

# CHAPTER 1

## INTRODUCTION

### Background

1.1 On 9 August 2007, the Senate referred to the Standing Committee on Legal and Constitutional Affairs five bills comprising the legislative package for the Australian Government's response to the 'national emergency' relating to the welfare of Indigenous children in the Northern Territory.

1.2 The bills were referred to the committee for inquiry and report by 13 August 2007 and are as follows:

- the Northern Territory National Emergency Response Bill 2007 (National Emergency Response Bill);
- the Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 (Welfare Payment Reform Bill); and
- the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 (National Emergency Response and Other Measures Bill);
- the Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007-2008; and
- the Appropriation (Northern Territory National Emergency Response) Bill (No. 2) 2007-2008.<sup>1</sup>

1.1 Overall, the legislative package flows from measures announced by the Prime Minister and the Minister for Families, Community Services and Indigenous Affairs on 21 June 2007. This announcement followed the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, authored by Mr Rex Wild QC and Ms Patricia Anderson and presented to the Northern Territory Government in April 2007.<sup>2</sup> The Minister noted in his second reading speech the relationship between this report and the new measures:

Six weeks ago, the *Little children are sacred* report commissioned by the Northern Territory government confirmed what the Australian government had been saying. It told us in the clearest possible terms that child sexual

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1 The appropriation bills provide for spending in excess of \$580 million in 2007-2008 to implement the measures contained in the national emergency response.

2 The report is available at [http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_final\\_report.pdf](http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_final_report.pdf) (accessed 9 August 2007).

abuse among Aboriginal children in the Northern Territory is serious, widespread and often unreported, and that there is a strong association between alcohol abuse and sexual abuse of children.

With clear evidence that the Northern Territory government was not able to protect these children adequately, the Howard government decided that it was now time to intervene and declare an emergency situation and use the territories power available under the Constitution to make laws for the Northern Territory.<sup>3</sup>

1.2 The Minister explained how the emergency intervention package relates to longer term measures:

The need is urgent and immediate and the government is stepping up to the plate to provide the necessary funding now for additional police, for health checks, for welfare reform and for other measures necessary to achieve these outcomes. But we also recognise that longer-term action is required to normalise arrangements in these communities. Funding for housing in remote communities received a major boost in this year's budget. Separate funds will be provided for other longer-term measures in the next budget process.<sup>4</sup>

1.3 Dr Sue Gordon, the Chair of the National Emergency Taskforce, outlined for the committee progress which has been made in relation to implementation of the intervention package to date.<sup>5</sup> The Minister also outlined to the House what implementation of the intervention package had already occurred including the response from volunteers:

The government has been tremendously encouraged by the overwhelming support for this emergency response from ordinary Australians. There have been hundreds of people volunteering to help. Police across Australia are volunteering their services. The Australian public want to see real change and are willing to put their shoulder to the wheel when they feel that can finally help to improve the lot of their fellow Australian citizens—the first Australians.<sup>6</sup>

## **Conduct of the inquiry**

1.4 Details of the inquiry, the Bill, and associated documents were placed on the committee's website. As of 9:00am on Monday, 13 August 2007, the committee had received 154 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

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3 *House of Representatives Hansard*, 7 August 2007, p. 7.

4 *House of Representatives Hansard*, 7 August 2007, p. 11.

5 *Committee Hansard*, 10 August 2007.

6 *House of Representatives Hansard*, 7 August 2007, pp 11-12.

1.5 The committee held a public hearing in Canberra on 10 August 2007. A list of witnesses who appeared at the hearing is at Appendix 2.

1.6 Due to the unusually short timeframe allowed for consideration of the bills, the committee did not have access to a full Hansard transcript when preparing its report. The committee therefore presents the proof Hansard transcript of the hearing at Appendix 3 of the report to assist the Senate in its consideration of the Bill. The committee thanks those organisations and individuals who gave evidence at the hearing, particularly given their cooperation and willingness to appear before the committee at very short notice. The committee is also grateful to those organisations and individuals who made submissions within these tight timeframes.

### **Main provisions of the bills**

1.7 This section of the committee's report outlines the main provisions contained in the three main bills.

#### ***National Emergency Response Bill***

1.8 The National Emergency Response Bill provides 'new principal legislation for the Australian Government's response to the national emergency confronting the welfare of Aboriginal children in the Northern Territory'.<sup>7</sup>

#### ***Part 2 – Alcohol***

1.9 Part 2 of the National Emergency Response Bill introduces measures to modify the Northern Territory's *Liquor Act 1978*, *Liquor Regulations* and *Police Administration Act 1978* to give effect to restrictions on the possession, consumption, sale and transportation of liquor within prescribed areas.<sup>8</sup> There is an exemption for people engaged in recreational boating and commercial fishing.

