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Re: Inquiry into the Northern Territory National Emergency Response Bill 2007 & Related Bills

To the Inquiry Committee:

While I have not had the opportunity to read the proposed legislation I make the following observations and submissions in relation to matters related to the proposed legislation.

I apologise for the rushed nature of this submission.

Yours sincerely

Jane Vadiveloo

**Submission to the Senate Inquiry:
Inquiry into the Northern Territory National Emergency Response Bill 2007 &
Related Bills**

The Emergency Response could have ramifications as profound as those that created the Stolen Generations.

The Australian Government presented the Emergency Response as a response to the Little Children are Sacred Report. In his Press Release Mal Brough stated:

“The Australian Governments response reflects the very first recommendation of the Little Children are Sacred Report in 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...””

What was missing in Mal Brough’s press release and strategy was the rest of the recommendation, which stated:

“...It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.”

Indeed before proceeding to the recommendations the authors dedicated a page of instruction regarding the primary importance of community engagement and ownership for any future successful strategies. The focus lays the platform for reading all recommendations and the writers have made every effort to ensure that this priority in policy approach could not be lost by any reader. It appears that the authors pre-empted and tried to prevent the very approach that has been undertaken by the Australian Government. In their direction the authors quoted Fred Chaney

“And one of the things I think we should have learned by now is that you can’t solve these things by centralised bureaucratic direction... And I think my own view now is that the lesson we’ve learned is that you need locally based action, local resourcing, local control to really make changes.

But I think governments persist in thinking you can direct from Canberra, you can direct from Perth or Sydney or Melbourne, that you can have programs that run out into communities that aren’t owned by those communities, that aren’t locally controlled and managed, and I think surely that is a thing we should know doesn’t work. “

1. The Emergency Response in relation to Abuse

The many adjustments to the Emergency Response since its initial announcement indicates that it was poorly considered both in its application and its potential impact. The compulsory health check of Aboriginal children highlights the danger of the response.

As it was initially announced in the Emergency Response health checks were to be compulsory for all Aboriginal children in the Northern Territory. It was suggested that these health checks were related to assessing sexual abuse. It is apparent that legal advice forced the government to remove the mandatory requirement to the health check, and the check became a general health examination. While this has afforded the correct protection for these children and families it is unconscionable that the original policy removed any respect or rights of protection from these families for their children. To remove the control of a parent to choose who cares for and examines their child is a serious imposition of state control. In addition the initial proposal failed to support positive parenting and potentially breached practices regarding protective behaviours for children in relation to sexual abuse.

Forcing a child to be seen by strangers, without parental consent or request, and saying, “you must let this person look at you – to look at all of you,” is a dangerous policy to propose. What protective strategies does this teach a child? What message does this give to a parent? Most people undertaking the checks have no relationship with the children or parents with whom they are seeing and will be present in their lives momentarily. What message does this offer about the power relationship with non-Aboriginal people particularly in light of the report finding that non-Aboriginal people in positions of authority perpetrated many instances of abuse? It is frightening that this was one of the cornerstone responses to the abuse of children by the Australian Government. This fundamental breach of safety brings into question the legitimacy and safety of the whole strategy. It reflects the absence of analysis and consideration of the potential long term damage of the Emergency Response.

The stolen generations are a living reality for Aboriginal people in the Northern Territory. It is apparent that the Emergency Response has triggered fears arising from past traumas experienced by families affected by the Stolen Generations. People who were stolen from their families are still young. Some are not yet 50 years of age. This is living trauma that is experienced by them as individuals, and by their families from whom they were stolen. There are parents who have never found their children and there are children who have never been found by their families. There are families who have found each other and are struggling with the profound grief and despair of lost relations, language culture and life. The children and grandchildren of those people who were stolen suffer the pain and trauma of their parents, through the physical and psychological scarring of these experiences.

The Emergency Response announced and enacted by the Australian Government led many Aboriginal people into hiding, something that they did years before to escape the

removal of their children. Many see the health checks, not as a long awaited opportunity for health care, assessment and support, but as a possible challenge to their rights as parents and the removal of their children.

