are: The Torres Strait Health Partnership Framework Agreement,²³ signed today by Australian and State health ministers and representatives of the Torres Strait community; a new chronic disease centre on Thursday Island; and an asthma spacer program to improve treatment for Indigenous children.²⁴</p> <p>The Australian Government has also contributed \$1.25 million to help build the new Chronic Disease Prevention and Management Centre on Thursday Island, which Queensland Health will operate.</p>
<p>4 August 2006 <i>Australian Government directs additional funding to early childhood education for Aboriginal and Torres Strait Islander people</i></p>	<p>Today the Minister for Education, Science and Training, announced that the Australian Government has directed an additional \$5 million in early childhood education to expand initiatives for Aboriginal and Torres Strait Islander people.²⁵</p> <p>The extra \$5million funding is available over three years through the Parent School Partnerships Initiative programme.²⁶</p>

21 The full text of the report, *Review into the impact of ABSTUDY policy changes that came into effect in 2000*, can be found online at: http://www.dest.gov.au/sectors/research_sector/publications_resources/profiles/abstudy_changes.htm, accessed 24 January 2008.

22 Department of Education, Science and Training, *Review into the impact of ABSTUDY policy changes that came into effect in 2000*, Abstract, available online at: http://www.dest.gov.au/sectors/research_sector/publications_resources/profiles/abstudy_changes.htm, accessed 24 January 2008.

23 Agreements, Treaties and Negotiated Settlements Project, *Torres Strait Health Partnership Framework Agreement*, 25 July 2006, available online at: <http://www.atns.net.au/agreement.asp?EntityID=39>, accessed 24 January 2008.

24 Abbot, T., (Minister for Health and Ageing), *New steps to improve Indigenous health in far north Queensland*, Media Release, 26 July 2006, available online at: <http://www.health.gov.au/internet/ministers/publishing.nsf/content/health-mediarel-yr2006-ta-abb111.htm?OpenDocument&yr=2006&mth=7>, accessed 24 January 2008.

25 Bishop, J., (Minister for Education, Science and Training), *Strengthen early childhood education for Indigenous students*, Media release, 4 August 2006, available online at: <http://www.dest.gov.au/Ministers/Media/Bishop/2006/08/B001040806.asp>, accessed 24 January 2008.

26 For more information on the Parent School Partnerships Initiative programme see: http://www.det.wa.edu.au/education/Abled/parent_school_partnerships.html, accessed 24 January 2008.



<p>5 August 2006 <i>Indigenous education and training theme for Garma Festival</i></p>	<p>More than 2,000 people have gathered at Gulkula in East Arnhem Land for the eighth annual Garma Festival organised by the Yothu Yindi Foundation. This year's theme is Indigenous education and training.²⁷</p>
<p>8 August 2006 <i>International Day of the World's Indigenous Peoples</i></p>	<p>The Aboriginal and Torres Strait Islander Social Justice Commissioner said that today's International Day of the World's Indigenous Peoples, the second International Decade of the World's Indigenous People and the impending vote for adoption of the Declaration on the Rights of Indigenous Peoples shows there is growing international recognition of indigenous peoples' human rights.²⁸</p>
<p>9 August 2006 <i>Outback Stores formed</i></p>	<p>A new entity – Outback Stores is created. It is a wholly owned subsidiary of Indigenous Business Australia (IBA). Outback Stores has been formed to accommodate the Australian Government's recent Budget commitment to spend \$48 million over four years to address ongoing concerns regarding the running of outback stores.</p> <p>The Chairman of IBA will head a Board that includes some of the country's leading former CEOs from the retail and wholesale sectors in a bid to improve and expand the number of remote community stores in Indigenous areas.</p> <p>Community stores have the ability to improve health standards of remote area Indigenous communities by providing good food at affordable prices.²⁹</p>
<p>11 August 2006 <i>The Aboriginal and Torres Strait Islander Social Justice Commissioner voices concerns about amendments to the Aboriginal Land Rights Act (Northern Territory) 1976</i></p>	<p>The Aboriginal and Torres Strait Islander Social Justice Commissioner has expressed concerns about the amendments to the <i>Aboriginal Land Rights Act (Northern Territory) 1976</i>, which are currently being debated in the Senate.</p> <p>The Commissioner has urged the government to postpone the passage of the Bill until there is more detail available on the impact of the implementation of the legislation and to allow more time for consultation with landowners in the Northern Territory.³⁰</p>

27 ABC News Online, *Indigenous education and training theme for Garma Festival*, 5 August 2006, available online at: <http://www.abc.net.au/news/newsitems/200608/s1707059.htm>, accessed 24 January 2008.

28 Calma, T., (Aboriginal and Torres Strait Islander Social Justice Commissioner), *International Day of the World's Indigenous Peoples*, Media release, 8 August 2006, available online at: http://www.hreoc.gov.au/about/media/media_releases/2006/60_06.htm, accessed 24 January 2008.

29 Australian Government, Indigenous Business Australia, *Outback Stores to unveil high-level board*, Media release, 9 August 2006.

30 Calma, T., (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Postpone the passage of the Aboriginal Land Rights Act Bill*, Media release, 11 August 2006, available online at: http://www.hreoc.gov.au/about/media/media_releases/2006/62_06.htm, accessed 24 January 2008.



	<p>Some of the major amendments being proposed involve: the provision for 99 year leases over land owned by traditional owners;</p> <ul style="list-style-type: none"> • amendments which break up Land Councils, remove their financial independence (through removal of a statutory funding guarantee), and require them to publicly disclose confidential minutes; • the termination of non-contiguous land claims to the intertidal zone; and • enabling the NT Government to meet its rental and administration costs for community leasing from the Aboriginal Benefits Account.³¹
<p>15 August 2006 <i>Australian Parliamentary Inquiry into the Indigenous visual arts and craft sector</i></p>	<p>The Minister for the Arts and Sport today announced an Australian Parliamentary inquiry into the Indigenous visual arts and craft sector. The Senate Environment, Communications, Information Technology and the Arts Legislation Committee will run the inquiry. The committee will report to Parliament in June 2007.³²</p>
<p>17 August 2006 <i>The Australian Government passes the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006</i></p>	<p>The <i>Aboriginal Land Rights (Northern Territory) Amendment Bill 2006</i> was passed today.</p> <p>The Bill will introduce new streamlined procedure for exploration and mining on Aboriginal land contained in the Amendments. The Bill includes a provision that Land Councils will be funded only on their performance and outcomes.</p>
<p>21 August 2006 <i>Native Title Claims Resolution Review Report Released</i></p>	<p>The Australian Attorney-General today announced details of the Government's reforms to the process of the resolution of native title claims.</p> <p>The move arises from the Government's response to the Native Title Claims Resolution Review, an independent review into the process of resolving native title claims. The independent review was established as part of the Australian Government's package of six inter-related reforms to the native title system announced in September 2005.</p> <p>The Attorney-General today released the report of the review along with the Government's response. The reforms include giving the National Native Title Tribunal (NNTT) additional powers to more effectively mediate native title matters.</p>

31 Northern Land Council, *NLC calls for ALRA postponement*, Media Release, 4 August 2006, available online at: http://www.nlc.org.au/html/wht_media.html, accessed 29 January 2008.

32 Kemp, R., (Minister for the Arts and Sport), *Inquiry into the Indigenous visual arts sector*, Media Release, 15 August 2006, available online at: http://www.minister.dcita.gov.au/kemp/media/media_releases/inquiry_into_the_indigenous_visual_arts_sector, accessed 24 January 2008. Full terms of reference for the inquiry are available online at: http://www.aph.gov.au/senate/committee/ecita_ctte/indigenous_arts/tor.htm, accessed 24 January 2008.



	<p>Amendments to the <i>Native Title Act 1993</i> arising from the Review are likely to be introduced later this year, along with legislation which will give effect to other elements of the reforms.³³</p>
<p>30 August 2006 <i>Australian Government ratifies two Optional Protocols to the United Nations Convention on the Rights of the Child</i></p>	<p>The Human Rights and Equal Opportunity Commission (HREOC) has welcomed the announcement that the Australian Government has ratified the two Optional Protocols to the United Nations Convention on the Rights of the Child.</p> <p>Australia's ratification of the Protocols sends a clear signal to the international community about the importance of these principles and the role of international law in protecting children around the world.³⁴</p> <p>In 2004, the Human Rights and Equal Opportunity Commission (HREOC) made a submission on the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, to the Joint Standing Committee on Treaties.³⁵</p>
<p>19 October 2006 <i>Passage of the Australian Corporations (Aboriginal and Torres Strait Islander) Act 2006</i></p>	<p>The <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (CATSI Act) was passed today. When it commences on 1 July 2007, it will replace the <i>Aboriginal Councils and Associations Act 1976</i> (ACA Act).</p> <p>Corporations will have up to two years – the 'transitional period' – to make the necessary changes to comply with the new law.³⁶</p>
<p>27 October 2006 <i>The Western Australian Law Reform Commission Report on Aboriginal Customary Laws is launched</i></p>	<p>From December 2000 to October 2006 the Western Australian Law Reform Commission undertook a detailed inquiry into the recognition of Aboriginal law and culture in Western Australia.</p>

- 33 Ruddock, P., (Attorney-General), Media Release 158/2006, *Improving resolution of native title claims*, 21 August 2006, available online at: http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2006_Third_Quarter_1582006_-_21_August_2006_-_Improving_Resolution_of_Native_Title_Claims, accessed 24 January 2008. Information about other elements of the reforms is available at: <http://www.ag.gov.au/nativetitlesystemreform>. The report and the Government's response are available at: <http://www.ag.gov.au/claimsresolutionreview>, accessed 24 January 2008.
- 34 Human Rights and Equal Opportunity Commission, *HREOC congratulates government for ratifying children's rights protocols*, Media Release, 30 August 2006, available online at: http://www.humanrights.gov.au/about/media/media_releases/2007/5_07.html, accessed 24 January 2008.
- 35 A copy of the Commission's submission can be found at: http://www.humanrights.gov.au/legal/submissions/jskot_submission_croc_optional_protocol.html, accessed 24 January 2008.
- 36 Australian Government, Office of the Registrar of Aboriginal and Torres Strait Islander Corporations website, *The Corporations (Aboriginal and Torres Strait Islander) Act 2006*, available online at: http://www.orac.gov.au/about_orac/legislation/reform_act.aspx, accessed 15 October 2007.



	<p>Over this period the Commission consulted with Aboriginal people, communities and organisations in all regions of the state. The Commission's inquiry culminated in a comprehensive Final Report setting out 131 recommendations for reform of laws and policies and the practices of government agencies, police and courts.³⁷</p>
<p>8 November 2006 <i>Passage of the Australian Crimes Amendment (Bail and Sentencing) Bill 2006</i></p>	<p>The <i>Australian Crimes Amendment (Bail and Sentencing) Bill 2006</i> amends the sentencing and bail provisions in the <i>Crimes Act 1914</i> in accordance with the decisions made by the Council of Australian Governments (COAG) on 14 July 2006.³⁸</p> <p>COAG 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. The COAG meeting followed the recommendations of the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities on 26 June 2006.</p> <p>This bill passed through the Senate with two Government amendments.³⁹</p>
<p>14 November 2006 <i>National Indigenous Youth Leadership Group merged with the National Youth Roundtable</i></p>	<p>The National Indigenous Youth Leadership Group, which was formed in July 2005, has been merged with the National Youth Roundtable (Roundtable). The original focus of the National Indigenous Youth Leadership Group was the promotion of issues of relevance to young Indigenous Australians.⁴⁰</p> <p>The Roundtable replaced the Australian Youth Policy and Action Coalition, which started with 50 people and decreased to 30 in 2005 when the National Indigenous Youth Leadership Group was formed.</p> <p>The Roundtable is the Australian Government's youth consultation mechanism. It brings together young people aged 15 to 24 years from all areas around Australia and various cultural backgrounds. The Roundtable provides young Australians with the opportunity to meet with the Australian Government to discuss and explore issues that impact on young people.⁴¹</p>

37 Law Reform Commission of Western Australia website, *Aboriginal Customary Laws*, available online at: <http://www.lrc.justice.wa.gov.au/094g.html> accessed 16 October 2007.

38 Council of Australian Governments, *Council of Australian Governments – Communiqué – 14 July 2006*, 14 July 2006, p13.

39 Parliament of Australia, Parliamentary Library website, *Bills Digest no. 56 2006–07, Crimes Amendment (Bail and Sentencing) Bill 2006*, available online at: <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd056.htm#Passage> accessed 16 October 2007.

40 Cob, J., (Minister for Community Services), *Labor out of touch on youth leadership*, Media Release, 14 November 2006, available online at: http://www.facs.gov.au/internet/minister4.nsf/content/youth_leadership_14nov06.htm, accessed 24 January 2008.

41 The Australian National Youth Roundtable website, *National Youth Roundtable*, available online at: <http://www.thesource.gov.au/involve/NYR/default.asp> accessed 16 October 2007.



<p>28 November 2006 <i>Tasmanian Parliament passes the Stolen Generations of Aboriginal Children Act 2006</i></p>	<p>All members of both Houses of Parliament in Tasmania pass the <i>Stolen Generations of Aboriginal Children Act 2006</i>. The legislation creates a \$5 million fund to provide payments to eligible members of the Stolen Generations of Aboriginals and their children.</p> <p>The Act will become operational on January 15, 2007. An Office of the Stolen Generations Assessor has been established and claims for compensation will be determined by January 2008.⁴²</p>
<p>10 January 2007 <i>New Family Violence Prevention Legal Services Unit announced</i></p>	<p>Port Lincoln Aboriginal Health Service has been appointed as the newest service provider in the Indigenous Family Violence Prevention Legal Services Program. It is anticipated that the new service will be in its early operational stages in the coming months.⁴³</p> <p>The family violence units are established to focus on adults, children and young people who live in regional and remote areas and who are survivor-victims of family violence and sexual abuse or who are at immediate risk of such violence.⁴⁴</p> <p>The appointment is part of the Australian Government's commitment to add five units to the Indigenous Family Violence Prevention Legal Services Program, which will take the total number of units to 31.</p>
<p>23 January 2007 <i>Minister signs funding agreement for Australian Training College – Pilbara</i></p>	<p>The Australian Minister for Vocational and Technical Education today signed a \$23.5 million funding agreement to establish the Australian Technical College - Pilbara in Western Australia.</p> <p>This agreement is the 21st Funding Agreement to be signed, providing opportunities for young people to attend Australian Technical Colleges across the nation. It is hoped that 2000 students will study and train in Australian Technical Colleges through 2007.</p> <p>This Australian Technical College is strategically placed in Western Australia's mining heartland and economic engine room to ensure that future skill needs for iconic mining giants such as BHP Billiton Iron Ore Pty Ltd, Chevron Australia Pty Ltd, Pilbara Iron (Rio Tinto Group) and Woodside Energy Pty Ltd can be met.</p>

42 Tasmanian Government, Office of the Stolen Generations Assessor website, *Tasmania says sorry - Stolen Generations of Aboriginal Children*, available online at: <http://www.dpac.tas.gov.au/stolengeneration/index.html> accessed 15 October 2007.

43 Ruddock, P., (Australian Attorney-General), *New Family Violence Prevention Legal Services Unit announced*, Media Release 004/2007, 10 January 2007, available online at: http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2007_First_Quarter_0042007_-_10_January_2007_-_New_family_violence_prevention_legal_services_unit, accessed 24 January 2008.

44 Calma, T. (Aboriginal and Torres Strait Islander Social Justice Commissioner), *Social Justice Commissioner welcomes new Family Violence Prevention Legal Services Program announced for Port Lincoln*, Media Release, 12 January 2007, available online at: http://www.humanrights.gov.au/about/media/media_releases/2007/3_07.html, accessed 24 January 2008.



	<p>These corporations have been instrumental in working with the Australian Government and the local community in establishing the Australian Technical College - Pilbara, which is also uniquely placed to expand the opportunities of many young Indigenous students in this geographically isolated region.</p> <p>Five Australian Technical Colleges opened in 2006, and a further 16, including the Australian Technical College – Pilbara, are expected to open this year.⁴⁵</p>
<p>25 January 2007 <i>Australian of the Year Awards</i></p>	<p>A record number of Indigenous Australians have been recognised for their contributions to the nation in this year's <i>Australian of the Year Awards</i>.</p> <p>High achieving Aboriginal Australians were represented for the first time as finalists in each of the three main categories: <i>Australian of the Year</i> (Raymattja Marika), <i>Senior Australian of the Year</i> (Patricia Anderson), <i>Young Australian of the Year</i> (Tania Major and John Van den Dungen).</p> <p>Queensland's Indigenous youth advocate, Tania Major, was named Young Australian of the Year 2007 for her efforts in addressing the issues involved in the welfare of young Indigenous people.⁴⁶</p>
<p>25 January 2007 <i>New Family Violence Prevention Legal Service for Broken Hill</i></p>	<p>The Australian Government has selected the Far West Community Legal Centre to provide extra legal and support services to Indigenous Australians in the Broken Hill area who are victims of family violence and sexual assault.</p> <p>The new service is expected to start operating in the coming months, after its detailed funding arrangements are finalised.⁴⁷</p>
<p>13 February 2007 <i>New South Wales Police recruits have largest number of Indigenous graduates</i></p>	<p>The largest ever class of NSW Police recruits including 12 of Aboriginal or Torres Strait Islander descent will graduate in Goulburn today, boosting the organisation's strength to approximately 15,300 officers.</p>

45 Hardgrave, G., (Australian Minister for Vocational and Technical Education, Minister Assisting the Prime Minister), *Minister signs funding agreement for Australian Training College – Pilbara*, Media Release, 18 January 2007, available online at: <http://www.dest.gov.au/Ministers/Media/Hardgrave/2007/01/H001180107.asp>, accessed 24 January 2008.

46 Australian of the Year Awards, *Climate Change Crusader named Australian of the Year*, Media Release, 25 January 2007, available online at: <http://www.australianoftheyear.gov.au/pages/page307.asp>, accessed 24 January 2008.

47 Vaile, M., (Deputy Prime Minister, Minister for Transport and Regional Services, Leader of Nationals) and Cobb, J., (Minister for Community Services), *Australian Government Takes on Family Violence in Broken Hill*, Joint Media Statement, 24 January 2007, available online at: http://www.ministers.dotars.gov.au/mv/releases/2007/January/008MV_2007.htm, accessed 24 January 2008.



<p>21 February 2007 <i>Petrol sniffing campaign expanded</i></p>	<p>The Minister for Health and Ageing and the Minister Family and Community Services and Indigenous Affairs have announced that the Australian Government have expanded efforts to help Indigenous communities address petrol sniffing and other substance abuse problems.</p> <p>The Government's Central Australian anti-petrol sniffing strategy will be expanded to north of Alice Springs above Ti Tree as well as into Indigenous communities in the East Kimberley region of Western Australia.⁴⁸</p>
<p>22 February 2007 <i>Council of Australian Governments (COAG) Indigenous Trials</i></p>	<p>The Council of Australian Governments (COAG) trials operating in eight Indigenous communities across Australia will be further developed as part of the Governments Blueprint for Action in Indigenous Affairs, the Minister for Families, Community Services and Indigenous Affairs, announced today.⁴⁹</p> <p>'The trials, administered jointly by the Commonwealth, state and territory governments, began in 2002 and explored new ways of working to reduce Indigenous disadvantage,' the Minister said.</p> <p>The Minister stressed that commitments made during the trials would be honoured.</p> <p>In the APY Lands, the Department of Health and Ageing will continue to take a lead role in seeing through its commitments and the Department of Education, Science and Training will remain a key player in the Murdi Paaki region.</p> <p>Agreements were made with state and territory governments in 2006 for more place-based approaches in Galiwinku (NT), Alice Springs, Mornington Island (QLD) and Kalumburu (WA). Other sites are being negotiated with state and territory Governments.⁵⁰</p>
<p>23 February 2007 <i>\$36.6 million to improve Indigenous telecommunications</i></p>	<p>The Australian Minister for Communications, Information Technology and the Arts today invited remote Indigenous communities to apply for funding under the new \$36.6 million Backing Indigenous Ability telecommunications program.</p>

48 Brough, M., (Minister for Families, Community Services and Indigenous Affairs, Minister Assisting the Prime Minister for Indigenous Affairs) and Abbot, T., (Minister for Health and Ageing), *Petrol-sniffing Campaign Expanded*, Joint Media Release, 20 February 2007, available online at: http://facs.gov.au/internet/minister3.nsf/content/20feb_petrolsniffing.htm, accessed 24 January 2008.

49 The COAG synopsis report is available online at: http://www.atsia.gov.au/media/media07/220207_coag_trials.aspx and the individual evaluation of the COAG trials are available online at: <http://www.oipc.gov.au/publications/default.asp> accessed 17 October 2007.

50 More information on the COAG trials is available online at: <http://www.indigenous.gov.au/coag/default.html>, accessed 24 January 2008.



	<p>The Backing Indigenous Ability (BIA) telecommunications program aims to improve access to telecommunications services in regional and remote Aboriginal and Torres Strait Islander communities.</p> <p>The program builds on the Telecommunications Action Plan for Remote Indigenous Communities (TAPRIC) that saw the installation of 216 robust phones throughout 124 Indigenous communities. Remote Indigenous communities are eligible to apply for funding or services, although some funding will be reserved for allocation on a needs basis, for example as part of a Shared Responsibility Agreement.</p> <p>Applications from remote Indigenous communities of any size are invited now.⁵¹</p>
<p>7 March 2007 <i>Leadership in Indigenous Education recognised</i></p>	<p>The Minister for Education, Science and Training recognises 18 schools for outstanding leadership in Indigenous Education.</p> <p>The Excellence in Leadership in Indigenous Education Awards were established in 2003 as part of the Australian Government's <i>Dare to Lead Project</i>.</p> <p>More than 1,100 Indigenous students across Australia will have benefited from the actions of the 18 award winning schools.</p> <p>An 18-member selection panel consisting of school leaders and Aboriginal educators from different states and territories plus representatives of the four peak principals associations evaluated the applications received from schools nationally.⁵²</p>
<p>13 March 2007 <i>New Family Violence Prevention Units in Western Australia</i></p>	<p>Kullarri Indigenous Women's Aboriginal Corporation in Broome and Southern Aboriginal Corporation in Albany were named as the newest service providers for the Indigenous Family Violence Prevention Legal Services program.</p> <p>The new units will service communities in the Broome Local Government Area and in the lower great southern region of Western Australia, including Albany, Mt Barker, Katanning, Kojonup, Gnowangerup, Tambellup and Jerramungup.⁵³</p>

51 Abbot, T., (Minister for Health and Ageing), *\$36.6 million to improve Indigenous telecommunications*, Media Release, 23 February 2007, <http://www.tonyabbott.com.au/news/article.aspx?ID=1509>, accessed 24 January 2008.

52 Bishop, J., (Minister for Education, Science and Training, Minister Assisting the Prime Minister for Women's Issues), *Making a difference for Indigenous students*, Media Release, 8 March 2007, available online at: <http://www.dest.gov.au/ministers/media/bishop/2007/03/b0002080307.asp>, accessed 24 January 2008.

53 Ruddock, P., (Attorney-General), *New Family Violence Prevention Units in WA*, Media Release, 13 March 2007.



<p>13 March 2007 <i>New Sports Academies for Indigenous Students</i></p>	<p>The Minister for Education, Science and Training today announced that new school-based sports academies for Indigenous students will aim to engage, motivate and lead them into lifelong learning.</p> <p>Thirteen academies drawing students from secondary schools, including remote areas will begin operating in five States and Territories over the next few months. The Programme will deliver 20 academies to 2009.⁵⁴</p>
<p>13 March 2007 <i>Financial commitment from Australian Government to upgrade Alice Springs Town Camps</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs said the original Australian Government commitment of \$20 million announced last year would be increased by up to a further \$50 million to provide for an upgrade of town camps.</p> <p>The funding announced last year included \$10 million to be used to establish two short-term visitor accommodation centres, following approval by the Northern Territory Government of two sites. The bulk of the funding would be used to upgrade existing town camps.⁵⁵</p>
<p>20 March 2007 <i>Memorandum of Understanding (MOU) to advance Indigenous employment in the forestry industry</i></p>	<p>A Memorandum of Understanding (MOU) has been signed today to focus on Indigenous employment and skills shortages in the forest industry, and on opportunities to encourage Indigenous business in regional Australia.⁵⁶</p> <p>The MOU aims to advance the implementation of the National Indigenous Forest Strategy.⁵⁷</p>
<p>21 March 2007 <i>Australian Football League (AFL) joins Australian Government to help Indigenous kids participate in sports</i></p>	<p>The Minister for Families, Community Services and Indigenous Affairs and the AFL Chief Executive Officer announced details of a three-year partnership between the Australian Government and the Australian Football League.</p> <p>Through the <i>AFL Club Fostership Program</i>, the AFL will partner with Indigenous communities and, in conjunction with local schools and community organisations, encourage young people into sporting activities.</p>

54 Bishop, J., (Minister for Education, Science and Training, Minister Assisting the Prime Minister on Women's Issues), *New Sports Academies for Indigenous Students*, Media Release, 13 March 2007, available online at: <http://www.dest.gov.au/ministers/media/bishop/2007/03/b001130307.asp>, available 24 January 2008.

