

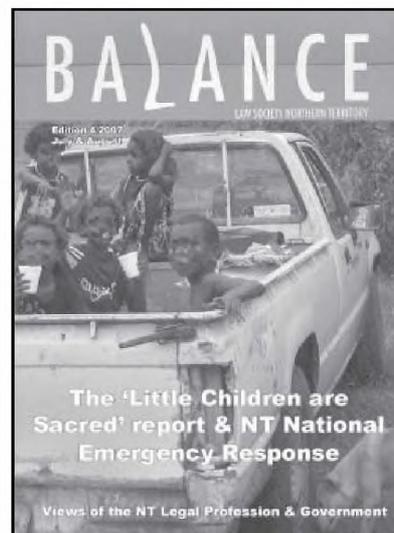
The 'Little Children are Sacred' report and NT National Emergency Response

The July/August edition of *Balance* received a wide range of contributions which represented a number of interesting perspectives regarding a complex and important issue for the Northern Territory - the NT National Emergency Response.

The special edition was particularly well received, although some feedback was received regarding the lack of contribution from Indigenous organisations.

For this edition of *Balance*, a number of organisations (particularly Indigenous organisations) were again approached to provide their perspectives on the complex issues, as a follow-up to the previous edition of *Balance*, which was one of the Society's most widely distributed editions.

Thank you to those organisations and individuals who contributed to both editions.



Intervention powers too wide

David Ross, Director, Central Land Council

No one disagrees that the current level of child abuse and other forms of violence in Indigenous communities is unacceptable. On 18 June, before the National Emergency measures were announced, I called on both the Northern Territory and Australian Governments to adopt a bipartisan position and take decisive steps to address the recommendations of the 'Children are Sacred' report.

Accordingly, the Central Land Council welcomed the initial announcement of the Australian Government Emergency response and gave broad support to the emergency measures for tougher bans on alcohol and pornography, increased services such as health checks and policing, and linking education and child neglect to welfare.

However, we cautioned that in order for the response to be effective it would require long term investments and adoption

of a community development approach. We also expressed concern about the breadth of legal powers enabling the Australian government to control every aspect of Aboriginal life.

I remain concerned about the scope of these powers and how they may impact negatively and unnecessarily on Aboriginal people in central Australia.

The new business management powers are particularly invidious. In major communities the Minister now has the power to unilaterally alter funding agreements, direct how services are to be provided, seize community assets and sack community councils. The Australian Government says these powers are necessary to facilitate rapid improvements in communities but will only be used as 'a last resort'. However, the conditions on these powers do not ensure they could only be used as 'a last resort'.

For example, the Minister's new power to direct services could apply to an organisation that has not received Commonwealth funds. This is so because the services power is only conditioned on the basis that the Commonwealth has provided funds which could be used to provide a particular service, not that a particular organisation has received funds to provide that service.

Similarly, the Minister's new power to give directions related to assets could extend to seizing assets that are not even located in an area where the business management powers apply. Again, this is so because the assets power is only conditioned on the basis that the Commonwealth has provided funds which could be used to provide a particular service, not that a particular asset was purchased with funds to provide the service in a particular place.

The powers are riddled with these

kinds of uncertainties, which only broaden rather than narrow what are already wide-ranging powers. Such broad and sweeping powers might be appropriate in a genuine emergency context, but here they are simply not attended by appropriate checks and balances which would prevent their misuse and avoid unintended consequences. They are not there. The powers are too wide.

The measures relating to land may also have unintended consequences for traditional owners and community residents. The government has compulsorily acquired five year 'leases' over 65 communities without any negotiation or guarantee of rent or compensation. In a further determination the Minister gave the Commonwealth further powers to repair, demolish or replace any existing buildings and infrastructure.

No rights are noted in favour of landowners. The Australian Government says the 'leases' are necessary to improve conditions in communities without going through long approval processes. It is not clear what these long approval processes are – up until now it has been easier to construct houses on Aboriginal land than on other places where the *Planning Act* and other requirements apply.

It is difficult to reconcile the Commonwealth's right to exclusive possession with the lack of rights accorded to Aboriginal landowners

who reside in communities. On the face of it, the Commonwealth will be able to exclude residents who are both the owners of the title held by the Land Trust under Australian law, and the owners of the land in accordance with Aboriginal tradition. It is doubtful this potentially absurd result would be corrected by the reservation of rights to use or occupation under s 71 of the *Land Rights Act* – this section is unlikely to apply where the Commonwealth holds a right to exclusive possession of the land.

As for community residents who are not landowners, their position is no better. While existing interests in communities are preserved, including, for example, a common law tenancy of a resident, these rights may be arbitrarily terminated by the Commonwealth under the emergency legislation.

In reality the 'leases' are in name only and it is not acceptable to have an arrangement whereby residents, many of whom are landowners in the community, do not have any guaranteed rights to live in the community. The 'lease' powers are too wide.

Many more measures that impact on rights could be itemised here, including the exclusion of the *Racial Discrimination Act*, the power to seize community stores, and a new compulsory acquisition and vesting power over town camps.