It has taken the past 20 years of strategic work to try to develop more trusting relations between non-Indigenous authorities such as welfare, and Aboriginal communities. This has been built on policies that include Aboriginal people in service delivery, interpreting, decision making and community development. There continues to exist an underlying fear despite the gains that have been made. There is a delicate relationship between statutory authorities, and Aboriginal people. It is widely understood that this relationship needs a strong foundation of trust and respect if the long term protection and well being of children is to be achieved. People will stop speaking, stop engaging, stop offering information, stop working with the system if they fear that they will have no control and will lose their children.

The Emergency Response risks undermining all service engagements with Aboriginal people. Aboriginal people in the Northern Territory can no longer trust that non-Indigenous authorities will not issue absolute control over their lives. Despite rhetoric and practices of inclusion and collaboration, it will be understood that the Australian Government can adjust this at any moment. It is difficult to see how any equal or trusting relationship can be developed under such conditions.

The potential abuse that the Emergency Response will inflict on Aboriginal people and the trauma that it is perpetuating must be seriously questioned and re-examined by all levels of Government.

2. The Emergency Response and access and control of customary lands

The Land Rights Act is the only existing legal recognition of the rights and importance of customary life of Aboriginal people in Australia. Unlike the Native Title Legislation, the Land Rights Act allows Aboriginal people absolute access to their lands for the purposes of their life in accordance with their cultural integrity.

The importance of this Act on the well being and future of Indigenous Australia should not be underestimated. The NT is the only jurisdiction that recognises the rights of Aboriginal people over their lands through this legislation. It is for this reason that people continue to have their customs, language and cultural integrity. Removing this protection could result in a serious decline in Aboriginal knowledge, customs and life.

The north of Western Australia provides a similar geographic picture to the Northern Territory. The lack of legislative protection over access to country has led to most Indigenous people speaking English as a first language and very few Indigenous languages in daily use. This language decline has been linked to limited access to customary lands. This leads to a serious decline in Indigenous systems of knowledge.

Experiences both within Australia and around the world in relation to Indigenous peoples clearly indicates that increased financial earning capacity and education (by removing from country and family) does not stem the social issues facing Indigenous people – the central issues surrounds cultural integrity, respect and recognition from the Governing state.

The differences between Western culture and Aboriginal cultures in the Northern Territory are profound. The differences underlie the historical failure of government policy.

Self fulfilment, Self development, personal wealth are all a part of the cultural norm of Western society. Life projection is based on the ability of the individual to learn, create a career, graduate from their family and education into an adult life that aims to fulfil personal ambition. Families are often small nuclear identities. Life has a great focus on consumerism and status is based on income and finances. Financial independence and education form the basis of opportunity and social standing. It is widely accepted that the individual is responsible for their choices and personal well being.

In Western cultures there is a movement away from the family as one becomes an adult. This occurs at both a physical and emotional level. As a result, while family continues to be important to many, there is rarely a shared daily life spanning across family generations.

Most indigenous communities in the Northern Territory are communal societies, and as such the basic tenets of life are opposite to that of Western society. Rather than the focus being on the individual and the self, most indigenous communities in the Northern Territory revolve around the family. Life is not about individual achievement. Most people grow up within an extended kinship structure. The focus and discourse of life is about members of the family and immediate community, and the responsibilities and relationships between people within the extended kinship network.

Due to the social obligation and communal living arrangement within family kinship structures it is common for all generations of a family to be living in the same house or in the same immediate geographical location. Family life being the primary focus means that the oldest and the youngest generations, and all in between, share daily life. This allows for an extraordinary environment of learning and social support.

Economy

Aboriginal people share their resources within their family and share strong obligation towards each other, through Aboriginal custom and law. This means that income is shared, housing is shared, material belongings are shared. There is a constant movement of resources and income and belongings between family members based on need and demand.