55 Brough, M., (Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs), *Major Howard Government investment in Alice Springs Indigenous Accommodation*, Media Release, 13 March 2007, available online at: http://www.facs.gov.au/internet/minister3.nsf/content/alice_springs_13mar07.htm, accessed 24 January 2008.

56 Abetz, E., (Senator for Fisheries, Forestry and Conservation) Bishop, J., (Minister for Education, Science and Training), Scullion, N., (Minister for Community Services) and Hockey, J., (Minister for Employment and Workplace Relations), *MOU to advance Indigenous employment in the forest industry*, Joint Media Release, 20 March 2007.

57 More information on the National Indigenous Forestry Strategy can be found online at: <http://www.daff.gov.au/forestry/policies/nifs>, accessed 17 October 2007.



	The AFL All Stars Ambassador Program aims to encourage adolescents to complete secondary school or secure a job. ⁵⁸
13 April 2007 <i>Indigenous Family Income Management (FIM) program opens in Cooktown</i> ⁵⁹	<p>The Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs today opened a new Family Income Management site in Cooktown, which he said would help Indigenous families better manage their income and create more opportunities for their kids.</p> <p>The Australian Government had committed \$16.6million over four years to support the continuation of the first five sites on Cape York and to fund two new sites, the first of which is Cooktown and to support other family and financial management programmes in the Northern Territory and Western Australia.⁶⁰</p>
4 April 2007 <i>Launch of 'Close The Gap' campaign for Indigenous health equality within 25 years</i>	<p>Forty of Australia's leading Indigenous and non-Indigenous health peak bodies and human rights organisations joined forces to launch the 'Close the Gap' campaign on Indigenous health inequality.</p> <p>The campaign comes in response to a call from the Social Justice Commissioner to achieve health equality for Aboriginal and Torres Strait Islander people within 25 years.</p>
	'Close the Gap' calls on all levels of Australian government to put in place firm targets, funding and timeframes to address health inequalities, including providing equal access to primary health care for Indigenous Australians within 10 years. ⁶¹

58 Brough, M., (Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs) and Demetriou, A., (Australian Football League Chief Executive Officer), *AFL stars join Australian Government to help Indigenous kids*, Joint Media Release, 21 March 2007, available online at: http://www.facsia.gov.au/internet/Minister3.nsf/content/afl_partnership_21mar07.htm, accessed 24 January 2008.

59 More information on the Indigenous Family Income Management (FIM) Program can be found online at: http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-money_management.htm, accessed 19 October 2007.

60 Brough, M., (Minister for Families, Community Services and Indigenous Affairs and Minister Assisting the Prime Minister for Indigenous Affairs), *Indigenous Family Income Management (FIM) program opens in Cooktown*, Media Release, 13 April 2007, available online at: http://facs.gov.au/internet/minister3.nsf/content/cooktown_13apr07.htm, accessed 24 January 2008.

61 Human Rights and Equal Opportunity Commission Website, Aboriginal and Torres Strait Islander Social Justice, *Indigenous Health Campaign*, further information available online at: http://www.hreoc.gov.au/social_justice/health/index.html, accessed 29 January 2008.



<p>30 April 2007 <i>Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse is presented to the Northern Territory Government</i></p>	<p>The Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (<i>Ampe Akelyernemane Meke Mekarle</i> “Little Children are Sacred”) is presented to the Northern Territory Government.</p> <p>The report found that child sexual abuse is serious, widespread and often unreported in Aboriginal communities across the Northern Territory. It makes 97 recommendations across a variety of areas to address this situation.</p> <p>The first recommendation calls for Aboriginal child sexual abuse in the Northern Territory to:</p> <p style="padding-left: 40px;">be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.</p>
<p>2 May 2007 <i>Australian Government grants \$83,000 for Indigenous youth leadership in Victoria</i></p>	<p>Indigenous young people from rural and regional Victoria will benefit from an \$83,000 Australian Government initiative, which will see 10 youth leaders hold various activities in their own communities to assist access to mainstream services.⁶²</p>
<p>8 May 2007 <i>Australian Government Budget 2007-2008</i></p>	<p>Funding to Indigenous affairs in the 2007-08 Australian Government Budget will total \$3.5 billion. This includes \$815.7 million in new and extended funding over five years.⁶³</p> <p>Key measures include:</p> <ul style="list-style-type: none"> • Abolishing the Community Housing and Infrastructure Program (CHIP) and replacing it with the Australian Remote Indigenous Accommodation Programme (ARIA). An additional \$293.6 million will focus on land tenure reform, mainstream public housing and private home ownership.

62 Australian Government, *\$83,000 in funding for Indigenous youth leadership*, Media Release, 2 May 2007, available online at: http://www.facsia.gov.au/internet/minister5.nsf/content/nyc_2may07.htm, accessed 29 January 2008.

63 Brough, M. (Minister for Families, Community Services and Indigenous Affairs), *Budget backs a better future for Indigenous Australians*, Media Release, 8 May 2007, available online at [http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/budget2007-08/\\$File/07_indigenous_complete.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/budget2007-08/$File/07_indigenous_complete.pdf), accessed 23 January 2008.



	<ul style="list-style-type: none"> • Expansion of the Indigenous Youth Mobility Programme that offers boarding school places and scholarships to Indigenous young people from remote communities. An additional \$218 million in new funds has been committed over four years. • Additional funding for early childhood development, including home health visits for children aged 0-8 years and better access to child care and playgroups. • Welfare reform measures including more than 800 CDEP positions will be converted into paid employment at a cost of \$97.2 million over four years.
<p>9 May 2007 <i>First ninety-nine year lease agreed to on Aboriginal land in the Northern Territory</i></p>	<p>The first ninety-nine year lease over a township on Aboriginal land was signed today. A historic agreement has been reached with the Mantiyupwi people for the lease of the town of Nguuiu on the Tiwi Islands in the Northern Territory.</p> <p>A package of benefit for Tiwi people includes the construction of 25 additional houses at Nguuiu together with a programme of homes repairs and maintenance, and an additional \$1 million to be invested in health initiatives.</p> <p>The formal grant of the ninety-nine year lease will proceed once the Tiwi Land Council completes the steps set out in the <i>Land Rights Act</i> to confirm the agreement of traditional owners, consult with other community residents and ensure the lease is appropriate.</p> <p>The ninety-nine year lease will be held by a new Commonwealth statutory officer – the Executive Director of Township Leasing which will issue sub leases, collect rent and administer the head lease.⁶⁴</p>
<p>11 May 2007 <i>Tri-party Agreement signed in Hope Vale</i></p>	<p>A tri-party agreement was signed by the Minister for Families, Community Services, and Indigenous Affairs, Hope Vale Aboriginal Shire Council and the Cape York Institute for Policy and Leadership. The agreement is based on welfare reform and family income management, housing reform and economic development.</p> <p>A business precinct would be established in Hope Vale and the Australian Government would support local people to establish businesses. Home ownership would now be possible, as Hope Vale Aboriginal Shire Council have decided to purchase freehold land adjacent to the town.⁶⁵</p>

64 Brough, M., (Minister for Families, Community Services and Indigenous Affairs Minister Assisting the Prime Minister for Indigenous Affairs), *Breakthrough agreement on Aboriginal Land in the NT*, Media Release, 9 May 2007, available online at: http://www.facs.gov.au/internet/Minister3.nsf/content/emergency_21june07.htm, accessed 24 January 2008.

65 Brough, M., (Minister for Families, Community Services and Indigenous Affairs Minister Assisting the Prime Minister for Indigenous Affairs), *Brighter Future for Hope Vale*, Media Release, 11 May 2007, available online at: http://www.facs.gov.au/internet/minister3.nsf/content/hopevale_11may07.htm, accessed 24 January 2008.



<p>15 May 2007 <i>Reform package announced for Indigenous communities in Western Australia.</i></p>	<p>The West Australian and Australian Governments have announced funding of more than \$112 million for a range of service initiatives for Indigenous people living in Western Australia.</p> <p>The State and Federal funding would address new land tenure options to facilitate individual home ownership; upgrades to community infrastructure and housing to address overcrowding in priority communities; and help provide essential services to remote communities.</p> <p>In the East Kimberley, the initiative package will focus on Kalumburu and add to the State Government's already announced reforms at Halls Creek including additional services for drug and alcohol rehabilitation.⁶⁶</p>
<p>16 May 2007 <i>Australian Government Increase funding to Indigenous Northern Territory Housing</i></p>	<p>The Australian and Northern Territory Governments have agreed on a package of housing and infrastructure initiatives to increase spending on housing for Indigenous people in remote communities in the Northern Territory.</p> <p>The package represents an investment by the Australian Government of \$163.5 million, and includes the \$70 million previously announced by the Minister for Families, Community Services and Indigenous Affairs for the Alice Springs town camp redevelopment.⁶⁷</p>
<p>25 May 2007 <i>10th Anniversary of Bringing them home Report</i></p>	<p>The 1997 <i>Bringing them home</i> report has reunited many Indigenous peoples with their families and created a groundswell of compassion and support but the 10th Anniversary of the report is a bittersweet one, the Aboriginal and Torres Strait Islander Social Justice Commissioner said today.</p> <p>The Commissioner said government services should be expanded to support localised activities tailored to the needs of stolen generation members themselves. He said social and emotional wellbeing remained a great-unmet need in the Indigenous community generally and represented an urgent challenge for all governments to ensure appropriate services were provided.⁶⁸</p>

66 Brough, M., (Minister for Families, Community Services and Indigenous Affairs Minister Assisting the Prime Minister for Indigenous Affairs) and Roberts, M., (Minister for Employment Protection), *\$112 million reforms package announced for Indigenous communities in WA*, Joint Media Release, 15 May 2007, available online at: http://www.facs.gov.au/internet/minister3.nsf/content/reforms_package_15may07.htm, accessed 24 January 2008.

67 Brough, M., (Minister for Families, Community Services and Indigenous Affairs Minister Assisting the Prime Minister for Indigenous Affairs), *Massive Boost for Indigenous NT Housing by Federal Government*, Media Release, 16 May 2007, available online at: <http://ofw.facsia.gov.au/Internet/Minister3.nsf/print/nt-housing-16may07.htm>, accessed 24 January 2008.

68 Calma, T., (Aboriginal and Torres Strait Islander Social Justice Commissioner), *10th anniversary is 'bittersweet'*, Media Release, 25 May 2007, available online at: http://www.humanrights.gov.au/about/media/media_releases/2007/34_07.html, accessed 24 January 2008.



<p>25 May 2008 <i>Second Indigenous Higher Education Advisory Council appointed</i></p>	<p>The Australian Minister for Education, Science and Training today appointed the new Chair and 15 members of the second Indigenous Higher Education Advisory Council (IHEAC). The inaugural IHEAC commenced in 2005 and retired on 15 March 2007.</p> <p>The new Council will make recommendations for awards under the Indigenous Staff Scholarships programme; develop strategies for increasing the number of, and enhancing the career paths of Indigenous staff employed in higher education institutions; convene an annual Indigenous Higher Education Conference to discuss research and policy directions, sector/institutional achievements, successful innovations and best practice measures; and present the annual Neville Bonner Scholarship and Indigenous Staff Scholarships.⁶⁹</p>
<p>25 May 2007 <i>Radioactive Waste Facility Site Nomination</i></p>	<p>The Australian Minister for Education, Science and Training has welcomed the decision by the Northern Land Council (NLC) to nominate land on Muckaty Station, 120 kilometres north of Tennant Creek, as a potential site for the Commonwealth radioactive waste management facility.</p> <p>A \$12 million package of benefits will accrue to the traditional owners in the event that the volunteer site proves to be the most suitable site for the facility.⁷⁰</p>
<p>27 May 2007 <i>40th Anniversary of the 1967 Referendum</i></p>	<p>27 May 2007 marks the 40th Anniversary of the 1967 Referendum in which more than 90 per cent of Australians voted to remove clauses from the Australian Constitution that discriminated against Indigenous Australians.⁷¹</p> <p>The referendum also gave the Commonwealth Government the power to make laws on behalf of Aboriginal people.⁷²</p> <p>A function at Old Parliament House, hosted by the Australian Prime Minister, to commemorate the Referendum will take the theme of National Reconciliation Week 2007 – <i>Their Spirit Still Shines</i>.⁷³</p>

69 Bishop, J., (Minister for Education, Science and Training, Minister Assisting the Prime Minister for Women's Issues), *Second Indigenous Higher Education Advisory Council*, Media Release, 25 May 2007, available online at: <http://www.dest.gov.au/ministers/media/bishop/2007/05/b001250507.asp>, accessed 24 January 2008.

70 Bishop, J., (Minister for Education, Science and Training, Minister Assisting the Prime Minister for Women's Issues), *Radioactive Waste Facility Site Nomination*, Media Release, 25 May 2007, available online at: <http://www.dest.gov.au/ministers/media/bishop/2007/05/b002250507.asp>, accessed 24 January 2008.

71 More information on the 1967 Referendum can be found at: <http://www.reconciliation.org.au/i-cms.isp?page=345>, accessed 22 October 2007.

72 Reconciliation Australia, *National Reconciliation Week 27 May 2007 – 3 June 2007*, available online at: <http://www.reconciliation.org.au/i-cms.isp?page=97>, accessed 22 October 2007.

73 The full text of the address given by Howard, J., (Australian Prime Minister) to the *Their Spirit Still Shines*' function at Old Parliament House on 27 May 2007 is available online at: <http://www.pm.gov.au/media/speech/2007/Speech24341.cfm>, last accessed 22 October 2007.



<p>26 May 2007 <i>Inaugural Australia wide ceremonies to honour Indigenous war veterans</i></p>	<p>This year the Australian Government will support the first ever Australia-wide ceremonies recognising the contribution Aboriginal and Torres Strait Islander people have made, and continue to make, in defence of Australia.</p> <p>The Minister for Veterans' Affairs will lay a wreath at the National Commemoration Ceremony at the Australian War Memorial in Canberra on Sunday 27 May with the Minister for Families, Community Services and Indigenous Affairs honouring Indigenous war veterans for the first time.⁷⁴</p>
<p>1 June 2007 <i>Third Report on Indigenous Disadvantage Released</i></p>	<p>The third in the series of reports <i>Overcoming Indigenous Disadvantage: Key Indicators</i> has been released today. Commissioned by the Council of Australian Governments, the Report's strategic framework helps track over time the extent to which government policies and other actions are making a difference to overcoming Indigenous disadvantage.</p> <p>The results in the third edition show that many Indigenous people have shared in Australia's recent economic prosperity, with improved employment outcomes and higher incomes. There have also been improvements in some education and health outcomes for Indigenous children. However, even where improvements have occurred, Indigenous people continue to do worse than other Australians and many indicators show little or no movement. In some key areas, particularly criminal justice, outcomes for Indigenous people have been deteriorating.</p> <p>The Report is a product of the Review of Government Service Provision. It is overseen by a Steering Committee comprising senior officials from the Australian, State and Territory governments and supported by a secretariat drawn from the Productivity Commission.⁷⁵</p>
<p>3 June 2007 <i>Fifteen-year anniversary of the High Court of Australia's Mabo decision</i></p>	<p>Today marks the fifteen-year anniversary of the High Court of Australia's judgment in the Mabo case. The decision, in 1992, recognised the Native Title rights of the Aboriginal and Torres Strait Islander peoples.⁷⁶</p>

74 Billson, B., (Minister for Veterans' Affairs) and Brough, M., (Minister for Families, Community Services and Indigenous Affairs, Minister Assisting the Prime Minister for Indigenous Affairs), *Australia wide ceremonies to honour Indigenous veterans*, Joint Media Release, 26 May 2007, available online at: http://minister.dva.gov.au/media_releases/2007/05_may/va064.htm, accessed 24 January 2008.

75 Australian Government Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Media Release, 1 June 2007, available online at: http://www.pc.gov.au/gsp/reports/indigenous/keyindicators2007/media_release, accessed 24 January 2008.

76 Reconciliation Australia, *National Reconciliation Week 27 May 2007 – 3 June 2007*, available online at: <http://www.reconciliation.org.au/i-cms.isp?page=97>, accessed 22 October 2007.



<p>14 June 2007 <i>Social Justice and Native Title Reports 2006 tabled in Parliament</i></p>	<p>The Attorney-General tables the <i>Social Justice Report 2006</i> and the <i>Native Title Report 2006</i> in Parliament. The reports were prepared by the Aboriginal and Torres Strait Islander Social Justice Commissioner.</p>
<p>19 June 2007 <i>From Hand Out to Hand Up: Welfare Reform Design Recommendations</i> launched by the Cape York Institute.</p>	<p>The Cape York Institute launch <i>From Hand Out to Hand Up: Welfare Reform Design Recommendations</i>.⁷⁷ The report is based on work with four Cape York communities – Coen, Aurukun, Hopevale and Mossman Gorge. Recommendations in the report are in four areas:</p> <ul style="list-style-type: none"> • Restoring social norms by attaching reciprocity to welfare payments, so that for instance, parents will have to ensure 100% attendance of children at school to receive welfare payments. • Addressing the ‘welfare pedestal’ through changing the incentives so that people are encouraged to come off welfare, or not enter welfare. • Supporting individual engagement in the real economy through converting CDEP positions into real jobs, making communities more business friendly and introducing measures to support mobility for employment and education. • Moving from welfare housing to home ownership. • The report also called for the establishment of a Family Responsibility Commission in the Cape. This would be an administrative, statutory legal agency that would make rulings about whether obligations to children have been breached by carers and if necessary, enforce sanctions.
<p>20 June 2007 <i>Report on Parliamentary Inquiry into Indigenous Arts Industry released</i></p>	<p>The Australian Senate released the report of its Inquiry into Australia’s Indigenous visual arts and craft sector which examined and made recommendations on strategies and mechanisms to strengthen the sector. The inquiry commenced in August 2006 and was conducted by the Senate Environment, Communications, Information Technology and the Arts Legislation Committee. The report contains twenty nine recommendations.⁷⁸</p>

77 More information on the *From Hand Out to Hand Up* Report can be accessed online at: <http://www.cyi.org.au/welfarereform.aspx>, accessed 23 January 2008.

78 Parliament of Australia Website: Senate: Indigenous Art – Securing the Future Australia’s Indigenous visual arts and craft sector. 20 June 2007. Full Inquiry Report can be accessed on line at: http://www.aph.gov.au/senate/committee/ecita_ctte/indigenous_arts/report/index.htm, accessed 23 January 2008.



21 June 2007

Australian Government launch a response following the release of the Little Children are Sacred Report in the Northern Territory

The Australian Government today launched a response following the public release of the Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (*Little Children are Sacred*) in the Northern Territory.

The Minister for Families, Community Services and Indigenous Affairs today announced immediate, broad ranging measures that will be introduced into the Northern Territory. The Australian Government have referred to the situation in the Northern Territory as a crisis.

The emergency measures to protect children being announced today are a first step 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 allow for quarantining of income;
- 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;
- 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;
- 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;



	<ul style="list-style-type: none"> • Improving governance by appointing managers of all government business in prescribed communities; and • The Community Development Employment Projects (CDEP) program will be progressively replaced by jobs, training and mainstream employment programs.⁷⁹ <p>A Taskforce is appointed to oversee the national emergency response with Magistrate Sue Gordon as its chair.⁸⁰</p>
<p>26 June 2007 <i>A human rights based approach is vital to address the challenges in Indigenous communities</i></p>	<p>The Human Rights and Equal Opportunity Commission (HREOC) has welcomed the Australian Government's announcements to act to protect the rights of Indigenous women and children in the Northern Territory and urges it to adopt an approach that is consistent with Australia's international human rights obligations.</p> <p>The complex issues being tackled and the proposed measures to be taken to overcome them raise a host of fundamental human rights principles. It is of the utmost importance to Australia's international reputation, and for community respect for our system of government, that solutions to all aspects of these matters respect the human rights and freedoms of everyone involved.⁸¹</p>

79 Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, *Northern Territory Emergency Response – Fact Sheet 16*, available online at: http://www.facs.gov.au/nter/docs/factsheet_16.htm, accessed 29 January 2008.

80 Brough, M., (Minister for Families, Community Services and Indigenous Affairs, Minister Assisting the Prime Minister for Indigenous Affairs), *National emergency response to protect Aboriginal children in the NT*, Media Release, 21 June 2007, more information about the Emergency Intervention is available online at: <http://www.facs.gov.au/nter/>, accessed 24 January 2008.

81 von Doussa, J., (President and Acting Sex Discrimination Commissioner), Calma, T., (Aboriginal and Torres Strait Islander Social Justice Commissioner and Acting Race Discrimination Commissioner), and Innes, G., (Human Rights Commissioner and Acting Disability Discrimination Commissioner), *A human rights based approach is vital to address the challenges in Indigenous communities*, Joint Media Release, 26 June 2007, available online at: http://www.hreoc.gov.au/about/media/media_releases/2007/45_07.html.



Overview of Family Violence and Child Abuse Initiatives by all Australian governments

To develop a nationwide picture of existing government initiatives that address family violence, the Social Justice Commissioner sent correspondence to all State, Territory and relevant Australian government departments¹ requesting information on their policies and programs during the period 2006-2007.

The materials reproduced here are primarily drawn from information provided by each government or department,² as well as some background information on major reports, inquiries or events that have shaped family violence and child abuse policy.

Part 1 of the appendix sets out the Council of Australian Governments (COAG) framework for intervention in family violence and child abuse, as well as Australian government responses reporting against the commitments arising from the 2006 *Inter-governmental Summit on Indigenous Family Violence and Child Abuse*.

Part 2 of the appendix provides supplementary information on other policies and programs that address family violence and abuse in Indigenous communities at the federal level.

Part 3 of the appendix provides an overview for each State and Territory under the following four headings:

- a) policy frameworks;
- b) joint State/Territory and Australian government initiatives;
- c) monitoring and evaluation processes; and
- d) programs

It also includes information about major relevant reports in each state and territory.

1 The departments contacted were: Department of Families, Community Services and Indigenous Affairs; Attorney General's Department; Department of Health and Ageing; Department of Employment and Workplace Relations; Department of Education, Science and Training; Department of Human Services; and Department of Communications, Information Technology and the Arts.

2 The Social Justice Commissioner's Office has reported the information provided by governments and departments. Although all efforts have been undertaken to ensure that the reporting is accurate, the Social Justice Commissioner's Office does not endorse the claims made.



Part 1: The Council of Australian Governments' framework for responding to Indigenous Family Violence and Child Abuse

Family violence and child abuse in Indigenous communities are issues that require cooperative action between the state and territory and federal levels of government. Many of the crucial services, such as policing, justice and child protection are the responsibility of the states and territories although there is still considerable scope for enhanced funding and supplementary support from the Australian government to address family violence and child abuse.

Most of the significant collaborative action taken on Indigenous family violence and child abuse has been negotiated through the Council of Australian Governments (COAG).³

Following the Prime Minister's national roundtable with Indigenous leaders on family violence in 2003, a working group was formed to develop a draft family violence strategy to be endorsed by COAG.⁴ COAG agreed to a *National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities*⁵ (the National Framework) on 25 June 2004. The National Framework establishes prevention of child abuse and family violence as a national priority and includes a process for taking action through bilateral agreements. It also states that family violence prevention will be based on the principles of:

- *Safety*: Everyone has the right to be safe from family violence and abuse.
- *Partnerships*: Preventing family violence and child abuse in Indigenous families is best achieved by families, communities, community organisations and different levels of government working together as partners.
- *Support*: Preventing family violence and child abuse in Indigenous families relies on strong leadership from governments and Indigenous community leaders and sustainable resourcing.
- *Strong, resilient families*: Successful strategies to prevent family violence and child abuse in Indigenous families enable Indigenous people to take control of their lives, regain responsibility for their families and communities and to enhance individual and family wellbeing.
- *Local solutions*: Successful strategies to prevent family violence and child abuse in Indigenous families are flexible, work across jurisdictional and administrative boundaries, enable communities and governments to work together in new and innovative ways and enable local Indigenous communities to set priorities and work with governments to develop and solution to implement them.

3 For a detailed discussion of government responses to family violence in Indigenous communities up to 2003, see *Social Justice Report 2003*, pp168-174.

4 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2003*, HREOC, Sydney, 2003, p169.

5 COAG, Communiqué, 25 June 2004, Attachment C – *National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities*, available online at: http://www.coag.gov.au/meetings/250604/attachments_c.rtf, accessed 29 January 2008.