#### ***Part 3 – Filtering of publicly-funded computers***

1.10 Part 3 introduces a scheme of accountability intended to prevent, and detect, the misuse of publicly-funded computers located within prescribed areas. Essentially, Part 3 requires filters accredited by the Minister to be installed and maintained on publicly-funded computers, including computers owned or loaned by bodies or individuals that receive government funding, or that directly or indirectly receive funding for employment programs. There is an exemption for a period if, for work,

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7 Explanatory Memorandum, 'Outline'.

8 The measures in the National Emergency Response Bill generally apply in Northern Territory communities on: land scheduled under the *Aboriginal Land Rights Act 1976*; community living areas, which are located on a form of freehold title issued by the Northern Territory Government to Aboriginal corporations; town camps, in the vicinity of major urban areas, held by Aboriginal associations on special leases from the Northern Territory Government; and other areas prescribed by the Minister on advice from the Northern Territory Emergency Task Force.

research or study purposes, a person needs to access material that would otherwise be blocked by a filter.

#### *Part 4 – Acquisition of rights, titles and interests in land*

1.11 Part 4 provides for the immediate and later acquisition of five-year leases over certain Aboriginal townships in the Northern Territory for the purposes of the emergency response. The underlying tenure will be preserved and existing interests will be generally preserved or excluded. A 'reasonable amount of compensation' for any acquisition of property will be paid if the constitutional requirement for just terms compensation, under section 51(xxxi), applies including an option of paying rent. Provision will also be made for early termination of the five-year lease, including when a township lease is granted.

1.12 Part 4 also provides for the Australian Government to exercise the powers of the Northern Territory Government to forfeit or resume certain leases known as town camps during the five-year period of the emergency response, and the option of acquiring a freehold interest over these areas.

#### *Part 5 – Business management areas*

1.13 The most significant amendments in Part 5 are contained in Division 4, 'Commonwealth management in business management areas'. Division 4 of Part 5 modifies Northern Territory legislation so far as is necessary, in order to provide the Commonwealth with the same powers as the Northern Territory (with appropriate adaptations). These amendments are designed to bring particular types of 'community services entities' in 'business management areas' under external administration to enable the Australian Government to flexibly allocate resources including government funds and the assets used to provide services and, where required, effectively address the performance of those entities to deliver relevant services.<sup>9</sup>

#### *Part 6 – Bail and sentencing*

1.14 Part 6 amends Northern Territory law to prohibit the relevant authority, when exercising bail or sentencing discretion in relation to Northern Territory offences, from taking into consideration any form of customary law or cultural practice to lessen or aggravate the seriousness of the criminal behaviour of offenders and alleged offenders. Part 6 also aims to ensure that bail authorities give appropriate weight to the special circumstances of victims and potential witnesses in remote communities.

1.15 Part 6 is modelled closely on the *Crimes Amendment (Bail and Sentencing) Act 2006* which amended the sentencing and bail provisions in the *Crimes Act 1914*,

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9 Explanatory Memorandum, 'Outline'.

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in accordance with the decisions made by the Council of Australian Governments (COAG) on 14 July 2006.<sup>10</sup>

### *Part 7 – Licensing of community stores*

1.16 Part 7 introduces a new licensing regime that will apply to persons who operate community stores in Indigenous communities. The new licensing regime will empower the Secretary of FaCSIA to grant 'community store licences'. The licensing regime is designed to enable the Secretary to assess a community store's practices, including:

- the capacity to comply with the 'income management regime' (see paragraph 1.18 below);
- the quality, quantity and range of groceries and consumer items, with an express inclusion of healthy food and drink;
- the business practices of the store, including pricing and other financial aspects (such as wages); and
- other matters considered relevant at the Minister's discretion, or those later specified by the Minister.

### ***Welfare Payment Reform Bill***

1.17 The Welfare Payment Reform Bill amends Commonwealth welfare legislation to provide new national welfare measures 'to help address child neglect and encourage school attendance'.<sup>11</sup>

### *Schedule 1 – Income management regime*

1.18 Schedule 1 of the Welfare Payment Reform Bill establishes income management regimes both nationally, and in relation to the Northern Territory and Cape York.