Housing

The aspiration of Western culture is home ownership and possessions - an currently being pressed onto Aboriginal people in the Northern Territory. There will be some people who aspire to this however, for many Aboriginal people home ownership is not consistent with cultural practice. For example, currently most Aboriginal people living in remote areas and many living in Urban areas continue to respect customary practice in response to someone in their family dying. This means that all possessions that a person has must be given up and life in effect begins again. The house you live in, the clothes you wear, your fridge, bed, chairs, everything is given up. It is common practice to remove all items that had some contact or reflects some memory of the person who had died. It is linked to this that photos are not shown and people's names are not spoken. It is custom that you remove any living memory of that person in your life. People leave their houses for good. They sit down with the families and grieve and in time, after the funeral and sometimes after a year or more, people will find a new home to live in. The idea of owning a permanent house is not consistent with customary practice. It is common now for people to swap houses and belonging and to assist people to start again. A home is not a permanently owned house. A home is where you live with your family. It is not possessions that are valued as much as human relations.

Customary Life

The ABS has quoted that over 80% if Indigenous people in the Northern Territory practice cultural activities.

Knowledge

It is widely understood that language contains unique knowledge. Globally, the reduction of languages has resulted in significant loss of knowledge as local languages contain specialised information regarding places, people, land, climate, nature, health etc.

We have the longest living culture in the world with over 40,000 years of developed knowledge. The NT has the greatest number of Indigenous language in the country. This language and the continuing customary practices contain extraordinary knowledge and expertise in relation to health, well being, climate, social systems, justice, land management, climate and environment, maternal and child health, aged care etc. It is essential that we begin to value this knowledge. The Land Rights Act is protecting this knowledge. It is the only law that exists to ensure the continuation of this knowledge.

Language

Two thirds of Indigenous people in the Northern Territory speak their Indigenous language as their first language in their home (ABS). It is likely that 100% of Aboriginal people in the NT in remote areas speak English as a second language.

There are over 40 distinct language spoken in the NT by over 35,000 people.

Social Economy

Social Economy in Indigenous Communities is the economy on which to build reform. While the social and health stress in indigenous communities is widely reported, and of great concern, this discourse dominates the landscape of discussion in relation to indigenous people. Little time is spent on understanding the strengths within the indigenous communities. As a result these strengths lack support become undermined and this diminishment contributes to the appalling health and social outcomes seen in many indigenous communities.

The economy of indigenous communities in the Northern Territory differs from the mainstream Western society. It is often interpreted that Indigenous communities are challenged in their social and financial economy as they are measured against a culture that is not their own. As a result for many years Governments of the day have persistent with policies and service delivery that sees Indigenous communities as being in deficit and in need. There has been a unsuccessful persistence to offer Western based policy and practice solutions to indigenous communities based on the misconception that indigenous society is “primitive” “unsophisticated” and unable to help themselves.

We now see Government policy driven by terms such as “passive welfare” and perpetuating the concept of uselessness and incompetence when discussing indigenous people and their communities. The failure of Western health and Social systems to address need over history, has culminated in blaming the ‘passive and irresponsible’ recipient. There has little analysis in relation to why the educational, financial, health and social support systems implemented over the past 50 years have failed Indigenous people. The responsibility has been placed at the feet of Indigenous people who are seen as passively accepting their poverty and poor health status.

The social structure of indigenous communities provides an exciting opportunity for Government to review service delivery, make savings and add value to indigenous people. Currently Governments make extensive savings due to the structure of indigenous society. The social capital contributes to the social economy creating less dependency on services that are otherwise required in a society based on the individual. Indigenous communities in the Northern Territory provide care and support service within the context of their cultural life.

To date Governments have not recognised or taken advantage of this existing social infrastructure. We have seen some use of these strengths in the creation of services such as Night Patrols and Safe Families, however the use of indigenous knowledge base is currently in limited use within the health, welfare, education and social support systems of Government and is certainly not recognised as part of the mainstream service delivery models.

The lack of indigenous knowledge primarily occurs due to the centralized nature of service development. Most services are designed for Western society as would be expected with the population base of Australia. These service designs are translated

nationally to all communities of people. The small population of indigenous communities have not had the historical prominence to fundamentally influence service structure.

To date we have continued to provide Western based care services, despite the profound difference in need and context for indigenous people.

The current challenge for Government is to find a balance between Western systems of service delivery and existing community ability. This requires a change in policy and theory, and a willingness to implement serious changes in service delivery. It also requires an appreciation of the savings Government can enjoy by understanding the implicit strengths that exist within indigenous communities in the Northern Territory.