- *Addressing the cause:* Successful strategies to prevent family violence and child abuse in Indigenous families to address the underlying causes of violence and abuse, including alcohol and drug abuse, generational disadvantage, poverty and unemployment.⁶

On 26 June 2006, the Minister for Families, Community Services and Indigenous Affairs, convened the *Intergovernmental Summit on Indigenous Family Violence and Child Abuse*, attended by all State and Territory Governments. All parties reconfirmed their commitment to the National Framework and developed the *National strategy for action to overcome violence and child abuse in Indigenous Communities* (the action strategy).⁷

The action strategy includes the following commitments:

- *Customary law and bail:* All governments agree that customary law in no way justifies violence against women and children. The Australian Government indicated its intention to amend 16A of the *Crimes Act 1914* to delete any reference to:
 - any mandatory consideration of cultural background for all offences against Commonwealth law and to exclude from sentencing discretion... claims that criminal behaviour was justified, authorized or required under customary law or cultural practice.⁸
- *Law Enforcement:* Unanimous support for the establishment of a National Intelligence Unit to improve policing of violence and child abuse in Indigenous communities.
- *Senior Indigenous Network:* Additional \$4 million in Australian government funding to support leadership development in Indigenous communities, to be negotiated bilaterally with the States and Territories.
- *Protection for Victims:* All governments recognise the importance of additional safe places and increased legal support for victims of violence and abuse.
- *Drug and Alcohol Rehabilitation Services:* Up to \$50 million Australian government funding to jointly fund additional drug and alcohol services, provided on a basis of need.
- *Health and Well-being of Children:* Extension of the Australian government's *Indigenous Child Health Check* scheme.
- *Corporate Governance:* Australian government funding guidelines to be amended to ensure that government funding only goes to 'organisations managed by fit and proper persons'.

6 COAG, Communiqué, 25 June 2004, Attachment C – *National Framework for Preventing Family Violence and Child Abuse in Indigenous Communities*, available online at: http://www.coag.gov.au/meetings/250604/attachments_c.rtf, accessed 29 January 2008.

7 Brough, M., (Minister for Families, Communities and Indigenous Affairs), *Communiqué – Safer Kids, Safer Communities, Attachment – National Strategy for action to overcome violence and child abuse in Indigenous Communities*, 26 June 2006.

8 Brough, M., (Minister for Families, Communities and Indigenous Affairs), *Communiqué – Safer Kids, Safer Communities, Attachment – National Strategy for action to overcome violence and child abuse in Indigenous Communities*, 26 June 2006.



- *Compulsory School Attendance:* All governments recognise the importance of school attendance but are unsure about how to ensure all Indigenous children are enrolled and attend school. The issue will be referred to the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA).

Following the Summit, implementation of the action strategy was discussed at the COAG meeting on 14 July 2006. It was further announced that the Australian Government would commit \$130 million over four years to assist with bilateral, joint funded initiatives around Indigenous family violence and child abuse.⁹

COAG agreed to the following measures:

- to provide more resources for policing in very remote areas;
- to improve the effectiveness of bail provisions;
- to establish a National Indigenous Violence and Child Abuse Intelligence Task Force to support existing intelligence and investigatory capacity;
- to establish Joint Strike Teams on a bilateral basis, where necessary, to work in remote Indigenous communities where there was evidence of endemic child abuse or violence;
- 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;
- to amend or monitor State and Territory legislation, where necessary, to remove customary law or cultural practice excuses;
- States and Territories magistrates being encouraged to make attendance at drug and alcohol rehabilitation programmes mandatory as part of bail conditions or sentencing;
- additional resourcing for drug and alcohol treatment and rehabilitation services in regional and remote areas;
- support for networks of Indigenous women and men in local communities so that they can better help people who report incidents of violence and abuse;
- an accelerated roll-out of the Indigenous child health check in high-need regions, with locations to be agreed on a bilateral basis; and
- collect and share data on enrolments and attendance with a newly established National Student Attendance Unit to monitor, analyse and report on this data.

In addition to these specific measures to address Indigenous family violence and child abuse, COAG has utilised other processes for joint action. The *Overcoming Indigenous Disadvantage* process was established in April 2003 when COAG commissioned the Steering Committee for the Review of Government Service Provision to produce a regular report against key indicators of Indigenous disadvantage. The reports are designed to measure whether government services

⁹ COAG, *Communiqué, Outcomes of the Indigenous Summit on Violence and Child Abuse in Indigenous Communities*, 14 July 2006, available online at: <http://www.coag.gov.au/meetings/140706/index.htm#indigenous>, accessed 29 January 2007.



are achieving outcomes and guide where further work is needed. Reports were released in 2003,¹⁰ 2005¹¹ and 2007.¹²

The *National Framework of Principles for Delivering Services to Indigenous Australians* was agreed on by COAG on 25 June 2004. It sets out service delivery based on the principles of: sharing responsibility; harnessing the mainstream; streamlining service delivery; establishing transparency and accountability; developing a learning framework; and focussing on priority areas.¹³

Other measures include:

- the COAG Reconciliation Framework;¹⁴
- COAG Trials;¹⁵ and
- bilateral agreements between Commonwealth and State and Territory Governments.¹⁶

Implementation of the Intergovernmental Summit on Indigenous Family Violence and Child Abuse and COAG Action Strategy

In August 2006 the Prime Minister wrote to all Australian government Ministers with portfolio responsibility for the 17 initiatives included in the \$130m package. The Minister for Families, Communities and Indigenous Affairs was charged with overall responsibility for coordinating the implementation of the package and for leading bilateral negotiations with the states and territories.¹⁷ The initiatives undertaken by Australian Government departments are reported below.¹⁸

1. Customary law (lead agency: Attorney General's Department)

The Australian Government enacted the *Crimes Amendment (Bail and Sentencing) Act 2006 (Cth)* on 7 December 2006 to give effect to COAG's decision on customary law. The Act amends the *Crimes Act 1914 (Cth)* to:

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- 10 SCRGSP (Steering Committee for the Review of Government Service Provision) 2003, *Overcoming Indigenous Disadvantage: Key Indicators 2003*, Productivity Commission, Canberra.
 - 11 SCRGSP (Steering Committee for the Review of Government Service Provision) 2005, *Overcoming Indigenous Disadvantage: Key Indicators 2005*, Productivity Commission, Canberra.
 - 12 SCRGSP (Steering Committee for the Review of Government Service Provision) 2007, *Overcoming Indigenous Disadvantage: Key Indicators 2007*, Productivity Commission, Canberra.
 - 13 COAG, Communiqué, 25 June 2004, Attachment B- *National Framework for Principles for Delivering Services to Indigenous Australians*, available online at: http://www.coag.gov.au/meetings/250604/attachments_b.rtf, accessed 29 January 2008.
 - 14 COAG, Communiqué, 3 November 2000, available online at <http://www.coag.gov.au/meetings/031100/index.htm#reconciliation>, accessed 29 January 2008.
 - 15 See the *Social Justice Report 2005*, pp 48- 57 for a detailed analysis of COAG trials.
 - 16 Relevant bilateral agreements between Commonwealth and State and Territory Governments are discussed below under each State and Territory overview.
 - 17 Costing for the seventeen initiatives was settled in late 2006. Evaluation data is not available for the period covered by this report (1 July 06 to 30 June 07), since most initiatives were in final stages of planning and/ or agreement during this time.
 - 18 The Social Justice Commissioner wrote to all relevant Secretaries of all of the relevant Commonwealth government departments requesting a report on the implementation of the COAG action strategy. These responses form the basis of the information provided.



- make clear that in the assessment of bail and sentencing decisions under Commonwealth law, the seriousness of criminal behaviour cannot be lessened or aggravated because of customary law or cultural practice.

The Act also provides additional protection to victims and witnesses by requiring courts to consider the potential impact of granting bail, on victims and witnesses – particularly those in remote communities.

The Australian Government has, as part of the Northern Territory Emergency Response, enacted *The Northern Territory National Emergency Response Act 2007* (Cth) (NT NER Act), assented to on 17 August 2007. The legislation brings bail and sentencing discretion in the Northern Territory in line with the Commonwealth's *Crimes Act* amendments and, therefore, also with the COAG decision. The amendments could be repealed if the Northern Territory enacts sufficiently complementary provisions.

While no direct funding was provided for the legislative amendments, the Australian Government has committed funding to two complementary programs:

- judicial cultural awareness training; and
 - community legal education.
2. *Bail determinations and enforcement* (lead agency: Attorney General's Department)

The Australian Government enacted the *Crimes Amendment (Bail and Sentencing) Act 2006* (Cth) on 7 December 2006, to give effect to COAG's decision. The *Crimes Act* amendments require a bail authority to take into consideration:

- the potential impact of granting bail on alleged victims and witnesses, and
- the fact that an alleged victim or witness is located in a remote community.

The NT NER Act brings bail and sentencing discretion in the Northern Territory in line with the *Crimes Act* amendments. The Northern Territory Legislative Assembly has made legislative changes that go some way toward matching the Australian Government's amendments, through the *Bail Amendment Bill 2007* introduced on 23 August 2007.

The amendments will reverse the presumption of bail for persons charged with certain offences, including serious sexual offences, and will also consider the interests of the community when determining a bail application.

Each jurisdiction is independently evaluating the need for legislative amendments. The legislative amendments ensure that bail authorities take into account the safety of victims and witnesses when making a decision to grant bail. This will prevent perpetrators from returning to communities, where this would put the safety and wellbeing of community members at risk.



COAG asked the Standing Committee of Attorneys-General (SCAG) to report on the extent to which bail provisions and enforcement take particular account of potential impacts of victims and witnesses in remote communities, and to recommend any changes required.

In March 2007, SCAG Ministers approved an out of session paper. All jurisdictions agreed to the following non-legislative recommendations:

- i) Where appropriate to individual jurisdictions, Indigenous community representatives should be involved as one means of helping inform bail decision makers in relation to bail decisions concerning members of their communities.
 - ii) Existing drug and alcohol diversion programs that are available for accused on bail should be considered for continuation and expansion, particularly to increase their availability to Aboriginal accused.
 - iii) SCAG should:
 - a) continue its work on sharing information about the operation and evaluation of best practice Indigenous justice programs (through the Indigenous Justice Clearinghouse Project); and
 - b) request the Clearinghouse to prioritise a Research Brief on effective bail support programs.
 - iv) Best practice bail support programs should be identified and implemented in a manner appropriately adapted to local conditions.
3. *Legal services support for victims and witnesses* (lead agency: Attorney General's Department)
- Utilising existing funds, the Attorney General's Department will continue to fund the *Indigenous Legal Aid* program and *Family Violence Prevention Legal Services* program.
4. *Community legal education* (lead agency: Attorney General's Department)
- Indigenous specific community legal education (CLE) programs will be implemented in 15 rural and remote communities across Australia. The programs will:
- inform Indigenous Australians about their legal and human rights and responsibilities, including any misunderstandings about customary law and issues that have arisen from recent changes to the *Crimes Act 1914 (Cth)*; and
 - provide information about how to access a range of services and encourage Indigenous Australians to report incidences of violence and abuse.

The initiative is funded at \$4.23 million over four years beginning in 2007-08. Funding is also allocated for an independent review of the community legal education project 2009-2010.



The Human Rights and Equal Opportunity Commission (HREOC) is developing the community legal education (CLE) program and associated training resources, in consultation with the Attorney General's Department. This initiative is being implemented in consultation with State and Territory governments, HREOC and the Indigenous community. The Department has asked State and Territory justice departments to provide input into locations for the program. State and Territory governments have also been encouraged to provide funding or in-kind contributions that will ensure a comprehensive rollout of the program to Indigenous communities around Australia.

The CLE program will be managed by local leaders and run by community legal education officers drawn from the local community. The program will help to develop stronger partnerships between service providers and communities providing the information, resources and ongoing training necessary to help address violence and child abuse in local communities.

5. *Judicial cultural awareness training* (lead agency: Attorney General's Department)

COAG agreed to provide appropriate information to the judiciary, through the National Judicial College of Australia (NJCA) on Indigenous culture, customary law and bail legislation. The NJCA has established a system of committees of judges across Australia to develop and deliver the Indigenous cultural awareness programs. The curriculum will be finalised in late 2007. \$500,000 has been allocated over four years from 2007-08 to 2010-2011 and it will be evaluated at the end of this period.

6. *National Intelligence Taskforce* (lead agency: Attorney General's Department)

The National Indigenous Violence and Child Abuse Intelligence Task Force (the Task Force) was announced in July 2006 and commenced in September 2006. The Task Force was established with funding of \$4.921 million in 2006-07 and an additional \$11.489 million over four years.

The objectives of the Task Force are to:

- improve national coordination in the collection and sharing of relevant information and intelligence;
- enhance national understanding about the nature and extent of violence and child abuse in Indigenous communities provide related intelligence and other advice, including on organised criminal involvement in drugs, alcohol, pornography and fraud; and
- conduct research on intelligence and information coordination and identification of good practice in the prevention, detection and responses to violence and child abuse in Indigenous communities.



7. *Joint Strike Teams* (lead agency: Attorney General's Department)

The Australian Federal Police are coordinating Joint Strike Teams on a bilaterally negotiated basis. The first strike team involves Northern Territory, South Australia and Western Australia with a tri-state intelligence desk based in Alice Springs. This has been successful in reducing trafficking petrol, alcohol and drugs in the Central desert region. \$1.7 million has been allocated to this initiative.

8. *Assessment of Adequacy of Policing in Remote Areas* (lead agency: Office of Indigenous Policy Coordination, FaCSIA)

In order to assess the adequacy of police numbers and facilities in remote communities, the Australian Government commissioned an independent assessment of the policing requirements in specific remote areas of Australia in relation to violence, abuse and child protection issues, at a cost of \$200,000. Mr John Valentin ARM, former Deputy Commissioner of the Northern Territory Police completed *The Valentin Report* (the report).¹⁹

Data was collected across Western Australia, Northern Territory, Queensland and South Australia. The outcomes of this assessment have been used to:

- assist in defining policing requirements in specific remote areas;
- inform the ongoing development and implementation of effective and appropriate policy measures on those issues; and
- assist the Government in its allocation of funding for additional police facilities.

9. *Improved Policing in Remote Areas* (lead agency: Office of Indigenous Policy Coordination, FaCSIA)

The Australian Government will provide capital assistance for necessary infrastructure to assist States and Territories to provide adequate policing in very remote communities. Guided by *The Valentin Report*, this initiative specifically addressed the provision of capital assistance for police stations, housing and other infrastructure in remote areas of Australia. Relevant jurisdictions are contributing sworn police officers at each facility funded by the Australian Government.

Whilst the initiative was allocated \$40m over four years (subsequently increased to \$47.1m), the majority of funding will be granted to States and Territories in the 2007-08 and 2008-09 financial years. Construction in each case is to be managed by the States and Territories, with the resulting assets owned and maintained by them. Memoranda of Understanding have now been signed with Western Australia, South Australia, Queensland and the Northern Territory to undertake significant expansion of policing infrastructure in those jurisdictions.

19 This report was released publicly in May 2007, and is available online at: http://www.facs.gov.au/internet/minister3.nsf/content/valentin_25may07.htm, accessed 29 January 2008.



Sites have now been approved for construction of police stations and/or officer accommodation in Amata (South Australia); Ernabella (South Australia); Galiwin'ku (Northern Territory); Woorabinda (Queensland); Hope Vale (Queensland); Lockhart River (Queensland); Poomperaw (Queensland); Aurukun (Queensland); Bidyadanga (Western Australia); Burringurrah (Western Australia); Looma (Western Australia); and Wingellina (Western Australia).

10. *Two Additional Sniffer Dog Teams* (lead Agency: Office of Indigenous Policy Coordination, FaCSIA)

The establishment of two mobile detector dog units to the Central Desert Substance Abuse Intelligence Desk will assist in reducing the trafficking and distribution of illicit substances throughout central and northern Australia. \$1.95 million has been allocated in the 2006-2007 to 2009-2010 budgets.

11. *Safe Places and Support Groups* (lead agency: FaCSIA)

\$6 million of the Family Violence Partnership Program (FVPP) allocation was committed to funding safe places and communities as well as support groups for victims under the Safe Places Initiative. This covers a two-year period up to and including 2008-09.

All States and Territories were invited to suggest proposals, including matched funding. Table 1 shows projects approved for Commonwealth funding (with total budget subsequently increased to \$8.2m).

Table 1: Commonwealth funding of Safe Place Initiatives		
State	Project	Commonwealth Commitment
SA	Ceduna Family Violence Strategy	\$473,080
SA	Cooper Pedy Safe House	\$768,000
NSW	Orana Far West Safe Houses	\$820,000
NSW	Weaving the Net – Community Development Program	\$548,000
NSW	Aboriginal Community Liaison Officers	\$505,896
NSW	Broken Hill Aboriginal Family Health Workers	\$360,000
NT	Safe Places: Behaviour Change	\$406,135
NT	Family Safe House	\$500,000



NT	Wadeye Child Care and Services Centre	\$1,500,000
NT	Wadeye Staff Housing and Fitout Costs	\$1,700,000
QLD	Yungaburra (youth residential facility)	\$650,000
Total		\$8,231,111

12. *Additional Drug and Alcohol Treatment and Rehabilitation Services* (lead agency: Department of Health and Ageing)

An additional \$46.168 million of funding will be provided over four years and then approximately \$14 million in recurrent funding per year to improve access to drug and alcohol treatment and rehabilitation services for Indigenous Australians in remote and regional areas.

This will enhance the capacity of existing drug and alcohol treatment and rehabilitation services and provide capital and recurrent funding for new treatment and rehabilitation services. Activities and services have been agreed collaboratively between the Australian Government, and State and Territory Governments and are supported by joint investment. The Measure is being developed and implemented in consultation with relevant stakeholder organisations including Aboriginal Medical Services and drug and alcohol treatment and rehabilitation services and state and territory governments.

13. *Alcohol Management Plans* (lead agency: Department of Health and Ageing)

As part of the measure to address violence and child abuse in Indigenous communities announced by the COAG in 2006, all States and Territories were encouraged to consider the applicability of alcohol management plans and to work with communities to introduce plans where appropriate. Alcohol management plans are implemented at the state/territory, local government or community level. A number of jurisdictions have alcohol management plans in place for specific communities. There was no funding attached to this component of the announcement.



14. *Restrict Kava Import Licences* (lead agency: Department of Health and Ageing)

The Australian Government has recently enforced the existing import regulations on kava. The tightened restrictions took effect on 25 June 2007 and have resulted in restrictions on the importation of kava for medical or scientific purposes only. Individuals returning from Pacific Island countries are allowed to carry 2kgs of kava on their person.

15. *Improving Health and Wellbeing of Indigenous Children in Remote Areas* (lead agency: Department of Health and Ageing)

COAG will provide \$3.8 million over two years for an accelerated rollout of the Medicare Benefits Schedule (MBS) Aboriginal and Torres Strait Islander Child Health Check (Item 708) in up to ten remote regions across Australia.

The MBS Aboriginal and Torres Strait Islander Child Health Check for Indigenous children aged 0-14 years was introduced in May 2006 to increase access to preventive primary health care for Indigenous children.

This measure will establish dedicated Health Check Teams who will augment the capacity of local primary health care services to provide comprehensive child health checks to all children aged 0-14 years within the remote regions. It is expected that 2,000 health checks will be conducted through the measure.

A follow-up team will also be available to work with the local primary health care services to ensure that all health conditions identified through the health check are responded to appropriately.

16. *Fit and Proper Persons* (lead agency: Department of Finance and Administration)

The Australian Government has determined that it will only fund non-government organisations that are led and managed by Fit and Proper Persons (FPP). The Department of Finance and Administration (Finance) has released the Policy Statement, *Fit and Proper Person Requirements*, which sets out the requirements for this policy implementation.

The Attorney-General's Department (AGD) and the Department of Families, Community Services and Indigenous Affairs (FaCSIA) will trial the FPP requirements over the period 1 October 2007 to 30 September 2008.

During the trial period, the FPP requirements will be implemented by selected FaCSIA and AGD program areas where funding exceeds \$80,000. Programs participating in the trial will ensure that standardised wording relating to FPP requirements is included in relevant documentation. Documentation (including Application Guidelines, Program Guidelines, Advertisements and Funding Agreements) has been prepared to assist organisations and individuals which will become part of the trial from 1 October 2007.



17. *National School Attendance Unit* (Lead agency: Department of Education, Science and Training)

All jurisdictions will collect and share truancy data on enrolments and attendance. The National Student Attendance Unit (NSAU) was established in late 2006 and has received preliminary data from all state and territory education jurisdictions. \$4.6 million has been allocated for this initiative.

The NSAU has conducted preliminary analysis of data, which suggests that the school attendance rate across states and territories is generally between 91-93 percent, with the rate for Indigenous children at least 7-10 percentage points less.

The NSAU's work involves:

- liaising with state and territory education jurisdictions to collect attendance data;
- undertaking research on attendance and enrolment issues; and
- developing strategies to improve school attendance and enrolment nationally.

\$670,000 of departmental funds has been spent on the establishment and maintenance for the National Student Attendance Unit, much of which has been formally rephrased to the year 2007-08 due to extended consultations with the states and territories.



Part 2: Other Australian Government Initiatives to address Indigenous Family Violence and Abuse

Indigenous family violence and child abuse has been addressed by the Australian Government through a number of specific budgetary measures. In the lead-up to the June 2004 COAG meeting, the Australian Government introduced further initiatives relevant to Indigenous family violence and abuse through its 2004-05 Budget, including:

- \$22.7m (over 4 years) to double the number of Family Violence Prevention Legal Services (from 13 to 26);
- \$37.3m (over 4 years) to establish the Family Violence Partnership Program; and
- \$16.5m over four years for Indigenous women's development programs, targeting the development of women's leadership capacity.

The Australian Government has also been investing in related initiatives including more than \$60m to counter substance misuse and petrol sniffing in Central Australia and other regions – (\$8m over 4 years in 2005-06 and \$55.2m over 4 years in the 2006-07 Budget).

Subsequent significant budget allocations in 2005-06 and 2006-07 were:

2005-06 Budget

- \$8m (over 4 years) for additional Indigenous drug and alcohol initiatives; and
- \$11.2m for comprehensive child health checks in Indigenous communities.

2006-07 Budget

- \$23.6m (over 4 years) to expand the number of Family Violence Prevention Legal Services and to enable them to develop a prevention component;
- \$55.2m (over 4 years) to address substance abuse, petrol sniffing and governance training (a commitment of \$28m in 2006-07); and
- \$23m over four years for Indigenous leadership development, targeting Indigenous women, youth and men.

Indigenous family violence and child abuse prevention has also been addressed in a number of different portfolio areas. Information is provided below from the Office of Indigenous Policy Coordination, Attorney General's Department, Department of Health and Ageing and the Department of Employment and Workplace Relations.²⁰

²⁰ Not all government departments provided supplementary information on measures to address Indigenous family violence and abuse.



Office of Indigenous Policy Coordination

In 2004 new arrangements for the administration of Indigenous affairs were introduced with the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) and Aboriginal and Torres Strait Islander Services (ATSIS). Responsibility for programs was transferred to mainstream agencies. The Office of Indigenous Policy Coordination (OIPC) was established to coordinate policy nationally, and Indigenous Coordination Centres (ICCs) were established in each of the former ATSIC regions to deliver a whole of government approach to programs on a regional basis and to negotiate with Indigenous communities at the local level.

This framework places ICCs in an integral role to deliver services and programs to address family violence and child abuse through mechanisms such as Shared Responsibility Agreements (SRAs) and Regional Partnership Agreements (RPAs). Examples of ICC led family violence related initiatives are outlined below.²¹ In most cases these initiatives are delivered through a mix of SRA, RPA and program-supplemented funding.

South Australia

- *Metro-Adelaide 'Nunga Mi:Minar' SRA*: Signed in June 2007 to improve education, health and well being for Indigenous women experiencing family violence by assisting women at the Nungar Mi:Minar Women's shelter. An Aboriginal health worker has been employed to promote a healthy lifestyle program focusing on good nutrition; maternal and child health; and life management skills. The SRA brings together the Australian Government's Department of Health and Ageing; Department of Families, Communities and Indigenous Affairs; the SA Government Departments of Education and Children's Services; and the metropolitan Indigenous women's shelter, Nungar Mi:Minar.
- *RPA for Community Family Wellbeing*: Negotiated for the West Coast of South Australia to incorporate services for family violence, community safety, housing, youth issues, education, outreach programs to youth at risk and women's leadership development.

Victoria

- *Hope Opportunity Purpose Education and Employment (HOPE) SRA*: Negotiated in Mildura to reduce anti-social behaviour among Indigenous youth through increased school attendance and educational performance. The SRA uses sporting activities to engage youth and families in the education process.

21 This is a selective overview of agreements as provided by the Office of Indigenous Policy Coordination. A full searchable directory of agreements and programs can be found online at: <http://www.indigenous.gov.au/sra.html>, accessed 29 January 2008.