1.19 Firstly, Schedule 1 establishes a *national* income management regime that applies to a person in receipt of welfare payments, whose child is at risk of neglect, is not enrolled at school, or fails to attend school adequately. The part of the affected person's payment that is subject to income management will, generally, be used to pay the priority needs of that person, their partner and their children.

1.20 Secondly, Schedule 1 establishes an income management regime that applies in respect of people on certain welfare payments in the Northern Territory, as part of the Commonwealth's Northern Territory national emergency response, and in Cape York. There will be no overall reduction in payments as a result of these measures.

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10 See further Senate Standing Committee on Legal and Constitutional Affairs, *Crimes Amendment (Bail and Sentencing) Bill 2006*, October 2006.

11 Explanatory Memorandum, 'Outline'.

1.21 Schedule 1 sets out the broad circumstances where the income management regime provisions are to be applied. The specific details of the circumstances in which an individual can be subjected to these provisions are to be described in principles to be set out in a Legislative Instrument made by the Minister.

*Schedule 2 – Baby bonus*

1.22 The baby bonus will be paid in 13 fortnightly instalments to claimants who are subject to the income management regime.

*Schedule 3 – Northern Territory CDEP transitional payment*

1.23 The Community Development Employment Projects (CDEP) program commenced in 1977. Under the CDEP program, members of participating Aboriginal and Torres Strait Islander communities or organisations can forgo any Centrelink Income Support benefit (except Abstudy or full time student Youth Allowance) for a wages grant paid to the community.<sup>12</sup>

1.24 Beginning in September 2007, the CDEP program in the Northern Territory will progressively be replaced with other employment services. The Explanatory Memorandum states that CDEP program participants, on a community-by-community basis, will move into 'real jobs, training or to more appropriate income support', including Work for the Dole.<sup>13</sup> The legislative amendments in Schedule 3 are broadly designed to assist CDEP program participants who move onto income support by establishing a Northern Territory CDEP transition payment. The payment will make up the difference between average earnings from CDEP program payments and income support payments at 23 July 2007,<sup>14</sup> and the payments made under income support arrangements after the changes to the CDEP program.

***National Emergency Response and Other Measures Bill***

1.25 The National Emergency Response and Other Measures Bill amends existing Commonwealth legislation to support and complement the legislation and welfare amendments contained in the previous two bills.

*Schedule 1 – Prohibited material*

1.26 Schedule 1 of the National Emergency Response and Other Measures Bill inserts a new Part 10 into the *Classification (Publications, Films and Computer Games) Act 1995*. It contains measures banning the possession of pornographic material within prescribed areas and prohibiting the supply of pornographic material

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12 Parliamentary Library, *Northern Territory national emergency response Bills 2007 – interim Bills Digest* no. 15, 2007-08, 7 August 2007, p. 20.

13 Explanatory Memorandum, 'Outline'.

14 The Minister and the Minister for Employment and Workplace Relations announced the CDEP program changes on 23 July 2007.

in prescribed areas.<sup>15</sup> Schedule 1 also provides for new police powers in prescribed areas to seize and destroy material which may be prohibited under the new Part 10.

*Schedule 2 – Law enforcement*

1.27 The bill amends Commonwealth law enforcement legislation relating to the powers and functions of the Australian Crime Commission and the Australian Federal Police to 'facilitate implementation of the Australian Government's emergency measures to protect Aboriginal children in the Northern Territory from harm'.<sup>16</sup>

*Schedule 4 – Access to Aboriginal land*

1.28 The bill makes significant changes to the provisions governing access to Aboriginal land 'to increase interaction with the wider community and promote economic activity'.<sup>17</sup> It removes the requirement for people to obtain permits to enter and remain on certain areas of Aboriginal land, including common areas of townships, road corridors, airstrips and boat landings. It also allows for the placement of temporary restrictions on access to these areas to protect the privacy of cultural ceremonies or public health and safety.<sup>18</sup> Schedule 4 provides for a long list of people who may enter or remain on Aboriginal land, including government officials and members of Parliament.

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15 The measures in the National Emergency Response and Other Measures Bill generally apply to the same prescribed areas covered by the measures in the National Emergency Response Bill, that is: land scheduled under the *Aboriginal Land Rights Act 1976*; community living areas, which are located on a form of freehold title issued by the Northern Territory Government to Aboriginal corporations; town camps, in the vicinity of major urban areas, held by Aboriginal associations on special leases from the Northern Territory Government; and other areas prescribed by the Minister on advice from the Northern Territory Emergency Task Force.

16 Explanatory Memorandum, 'Outline'.

17 Explanatory Memorandum, 'Outline'.

18 Explanatory Memorandum, 'Outline'.