The Land Rights Act protects the cultural integrity of Indigenous cultures in the Northern Territory. It allows Aboriginal people to practice their customary life. It is not the cause of child abuse, social discord and poverty. It is arguable the strongest and most important foundation to the future health and well being of Indigenous peoples in the Northern Territory.

Draft United Nations declaration on the rights of indigenous peoples states:

Article 4

Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

Article 12

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

Article 24

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.
They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

Article 42

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 43

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

It is essential that Indigenous peoples in the Northern Territory maintain control over their customary lands. It is essential for the social, emotional, physical, cultural and economic future for Indigenous people. It is also a basic right.

Removing the absolute right of Indigenous people over the use of their land appears to remove the only current resource for economic development.

Way Forward:

Aboriginal people are seeking open discourse and solutions. Create a task force that moves from community to community to create an economic, education, social and health strategy and implementation plan – include land use and outside economic stakeholders – create shared agreements that respect the aspirations and abilities of Indigenous peoples. This is possible, achievable and will create a successful future.

Additional Information

This section is taken from

Demographics of the Central Australian Region

Mitchell, J, Pearce,R Stevens,M, Taylor, J and Warchivker, I (2005)¹

In the Northern Territory the population of indigenous people continues to grow and so to do the health and social welfare expenses. In the Central Australian region, by the year 2021 the projected relative Indigenous and non-Indigenous proportions will 42% and 58%. The overriding demographic characteristic of the Indigenous population in the region is the continuation of relatively high fertility and adult mortality leading to a perpetually youthful age profile with large numbers of children and young adults².

The increase in the Indigenous population will lead to an increase in the population currently experiencing extreme social and economic disadvantage unless programs and policies respond to this phenomenon.

Employment rates are 37% for Indigenous and 79% for non-Indigenous people in Alice Springs, and to 21% and 90% for the Central Remote (CR) region. Against this background, it is necessary to emphasis the overwhelming significance of CDEP in underpinning Indigenous labour force statistics.

Income

Indigenous incomes are less than half that of non-Indigenous people in Alice Springs and barely a quarter the level of non-Indigenous people in the Central Remote region. Of the estimated \$472.4m of personal income from mainstream employment³ in the Alice Springs region, 5.4% goes to Indigenous employees (\$76.2m and 10.2% respectively in the Central Remote region). While the regional labour market has grown in size and complexity, it can be argued that the participation of Indigenous people has declined.

In the 15-24 year age group, 65% of Indigenous people in Alice Springs are either classified as unemployed or not in the labour force. The income of people in this age group is correspondingly low. Almost 80% of Indigenous people in the CR region had an income of less than \$200 per week, and 12% of 15-24 year olds had no income. The data on Youth and Newstart allowance indicates that Indigenous young people are receiving substantially less income; approximately one third that of non-Indigenous youth on the same benefit types. Many Indigenous people aged between 15 and 24 years may have young families, and in 2002 in Alice Springs 66% of births for mothers were aged between 15-24 years. The low levels of income would have a strong bearing on the

¹ Mitchell, J, Pearce,R Stevens,M, Taylor, J and Warchivker, I (2005) Indigenous Populations and Resource Flows in Central Australia: A Social and Economic Baseline Profile: A report prepared by the Centre for Remote Health in conjunction with ATSIIS and ANU, Centre for Remote Health, Alice Springs

² *ibid*

³ Combination of the government sector and private

ability of parents to provide for their children, and subsequently on health status as well as educational outcomes and other indicators of well-being.

The average annual income for indigenous people in Alice Springs is \$15,781 compared to non-indigenous people whose annual income is \$32,403 and in the Central Remote region it is \$9,133 compared to \$35,729. In the near future we are facing a mainstream indigenous population the majority of whom will be poor and suffering serious social, economic and health burdens.

As stated in the Jakarta Declaration, “Above all, poverty is the greatest threat to health.”⁴

⁴ Jakarta Declaration on Health Promotion into the 21st Century, World Health Organisations, 1997