New South Wales

- *Dubbo East West Strategy SRA*: Targets family violence and child sexual abuse through a focus on prevention, capacity building and early intervention. The SRA uses performing arts to engage children, youth, staff and families to build capacity, understanding and resilience in dealing with family violence.
- *Bowraville Comprehensive SRA*: Developed in response to violence and grief in the community. Key partners include the NSW Departments of Aboriginal Affairs, Environment and Water, Workplace Relations and Employment, and the Australian Government Department of Communications, Information Technology and the Arts. The SRA addresses law and order; health; education; employment; and families and young people.
- *Family Court SRA*: Works across the communities of Kempsey, Bowraville, Coffs Harbour and Grafton establishing an Indigenous community based contact service to provide information on accessing the Family Court services and processes.
- *Miimi Mothers SRA*: Covers the purchase of a building to create an Indigenous community centre. Miimi Mothers have recently also received funding through the FaCSIA Local Answers program to provide services for young people to build capacity, voluntary services and support for Indigenous women at risk of family violence and abuse.
- *Inner City Aboriginal Women's Consultative Group (ICAWCG) SRA*: ICAWCG is a group of highly respected women from the Redfern Waterloo area who formed the Redfern Waterloo Indigenous Women's Consultative Group. This group formed in order to engage with government to improve outcomes for women and their families in the Redfern Waterloo area. The SRA is a community and whole-of-government response to identified priority issues, and includes support for the 'Blackout Violence Project'²² program which addresses violence prevention and child abuse in Indigenous communities. The SRA is linked to the Redfern Waterloo Authority's Human Service Plan that aims to reduce family violence.

Northern Territory²³

- *Palmerston Indigenous Village (PIV)*: Darwin ICC has developed a community development project in partnership with residents and the Palmerston City Council. The Palmerston City Council employs 2 people at PIV. One position acts as a community development officer and the other specifically targets young people at risk of entering the criminal justice system (funded by Attorney-General's Department through the ICC).

22 See case study of 'Blackout Violence Project' in Chapter 2.

23 According to the OPIC, it should be noted that examples of ICC activity in relation to family violence in the Northern Territory are potentially subject to significant review with respect to the Northern Territory Emergency Response.



Strategies to reduce family and community safety include: identification of 'dry houses'; improving relationships with local police; and working with service providers to improve access to program for local people. As a result of these strategies, school attendance of primary age students is now close to 100%.

- *Maningrida Youth Centre Project*: Developed by Darwin ICC and drawing on a range of partners including the Northern Territory Government, this project has a focus on reducing youth violence and self-harm by developing youth leadership and self reliance skills. The youth centre serves as a hub for programs and services and makes links across the local school, community organisations and Indigenous leadership forums.
- *Nhulunbuy*: Nhulunbuy ICC employs an Indigenous officer who participates in the local Child Protection Committee, convened by the NT Family and Children's Services Office. Nhulunbuy ICC also funds a local Indigenous language radio project, Aboriginal Resource and Development Services (ARDS), for the production of educational material in Yolgnu Matha, to address aspects of family violence in a culturally appropriate manner.

Queensland

- *Positive Families – Men's Leadership and Support SRA*: Focuses on providing support for families through the establishment of a Bowen Aboriginal and Torres Strait Islander Men's Support Group. Activities include provision of governance and leadership training, mentoring, a Men's Support Group and cultural camps for young males at risk. One of the group's first initiatives has been the development of an Adopted Uncle mentoring program to support young people and help them to develop life skills.
- *Rowoarr Community Justice Rehabilitation Centre SRA*: Establishment of an alcohol rehabilitation facility to provide accommodation for 15 people in a safe, healthy and supportive family environment. The facility is accessible to residents of both Pormpuraaw and Kowanyama and provides a way of keeping families together during rehabilitation.

Western Australia

- *Djugarargyn Aboriginal Community SRA*: Enables implementation of a three-part strategy to promote functional and resilient families using and building on facilities at Djugarargyn.

The first component comprises the Diversionary/ Lifeskills Program, a series of short courses focusing on diversionary activities underpinned by cultural awareness. Courses have been successfully run in partnership with the Djarindjin/ Lombadina School.

The second component is the Youth Camp/ Leadership Development Program which is a more formal program aimed at providing young people with essential skills in dealing with conflict, avoidance of drugs and awareness of support services. This program links participants with role models who may include elders, teachers and local police.



The final component, the Emergency Accommodation Support Program provides short-term crisis accommodation for youth, particularly girls and young women, who are at risk of self-harm, domestic violence and drug use.

- *Strengthening Families SRA*: Provides a day centre for West Kimberley men who are disadvantaged, unemployed, homeless, alcoholic, welfare dependant or who have been involved in family violence.

The Men's Service supports and enables Indigenous men by:

- working to develop better relations and understanding between the local Shire, Western Australian Police Department and the Western Australian Justice Department;
 - assisting men to access support services such as the Western Australian Department of Community Development (Welfare services);
 - encouraging men to work positively with Jayida Burru (family violence prevention);
 - promoting the men's centre locally as a place to rebuild a sense of identity and responsibility as an Indigenous man strong in language, lore and culture; and
 - promoting opportunities for Indigenous men to regain respect in their community and rebuild family unity.
- *Martu Elders Patrol SRA*: The Parnpajinya Community on the outskirts of the Newman township is exposed to high levels of drunkenness, disorderly conduct and domestic disputes, resulting in a large cohort of youth disengaging from education and engaging in substance use and criminal behaviour.
The SRA addresses these issues through:
 - the Elders Patrol which locates truant children and works with the child and parent/ carer to identify the issues that stop the child attending school;
 - a breakfast program;
 - patrols of known drinking areas to locate those people who are at risk of harming themselves or harming others as a result of excessive alcohol consumption;
 - cultural bush trips; and
 - capacity building of parents.
 - *Mullewa Women's Indigenous Group SRA*: Enabling the renovation of the Indigenous Women's Centre to provide a range of activities which address feuding, family violence and relationship breakdown.
 - *Geraldton Comprehensive Youth Program SRA*: Strengthens youth at risk services and family support networks through:
 - provision of a Youth Night Outreach Program;



- establishment of culturally appropriate diversionary activities that enable youth to reconnect with families; address substance misuse and offending; and re-engage with education or employment;
- family counselling program; and
- renovation of the Alice Nannup Youth Art Centre.

Attorney General's Department

- *Indigenous Legal Aid Program*: Funds organisations to deliver high quality, culturally inclusive legal aid services to Indigenous Australians. This network delivers services at 78 permanent sites, court circuits and outreach locations in urban, rural and remote areas throughout all States and Territories. These organisations provide a range of services including initial legal advice, minor assistance and referral, duty lawyer assistance and legal casework services in criminal, civil and family law matters.

In addition, service providers have developed new initiatives for the increased representation of Indigenous women and children. These include:

- the establishment of a Family Violence Team that comprises a female Aboriginal contact officer and a dedicated Aboriginal field officer, in three service areas in New South Wales (Dubbo (Western NSW), Grafton (North NSW) and Parramatta (Central-South-Eastern NSW)); and
- the establishment of Family Law Units comprising eight family lawyers who cover four offices and provide Family Law Services including care and protection orders with offices in Dubbo, Lismore, Wagga Wagga and Sydney.

The program has a three-year funding cycle, the current contracts end in June 2008. In 2006-07, \$48.175 million was provided under service contracts and \$169,000 for test case funding. In addition, \$1.543 million was provided under the pilot Expensive Indigenous Criminal Case Fund, and \$1.847 million was provided for capital and associated management costs. \$50.796 million has been allocated for the program in 2007-08.

- *Family Violence Prevention Legal Services*: Funding for legal services to assist Indigenous adults and children who are victims of family violence, or who are at immediate risk of such violence, in remote and regional Australia. FVPLS are also funded under the Early Intervention Prevention Program to intervene in the cycle of family violence and sexual assault, to bring about changes in the behaviour and attitude of individuals and the community.

FVPLS units run on one year contracts and provide a range of services to address and prevent family violence and sexual abuse. These include legal advice and casework assistance, counselling, child protection and support to assist in protecting victims from further violence and abuse. The units also provide information, support and referral services, and conduct community promotion and prevention initiatives to ensure



communities are aware of their legal rights and how to seek assistance. In addition, referrals to mediation programs help prevent an escalation of conflict into physical violence. In the first three quarters of the 2006-07 financial year FVPLS units assisted 4,908 clients

- *Prevention Diversion Rehabilitation and Restorative Justice Program:* Funding for community organisations to undertake projects to divert Indigenous Australians away from contact with the criminal justice system, and also facilitate activities to rehabilitate and support for people in custody. Projects include: night patrols; restorative justice initiatives around community and individual alternate dispute resolution activities; and programs for young people at risk.

\$8.522 million was spent on the program in 2006-07, with an additional \$635,000 for Shared Responsibility Agreements. \$13.252 million has been allocated in 2007-08, including new funding to convert over 117 CDEP positions into full jobs as night patrol workers. PDRR has also received \$8.211 million in 2007-08 through the *NTER Night Patrol NPP (Appropriation Bill August 2007)*.

- *National Community Crime Prevention Program:* Funding for grassroots projects designed to enhance community safety and crime prevention. Funding is administered through three streams:
 1. Community Partnerships stream;
 2. Indigenous Community Safety stream; and
 3. the Community Safety stream.

To date 311 projects totalling \$56 million have been awarded under this program. Of these, 38 are Indigenous Community Safety stream projects totalling \$5 million.

- *Community Legal Services Program:* Community legal centres (CLCs) are independent, community based, non-profit organisations, which provide assistance on legal and related matters to people on low incomes and those with special needs.

CLCs received \$25.712 million in 2006-07, including \$1,029,283 for Indigenous Women's Programs (IWPs). IWPs provide community development, community legal education, and outreach services to rural and/ or urban fringe communities. They provide assistance across a range of legal issues family law, tenancy, domestic and sexual violence and consumer rights law.

In 2007-08, \$1,050,073 has been allocated to eight community legal centres for IWPs to provide services specifically for Indigenous women to assist in addressing their legal service needs. IWPs are located in Sydney (statewide), Brisbane (statewide), Townsville/Cairns, Port Augusta, Geraldton, Kimberley, Pilbara region and Katherine.

- *Indigenous Family Violence Liaison Officers at the Family Court of Western Australia:* In the 2007-08 Budget, the Australian Government committed \$700,000 over three years to an Indigenous liaison pilot program in the Family Court of Western Australia.



Two Indigenous Family Liaison Officers will be employed to improve the delivery of family law services and access to justice for Indigenous families in Western Australia. The program will also improve access to counselling and mediation for Indigenous families in conflict, and improve access to family law services by Indigenous communities.

- *Northern Territory Aboriginal Interpreter Service*: Interpreter service for Indigenous individuals with limited English language skills to better understand the legal process and better understand their legal rights. The initiative provides training for interpreters as well as financial assistance to the Indigenous legal aid services and FVPLS units in the Territory for the purchase of interpreting services.

The Northern Territory Aboriginal Interpreter Service (AIS) is jointly funded by the Australian and Northern Territory governments and received \$1.107 million in 2006-07. A further \$1.133 million has been allocated in 2007-08, with an additional \$550,000 allocated as part of the NT NER. The Attorney-General's Department has signed a Memorandum of Understanding with the Northern Territory Government covering funding for four years commencing 2005-06.

- *Family Violence Law Strategy*: Announced on 26 February 2006 by the Attorney-General, the strategy supports the reforms relating to family violence contained in the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

From 1 July 2006 the *Family Law Act 1975* requires courts to take prompt action in relation to allegations of child abuse or family violence, particularly that it receives adequate information so that appropriate orders can be made and protection provided. A new objective has also been inserted into the Act to make it clear that children need to be protected not only from direct harm, but also from harm that comes from being exposed to family violence against others.

The Family Court of Australia has also implemented the *Magellan Project*, which operates nationally to deal with disputes involving serious allegations of child abuse and child sexual abuse. It involves an intensive case management approach combined with close stakeholder relations between the Court, legal aid, and State and Territory services such as child protection and Independent Children's Lawyers.

- *Family Relationships Services Program*: The Attorney General's Department has joint responsibility with FaCSIA for the Family Relationships Services Program. This program funds a range of services to assist families experiencing relationship difficulties or who have separated. These include new Family Relationship Centres which provide information for families with relationship issues, as well as referral to other services that can assist.



The first 15 of 65 Family Relationship Centres were established in July 2006 to provide information and referral to help strengthen family relationships, and dispute resolution to help parents reach agreement about their children after separation. Advisers for Indigenous communities were attached to offices in Darwin, Townsville, Lismore and Mildura. The Darwin Family Relationships Centre employs three Indigenous Advisers – two operate out of the Darwin office and one operates out of Alice Springs.

Department of Health and Ageing

- *National Illicit Drug Strategy 'Tough on Drugs' Indigenous Communities Initiative*: Worth \$10.5 million over four years and part of a larger \$20 million package of initiatives announced by the Prime Minister on 28 August 2003 to reduce the incidence of violence in Aboriginal and Torres Strait Islander communities by developing local solutions to issues that contribute to violence such as drug and alcohol abuse.

The Department of Health and Ageing developed the Initiative in conjunction with Aboriginal and Torres Strait Islander representatives. Projects funded under this Initiative address key areas for action identified in the *National Drug Strategy Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003-2009* endorsed by the Ministerial Council on Drug Strategy.

Current projects/programs funded under this Initiative during 2006-07 include:

- Alcohol and Other Drug component of the Indigenous HealthInfoNet – \$138,444.
- Implementation and Distribution Strategy for the Alcohol Treatment Guidelines for Indigenous Australians – \$197,698.
- Pilot trial of the Alcohol Treatment Guidelines for Indigenous Australians and an evidence-based brief intervention tool in two Aboriginal Community Controlled Health Services – \$5,797.
- Satellite broadcast promoting the Alcohol Treatment Guidelines for Indigenous Australians – \$205,200.
- Indigenous National Alcohol and other Drug Workforce Development program – \$950,710.
- Strong Spirit Strong Mind Video Resources – \$269,580.
- Pilbara Drug & Alcohol Program (SRA) – \$465,000.
- Smoking Cessation Program – \$63,435.
- Larapinta Learning Centre – \$133,291.
- Mt Theo Substance Misuse Program – \$109,091.
- Indigenous Risk Impact Screen (IRIS) and Brief Intervention State-wide Implementation Project – \$281,179.
- Substance Misuse Community Resilience Program – \$31,578.
- Gender specific inhalant abuse flipcharts – \$25,850.
- Inhalant Misuse: a review of interventions – \$77,288.
- Alcohol and Other Drugs (AOD) Strategic Intervention project With NT Indigenous Communities – \$116,784.



- Boorooloola Army Aboriginal Community Assistance Program
– \$43,000.
- Doomagee Army Aboriginal Community Assistance Program
– \$15,440.
- Indigenous Alcohol Intervention Program – \$177,525.
- *National Illicit Drug Strategy – Capacity Building in Indigenous Communities:* In May 2005, the Australian Government provided funding of \$8 million over four years. Funding under this Initiative is available for projects on a trial and/ or one-off basis and organisations that apply for funding must already have secured core funding, given that the funding under this Initiative is not designed for this purpose.
Current projects funded under this Initiative during 2006-07 include:
 - National Drug Research Institution Indigenous Alcohol Intervention Program, Stage 2 – \$750,000.
 - Mt. Theo Substance Misuse Program – \$108,400.
 - Supporting Young People and Families, Bathurst SRA program – \$34,080.
 - South Coast Medical Service Aboriginal Corporation – \$127,640.
 - Aboriginal Health council of SA – \$15,774.
- *National Illicit Drug Diversion Initiative:* Indigenous programs are funded to prevent petrol sniffing and inhalant abuse. Youth Wellbeing Programs are run in Central and Top End Northern Territory by Central Australian Youth Link-up Services (auspiced by Tangentyere Council) and the Council for Aboriginal Alcohol Programs. Combined funding for the 2006-07 financial year was approximately \$356,666.
- *Healthy for Life:* Introduced in 2005-06 to support primary health care services to improve child and maternal health and chronic disease care and outcomes for Aboriginal and Torres Strait Islander people. Over 80 primary health care services are participating in Healthy for Life in all States and Territories through 53 sites. Over 88% of primary health care services funded through Healthy for Life are located in regional and remote areas.
- *Healthy For Life* is implemented in 2 phases by funded services. In phase 1, services undertake an assessment of current client population needs and an extensive 'stock-take' of existing model/s of care and systems of service delivery. In phase 2, services implement approved action plans and report twice annually on progress to achieving the specific program outcomes.
- *Health@Home Plus:* As announced in the 2007-08 Federal Budget the Australian Government will provide \$37.4 million over four years to support Aboriginal and Torres Strait Islander children aged 0-8 years in targeted remote and outer regional areas. Commencing in the prenatal period, health professionals will provide regular home visiting services to women pregnant with an Aboriginal and Torres Strait Islander child, continuing until the child is 2 years. Child and family support will be provided to high need children aged 2-8 years.



40 new Puggy Hunter Memorial Scholarships will also be offered through this initiative for child health related fields of study to support the development of the Aboriginal and Torres Strait Islander child health workforce.

Health@Home Plus will aim to improve health and wellbeing outcomes for Aboriginal and Torres Strait Islander children and their families by providing home based social and parenting support, coordinating health care and assisting parents and children to access other support services.

The program will be implemented from a small base (i.e. two trial sites in the first year), building up to 7 trial sites over four years.

Department of Employment and Workplace Relations

- *Working for Families (WfF) Initiative*:²⁴ An additional 1,000 CDEP participant places were provided to the CDEP programme per annum for four years from 2003-04 to 2006-07. WfF was introduced to address the family violence and substance misuse problems prevalent in many remote Aboriginal communities by supporting project activities including:
 - Night patrols;
 - Police aides;
 - Women’s support programmes; and
 - Substance abuse programmes.
- In 2003, funding of \$44.4 million over four years was provided. Operational costs of approximately \$4m a year to cover the on-costs of organisations delivering the CDEP programme were to be absorbed within the CDEP programme budget. In 2007 the Australian Government committed \$50.7 million to continue funding 1,000 CDEP places per annum over the next four years.

In 2007 the Australian Government committed to the continuation of projects that are aimed at preventing and addressing family violence and substance misuse problems that affect many remote Indigenous communities. It is not clear how this will occur, i.e. whether CDEP positions will be converted to regular employment.

24 Working for Families was announced as part of ATSIC’s Family Violence strategy launched by the Federal Indigenous Affairs Minister on 21 August 2003.



Part 3: State and Territory Government Responses to Indigenous Family Violence and Child Abuse

1) New South Wales

Much of the recent policy focus on Indigenous child sexual assault and family violence in NSW is the result of the 2006 *Breaking the Silence: Creating the Future*²⁵ report of the Aboriginal Child Sexual Assault Taskforce (ACSAT).²⁶

The Aboriginal Child and Sexual Assault Taskforce was established in 2003 in response to the Roundtables on sexual violence in Aboriginal communities conducted by the Department of Aboriginal Affairs in 2001-02. It was also established due to the finding of the Aboriginal Justice Advisory Council's 2002 report *Speak Out, Speak Strong* that approximately 70% of Aboriginal women in NSW prisons had been sexually assaulted as children.²⁷

ACSAT found that child sexual assault is an endemic problem in NSW Indigenous communities. Both boys and girls are victims, and perpetrators are often people close to the child. Child sexual assault is not well understood by the community and often goes unreported. The harm of child sexual assault is intergenerational and contributes to drug use, violence, criminal offending, and mental illness.

Although ACSAT found some good practice responding to child sexual assault, especially in Indigenous specific non-government organisations, there were significant barriers to accessing services and poor coordination between government agencies. Access to culturally appropriate counselling for victims was very limited, treatment for sex offenders was also limited, with treatment only available in correctional facilities and there was no state or commonwealth policy framework on child sexual assault. The report made 119 recommendations to eliminate service gaps and overcome barriers to accessing services. Overall the recommendations point to the need for effective, cooperative and community driven partnerships to tackle child sexual assault.

The report was published in June 2006 but the NSW government did not release its response until January 2007, despite sustained lobbying from the Indigenous community and other stakeholders. The Social Justice Commissioner also gave support to the ACSAT:

I am not so convinced that to date, the Taskforce's report has been treated with the urgency and priority that it deserves, or that it has been progressed in a manner consistent with the commitments made by the NSW government. And that is also why I am here today – to lend my voice and support to the report and to the

25 Aboriginal Child Sexual Assault Taskforce, *Breaking the silence: creating the future: addressing child sexual assault in Aboriginal communities in NSW*, NSW Attorney General's Department, Sydney, 2006.

26 The Taskforce members were: Marcia Ella-Duncan (Chair); Joan Dickson; Chris Cunneen; Greg Telford; Luke Penrith; and Melva Kennedy.

27 Aboriginal Child Sexual Assault Taskforce, *Breaking the silence: creating the future: addressing child sexual assault in Aboriginal communities in NSW*, NSW Attorney General's Department, Sydney, 2006.



directions that it sets forth for government and community partnerships and action.²⁸

Much concern has also been expressed at the scale of the government's response, which involves the re-badging of existing expenditure, with very few additional resources being allocated.

a) Policy Frameworks

NSW Interagency Action Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011²⁹

The NSW Government released its *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, in January 2007 in response to the *Breaking the silence: creating the future* report. The five-year plan contains 88 actions focused on four strategic directions: law enforcement; child protection; prevention and early intervention; and community leadership to be implemented at a total cost of \$30 million. Several actions are being implemented statewide, while others are being implemented in specific locations.

NSW State Plan³⁰

The Government's 10-year strategic plan contains priorities aimed at reducing family violence and abuse in Indigenous communities. These are:

- improved health, education and social outcomes for Aboriginal people;
- strengthening Aboriginal communities;
- embedding the principle of early intervention and prevention into government service delivery in NSW; and
- reducing the rates of child abuse and neglect.

The *State Plan* builds on and links commitments made under existing whole-of-government plans such as the *Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities* and *Two Ways Together*.

Two Ways Together³¹

Two Ways Together (TWT), initiated in 2003, is the NSW Government's 10-year plan to improve the health and wellbeing of Aboriginal people. In 2004, the Government approved \$40 million in funding over 4 years for initiatives in 7 priority areas including health, education, economic development, justice, culture and heritage, housing and infrastructure, and families and young people.

28 Calma, T., *Addressing family violence and child sexual assault in Indigenous communities – A human rights perspective*, Aboriginal Child Sexual Assault Forum NSW Parliament House, Tuesday 5 December 2006, available online at http://www.humanrights.gov.au/about/media/speeches/social_justice/20061205_family_violence.html, accessed 17 January 2008.

29 The *NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011* can be accessed online at: www.nsw.gov.au/PDF/NSWInterPlanTackleChildSexualAssAborigComs.pdf, accessed 22 January 2008.

30 The *NSW State Plan* can be accessed online at: <http://www.nsw.gov.au/stateplan/index.aspx?id=8f782cbd-0528-4077-9f40-75af9e4cc3e5>, accessed 23 January 2008.

31 The *Two Ways Together Policy Document and Regional Reports* can be accessed online at: <http://www.daa.nsw.gov.au/policies/policy.html>, accessed 23 January 2008.



TWT sets the direction for a whole-of-government approach in Aboriginal affairs by ensuring that existing and new programs are linked to clear outcomes.

Regional Action Plans have been developed for 8 regions to implement the TWT programs and initiatives. The plans contain actions which either directly address family violence and child sexual assault, or which address causal factors such as education, housing and employment.

In 2007, TWT was aligned with the NSW *State Plan* to ensure that goals and targets are complementary. The State Plan goal of *Strengthening Aboriginal Communities* encompasses priority objectives of safe families, education, environmental health, economic development and building community resilience, which will guide TWT activity.

NSW Aboriginal Family Health Strategy

This strategy began in 1998 and focused on the funding of Aboriginal Family Health Workers involved in locally based projects to address Aboriginal health. Under the current program, two Area Health Services and 13 non-government organisations receive funding for 18 Aboriginal Family Health Workers. Aboriginal Family Health Projects are located at Hamilton, Taree, Wyong, Kempsey, Wagga Wagga, Tobwabba, Walgett, Wellington, Yorana, Tweed Heads, Wallsend and Moree.

In 2007-08, the *NSW Aboriginal Family Violence Strategy* will replace the Aboriginal Family Health Strategy. The new Strategy will continue to involve Aboriginal Family Health Workers, and will address issues of family violence, sexual assault and child abuse in Aboriginal communities by providing a framework for dealing with these concerns in a culturally appropriate manner across Area Health Services.

The *Family Violence Strategy* will incorporate operational guidelines for Aboriginal Family Health Workers, including mandatory training, professional development, supervision, mentoring, planning, monitoring and evaluation, and information on the range of available domestic violence, sexual assault and child abuse services, and guidelines for responses to family violence offending in Aboriginal communities.

Guidelines for Responses to Family Violence Offending in Aboriginal Communities

These Guidelines were developed in 2006-07 and describe the nature and variation of family violence in Aboriginal communities, and clarify NSW Health's role in prevention, protection and intervention in relation to family violence offending. The Guidelines provide a brief description of jurisdictions' services with associated referral pathways that support, and give context to, responses to family violence.

Aboriginal Maternal and Infant Health Strategy

The *Aboriginal Maternal and Infant Health Strategy* (AMIHS) provides antenatal and post-natal support for Aboriginal women through community midwives and Aboriginal health education officers.

The AMIHS involves midwives, Aboriginal health workers and education officers working in small teams to conduct activities such as prenatal checks, support during pregnancy, education and information, postnatal checks and transport assistance.



The 3-year evaluation³² of the initial sites for the Strategy reported that the perinatal mortality rate decreased from 18.6 per 1,000 live births in 2003 to 5.4 per 1,000 live births in 2004.

Department of Community Services Aboriginal Strategic Commitment and Commitment of Service to Aboriginal Communities

The *Aboriginal Strategic Commitment* developed in 2006-07³³ explicitly recognises the impact of past government policies on Aboriginal people and communities and is underpinned by two key elements:

- in all programs, services and initiatives, DoCS is respectful and responsive to the diverse needs of Aboriginal people and communities; and
- Aboriginal children and young people are safe, nurtured and cared for in their families and communities.

Aboriginal Child, Youth and Family Strategy³⁴

This Strategy forms part of NSW's Families First prevention and early intervention strategies aimed at improving outcomes for Aboriginal children, young people, their families and communities. The Strategy has established 22 Aboriginal Family Workers across NSW, located in a number of Aboriginal and mainstream organisations. Programs include Aboriginal Supported Playgroups and support groups for grandparents caring for grandchildren.

NSW Police Force Aboriginal Strategic Direction 2007-2011³⁵

The Aboriginal Strategic Direction sets out clear objectives, strategies and actions as well as timeframes for achieving them. Major themes of the Plan include:

- communication and understanding between Police and Aboriginal people;
- community safety and fear of crime;
- Aboriginal cultural awareness within the NSW Police Force;
- numbers of Aboriginal officers and civilian staff in NSW Police;
- keeping Aboriginal youth away from criminal and anti-social behaviour;
- dealing effectively with family violence and sexual assault;
- Aboriginal substance abuse; and
- how to reduce offending and over-representation of Aboriginal people in the justice system.

32 The evaluation can be accessed online at: http://www.health.nsw.gov.au/pubs/2006/evaluation_maternal.html, accessed 23 January 2008.

33 More information on this Commitment can be accessed online at: http://www.community.nsw.gov.au/DOCSwr/_assets/annual_report07/dg_message.htm, accessed 23 January 2008.

34 The document can be accessed online at: www.familiesfirst.nsw.gov.au/uploads/41f247db-5d83-4449-b548-f3902ed6b5ec6.pdf, accessed 23 January 2008.

35 The document can be accessed online at: http://www.police.nsw.gov.au/about_us/policies_and_procedures/policies/aboriginal_strategic_direction, accessed 23 January 2008.



b) State and Australian Government Joint Initiatives

Overarching Agreement on Aboriginal Affairs between the Commonwealth of Australia and the State of New South Wales

The Overarching Agreement on Aboriginal Affairs between the Commonwealth of Australia and the State of New South Wales (also referred to as the *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in New South Wales*) was signed on 17 April 2006.

This five-year agreement aims to improve Indigenous access to services. It is part of the implementation of *Two Ways Together: the NSW Aboriginal Affairs Plan 2003-2012*. The two governments have agreed upon action regarding:

- wealth and employment;
- entrepreneurialism;
- living conditions;
- health and social outcomes in Indigenous communities; and
- better integration of government services to Indigenous communities.

Implementation of the agreement will be supervised by the Intergovernmental Aboriginal Affairs Group, which has been established for this purpose.

COAG Family Violence Action Strategy

The NSW Government is working with the Australian Government across a range of priorities under the *National Strategy for action to overcome violence and child abuse in Indigenous Communities*,³⁶ as set out below.

Law enforcement

NSW has seconded two Police officers to the National Indigenous Violence and Child Abuse Intelligence Taskforce that is head quartered in Alice Springs.

Senior Indigenous Networks

At the Summit, the Australian Government announced funding of \$4 million to support leadership development of Indigenous women and men in Indigenous communities. NSW has been advised that its application for three programs has been unsuccessful. The programs included a statewide multimedia campaign and a legal education program to be rolled out to the four focus communities in the Interagency Plan; an extension of the Targeted Aboriginal Student Strategy; and provision of cultural camps to three focus communities. NSW will implement these actions in the context of the Interagency Plan.

36 Brough, M., (Minister for Families, Communities and Indigenous Affairs), *Communique – Safer Kids, Safer Communities, Attachment – National Strategy for action to overcome violence and child abuse in Indigenous Communities*, 26 June 2006.



Protection for victims

In May 2007, the Australian Government announced funding of \$2.23 million in 2007-08 and 2008-09 for four programs in NSW that address family violence:

- *Weaving the Net* Community Development Program – a community development and education program which works with community members, local and regional service providers, and appropriate Aboriginal leaders to build awareness of the dynamics of child sexual assault and to develop resources for addressing family violence and child abuse;
- *Aboriginal Family Health Workers* – funding will provide two Aboriginal Family Health Workers in Broken Hill;
- four *Aboriginal Community Liaison Officers (ACLO)* – ACLOs work in Police Local Area Commands and provide a range of community facilitator roles, supporting Aboriginal women to report family violence, assisting with resolving disputes, and implementing solutions to crime and violence; and
- the *Orana Far West Safe Houses program*.

Drug and alcohol rehabilitation services

NSW Health and the Office for Aboriginal and Torres Strait Islander Health (OATSIH) are currently in negotiations to jointly fund drug and alcohol rehabilitation services for Aboriginal people. The NSW Centre for Aboriginal Health provided funding for drug and alcohol programs, including residential programs, to 16 Aboriginal Community Controlled Health Organisations in 2006-07. NSW already provides a range of drug and alcohol services, including programs delivered by Aboriginal Community Controlled Health Organisations.

Health and Wellbeing of Children

NSW Health is working with the Australian Government Department of Health and Ageing to implement the roll-out of the Aboriginal and Torres Strait Islander Child Health Check in Coonamble and Gulargambone. An additional site will be established at Nyngan or Warren in 2007-08.

Corporate governance

The Australian Government proposed at the Summit that funding guidelines be amended to ensure that government funding, from all levels of government, be restricted to organisations managed by fit and proper persons. NSW gave in-principle agreement to this proposal. NSW is committed to supporting and developing Aboriginal community leadership and governance. NSW supports mechanisms that ensure Aboriginal representation and involvement in decision-making that affects Indigenous well-being. This is being done through Community Working Parties at a local level, and through the Regional Engagement Groups which have been established to drive the implementation of *Two Ways Together* at the regional level. The Regional Engagement Groups include representation from Aboriginal communities and State and Federal Government agencies. In addition, NSW has recently amended the *Aboriginal Land Rights Act 1983* to improve the corporate governance of the NSW Aboriginal Land Council network.



Compulsory school attendance

NSW has made improvements to its collection of data in relation to school attendance by Aboriginal students. NSW government schools make a return of absences at the end of each semester. The data is disaggregated by school, term, year, region, school grade, school levels and gender. From Semester 1, 2006 the return now includes data on Aboriginal students.

c) Monitoring and Evaluation

Two Ways Together

TWT Regional Reports were released in November 2006. The Reports bring together data about Aboriginal people and the government services for each of the Regional Coordination Management Group (RCMG) regions of NSW.³⁷

The Department of Aboriginal Affairs prepares biennial indicator reports on the progress of TWT. The next report is due in early 2008.

State Plan

Lead Ministers and relevant CEOs will be required to report to the Government on their progress in delivering *State Plan* priorities. Performance data on the priorities will be published on the *State Plan* website as soon as it is available. A *State Plan Annual Report* will also be published providing an analysis of the progress to date and will identify emerging challenges and any new programs or strategies that have been introduced.

d) Programs

Healing approaches:

- *Victims Services Approved Counsellors:* This is a non-Indigenous specific service but Victims Services Approved Counsellors have been undertaking training in cultural competence developed by the Education Centre Against Violence to ensure that counsellors have the skills and knowledge to work with Aboriginal clients.

Community education and community development:

- *Greater Taree Domestic Violence Community Development Project* (\$50,000 in 2006-07): Education resources aimed at raising awareness among GPs, community organisations and teachers, of referral points and appropriate ways of identifying and addressing domestic violence. The project also involves a series of 5-day camps for young Aboriginal women and girls aged between 12 and 24 years.

³⁷ The TWT Policy Document and Regional Reports can be accessed online at: <http://www.daa.nsw.gov.au/policies/policy.html>, accessed 23 January 2008.



- *Education Centre Against Violence (ECAV)* (\$595,660 in 2006-07): *Weaving the Net* program, outlined above. ECAV also has a Memorandum of Understanding with the Aboriginal Community Consultative Group to provide advice and support in the development and implementation of all-Aboriginal focused programs and resources.
- *Our Kids: Stay Safe, Stay Strong 2007 Calendar and Activity Book*: Calendar and activity book using children's art work to denounce violence. The activity book is an interactive resource tool aimed at building the awareness, skills and safety networks of children to protect them from violence and abuse in their families and communities.
- *Lismore City Council 'Indigenous Girls Well-Being Camp'* (\$16,200 in 2006-07): Camps include presentations on sexual health & wellbeing, understanding domestic violence, negotiating the legal system, healthy relationships, self-defence and self-esteem.
- *Community Justice Centres 'Conflict Management training'* (\$263,000 over 3 years): Delivery of conflict awareness and conflict management training for Aboriginal community members. The program targets awareness of the indicators of family violence as well as larger community disputes that have the propensity to escalate into violent confrontations. The training has been conducted in 4 communities, with another 12 communities scheduled for 2008.

Culturally appropriate child protection services:

- *Aboriginal Intensive Family-Based Services (IFBS)* (\$3.688 million in 2006-07): Aimed at reducing the number of Aboriginal children and young people entering out-of-home care by providing three month intensive home-based program to families whose children are at risk of out-of-home care, predominantly arising from drug and alcohol abuse and family violence.
- *Brighter Futures*: Involves DoCS working with non-government and community partner organisations to provide early intervention services to vulnerable children aged 0-8 years and their families. The program has a strong focus on supporting Aboriginal families, and between 2007 and 2010 will invest \$5 million in Aboriginal-specific programs and services.

Programs for Indigenous offenders who perpetrate violence or abuse (including juveniles):

- *Circle Sentencing* (\$1.015 million per annum): Alternative sentencing court for adult Aboriginal offenders. It directly involves local Aboriginal people (including victims) in the process of sentencing offenders, with the aims of making it more meaningful and improving confidence in the criminal justice system. It also empowers Aboriginal people to address criminal behaviour within their local communities.

Circle sentencing is used for offences that can be dealt with summarily. Serious offences such as malicious wounding, drug-related offences and sexual offences are excluded.



The program operates at Local Courts in Nowra, Dubbo, Walgett, Brewarrina, Bourke, Lismore, Armidale and Kempsey, with the program to expand into Western Sydney (Mt Druitt).

- *New Street Service for Adolescents* (\$500,000 in 2006-07): Non-Indigenous specific service in Western Sydney that provides therapeutic service for families that addresses abusive behaviours in young people aged between 10 and 17 years.
- *Magistrates Early Referral into Treatment Program (MERIT)*: Diversionary program for offenders with alcohol and drug use problems. The Aboriginal Health and Medical Research Council are developing a best practice model to deliver the MERIT program to Aboriginal defendants. The referral rate for Aboriginal defendants is around the same as their representation in the local court population but their completion rate is lower than non-Aboriginal defendants.
- *Walking Together* (\$299,000 in 2006-07): Group program targeted at Aboriginal male and female offenders, who are supervised by Community Offender Services at the Probation and Parole Service in Newtown and Redfern. The program provides a 16 session intervention for Aboriginal male perpetrators of family violence; a 16 session intervention for Aboriginal female perpetrators of family violence including strategies for reporting violence against children; and a 15 session intervention for Aboriginal male and female offenders to assist offenders to control alcohol consumption related to violent and non-violent offending.
- *'Our Journey To Respect' Program* (\$12,960 in 2006-07): Intergenerational violence prevention program targeting young Aboriginal males 14-18 years who have committed or are at risk of committing violent offences, run by the Department of Juvenile Justice.
- *Mallee Family Care 'Our Journey to Respect'* (\$26,000 in 2006-07): Group program, conducted in South Western NSW that seeks to facilitate participants' movement from relationships based on power and control towards relationships based on respect. It targets young Aboriginal males 12-17 years who have committed or are at risk of committing violent offences.

Community justice groups:

- *Aboriginal Community Justice Groups* (\$1.2 million in 2006-07): Aboriginal Community Justice Groups look at offending behaviour in their community and develop local solutions to that behaviour. They also work with different parts of the criminal justice system and play a major role in the circle sentencing program. Groups are currently located in 17 communities. Lismore, Grafton, Maclean, Kempsey, Toronto, Redfern, Wollongong, Nowra, Wagga Wagga, Broken Hill, Dubbo, Bourke, Brewarrina, Walgett, Armidale and Moree.



Safe houses and services for women and children:

- *Orana Far West Safe Houses Project*: Partnership with the Australian Government to deliver an integrated family violence service delivery package building the capacity of five safe houses in Bourke, Brewarrina, Lightning Ridge, Walgett and Wilcannia to address safety issues for women and children at risk of family violence.
- *Staying Home Leaving Violence* (\$4.8 million over four years): Framework that helps women and children stay safely in their homes by removing the violent partner, funded through the Supported Accommodation Assistance Program. This is non-Indigenous specific service, currently running in Bega, Eastern Sydney and Western Sydney.

Crime prevention programs:

- *Aboriginal Community Assistance Patrols* (\$1.06 million in 2006-07): Community Patrols operate within 14 locations across New South Wales in Armidale, Bourke, Brewarrina, Dareton, Dubbo, Kempsey, Mungindi, Nambucca, Newcastle, Nowra, La Perouse, Taree, Wilcannia and Ballina.
- *Aboriginal Community Liaison Officers* (\$5.88 million in 2006-07): Aboriginal Community Liaison Officers operate in 50 communities across NSW and provide a key liaison point between Aboriginal communities and local police.

Men's Groups:

- *Acmena Juvenile Justice Centre*: Provides support to Aboriginal young people in custody by reinforcing positive role models in the community and developing linkages and relationships that assist transition back into the community.
- *Rekindling the Spirit*³⁸ (\$464 000 in 2006-07): Program is targeted at Aboriginal male and female community-based offenders who have issues relating to family violence. Activities in the program include group-based intervention to address issues of family violence and substance abuse; father and son camps; mother and daughters camps; and victims programs to support the victims of perpetrators.

38 See case study on *Rekindling the Spirit* in Chapter 2.



2) Queensland

The Queensland Government has commissioned a number of research reports and inquiries into Indigenous family violence and abuse over the years. The first major undertaking was the *Aboriginal and Torres Strait Islander Women's Task Force on Violence*, formed in December 1998, in response to demands from women for urgent action to halt the unprecedented levels of violence in Indigenous communities across Queensland.

Chaired by Associate Professor Boni Robertson of Griffith University, the Task Force comprised 50 Indigenous women with relevant knowledge and personal experience from across the state. A smaller Working Group carried out the process of research and consultation, visiting Indigenous communities and interviews throughout Queensland during the first half of 1999. The report, containing 123 recommendations, was handed to the Minister in October 1999 and tabled in State Parliament on 2 December 1999.

The Task Force found a disturbing level of violence:

Violence is now overt; murders, bashings and rapes, including sexual violence against children, have reached epidemic proportions with both Indigenous and non-Indigenous people being perpetrators.³⁹

Alcohol was identified as a major factor, along with government inaction, the deterioration of traditional culture and identity and contemporary consequences of past injustices. The Taskforce attributed the rise of violence in Aboriginal communities to the failure of both Indigenous and non-Indigenous agencies to deliver critical services.

The *Cape York Justice Study*⁴⁰ was announced in July 2001 to look at the problem of alcohol and substance misuse in Cape York Indigenous communities. Although focusing on alcohol, unsurprisingly, the study made a clear link between alcohol use, family violence and abuse. The *Cape York Justice Study* also documents the fact that there are few services in the Cape York communities that can address violence and substance abuse, provide programs for perpetrators, or provide trauma and grief counselling. Further, those services that are available are based on service models that are not accessible or relevant to Indigenous people in Cape York⁴¹.

The Cape York Institute launched *From Hand Out to Hand Up: Welfare Reform Design Recommendations* report that was released on 19 June 2007.⁴² The report is based on work with four Cape York communities – Coen, Aurukun, Hopevale and Mossman Gorge.

Recommendations in the report are in four areas:

- Restoring social norms by attaching reciprocity to welfare payments, so that for instance, parents will have to ensure 100% attendance of children at school to receive welfare payments.

39 Robertson, B., *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report*, Department of Aboriginal and Torres Strait Islander Policy and Development, Queensland, 1999.

40 Fitzgerald, T., *Cape York Justice Study*, Department of Communities, Brisbane, 2001.

41 Fitzgerald, T., *Cape York Justice Study*, Department of Communities, Brisbane, 2001.

42 More information on the *From Hand Out to Hand Up* Report can be accessed online at: <http://www.cyi.org.au/welfarereform.aspx>, accessed 23 January 2008.



- Addressing the 'welfare pedestal' through changing the incentives so that people are encouraged to come off welfare, or not enter welfare.
- Supporting individual engagement in the real economy through converting CDEP positions into real jobs, making communities more business friendly and introducing measures to support mobility for employment and education.
- Moving from welfare housing to home ownership.

The report also calls for the establishment of a Family Responsibility Commission in the Cape. This would be an administrative, statutory legal agency that would make rulings about whether obligations to children have been breached by carers and if necessary, enforce sanctions.

Although not specifically targeted at Indigenous children, the Crime and Misconduct Commission completed an extensive review, *Protecting Children: an inquiry into abuse of children in foster care*,⁴³ in 2004. This identified issues around the need for appropriately resourced and supported Aboriginal and Islander Child Care Agencies to provide appropriate support and placements for children in care⁴⁴ and assist in connection to family and culture.

a) Policy Frameworks

Strong Indigenous Communities CEO Taskforce

The Queensland Government's Strong Indigenous Communities CEO Taskforce is responsible for progressing major policy development areas including:

- reforming Indigenous social and economic policy;
- reforming Indigenous governance and land; and
- addressing Indigenous justice.

Meeting Challenges, Making Choices⁴⁵

In response to the *Cape York Justice Study*, the Queensland Government released *Meeting Challenges, Making Choices: The Queensland Government response to the Cape York Justice Study* in April 2002. This strategy identified a range of reforms to address the alcohol and violence issues afflicting Indigenous communities in Queensland, primarily in the eight key result areas of:

- alcohol, substance abuse and rehabilitation;
- governance;
- crime and justice;
- children, youth and families;
- health;
- education and training;

43 Crime and Misconduct Commission, *Protecting Children: an inquiry into abuse of children in foster care*, Brisbane, 2004.

44 Crime and Misconduct Commission, *Protecting Children: an inquiry into abuse of children in foster care*, Brisbane, 2004, p 225.

45 *Meeting Challenges, Making Choices* can be accessed online at: <http://www.mcmc.qld.gov.au/resources/policy.php#mcmc>, accessed 23 January 2008.



- economic development; and
- land and sustainable natural resource management.

Partnerships Queensland⁴⁶

In 2005, Partnerships Queensland was launched as the strategic policy framework that consolidates all State initiatives for Aboriginal and Torres Strait Islander Queenslanders against the following goal areas:

- strong families, strong cultures;
- safe places;
- healthy living; and
- skilled and prosperous people and communities.

Child Wellbeing Taskforce

A Child Wellbeing Taskforce is being established in Queensland to improve care, development and safety of children in 19 identified communities. The Taskforce will pilot a place-based approach focused on prevention and early intervention, and will utilise cross-agency commitment and resources to develop innovative models of service delivery designed to meet the needs of each community. It is proposed that the Taskforce, which comprises representatives from a range of child safety, community, education and health agencies, will initially focus on the Aboriginal community of Hope Vale.

Queensland Child Protection Strategy 2007-10

The Queensland Government continues to reform its child protection system. A whole-of-government action plan guides implementation of the strategy over the next four years. Special consideration is given to meeting the needs of Aboriginal and Torres Strait Islander children and young people.

Lower Gulf Strategy (Probation and Parole)

In 2006-07, the Queensland Government provided funding of \$57.5 million over five years to establish a new probation and parole service. The service was designed to provide a permanent presence of probation and parole staff in Indigenous communities in the Lower Gulf in order to:

- ensure adequate supervision of offenders on orders;
- assist offenders with rehabilitation; and
- assist offenders on parole with reintegration into the community.

To support the strategy the Queensland Government is seeking to engage trainee Aboriginal and Torres Strait Islander employees to work at each of the probation and parole offices.

Since the strategy's commencement, there have been marked improvements in business practice and improved relationships with the Magistracy and community groups in the areas. Preliminary data indicates that the strategy is having a positive effect on diversion from custody, with greater incidence of parole or probation rather than custodial sentences.

46 More information regarding Partnerships Queensland, including the 2006 Baseline Report and Progress Report can be accessed online at: <http://www.indigenous.qld.gov.au/partnerships/partnerships.cfm>, accessed 23 January 2008.



Aboriginal and Torres Strait Islander Access Strategy

The Aboriginal and Torres Strait Islander Access Strategy (Indigenous Access Strategy) is designed to ensure that the Commission for Children and Young People (CCYP) services, policies, programs, and practices are:

- culturally competent;
- accessible; and
- effective in protecting and promoting the rights, interests, safety and well being of Aboriginal and Torres Strait Islander children and young people.

Employment Screening Services Program (ESSP)

In Queensland, the CCYP conducts employment screening to determine whether applicants are able to work in categories of employment regulated by the Commission for Children and Young People and the Child Guardian Act 2000.

The Employment Screening Services Program (ESSP) includes an Indigenous access strategy that will establish partnerships with Aboriginal and Torres Strait Islander communities to assist them to identify and manage risks to Aboriginal and Torres Strait Islander children and young people, including by conducting appropriate employment screening.

b) State and Australian Government Joint Initiatives

Agreement on Aboriginal and Torres Strait Islander Service Delivery between the Commonwealth of Australia and the Government of Queensland

The Agreement on Aboriginal and Torres Strait Islander Service Delivery between The Commonwealth of Australia and the Government of Queensland (the Agreement) was signed in December 2005.

The Agreement is intended to establish arrangements to engage with Aboriginal and Torres Strait Islander communities across Queensland. The Agreement is based upon priorities that were agreed in the *Overcoming Indigenous Disadvantage Report* and which have subsequently been refined by both governments.

The Australian Government's priority areas are:

- early childhood intervention, focusing on improved mental and physical health;
- safer communities (including issues of authority, law and order and good governance) and developing community capacity; and
- enhancing 'Indigenous wealth, employment and entrepreneurial culture'.

The Queensland Government's priority areas are:

- strengthened families and communities and strengthened cultures;
- safe places (including alcohol management and community-based law and justice issues);
- healthy living (including access to housing issues); and
- skilled and prosperous people and communities (including access to education and training issues).



The key mechanism for Indigenous consultation will be 'Negotiation Tables'. It is also envisaged that the resulting increase in engagement between communities and government will provide the basis for the negotiation of Shared Responsibility Agreements (SRAs).

Schedules to the Agreement identify locations in Queensland receiving particular attention under the Agreement. During 2005-2006, the Lockhart River community was to be part of a pilot program for streamlined bureaucratic processes and more flexible funding. Furthermore, joint government initiatives in Cape York and on Palm Island are brought under the Agreement. It is intended that other areas will be identified for specific and coordinated action and added to Schedule Two.

The Agreement will be monitored by biannual meetings of senior officials, by joint workshops between government and Indigenous Coordination Centre Managers and by biannual meetings convened by the Department of Aboriginal and Torres Strait Islander Policy and Indigenous Coordination Centres.

Family Responsibility Commission

In mid 2006, the Cape York Institute launched its Welfare Reform Project. In accordance with the Cape York Agenda the *From Hand Out to Hand Up* Report contains a recommendation for a Family Responsibility Commission (FRC) to be funded by the Australian Government and commence in January 2008.

The FRC will make rulings about whether obligations to children have been breached by carers, and if necessary enforce a range of sanctions, including:

- (a) to issue a warning to an individual;
- (b) to direct individuals to attend support services on either a voluntary or compulsory basis;
- (c) to order all or part of welfare payments to conditional income management (such that the recipient has limited discretion over the expenditure of their welfare payments);
- (d) to determine that all or part of welfare payments be directed to an adult that is caring for that individual's children.

The FRC's Secretariat will be based in Cairns, but it will have panels of three people permanently based in each of the four communities vested with the power of decision-making. The panels would comprise three people: one legal officer and two Indigenous community members (one male and one female).

The FRC would be an administrative law tribunal and therefore any decision made by the body could be appealed. This would take place first by internal review; then if the appellant was dissatisfied with the result they could appeal to the Administrative Appeals Tribunal.



COAG Trial in Cape York

Since late 2005 there has not been any activity specifically relating to the Cape York Trial, and many stakeholders have accordingly concluded that the Trial is over. However, there has been no formal end to the process. There is a need for a COAG or Australian Government decision on whether there is to be any further action on the Cape York Trial, and clear communication of this to all relevant parties.⁴⁷

c) Monitoring and Evaluation

Partnerships Queensland – Baseline Report 2006

The Partnerships Queensland *Baseline Report 2006* is the first stage of Partnerships Queensland performance reporting. The report provides the baseline from which all future progress in improved outcomes for Aboriginal and Torres Strait Islander peoples in Queensland can be measured. This monitoring process will measure key indicators of wellbeing and will provide the basis for developing targeted and prioritised programs and interventions that will address disadvantage in Aboriginal and Torres Strait Islander communities.

The report has collated information from state government agencies, the Australian Bureau of Statistics and the Australian Institute of Health and Welfare. The Office for Aboriginal and Torres Strait Islander Partnerships undertook the analysis and interpretation of the data in close consultation with relevant government agencies.

The *Baseline Report* is complemented by the initial *Implementation Progress Report 2006*. The progress report details the most recent achievements of the Queensland Government in addressing areas of Indigenous disadvantage. It also outlines future activities to be undertaken across government to strengthen policy, planning and service delivery to Aboriginal and Torres Strait Islander peoples.

Child Guardian Key Outcome Indicators

In 2006, the CCYP conducted extensive research and consultation to establish an outcome-based method of assessing the effectiveness of the child safety system. This resulted in the development of Child Guardian Key Outcomes and a series of proposed measures that will be used when gathering and reporting information about the child safety system.

One of these outcome indicators relates to Aboriginal and Torres Strait Islander children, and includes various measures in relation to the safety and wellbeing of these children.

Indigenous Child Placement Principle Project

The Commission for Children and Young People monitors the Department of Child Safety's compliance with the Indigenous Child Placement Principle set out in s.83 of the Child Protection Act 1999.

47 *Review of the Cape York COAG Trial Final Report* prepared for the Office of Indigenous Policy Coordination 9 October 2006, Sydney, available online at: www.oipc.gov.au/publications/PDF/Cape_York_COAG_Trial_Evaluation.PDF, accessed 24 January 2008.



Systemic recommendations

In 2006-07, the Commission for Children and Young People finalised systemic recommendations related to Aboriginal and Torres Strait Islander children. These recommendations targeted information management and decision support mechanisms in an effort to improve the available data about Aboriginal and Torres Strait Islander children.

Murri Court Review

A review of the Murri Court was completed in 2006 and the majority of its recommendations have been implemented.⁴⁸ The review confirmed that the Murri Court has been effective in providing practical access to justice for Aboriginal and Torres Strait Islander offenders.

An independent evaluation is currently being undertaken by the Australian Institute of Criminology (AIC), and the AIC is also working with Department of Justice and Attorney-General to implement an effective evaluation database.

Research into legislative instruments

The Queensland Government has commissioned research into:

- the appropriateness of Domestic Violence Orders and the other relevant legislative instruments for Aboriginal and Torres Strait Islander communities, and recommendations for alternatives (this informed the evaluation of the 2003 amendments to the Domestic and Family Violence Protection Act 1989); and
- causal factors for family violence in Torres Strait Islander communities and recommended Torres Strait Islander-specific responses.

Narrative Inquiry

Narrative inquiry is a method of gathering and analysing information from community members through a 'story telling.' The Queensland Government has trialled a narrative inquiry training package with departmental staff and some funded non-government organisations that conduct prevention and early intervention pilot programs, including:

- Mununjali Housing and Development Company;
- Darumbal Community Youth Service; and
- Centacare, Mount Isa.

Narrative inquiry has been used effectively as an evaluation strategy by all three of these programs. The Darumbal Community Youth Service and Centacare have used the method to collect material for their Client Outcomes Projects, which were part of the suite of evaluation techniques used to evaluate the prevention and early intervention pilot programs.

⁴⁸ The Report on the review of the Murri Court can be accessed online at: <http://www.justice.qld.gov.au/671.htm>, accessed 24 January 2008.



d) Programs

Healing approaches:

- *Queensland Indigenous Alcohol Diversion Program (QIADP) (\$2.9 million over three years):* A voluntary 20-week rehabilitation program for Indigenous defendants charged with certain offences that relate to their use of alcohol; and for Indigenous parents involved in the child protection system who also have an alcohol problem.

The criminal justice stream of the QIADP will operate as a bail-based diversionary program. The goal of the program is to break the alcohol-crime cycle by involving eligible Indigenous defendants in treatment and case management programs designed to reduce alcohol-related harm to the individual and the community.

The family intervention stream of the QIADP will offer Indigenous parents the option of accessing culturally appropriate treatment for alcohol misuse if their alcohol misuse impacts on their ability to protect their children from harm.

The three-year pilot program commenced in July 2007 in Cairns (with outreach to Yarrabah) has 32 treatment places; Townsville (with outreach to Palm Island) has 40 treatment places; and Rockhampton (with outreach to Woorabinda) has 32 treatment places.

- *Healing services* (\$1.5 million per annum): Six Indigenous healing services, which provide contemporary and traditional healing to people in Indigenous communities affected by violence. Healing services have been successfully established in Thursday Island, Pormpurraw, Injinoo, Rockhampton, Cunnamulla and the North West of Cape York.

Community Education and Community Development:

- *Child Responsive Communities Project (Cherbourg):* A multi-agency initiative, based on the Crime and Misconduct Commission's research on best practice to reduce child abuse.⁴⁹ The project aims to improve children's knowledge about child sexual abuse; dispel the notion that child sexual abuse is a "normal" childhood experience; and improve the government response once abuse is disclosed.

Project delivery will include school-based activities for primary school children, community-based education for adults, improvements to the responsiveness of the criminal justice system and improvements to community safety and therapeutic responses for children and their families.

This project is currently in the scoping and development phase.

⁴⁹ Crime and Misconduct Commission, *Protecting Children: an inquiry into abuse of children in foster care*, Brisbane, 2004.



- *AFL Education Partnership*: Education partnership with the Australian Football League (AFL) targeted at Indigenous youth. The partnership will use the existing 27 Kickstart football clinics, which are permanently staffed around Queensland remote Indigenous communities. The Government is currently developing 'curriculum' that coaches could use to educate children about healthy relationships, and challenge community tolerance of domestic and family violence.
- *Domestic and Family Violence Prevention*: In 2007, the Queensland Domestic and Family Violence Prevention Month campaign incorporated a focus on Indigenous men with the key message 'every man must take a stand against domestic and family violence.' A radio advertising campaign aired on Indigenous radio stations throughout the month, and advertisements (including perpetrator help cards) were placed in restrooms and public bars and clubs across the state. The Government also provided \$21,729 to Aboriginal and Torres Strait Islander community groups throughout Queensland to hold events and activities to promote the prevention of domestic and family violence in Indigenous communities.
- *Be Strong Be Heard*: Established to address prevailing non-reporting of sexual assault and mistreatment of Indigenous youth in Cape York and the Torres Strait.

Culturally appropriate child protection services:

- *Department of Child Safety initiatives*: Recent child protection initiatives include:
 - the creation of a new Gulf Child Safety Service Centre to provide culturally-focussed service delivery to the remote communities of North West Queensland;
 - scholarship awards to four Indigenous staff members to gain relevant qualifications for employment as Child Safety Officers;
 - sponsorship of 12 Indigenous cadets under the National Indigenous Cadetship Project;
 - recruitment of 228 Aboriginal and Torres Strait Islander carers;⁵⁰ and
 - the allocation of \$12.8 million in grant funding to extend coverage of Indigenous Recognised Entities across Queensland.⁵¹
- *Residential care*: Over the next four years, the Government will allocate \$15.5 million in capital funding and \$19.1 million in recurrent funding for residential care houses in Pormpuraaw, Kowanyama, Aurukun, Weipa/ Napranum and Doomadgee; a first placement house on Palm Island to provide a culturally appropriate place for Indigenous children and young people to stay while their needs are being assessed; and office and residential accommodation for child safety officers working in Indigenous communities.

50 As at 31 December 2006.

51 There are currently 29 funded services.



- *Community Visitor Program (CVP)*: Makes regular visits to children in alternative care. Community visitors immediately report any identified harm to children and young people in out-of-home care to the Department of Child Safety and to the Queensland Police Service where the matter involves alleged criminal activity. Thirty per cent of serious issues identified by community visitors in 2006 related to Aboriginal and Torres Strait Islander children and young people.

Programs for Indigenous offenders who perpetrate violence or abuse (including juveniles):

- *Ending Family Violence Program*: Cognitive behavioural program, which is delivered over 10 two-hour sessions and responds to the specific needs of Aboriginal and Torres Strait Islander people who have been convicted of offences related to violence within their family and/ or community.
- *Ending Offending Program*: Cognitive behavioural program designed to modify the drinking and offending behaviour of Aboriginal offenders.
- *Crossroads* and *Back on track*: Cognitive behavioural program for sex offenders to prevent re-offending. Indigenous cultural advisors attend groups and consult with program staff in order to acknowledge cultural context and inform on culturally sensitive issues. These programs are only available in the correctional environment.
- *Murri Court*: Magistrates Courts that deals with adult and youth Indigenous offenders who plead guilty to offences and elect to appear before the Murri Court for sentence. The Murri Court provides a forum in which Aboriginal and Torres Strait Islander Elders can become involved in identifying the causes of offending behaviour and appropriate options for offender rehabilitation. The emphasis is on imposing alternatives to custodial sentences that are equally or more effective in preventing a recurrence of offending behaviour.
- *Police-Citizen Youth Clubs (PCYCs)* and *Community Activity Program through Education (CAPE)*: Operate in Indigenous communities throughout Queensland, including Wujal Wujal, Hope Vale, Yarrabah, Palm Island, Mornington Island and Napranum. The objective of these programs is to engage young people and divert them from the criminal justice system through recreational activities and support.

Community Justice Groups:

- Established in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody and to deal more effectively with social justice issues regarding over representation of Aboriginal and Torres Strait Islander people in the States criminal justice system. The Queensland Government currently funds 41 Community Justice Groups across Queensland.



Safe houses and services for women and children:

- *Safe Haven* (\$17.83 million): Joint Australian and Queensland Government⁵² project being implemented in the communities of Cherbourg, Coen, Palm Island and Mornington Island. It is aimed at reducing the impact of domestic and family violence on children and young people. While the building is underway an interim service model has been developed for co-ordination and integration of interim services with existing services; community capacity building; night patrol service; family support/parenting counselling service; youth engagement and support; and a family brokerage system.
- *Safe Houses*: The 2007-08 Queensland State Budget allocated \$19.1 million operating and \$15.5 million capital funding over four years to better protect Indigenous children in remote communities. This will include at least five 'safe houses,' which will provide accommodation for children who are within the child safety system.
- *Supported Accommodation Assistance Program*: There are currently 13 crisis accommodation services in Queensland funded through the Supported Accommodation Assistance Program (SAAP). These services are specifically designed to assist Aboriginal or Torres Strait Islander women and their accompanying children who are homeless or at risk of homelessness. SAAP services are also referred to as 'safe houses'.

Crime prevention programs:

- *Community Patrols*: The Queensland Government provides funding support to community patrols in Townsville and Palm Island. In addition, Community Justice Groups throughout the state facilitate the delivery of crime prevention programs in their communities including night patrols, 'Murri Watch', youth camps, and outstations.
- *Youth and Community Combined Action (YACCA) program*: Provides recurrent funding of over \$2 million per year to non-government organisations. YACCA is aimed at young people aged 12 to 25 who are at risk of offending and other high-risk behaviours. Three services located in Cherbourg, Brisbane and Palm Island specifically target Indigenous young people. The services provide a range of crime prevention activities to assist young people to play positive and responsible roles in their communities.

52 Joint funding is provided: \$10.38M Queensland contribution and \$7.45 million Australian Government contribution.



3) South Australia

In 2003, a child protection review was undertaken by Robyn Layton QC. The report, *A State plan to protect and advance the interests of children*⁵³ devotes a chapter to Indigenous children and young people.

The report makes eight Indigenous specific recommendations for better service delivery, interagency cooperation and community education and community development. It also recommends a human rights based approach to Indigenous child protection:

Recommendation 31: That the principles contained in the United Nations Convention on the Rights of the Child (UNCROC) be reflected in all statutes affecting Indigenous children and young people and form the underpinning principle objectives driving legislation in this State. That the South Australian Child Protection Board, when developing protocols and guidelines, has regard to the three targets identified by UNICEF in its New Global Agenda for Children (2000).⁵⁴

In 2004 the South Australian government created the Commission of Inquiry (Children in State Care and on APY Lands) to investigate:

allegations of failure on the part of government agencies, employees or other relevant persons to investigate or appropriately deal with allegations concerning sexual offences against children under the guardianship, custody, care or control of the Minister responsible for the protection of children; and to provide for a Commission of Inquiry into the incidence of sexual offences against children resident on the Anangu Pitjantjatjara Yankunytjatjara lands.⁵⁵

The Commission of Inquiry has heard from 1849 people and undertaken 783 hearings.⁵⁶ The Commission is currently finalising its report which is expected to be submitted to parliament in January 2008.

a) Policy Frameworks

South Australian Strategic Plan

The South Australian Government has an overarching South Australian Strategic Plan (SASP). The SASP contains specific targets relating to Indigenous health and well-being:

- *Aboriginal healthy life expectancy*: Lower the morbidity and mortality rates of Aboriginal South Australians.
- *Aboriginal Leadership*: Increase the number of South Australians participating in community leadership and in community leadership development programs.
- *Aboriginal housing*: Reduce overcrowding in Aboriginal households by 10% by 2014.

53 *A State Plan to Protect and Advance the Interests of Children* can be accessed online at: <http://www.familiesandcommunities.sa.gov.au/Default.aspx?tabid=733>, accessed 24 January 2008.

54 *A State Plan to Protect and Advance the Interests of Children*, can be accessed online at: <http://www.familiesandcommunities.sa.gov.au/Default.aspx?tabid=733>, accessed 24 January 2008.

55 *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004*.

56 Children in State Care Commission of Inquiry, *Issues upon which the Commission seeks submissions*, Media Release, 15 February 2007.



- *Aboriginal education:* early years. Increase yearly the proportion of Aboriginal children reading at age appropriate levels at the end of year 1.
- *Aboriginal wellbeing:* Improve the overall wellbeing of Aboriginal South Australians.
- *Aboriginal employees:* Increase the participation of Aboriginal people in the South Australian public sector, spread across all classifications and agencies, to 2% by 2010 and maintain or better those levels through to 2014.

Further, the South Australian Government has drafted a State Aboriginal Strategic Plan, which is due for release in 2007-08.

Keeping Them Safe In Our Care Action Plan

Keeping them Safe is the South Australian Government's wide ranging program to reform the State's child protection systems and services. An action has been identified to specifically address the needs of Indigenous young people:

- Getting it Right for Aboriginal Children and Young People: Giving a renewed priority and commitment to developing effective and culturally appropriate responses to the high numbers of Aboriginal children and young people in our care.

Service planning across government departments seeks to address this as a state government priority.

Domestic Violence Statement of Commitment

The Justice Portfolio adopted the Domestic Violence Statement of Commitment in September 2005. The Statement of Commitment recognises the key role of Justice Portfolio agencies in responding to domestic violence including:

- providing victims with access to justice and increasing their safety; and
- intervening effectively with offenders to stop violence.

Women's Safety Strategy

The Women's Safety Strategy has specific reference to Indigenous women, stating that responses to violence against Aboriginal and Torres Strait Islander women will be informed by the principles detailed in the 'Rekindling Family Relationships – Framework for Action'.

Family Safety Framework

This is a Framework to drive the development of improved, integrated service responses to violence against all women and children in South Australia. The Framework outlines the process, procedures and policies that will enable agencies to better support women, children and young people who are victims of violence and abuse and people who use violence. The Framework incorporates an agreement to share information between agencies and sets out the parameters for the sharing of this information.



b) State and Australian Government Joint Initiatives

Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the State of South Australia

The *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the State of South Australia* (also known as the *Bilateral Agreement on Service Delivery to Aboriginal and Torres Strait Islanders in South Australia*) was signed by the Prime Minister and the Premier of South Australia on 17 April 2006. The five-year agreement aims to enhance health and welfare of Indigenous South Australians.

The agreement is a response to issues identified in the *Overcoming Indigenous Disadvantage Report*. The agreement includes planned action in the areas of 'safer communities; housing and infrastructure; health and education; homelessness; economic development; land, environment and culture; and service delivery'.

It is to enhance cooperation between the two governments in service delivery, including through a streamlining of processes. The agreement is also designed to reduce bureaucratic overlap and service duplication in Indigenous communities.

COAG Family Violence Action Strategy

The Australian Government and South Australia participated in bilateral negotiations throughout 2006-07 to identify initiatives to address violence and child abuse in Indigenous communities as outlined in the COAG Action Strategy. The majority of the discussions under the Action Strategy had not reached the formal agreement stage by the end of 2006-07.

Law enforcement

Improved Policing in remote areas

The Australian Government initiated an audit of policing in remote areas. The State Government participated in this initiative through SAPOL with an audit of policing on the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.

The Australian Government has agreed to provide the South Australian Government with capital funding for police infrastructure on the APY Lands. The State has agreed to contribute to this by providing four additional police officers for the APY Lands and a number of community liaison positions, targeting family violence. The number of permanent police on the APY Lands has now increased to twelve fully sworn officers compared to 2002 when the Lands were policed by officers operating from Marla with the support of Community Constables. In addition to the 12 officers, there are 10 Community Constable positions across the Lands as well as 6 officers and 1 clerical position based at Marla.

Sniffer Dogs and Strike Teams

South Australia is a party to the tri-state intelligence desk, based in Alice Springs, which has been very successful in reducing the trafficking of petrol, alcohol and drugs in the Central Australian desert region.

National Indigenous Violence and Child Abuse Task Force

South Australia has provided two officers to the Task Force.



Protection for Victims

Ceduna and Coober Pedy Safe House Initiative

The Australian and State Governments have jointly funded the development and implementation of a number of Safe Houses for Women and Children fleeing violence in Ceduna and Coober Pedy. This initiative provides intensive case management, accommodation and re-establishment services to women and children.

Commission of Inquiry into sexual abuse on the APY Lands

The Australian Government has provided support to the State for the expansion of the current Commission of Inquiry into Children in State Care. The expanded Inquiry focuses on the sexual abuse of children on the APY Lands. The Inquiry will hand down its report at the end of January 2007.

Health and Wellbeing of Children

Introduction of a family Support Worker in Yalata and Senior Social Workers in Anangu Pitjantjatjara Yankunytjatjara (APY) Lands to provide early intervention for families.

Drug and Alcohol Rehabilitation Services

The South Australian and Australian Governments have entered into a joint agreement for non residential rehabilitation drug and alcohol day centres in Port Augusta, Coober Pedy and Ceduna.

Compulsory School Attendance

The South Australian Government has agreed to provide data on school attendance to the Australian Government. This data will be provided down to the school level (not individuals) to enable monitoring of attendance levels.

c) Monitoring and Evaluation

No monitoring or evaluation mechanisms were reported to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

d) Programs

Community education and community development:

- *Rekindling Indigenous Family Relationships (RIFR) project in the Riverland:* Funded through the Family Violence Partnership Program (FVPP) jointly between the Australian and State governments, it is aimed at increasing the capacity of Indigenous people to respond to, reduce and prevent family violence and child abuse, as well as link with a range of services. It includes a Community Enhancement Program and Family Wellbeing Program that provides participants with skills for effective communication and conflict resolution. The Family Well Being course is a Certificate II Course within TAFE Aboriginal Education and is a nationally accredited counselling skills course.



- *State Aboriginal Women's Gathering and State Aboriginal Men's Gathering:* In 2006 a gathering with over 70 women representing communities from metropolitan, rural and remote South Australia coming together. The theme of the Gathering was '*Indigenous Family Violence – Local Community Solutions*'. Delegates to the gathering were presented with a report, '*A Two-Way Conversation: Aboriginal Women Talking, Government Listening*', compiled by Office of Women (OfW). The report presents the SA Government's response to recommendations made at the 2002-2005 State Aboriginal Women's Gatherings. A panel comprising Departmental heads from across Government joined the Gathering to respond to questions from the delegates as to how Government could further progress the recommendations.

A similar State Aboriginal Men's Gathering also occurred in December 2006 with a focus around men's health.⁵⁷

- *Child Safe Environments Training – tailored to community:* Training by Families SA in partnership with a remote area Health Clinic in Pukatja to increase knowledge of the child protection system.

Culturally appropriate child protection services:

- *Taikurtinna Maltorendi (Families to remain together):* Aboriginal-specific service providing support and access to services for Aboriginal families who receive a 'Tier 3' notification and who live in the north-west regions of Adelaide. Taikurtinna Maltorendi also provides a whole of family case management/ outreach home visiting service that aims to support families in a non-threatening, culturally accountable environment to improve the housing, educational, health and wellbeing outcomes for children at risk of becoming homeless.
- *Yaiya Tirramangkotti:* Provides advice and assistance in cases involving the abuse of Aboriginal children. Staffed by Aboriginal people, Yaiya Tirramangkotti makes sure that everything is done to involve Aboriginal families and help them care for their children in ways that are culturally appropriate and consistent with the Aboriginal Child Placement Principles.
- *Principal Cultural Consultants:* Indigenous positions that advise senior staff within the department of the management of critical cases and the quality, appropriateness, and effectiveness of this practice.
- *Murray Bridge Aboriginal Families Team:* Provides holistic services and support to prevent families and young people entering the child protection, alternative care and youth justice system.
- *Davenport Community Protocols:* As a pilot project, the Port Augusta District Centre, Families SA is partnering with the Davenport Community to develop protocols regarding best ways to approach and work with the community on issues relating to child protection and child/ young person safety within the community.

57 See Men's groups case study in Chapter 2.



- *Port Augusta Aboriginal Families Team*: Provides intensive case management for Aboriginal families who have multiple problems, and who have been involved with numerous human service agencies over a long period of time.
- *Kumangka Padnendi*: Assists Aboriginal families to remain united, re-united or re-connected using a therapeutic approach. The therapeutic approach is two pronged, the first is the 'Rapid Response' that has the capacity to respond to Aboriginal people in crisis situations where children have been removed or are at risk of removal. The second is the sustained therapeutic response that focuses on the parents/caregivers needs. Often the parents/ caregivers are themselves victims of past policies that lead to widespread removal and disruption to parenting practices.

Programs for Indigenous offenders who perpetrate violence or abuse (including juveniles):

- *Mary Street Adolescent Program*: Provides counselling and help for adolescents (and their families) who have sexually offended. This is not an Indigenous specific service.
- *Aboriginal Mental Health Youth Partnership*: Families SA and the Child and Adult Mental Health Services (CAMHS) have developed partnerships within the Secure Care setting at Cavan Training Centre, to provide support, counselling and mental health services to Aboriginal young people within the juvenile justice system.
- *Panyappi*: Indigenous youth mentoring service for young people who experience multiple problems that lead them to frequent inner city or other suburban hangouts, placing them at risk of being a victim of crime or engaging in offending behaviour.
- *Kurlana Meyanna Karpandi (Supporting Youth)*: Service to target Aboriginal young people in the juvenile justice system – aged from 10 to 18 years who are custody and are in need of suitable accommodation or placement after they return to the community. The program is designed to recruit, train and support Aboriginal carers to provide placements for young people in the Justice System.
- *Marni Wodli (Good House)*: Accommodation program funded primarily to provide culturally appropriate accommodation options and independent living skills to 'at risk' Aboriginal young people aged between 15 and 18 years.

Crime prevention programs:

- *Port Augusta Youth Support Services Bus*: Collaborative program with partnerships between Families SA, Department of Justice and Port Augusta Council to provide transport for young people at risk of offending to go to safe places; and provide individual support and referral.



4) Western Australia

Western Australian initiatives to address Indigenous family violence and child abuse have been framed in response to the Gordon Inquiry, one of the most well known and largest inquiries into Indigenous communities. Following the Coroner's Inquest into the death of a 15 year old girl in Swan Valley, the Western Australian Government formed a special inquiry headed by Magistrate Sue Gordon to look at family violence and child abuse in all Western Australian Aboriginal communities. The findings of this inquiry are published in the report, *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*.⁵⁸

Commenced in 2002, the Inquiry ran for six months and evidence and information was obtained by the Inquiry through written submissions from government, non-government agencies and individuals; documents and materials provided by government agencies; consultation with Aboriginal communities, government agencies, non-government agencies and to other facilities and individuals; formal hearings; and relevant research materials.

The Gordon Inquiry found that:

- family violence and child abuse occur in Aboriginal communities at a rate that is much higher than that of non-Aboriginal communities;
- better responses are needed when family violence and child abuse occur;
- the Government needs to provide a co-ordinated 'connected' approach to service delivery that responds to each community's need for integrated service provision; and
- there is a need to increase the capacity of workers to be responsive to abuse and violence in Aboriginal communities and the needs of Aboriginal people.

The Gordon Inquiry made 197 findings and recommendations. It is this Report that has shaped much of the policy development in Western Australia. The recommendations can be grouped around 4 main themes:

1. strengthening the response to child abuse and family violence;
2. strengthening response to vulnerable children and adults at risk;
3. strengthening the safety of communities; and
4. strengthening the governance, confidence, economic capacity and sustainability of communities.

The Western Australian Government's response to the Gordon Inquiry, *Putting People First*, was tabled in Parliament in December 2002. Further government responses are outlined below.

58 More information including the full Gordon Inquiry Report can be found online at: <http://www.dia.wa.gov.au/gordon/background.html>, accessed 24 January 2008.



a) Policy Frameworks

Gordon Action Plan⁵⁹

In November 2002, the Western Australian Government, in response to the Gordon Inquiry, identified four key outcome areas to be addressed by the Gordon Action Plan. They include:

- timely responses to children identified as abused or significantly at risk of abuse and/or neglect;
- a reduction in family violence and child abuse in Aboriginal communities;
- an increase in the percentage of people in Aboriginal communities who feel safe including children and youth; and
- an increase in the percentage of Aboriginal people who are aware of and can access family violence and child abuse services.

The Gordon Action Plan comprised 125 initiatives with a budget of \$71 million over four years.

Operational Response to Child Abuse disclosures in the East Kimberley

Between April and July 2007, there were a number of arrests and charges following child abuse disclosures in Indigenous communities in the East Kimberley.

On 23 July 2007, the Cabinet Standing Committee on Law and Order gave a mandate to the Department of Indigenous Affairs (DIA) to lead coordination of a government response to the broader impacts on the community as a result of the high number of disclosures. A Director's General Group, established to coordinate the response at the strategic level, has endorsed a model for agreed whole-of-government action to address broad community issues arising from the disclosure of child abuse.

The model will provide a phased approach consisting of the initial response involving investigation and case management, the recovery phase involving community healing and other strategies to support the broader community to manage issues, and community building involving longer-term strategies, services and processes to bring about safety and security of children.

The response model is underpinned by the Gordon Action Plan, which provides the longer-term measures needed to reduce family violence and eliminate child abuse.

59 Details on the Action Plan and information on the Government's response to the Gordon Inquiry are available online at: <http://www.dia.wa.gov.au/gordon/Index.htm>, accessed 24 January 2008.



b) State and Australian Government Joint Initiatives

Bilateral Agreement on Indigenous Affairs between the Western Australian and Australian Governments⁶⁰

The Bilateral Agreement on Indigenous Affairs (the Agreement) between the Western Australian and Australian Governments establishes an agreed framework and priorities for intergovernmental cooperation and enhanced effort in Indigenous Affairs.

The Agreement has six key outcome areas:

- Law and Order and Safe Places for People;
- Skills, Jobs and Opportunities;
- Healthy and Strong People;
- Sustainable Environmental Health and Infrastructure;
- Land, Sea and Culture; and
- Strong Leadership and Governance.

The Western Australian Government has now established a Directors' General Group supported by specific Senior Officers groups under each outcome area to establish policy priorities for negotiation with the Australian Government.

c) Monitoring & Evaluation

Gordon Action Plan

Department of Indigenous Affairs (DIA) has monitored and evaluated the implementation status of the initiatives arising from the Gordon Action Plan. As at 30 May 2007, the majority of initiatives have been implemented.

The outcomes of the Gordon Action Plan are being evaluated in three stages. The first stage consists of:

- a) evaluation of collaboration between agencies and with the Aboriginal community at a strategic level;
- b) case studies of the impacts of initiatives and strategies at the community level;
- c) identification of the longer-term outcomes for the Gordon Action Plan; and
- d) how these can be measured and evaluated.

The first stage of the evaluation is currently in progress. A number of separate Gordon Action Plan initiatives have already been evaluated by the agencies responsible for these programs, including the Strong Families and Child Protection Workers programs.

⁶⁰ A copy of the Agreement is available to download at: <http://www.dia.wa.gov.au/DIA/Partnerships/BilateralAgreement.aspx>, accessed 24 January 2008.



Part C of the Stage One evaluation of the Gordon Action Plan will identify the longer-term outcomes and how these can be measured and evaluated. This will include developing an outcomes framework and a set of indicators that will give a clearer picture of what sorts of data will be required and useful in assessing the achievement of Action Plan outcomes. Stage Two of the Gordon Action Plan evaluation is scheduled for 2008.

d) Programs

Healing approaches:

- *Culturally appropriate Counselling and Support Services* (\$200,000 specific Gordon Action Plan funding): Program to increase capacity to provide culturally appropriate counselling and support services by considering the feasibility of giving scholarships to Aboriginal and other persons for professional development in partnership with tertiary institutions; engaging with relevant agencies, bodies and people to foster the development and implementation of skills training and support for Aboriginal people; and evaluating the Derby Family Healing Centre to assess the benefits of whole-of-family 'healing centre models'.

Community education and community development:

- *Protective Strategies program*: The Department of Education and Training will introduce into the school curriculum the teaching of protective behaviour strategies to complement health and well being units.

Culturally appropriate child protection services:

- *Aboriginal Support Workers* (\$5.084m specific Gordon Action Plan funding over four years): Recruitment and support of fourteen skilled Aboriginal Support Workers (one per police district) to enhance the accessibility of and support services for children and youth exhibiting risk behaviour. The workers will be co-located within existing services that are accessed by Aboriginal children and young people.

Programs for Indigenous offenders who perpetrate violence or abuse:

- *Reasoning and Rehabilitation Program*: A cognitive behavioural program that aims to reduce offending behaviour through group work. This is not an Indigenous specific program.
- *Sex offender program*: All juvenile sex offenders in custody have the opportunity to engage in counselling to address their sexual offending. This is not an Indigenous specific program.
- *Community Supervision Agreements* (\$0.835m specific Gordon Action Plan funding over four years): Three Training and Liaison Officers are employed in the Pilbara, Kimberley and Goldfields to provide appropriate financial and logistical support and training to communities managing community supervision agreements. This is hoped to lead to an expansion in the number of community supervision agreements.

**Safe Houses and services for women and children:**

- *Safe Places-Safe People* (\$ 1.247m specific Gordon Action Plan funding over four years): Strategy that foster a systematic and coordinated approach to respond to child abuse. The program builds on and supports community initiatives, such as the Kids Helpline, to respond to the needs of children including:
 - Identification of 'safe persons and places' in Aboriginal communities where Aboriginal children can take themselves to if they are in need.
 - Expansion of work already being undertaken in seven rural and remote communities to develop community-managed responses and the identification of safe places for Aboriginal women threatened or subjected to violence.
 - Investigation of the feasibility of each 'safe place' having access to a restricted phone with free provision to call emergency numbers such as police, crisis care, and Kids Help Line.

Crime Prevention programs:

- *Aboriginal Community Patrols*: The Department of Indigenous Affairs funds 17 service providers to deliver 19 patrols throughout metropolitan and regional Western Australia. The patrols assist Indigenous people at risk of self harm; family and community violence; homelessness; and substance abuse and misuse.



5) Victoria

The Victorian Government established an independent Victorian Indigenous Family Violence Task Force in 2001 to lead the development of an Indigenous family violence strategy for the State. Their report, *Indigenous Family Violence Taskforce Report (2003)*⁶¹ is the key research document on the status of Indigenous family violence in Victoria, having undertaken in-depth community consultations at a local, regional and state-wide level.

The Report finds that one in three Indigenous people are the victim, have a relative who is a victim or witness an act of violence on a daily basis in Aboriginal communities across Victoria.

Data provided to the Task Force by Victoria Police indicates that an Indigenous person in Victoria is more than eight times more likely to be a victim of family violence than a non-Indigenous person. Data collected across the same time frame confirmed that 2.9% of Victoria's Indigenous community were victims of family violence compared with 0.55% for non-Indigenous people.

The report found that Aboriginal children are the subject of substantiated child abuse at more than seven times the rate for non-Aboriginal children and there had been a 38.7% increase in Indigenous child protection investigations with parental domestic violence characteristics between 1998-99 and 2002-03. Substantiated incidents had also increased by 52.7% in this same time period.

The Report made 28 formal recommendations to the Victorian Government along with the provision of an Action Plan to be considered by members of the Indigenous Family Violence Partnership Forum and the Indigenous Family Violence Working Group when preparing the 'whole of government' response for input into the Victorian Indigenous Family Violence Strategy.

The Victorian Government prepared a Formal Response to the Victorian Indigenous Family Violence Task Force Final Report, as well as the recommended Indigenous Family Violence Strategy, discussed below.

a) Policy Frameworks

Indigenous Family Violence Strategy

The Indigenous Family Violence Strategy is the Victorian Government's response to the *Indigenous Family Violence Taskforce Report (2003)*,⁶² together with the *Victorian Government Response to the Victorian Indigenous Family Violence Task Force Final Report (2004)*.⁶³ In 2002-03 \$7.6 million was allocated over four years to support the development and implementation of the *Indigenous Family Violence Strategy*.

61 The *Indigenous Family Violence Taskforce Report (2003)* can be accessed online at: http://www.office-for-children.vic.gov.au/family-violence-sexual-assault/library/publications/task_force_report, accessed 24 January 2008.

62 The *Indigenous Family Violence Taskforce Report (2003)* can be accessed online at: http://www.office-for-children.vic.gov.au/family-violence-sexual-assault/library/publications/task_force_report, accessed 24 January 2008.

63 The *Victorian Government Response to the Victorian Indigenous Family Violence Task Force Final Report (2004)* can be accessed online at: http://www.office-for-children.vic.gov.au/__data/assets/pdf_file/0020/16706/fcs_govt_response_task_force_report.pdf, accessed 24 January 2008.



The long-term response to Indigenous family violence is an Indigenous-Government partnership to develop a ten-year plan to prevent and eliminate Indigenous family violence. This partnership is led by the Indigenous Family Violence Partnership Forum, which comprises senior Government representation and Indigenous community leadership through the Indigenous Family Violence Regional Action Groups and Indigenous service providers.

Indigenous Regional Action Groups build the leadership and capacity of Indigenous communities to prevent and respond to family violence. Regional Action Groups have been empowered to become effective decision-making bodies on strategies to address family violence issues at the local level. Training incorporating knowledge building and skills development has been provided to members so they fulfil their leadership role.

A Fairer Victoria

In 2005, *A Fairer Victoria* reinforced the Government's commitment to improving the lives of all Victorians, including Indigenous Victorians. It led to a new policy of working with Indigenous people, *Building a New Partnership with Indigenous Victorians*.⁶⁴ This commitment underpinned the development of the *Victorian Indigenous Affairs Framework* (VIAF).

Victorian Indigenous Affairs Framework

The VIAF contains six Strategic Areas for Action:

1. improve maternal health and early childhood health and development;
2. improve literacy and numeracy;
3. improve year 12 completion or equivalent qualification and develop pathways to employment;
4. prevent family violence and improve justice outcomes;
5. improve economic development, settle native title claims and address land access issues; and
6. build Indigenous capacity.

To ensure that there is coordination of effort, and to provide whole of government leadership, the Government established a Ministerial Taskforce on Aboriginal Affairs to direct implementation of the VIAF.

Ministerial Taskforce on Aboriginal Affairs

The Ministerial Taskforce on Aboriginal Affairs (MTAA) drives action and provides whole-of-government direction on the VIAF. It has a continuing focus on outcomes for children and young people.

⁶⁴ The policy document *Building a New Partnership with Indigenous Victorians* can be accessed online at: http://www1.dvc.vic.gov.au/aav/docs/Vic_IndigenousAffairsFramework.pdf, accessed 24 January 2008.



Aboriginal Justice Agreement

The first phase of the Victorian Government's *Aboriginal Justice Agreement (AJA)*,⁶⁵ launched in 2000 by the Department of Justice, was a formal agreement between Government and elected members of the Indigenous community. The *Aboriginal Justice Agreement's* objectives are crime prevention and early intervention; strengthening alternatives to imprisonment; reducing re-offending; reducing victimisation; building responsive and inclusive services and strengthening community justice responses.

Launched in 2006, the second phase of the *Aboriginal Justice Agreement*⁶⁶ includes a commitment to:

- further develop a shared vision and agreed priorities for action within government and community sectors;
- empowering local Indigenous communities to become involved in justice policy planning and service delivery; and
- further develop stronger and more sustainable approaches to tackling the many issues associated with over-representation of Indigenous people in the Victorian justice system.

An additional \$26 million was provided by the Victorian Government in the 2006-07 Budget to progress Phase 2 and to strengthen the effort in reducing over-representation.

Aboriginal Justice Forum

Under the AJA, the Aboriginal Justice Forum was established to forge and sustain key justice partnerships at the local, regional and state-wide levels. The foundations are the Regional Aboriginal Justice Advisory Committees.

The Aboriginal Justice Forum and Regional Aboriginal Justice Advisory Committees have been successful in enabling the Indigenous community and the Government to jointly set policy direction and monitor all AJA-related activities. This partnership has been enhanced through the establishment of Local Justice Action Committees in 2006-07. Local committees enable local Indigenous communities to work closely with justice agencies to devise local solutions to justice issues.

The Aboriginal Services Plan 2008-2010

The Aboriginal Services Plan 2008-2010 outlines commitments by the Department of Human Services (DHS) to improve outcomes for Indigenous people.

A Way Forward – Violence Against Women Strategy

This Strategy provides Victoria Police with a platform for development of initiatives and its key role in system-wide family violence and sexual assault reforms. Ongoing strategies include Indigenous specific initiatives.

65 Further information on the *Aboriginal Justice Agreement* can be accessed online at: <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Indigenous+Victorians/JUSTICE++Victorian+Aboriginal+Justice+Agreement>, accessed 24 January 2008.

66 Further information on the *Aboriginal Justice Agreement* can be accessed online at: <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Indigenous+Victorians/JUSTICE++Victorian+Aboriginal+Justice+Agreement>, accessed 24 January 2008.



Integrated Family Violence Service Reform Framework

The Victorian Government's Integrated Family Violence Service reforms initiated a new approach to family violence in Victoria. The broad reforms were supported by \$35.1 million over four years in the 2005-06 Budget.

All agencies, including human services, police and justice services are required to work together to provide co-ordinated responses at the local level. Improving access to services for Indigenous Victorians is one of the family violence reform priorities. Regional Integrated Family Violence Committees which have been established throughout Victoria can address Indigenous access issues. These committees are responsible for driving and monitoring implementation of the new approach to family violence at a regional level and include representatives from Indigenous organisations.

In 2004 Victoria Police introduced the *Code of Practice for the Investigation of Family Violence* which details that police must respond to all incidents of family violence, emphasising the safety and support of victims. The code recognises the unique nature of family violence in Indigenous communities.

b) State and Australian Government Joint Initiatives

No state and Australian Government joint initiatives were reported to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

c) Monitoring and Evaluation

Victorian Indigenous Affairs Framework

Each of the six Strategic Action Areas contained in the Victorian Indigenous Affairs Framework (VIAF) includes change indicators that will measure the Government's progress in reducing Indigenous disadvantage. Achieving improvements in the change indicators in each of the Strategic Action Areas is the basis for improving outcomes. These indicators provide a way to measure progress in achieving the priority outcomes of the VIAF.

Aboriginal Services Plan Key Indicators Report

The Department of Human Services is closely monitoring the number of reports of child abuse and neglect that it receives. The department will report on its progress against a range of measures including child protection reports, substantiations and re-substantiations through the annual *Aboriginal Services Plan Key Indicators Report*.



d) Programs

Culturally appropriate child protection services:

- *Aboriginal Child Specialist Advice and Support Service (ACSASS):* Provided by VACCA⁶⁷ and Mildura Aboriginal Corporation, ACSASS work closely with the Department of Human Services to provide consultation, advice and information to Child Protection workers on all reports and significant actions and decisions regarding Indigenous children.
- *Aboriginal and Torres Strait Islander Family Decision Making Program:* Every region now has funds to enable local Aboriginal community controlled organisations to appoint community conveners as part of the Aboriginal and Torres Strait Islander Family Decision Making Program. This program enables extended family and respected Elders to participate in decision-making and case planning about the safety, stability and development of Indigenous children within the child protection system.
- *Aboriginal Family Preservation and Restoration programs:* Prevents the placement or enable the return home of Indigenous children by improving safety and care standards within the family. Aboriginal Family Preservation works intensively with families in their own home while Family Restoration offers the additional resource of a residential facility for the whole family.
- *The Indigenous – Family Services (Innovations Programs):* Since 2001 resources have been increased to the Indigenous family services sector for the delivery of services to Indigenous children and families. Services focus on those families who have been identified to child protection services.
- *Capacity Building:* As part of the implementation of the new child and family legislation an additional \$1.4 million was committed in November 2006 to assist Indigenous community controlled organisations build their capacity to deliver a range of child and family welfare services.
- *Child FIRST:* Initiative for all children and families in need of support and guidance. It ensures they receive supports earlier both through improved early years services that engage more effectively with vulnerable Indigenous families and through Child FIRST linking families into local family services. Capacity also now exists to provide longer-term support for particularly vulnerable families where required.

Community education and community development:

- *Indigenous Family Violence Strategy Community initiative Fund:* Annual grants under the Community Initiative Fund complement the Regional Action Groups. The Fund supports the implementation of community-based projects that raise awareness of and responses to family violence. In 2006-07, 33 local projects were funded.

67 See case study on the Lakidjeka ACSASS in Chapter 2.



- *Mildura Family Violence and Sexual Assault Awareness Campaign:*⁶⁸ Victoria Police and the Indigenous community in Mildura have developed a media campaign to prevent family violence by highlighting the impact of violence on community members. Strong relationships between Indigenous leaders and Victoria Police have been forged through the project.
- *Lake Tyers Community Renewal Program:* A holistic approach to reduce Indigenous disadvantage based on long term and sustained community renewal strategies. The program has reduced police call-outs from an average of 25 per month (for the three months before the intervention) to an average of 1.25 call-outs for the first four months of the 2007 calendar year.

Healing Approaches:

- *Healing Services and Time Out* (\$1.6 million per annum): Four Indigenous Healing Services will provide a holistic approach to addressing family violence in Indigenous communities. The Healing services are to be based in Loddon Mallee South, East Gippsland, North & West Metropolitan and Eastern Metropolitan Regions.

Four Indigenous Time Out services will refer Indigenous people who use violence against family members to a place to access support to help them manage their violent behaviour. The Time Out services are in Loddon Mallee North, Hume, East Gippsland and North & West Metropolitan Regions. These services are currently being developed.

The Victorian Government has allocated \$1.6 million per annum and the Australian Government has allocated capital funding of \$2.8 million for two Healing and two Time Out centres in rural Victoria.

- *More appropriate access to Court:* Indigenous outreach support is a part of the courts reforms associated with establishing the Family Violence Court Division of the Magistrates' Court of Victoria at Ballarat and Heidelberg

Programs for Indigenous offenders who perpetrate violence or abuse (including juveniles):

- *The Koori Youth Intensive Bail Support Program:* Aims to reduce the number of young Indigenous people detained prior to sentencing. The program provides intensive outreach support to assist young people comply with bail conditions or conditions placed on deferred sentences.
- *Koori Courts:* Adult and children's Koori Courts have been implemented across Victoria, achieving reduced re-offending. This is in addition to the Aboriginal Liaison Officer Program and cultural awareness training for court staff and Magistrates in the mainstream courts system.
- *The Koori Pre and Post Release Services Programs:* Provides post release, intensive cultural support to young Indigenous people to help reduce the likelihood of non-compliance with post-custodial orders. Cultural programs also operate in Custodial Centres that increase the knowledge and engagement of young Indigenous people with their culture.

68 See case study on the Mildura Family Violence and Sexual Assault Awareness Campaign in Chapter 2.



- *The Koori Youth Justice Program*: Established in 1992 and has expanded over the years to all Department of Human Services regions. In 2006-07 there were 16 community workers, three custodial workers (one in each custodial centre) and a central program adviser. The role of the Koori Youth Justice workers, based mainly in Indigenous Co-operatives, is both preventative and responsive. Clients include young people who are the subject of orders from the criminal division of the Children's Court, young adults in the dual track system, young Indigenous people who are at risk of offending and those who have committed minor offences and received Police diversion or caution.
- *The Marumali program*: This program assists individuals to heal and manage the distress and trauma of dealing with the intergenerational impacts on prisoners of the Stolen Generations.
- *The Koori Cognitive Skills Program*: Cognitive behavioural program for Indigenous offenders.

Early intervention and well being:

- *Koori Maternity Strategy*: Delivered through the Koori Maternity Program in 11 Aboriginal community controlled Health Services. Indigenous maternity health workers are also employed to work with clinical staff at the Co-operative and/ or the local hospital.
- *The In-Home Support for Aboriginal Families Initiative*:⁶⁹ Support to improve the health, development, learning and well-being of Indigenous children 0-3 years. It also aims to strengthen support and improve parenting capacity for Indigenous parents and their families that is respectful of their cultural identity.
- *Best Start*:⁷⁰ Early childhood prevention and early intervention initiative that aims to improve the health, development, learning and well-being of all children between the ages of 0-8 years across Victoria, from pregnancy through to transition to school. Of the 30 *Best Start* sites, six are Indigenous specific.
- *Maternal and Child Health Service*: Universal access and participation for all children from birth to school age. Maternal and child health nurses play an important role in linking Indigenous children with the Koori Early Childhood Education Program workers and/ or local early childhood activities including playgroups and kindergartens. For higher-need Indigenous mothers, an 'in-home support' service is now being introduced in areas building on the Koori Maternity Strategy and extending support over the first three years.

69 Further information on the *In Home Support for Aboriginal Families* can be found online at: http://www.office-for-children.vic.gov.au/early-years-services/in_home_support_for_aboriginal_families, accessed 24 January 2008.

70 Further information on the Best Start program can be found online at: <http://www.beststart.vic.gov.au/>, accessed 24 January 2008.



6) Tasmania

The Tasmanian response to family violence has been informed by the major report, *ya pulingina kani – Good to see you talk*⁷¹ (2002). This project was part of the Indigenous Family Violence Project and was conducted jointly by the Tasmanian Office of Aboriginal Affairs and Women Tasmania, Department of Premier and Cabinet and funded by Partnerships Against Domestic Violence.

The report was based on extensive state-wide consultations. The project team spoke with over one hundred and fifty people formally and informally. The result is a narrative told by Aboriginal people about Aboriginal family violence in Tasmania.

Four recommendations that were made in the *ya pulingina kani* report:

1. *Reciprocity*: An ongoing role for the individuals who contributed to the report in advising government on Indigenous family violence matters with the Tasmanian government accepting reciprocal responsibility for the healing that lies ahead for Tasmanian Aborigines.
2. *Healing*: That Aboriginal people be trained in community grief and healing work. This healing process will then promote the continuation of the story telling that has been started in this compilation of this report. Those who have been trained can then go on and train others in the community in this healing work.
3. *Partnership*: That the Government will honour its policy of working in partnership with the community.
4. *Art, Performance and Culture*: That the Government fund Aboriginal writers, artists and performers to collaborate and bring the stories of *ya pulingina kani* to life through state wide performances.

The *ya pulingina kani* report also helped inform the development of the *Safe at Home* initiative outlined below.

a) Policy Frameworks

Safe at Home

Enacted in 2005, *Safe at Home* is the Tasmanian government's criminal justice response to family violence. It is a mainstream initiative delivered through an integrated service delivery system designed to manage the safety of adult and child victims and also change the behaviour of offenders.

b) State and Australian Government Joint Initiatives

COAG Trial

The COAG trial site in the north-eastern region of Tasmania (covering Launceston, Meander Valley, Northern Midlands, Break O'Day and Flinders local government areas), was formed in part by the Indigenous Family Violence Project Tasmania, which produced the *ya pulingina kani* Report. Further groundwork for the trial

71 The *ya pulingina kani* report can be accessed online at: <http://www.dpac.tas.gov.au/divisions/oa/information/yapullinginakani.pdf>, accessed 24 January 2008.



began in July 2003 in a collaborative process involving members of the Aboriginal community, governments and project workers.

The COAG trial process has generated a number of positive outcomes including:

- improved collaborative relationships between the Australian Government, Tasmanian Government and the Aboriginal community;
- identification of a number of priority areas for potential action; and
- implementation of, for example, an Aboriginal Family Wellbeing Course delivered through TAFE Tasmania, a program based around community cohesion and well being for Cape Barren Island, and the appointment of an Aboriginal case worker based at Ashley Youth Detention Centre.

The COAG trial in Tasmania has now been evaluated and, following on from the Australian Government's announcement in February 2007, the trials will evolve onto a more mainstream footing. There remains a commitment from all parties to continue working together under the COAG arrangements to further scope and progress priority areas for action. This will also build on the work of the Inter-governmental Family Violence summit held in July 2006 following which COAG reaffirmed its commitment to the National Framework on Indigenous Family Violence and Child Protection.

Following discussions by the Inter-governmental Coordinating Committee, the trial's Lead Agency Forum has now agreed to:

- broaden the focus on Aboriginal family violence in the trial site to the whole of Tasmania; and
- establish a new governance structure to guide further scoping and implementation in agreed priority areas for action.

Continued direct engagement with the Aboriginal community, as partners, will remain a priority as the initiative continues into implementation.

c) Monitoring and evaluation

No monitoring or evaluation mechanisms were reported to the Aboriginal and Torres Strait Islander Social Justice Commissioner.

d) Programs

Safe at Home

Although *Safe at Home* is a mainstream initiative, it has a significant focus on cultural appropriateness. The *ya pulingina kani* Working Group was established to advise Government on Aboriginal family violence issues and acts as a reference group for *Safe at Home*. The group arose from the *ya pulingina kani* (Good to See You Talk) Report that was commissioned by the Tasmanian Government in 2002.



7) Australian Capital Territory

a) Policy Frameworks

ACT Children's Plan 2004-2014

The ACT Children's Plan is a ten-year plan to guide decisions by the government and non-government sectors about policies, programs and service for children up to 12 years of age. It includes commitments around prevention and early intervention, education and coordination of services. Of the seven key commitments one specifically relates to working in partnership with Indigenous communities.

ACT Aboriginal Health Forum and 'A New Way'

The Aboriginal and Torres Strait Islander Health Forum was formed under the National Framework Agreement and is the primary strategic planning body for Aboriginal and Torres Strait Islander Health in the ACT. It consists of three forum partners:

- Australian Government Department of Health and Ageing;
- ACT Health ; and
- Winnunga Nimmityjah Aboriginal Health Service.

Additional Forum representation comprises:

- Queanbeyan Indigenous Coordination Centre;
- ACT Division of General Practice; and
- Department of Families, Community Services and Indigenous Affairs.

The Forum meets up to six times a year and is specifically responsible for the implementation of '*A New Way: The ACT Aboriginal and Torres Strait Islander Health and Wellbeing Plan 2006-2011*'. This Plan represents an ACT government/ non-government health service provider response to the requirement of the NSFATSIH that each jurisdiction develop a local Implementation Plan.

'*A New Way*' contains five priority areas:

1. building family resilience;
2. maternal and child health;
3. social health, including mental health and substance abuse;
4. chronic and infectious disease prevention and management; and
5. frail aged and people with disabilities.

Cultural Respect Implementation Plan 2006-2009 – ACT Health

The Cultural Respect Implementation Plan was developed in response to the national Cultural Respect Framework for Aboriginal and Torres Strait Islander Health 2004-2009 endorsed by the Australian Health Minister's Advisory Council (AHMAC). The Cultural Respect framework is designed to guide ACT Health in ensuring that the services they provide are culturally safe for Aboriginal and Torres Strait Islander people.



b) State and Australian Government Joint Initiatives

Bi-lateral Agreement on Indigenous Affairs – between Australian Capital Territory (ACT) Government – Department of Disability Housing and Community Services (DHCS) – and the Australian Government

The ACT has not yet finalised this bi-lateral agreement with the Australian Government. Key projects currently under consideration or being implemented in the ACT include an Indigenous specific alcohol and drug rehabilitation program, an Aboriginal and Torres Strait Islander Elected Body and a seamless and integrated service delivery system for Aboriginal and Torres Strait Islander children and young people.

Bi-lateral agreement – Department of Education and Training (DET)

There is a bi-lateral agreement with the Australian Government Department of Education, Science and Training to implement strategies to achieve the priorities for Indigenous education of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). This agreement is for a four-year period and achievement is reported annually to the Australian government in its *Supplementary Recurrent Assistance Performance Report on Indigenous Education*.

c) Monitoring & Evaluation

Taskforce on Indigenous Affairs

Established early 2007 as a joint initiative to bring together the relevant ACT Government Chief Executives to coordinate;

- the ACT Government's Indigenous policies and programs; and
- to report to the Minister for Indigenous Affairs on directions and priorities.

The terms of reference were recently amended to emphasise actions to improve outcomes for 'children' and 'young people'. The Taskforce provides bi-monthly reports to the Minister.

Aboriginal and Torres Strait Islander Reference Group

Joint government and community group that considers service delivery issues relating to Aboriginal and Torres Strait Islander families,

Aboriginal Health Impact Statements

An outcome identified from the ACT Health Cultural Respect Implementation Plan 2006-2009. Provides a mechanism to ensure that mainstream health services are responsive to the needs of Aboriginal and Torres Strait Islander people.

ACT jurisdictional reports

ACT jurisdictional reports, prepared by the ACT Aboriginal Justice Centre (AJC) for the National Aboriginal Justice Advisory Committee (NAJAC), provides comprehensive information on a range of Indigenous justice matters. The reports contain information supplied from a range of ACT agencies. Development of these reports is supported by the Department of Justice and Community Safety.



Aboriginal and Torres Strait Islander Health Performance Framework

The Aboriginal and Torres Strait Islander Health Performance Framework (HPF) is designed to measure the impact of the NSFATSIH and inform policy analysis, planning and program implementation. The HPF has approximately 70 measures in three groups:

- health status and outcomes;
- determinants of health including socio-economic and behavioural factors; and
- health system performance.

As signatories to these documents, ACT Health continues to monitor and report quarterly against agreed priorities that refer to, and recommend, “the protection of children from abuse and violence, including sexual abuse” and responses to alcohol, smoking, substance and drug misuse.

d) Programs

Culturally appropriate child protection services:

- *Aboriginal and Torres Strait Islander Services Unit:* Discrete functional unit within the Office for Children, Youth and Family Support (OCYFS), Department of Disability, Housing and Community Services that gives a strong focus to Aboriginal and Torres Strait Islander issues and to work towards addressing the over-representation of Aboriginal and Torres Strait Islander children and young people in the care and protection and community youth justice systems.
- *Indigenous Integrated Service Delivery Project:* Targets at risk Aboriginal and Torres Strait Islander families with young children. Over the next twelve (12) months the Project will develop and foster an integrated approach to service delivery across identified Government, education and family support services to at risk Aboriginal families.
- *The Aboriginal and Torres Strait Islander Kinship and Foster Care Service:* By the end of 2006-07, the number of families registered with the service has grown to 14, with a further 10 families undergoing the training, assessment and registration process.
- *Community-Based Indigenous Family Support Services:* Two workers provided in partnership with Gugan Gulwan Youth Aboriginal Corporation, Winnunga Nimmityjah Aboriginal Health Service and the Office for Children, Youth and Family Support; and the Jumby Mulla Program in a contract with the Billabong Aboriginal Corporation.
- *Aboriginal and Torres Strait Islander Cultural Plans:* Following amendments to the *Children and Young People Act 1999* (ACT), in 2006-07, decision-makers in the ACT must now take into account any cultural plan in place when making a decision to place an Aboriginal and Torres Strait Islander child or young person in out-of-home care.
- *Integrated Family Support Project:* Joint initiative between government and non-government agencies in the ACT, targeting at risk children in vulnerable families. It aims to try and divert families away from the care



and protection system and to prevent re-reporting. Under this project, participating agencies will be working with up to 10 vulnerable families. Although this is a mainstream project, at least two of the families will be Indigenous.

Programs for Indigenous offenders who perpetrate violence or abuse (including juveniles):

- *ACT Aboriginal Justice Centre:* Provides assistance to individuals within the criminal justice system to prevent further offending. The Aboriginal Justice Centre also has an advocacy role and is establishing partnerships and better service coordination between related agencies.

Safe houses and services for women and children:

- *Indigenous Supported Accommodation Service (ISAS):* Crisis and transitional supported accommodation to Aboriginal and Torres Strait Islander families who are homeless or at risk of homelessness. ISAS also provides outreach support to families in a case management framework and specialist children's case management. The service is funded to provide six families with accommodation and support in six separate houses.

Both Inanna and Raja, who are mainstream services with a proven record of providing culturally appropriate services to Aboriginal and Torres Strait Islander people, will provide the interim ISAS service until an Aboriginal and Torres Strait Islander community organisation is able to provide the service.

Early intervention and well being:

- *Koori Preschool Program:* Provides opportunities for Indigenous children to be enrolled in preschool from 0-5 years of age.
- *Winnunga Nimmitviah Aboriginal Health Service:* Provides a range of services including the Aboriginal Midwifery Access Program; Aboriginal Hearing Screening Program; Aboriginal Dental Program; Youth Detoxification Support Service; and Dual Diagnosis Program.



8) Northern Territory

Major Australian Government and Territory policy shifts in relation to Indigenous family violence and child abuse have been prompted by the *Ampe Akelyernemane Meke Mekarle (Little Children Are Sacred)* report.⁷² In August 2006 the Northern Territory government established the *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, chaired by Pat Anderson and Rex Wild QC.

The terms of reference for the Inquiry were to study how and why Indigenous children were being abused, with the focus being on unreported cases of abuse; to identify any problems in the way government responds to and attempts to protect Indigenous children from abuse; to look at way in which government departments can better work together to protect and assist children; and to look at how education pertaining to child sexual abuse can be brought to Indigenous communities.

The inquiry travelled all over the Northern Territory holding more than 260 meetings with individuals, agencies and organizations, and visiting 45 communities to talk with Aboriginal people. The Inquiry also received 65 written submissions. The Board of Inquiry was also assisted by an Expert Reference Group.

Underlying the Inquiry's findings was the common view that sexual abuse of Indigenous children is happening largely because of the breakdown of Indigenous culture and society. Other important points made by the Inquiry included:

- child sexual abuse in Indigenous communities is serious, widespread and often unreported;
- most Indigenous people are willing and committed to solving problems and helping their children. They are also eager to better educate themselves;
- Indigenous people are not the only victims and not the only perpetrators of sexual abuse upon their children, with a number of case reported where non-Indigenous perpetrators were abusing and exploiting Indigenous children;
- much of the violence and sexual abuse occurring in Territory communities is a reflection of past, current and continuing social problems which have developed over many decades;
- 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;
- existing government programs to help Indigenous people break the cycle of poverty and violence need to be improved and achieve better outcomes. There is not enough coordination and communication between government departments and agencies, and this is causing a breakdown in services and poor crisis intervention;

⁷² The full report can be accessed online at: www.nt.gov.au/dcm/inquiryasaac/pdf/bipacsa_final_report.pdf, accessed 24 January 2008.



- improvements in health and social services are desperately needed to address the break down of communities; and
- programs need to have enough funds and resources and be a long-term commitment.

The Inquiry found that child sexual abuse is a complex and deep-seated problem that requires urgent and dedicated action from the entire community in a collaborative manner. The Board made 97 recommendations for action that included:

- the empowerment of Indigenous communities to enable them to take more control and make decisions about their future;
- the provision of education campaigns on child sexual abuse and how to stop it, through the implementation of mandatory reporting amongst other things;
- the improvement of school attendance;
- the reduction of alcohol consumption in Aboriginal communities;
- the building of greater trust between Government departments, the police and Aboriginal communities;
- the strengthening of family support services; and
- the appointment of a Commissioner for Children and Young people who would be a senior, independent person who can focus on the interests and wellbeing of children and young people, review issues and report to Parliament.

The Board of Inquiry submitted their report to the Chief Minister on 30 April 2007. The Commonwealth Minister for Families, Community Services and Indigenous Affairs launched the Northern Territory Emergency Intervention in response on 21 June 2007 and the Chief Minister for The Northern Territory Government responded with the 'Closing the Gap of Indigenous Disadvantage' policy on 20 August 2007.

a) Policy Frameworks

Closing the Gap of Indigenous Disadvantage – Generational Plan of Action⁷³

The Northern Territory Government supported the messages and recommendations of the *Inquiry into the Protection of Aboriginal Children from Sexual Abuse (Little Children are Sacred Report)*. *Closing the Gap of Indigenous Disadvantage*, the official Northern Territory Government response to the Inquiry, was released in August 2007.

Closing the Gap commits to a twenty year generational commitment to overcoming Indigenous disadvantage. The vision of the plan is that:

by 2030, Indigenous children born in the Northern Territory will be as healthy and live as long as other Territorians. They will have the opportunity to participate fully in the social and economic life of the Territory, while having a strong cultural identity.⁷⁴

⁷³ More information and the full response can be accessed online at: <http://www.action.nt.gov.au/>, accessed 24 January 2008.

⁷⁴ Northern Territory Government, *Closing the Gap of Indigenous Disadvantage*, August 2007, p2.



Closing the Gap addresses additional areas of legislative reform, governance, employment and economic development, remote area policing, health, housing, communication and engagement that go beyond the recommendations contained in *Little Children Are Sacred*. The response establishes a comprehensive framework for the implementation of a long-term generational approach and for negotiating responsibilities with the Australian Government, and with communities through local community boards.

The response addresses each of the 97 recommendations made in *Little Children Are Sacred* in Appendix 1 of *Closing the Gap*.⁷⁵ There are seven action areas:

1. safety;
2. health;
3. housing;
4. education;
5. jobs;
6. culture; and
7. a better way of doing business.

Each area is designated a plan of action and in many instances additional budgetary funding is committed within the plan itself. The Northern Territory Government has committed \$286.43 million towards 5 year actions to implement the plan which will be spent on:

- \$79.36 million for child protection;
- \$38.61 million to implement the Remote Area Policing Strategy, community justice and other safety measures;
- \$10.11 million for alcohol and drug management;
- \$23.4 million to achieve better health outcomes;
- \$42.32 million for housing in Indigenous communities;
- \$70.68 million towards education;
- \$13 million to improve Indigenous employment and economic development; and
- \$8.95 million towards better cross-cultural understanding and engagement in service delivery.

Building Safer Communities

Building Safer Communities (BSC) is the Northern Territory Government's framework for crime prevention and community safety. The building blocks of the framework are:

- children and young people;
- protecting your home and business – preventing property crime;
- preventing violence – protecting Territorians;
- two way justice – engaging Aboriginal culture and communities;
- tackling substance abuse; and
- targeting punishment and preventing (re)offending.

⁷⁵ Northern Territory Government, *Closing the Gap of Indigenous Disadvantage*, August 2007, Appendix 1.



Building Healthier Communities

The Department of Health and Community Services (DHCS) have identified the following objectives for their framework '*Building Healthier Communities*' 2004-2009:

- giving kids a good start in life;
- strengthening families and communities;
- getting serious about Aboriginal health;
- creating better pathways to health services;
- filling service gaps; and
- tackling substance abuse.

Indigenous Education Strategic Plan

The Indigenous Education Strategic Plan outlines the six action areas and 12 priorities that the Department of Education will implement to build a strong, relevant education system that delivers results for Indigenous Territorians. The aim of the Indigenous Education Strategic Plan is to support young Indigenous Territorians to:

- value school;
- come to school;
- learn and achieve to their full potential;
- stay at school for 12 years of schooling; and
- successfully make the transition into employment, apprenticeships and traineeships, training or higher education.

The plan calls for strong partnerships between Indigenous parents, students, and the local school.

Domestic and Family Violence Strategy

The Northern Territory Government's Domestic Violence Strategy is designed to address issues of importance to all Territorians. The Domestic and Aboriginal Family Violence strategies (2003-2007) focus on issues of importance to Indigenous people, especially those living in remote and isolated localities. The strategies take a coordinated, multi-faceted, whole-of-government and whole-of-community approach to addressing domestic and family violence.

The Domestic and Family Violence Advisory Council is charged with providing high level and independent advice to Government on implementation of the Domestic and Family Violence Strategies, particularly in relation to regional and community issues. The Council reports directly to the Minister for Family and Community Services.

b) State and Australian Government Joint Initiatives

Overarching Agreement on Indigenous Affairs

The Prime Minister and the Chief Minister of the Northern Territory signed the *Overarching Agreement on Indigenous Affairs between the Commonwealth of Australia and the Northern Territory of Australia 2005-2010* (the Agreement) in April 2005. The Agreement sets out a collaborative approach by the Northern Territory



and Australian Governments to working with Indigenous communities to improve government service delivery and achieve better outcomes for Indigenous people in the Northern Territory.

Bi-lateral schedules are being progressively attached to the Agreement to set out how the governments will work together. The first three schedules '*Sustainable Indigenous Housing*', '*Strengthening and Sustaining the Indigenous Arts Sector*' and '*Regional Authorities*' were attached at the signing of the Agreement. Two additional schedules '*Boosting Indigenous Employment and Economic Development*' and '*Healthy Country, Healthy People*' were formally attached to the Agreement in March 2006 and September 2006 respectively.

Northern Territory and Australian Government agencies are working on potential future schedules in the areas of: Safer families and children; Indigenous education and training; Indigenous child health and wellbeing; Indigenous youth; and strategic interventions in priority communities.

COAG Family Violence Action Strategy

The Australian and Northern Territory Governments are currently negotiating a series of actions in relation to the National Inter-governmental Summit on Violence and Child Abuse in Indigenous Communities.

Measures discussed and agreed to in 2006-2007 include funding for remote policing and drug detection dogs, joint action on the National Indigenous Violence and Child Abuse Intelligence Taskforce, additional alcohol and drug treatment services and funding for the provision of safe houses.

Health

The main outcome of the June 2006 summit was an Australian Government commitment to an extra \$15.9 million over four years for the NT for alcohol treatment and rehabilitation services.

The Northern Territory considered priority areas within the alcohol and other drug areas by building on its significant initiatives in reforming legislation and in developing new services. As a result, the Northern Territory Government was the first jurisdiction to identify priorities, and in April 2007 provided details to the Australian Government on the NT's matching effort in the alcohol and other drug treatment area.

Unfortunately, no formal agreement has been signed yet. When funding is allocated it will be used across five key priority areas:

- support to the remote alcohol and other drug outreach workforce;
- rehabilitation and treatment services – Youth volatile substance abuse treatment services;
- rehabilitation and treatment services – Nhulunbuy Special Care Centre;
- Sobering Up Shelters (SUS) – replacement of facilities in Tennant Creek and Katherine; and
- transitional non-residential care services.



Education

The NT is represented on the National Student Attendance Unit (NSAU) by the Deputy Chief Executive of Education Services.

Indigenous Housing and Infrastructure Agreement

Under the Common Policy Framework, the Northern Territory Government agrees to deliver housing and housing related infrastructure components of these programs under the *Indigenous Housing and Infrastructure Agreement (IHIA) 2005-2008*. The new streamlined housing program *Northern Territory Indigenous Housing Program (NTIHP)* will operate alongside Territory Housing, which retains responsibility for Territory-wide public rental housing and current home-ownership policies and programs.

c) Monitoring and Evaluation

Closing The Gap contains three mechanisms that will be established to oversee its implementation:

- The formation of an Indigenous Affairs Advisory Council, comprising Indigenous leaders, representatives from Indigenous organizations and peak bodies. The group will advise government on issues affecting Indigenous Territorians, facilitate community input into *Closing the Gap* and oversee its implementation.
- The formation of an Operational Group comprised of the Deputy Chief Executives from relevant Northern Territory Government agencies who will be responsible to the Chief Executive Taskforce on Indigenous Affairs and will drive the implementation of the *Closing the Gap* across the Northern Territory Government. The group will report six monthly to the Chief Minister and Cabinet on the progress of the implementation. Cross-agency working groups responsible for the implementation of *Overcoming Indigenous Disadvantage report recommendations* will also be established and will report back to this Operational Group, thereby improving the integration of cross agency actions.
- The *Overcoming Indigenous Disadvantage* report along with Northern Territory Government agency annual and performance reports will be used to assess progress against *Closing the Gap*. These reviews will be conducted by the Indigenous Affairs Advisory Council and the Operational Group and compiled into a biennial report on progress under *Closing the Gap*.



d) Programs

Culturally appropriate child protection services:

- *'Jidan Gudbalawei'* (Kriol) or Peace at Home project: Jointly funded by the Australian and Northern Territory Governments, it aims to reduce the incidence of family violence and ensure the safety of family and children. The project combines resources from the Northern Territory Police, Department of Health and Community Services and community partners.

The project team works with families to lower family violence and educate people about the effects of family violence on families. Using a community education model, community safety plans are developed to strengthen each community's capacity to respond to family violence from within. Northern Territory Police educate men on the consequences of violent behaviour and separate sessions are held with women on services that can support them. The Department of Health and Community Services delivers sessions on what constitutes child abuse.

The project team also works with the Northern Territory Correctional Services, incorporating a case plan in the ongoing management of clients.

Community education and community development:

- *Pornography awareness education:* The Little Children are Sacred Report recommended that a pornography awareness education campaign be conducted amongst Indigenous people in remote areas. A range of culturally appropriate materials have been developed which will be used by a group of trained Indigenous men to disseminate the messages in Indigenous communities across the Territory within two years. The target group are teenage and adult Indigenous males, with complimentary education provided to women and children.
- *Programs for women in Alice Springs Correction Centre:* Specific sessions for women inmates regarding safe houses and services for women. These sessions include psycho-educational information from external providers specifically involved with women's shelters and safe houses.

Programs for Indigenous offenders who perpetrate violence or abuse (including juveniles):

- *Indigenous Family Violence Offender Program:*⁷⁶ Community based offender program run by NT Community Corrections. The IFVOP has now been run in eight remote communities in the Northern Territory: Nguiu, Oenpelli, Daly River, Pirlingimpi, Milikapati, Galawinku, Ntaria and Yuendumu. The Northern Territory and Australian Governments entered into a funding partnership to consolidate and expand the program into additional communities.

76 See Indigenous Family Violence Offender Program case study in Chapter 2.



- *Elders Visiting Program*: Traditional Elders from remote communities across the Northern Territory visit Correctional Centres to speak with prisoners about post-release plans, obligations and expectations upon returning to their communities.
- *Community Court*: Involves people of Indigenous cultural or community background. The Community Court is currently operational in Darwin, Tiwi Islands and Nhulunbuy.
- *NT Police Youth Diversion Scheme*: Provides an interface between police and community and is aimed at reducing offending behaviour of young people and those at risk of offending. This occurs in a restorative justice framework with formal diversion and associated case management support in urban centres. In remote and regional areas Community Youth Development Units work with those at risk within a community development framework.



Restoring Life and Spirit: *recovery from trauma*

Note by the artist, Helen Milroy

We are part of the dreaming. We have been in the dreaming for a long time before we are born on this earth and we will return to this vast landscape at the end of our days. It provides for us during our time on earth, a place to heal, to restore purpose and hope, and continue our destiny.

Our country and people have suffered many traumas since colonisation, the magnitude of which is beyond words. Looking through trauma is like being trapped in the back of a mirror, there is no reflection of self. It is like being trapped in darkness, unable to see where to go or what is there, surrounded by 'not knowing', paralysed by fear.

When we are wounded, our story is disrupted and life becomes fragmented. We may not be able to find our way forward and may start to see life through warped mirrors. We have to understand that trauma is only a part of our story and our story is part of a much greater story that has a different beginning, is enduring and will continue well beyond our lifetime.

To have integrity of existence we need to have an integrated experience throughout so that we do not isolate pockets of our life, disconnected from present reality, and so that we do not live in two worlds but can maintain an essence of continuity throughout our existence on this earth. We cannot play parts without understanding the whole story of Australia.

Part of the problem in healing is being able to put all the parts together again as there are still too many of us missing. To survive as peoples distinct in culture, we have to restore the collective. The individual may not be able to carry the survival of the culture into eternity but the collective can.

We can return to the dreaming to heal, to rest for a while and have our spirit restored, to find our place on the serpent and recover our purpose in this life. We have to trust that we will be cared for until we can walk again, taking sustenance from the tree of life that has sustained us over generations. Our ancestors watch and wait patiently for our return. They are like the clouds that roll through the sky coming to greet us and shed tears for our wounds, holding us within a teardrop, soothed and bathed in this healing water.

Then a new day will dawn and our ancestral guides will once again set us on our journey through life. To recover, we have to allow the sun to shed light and warmth on dark places and assist our wounds to heal. We have to shatter these warped mirrors and find our true reflection of self, spirit and country. We have to stand together, united and proud.

We may not always have control over what happens to us in life, but we do have control over truth. The ultimate control we have is the coherence and continuity of our own story.

To live without spirit is to sleep without dreams and wake to oblivion.