Taken together, these powers give

the Commonwealth Minister an unprecedented level of discretion in the affairs of the Northern Territory. Such an array of powers might be used appropriately in an emergency context, but the risk here is that, in time, they may be used capriciously in ways unrelated to the emergency response supporting children's welfare.

There are simply insufficient checks and balances to ensure that, for example, 'lease' powers are used beneficially for communities, or that business management powers are used only as 'a last resort'. Arbitrary interventions in the lives of Aboriginal people are now possible.

The CLC is pleased that the Australian Government has at last taken issues of disadvantage and abuse in Aboriginal communities seriously, and the CLC will work to take advantage of any opportunities that arise to improve community life. But Australian Government resolve must not come at any cost: the case has not been made that these legal powers are necessary to achieve the Australian government's objectives of improvements in communities.

It is for this reason that I call on the Australian government to review the need for these legal powers and how they have been used in Aboriginal communities. I remain worried about their possible impact on Aboriginal people and organisations throughout Central Australia now and into the future.

Coercive reconciliation

Stabilise, normalise, exit Aboriginal Australia

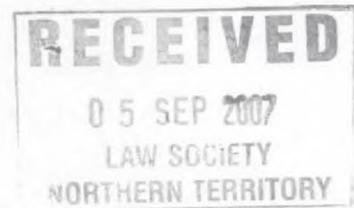
Professor Jon Altman, contributor to the last edition of *Balance* which focused on Indigenous issues, has recently edited a book entitled 'Coercive reconciliation: Stabilise, normalise, exit Aboriginal

Australia'.

A wide range of people contributed to the book, including a couple of our own - Rex Wild QC and David Dalrymple.

For further information regarding this publication, please contact Arena Publications on 03 9416 0232 or at glenise@arena.org.au. The book retails for \$27.50.

Minister for Families, Community Services and Indigenous Affairs response to Law Society open letter dated 29 June 2007



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Ms Allison Robertson
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31 AUG 2007

Dear Ms Robertson

Thank you for your letter of 29 June 2007, regarding Australian Government intervention in Northern Territory Indigenous communities.

The Government appreciates the interest of the Law Society Northern Territory, welcomes your support, and notes your views and suggestions.

The *Little Children are Sacred* report into the protection of Aboriginal children from child abuse in the Northern Territory made it clear that the level of child abuse occurring in Indigenous communities throughout the Northern Territory is at crisis levels. It is widespread in nature and requires the Government to respond as it would to a national emergency. Due to the urgency of the situation in the Northern Territory, the government was compelled to act very quickly, not responding to the Inquiry, but to findings of abuse. Our immediate priority is securing the safety and protection of children from sexual abuse.

The focus will initially be on short term stabilisation, restoring law and order and creating a place that is safe for children to sleep at night without fear of violence or abuse. This will be followed by longer term efforts with the Northern Territory Government to provide a better future for Indigenous Territorians. These steps are aimed at improving the welfare of Aboriginal children in the Northern Territory, improving their safety, health, and access to education.

As you are aware, alcohol is at the root of many of the problems in Indigenous communities and the Report identified "grog" as a key issue in situations of violence and abuse. The Australian Government will impose significant alcohol restrictions on Aboriginal land for six months. These restrictions will mean the sale, possession, transportation and consumption of alcohol will be banned in targeted areas. In addition, monitoring of take-away sales across the Northern Territory will be implemented. These measures will help stabilise these communities and give them a chance to recover. The Northern Territory Government has been asked to expedite more sustainable reforms across the Northern Territory on a more permanent basis, at which time the emergency bans may be reconsidered. We do not propose any restrictions on movement of people between 'dry' and 'wet' areas.

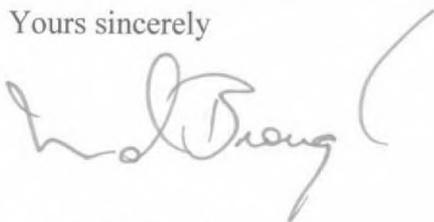
Minister for Families, Community Services and Indigenous Affairs response to Law Society open letter dated 29 June 2007...cont.

In addition, the Australian Government is providing voluntary child health checks to children up to the age of 16 in the affected communities. This is a comprehensive check of the child's health, wellbeing and social and environmental living conditions. The check includes organising investigations and referrals as required, providing preventive health advice and developing a plan for the good health of the child. Health Check Teams comprise a doctor, two nurses and an Aboriginal Health Worker. Forensic examinations are not part of the health check. If evidence of sexual abuse is elicited in the history or examination, it will be reported as per mandatory Northern Territory requirements. Health checks have been well received by Indigenous communities to date.

The Government is of the view that the old approach towards Indigenous affairs has not worked and that the safety of Indigenous children must be an absolute priority. We believe that our current approach is the most appropriate response to the emergency situation facing Northern Territory Aboriginal communities.

Thank you for bringing your concerns to my attention.

Yours sincerely



MAL BROUGH

Legal profession farewells a long-time member

The Law Society Council and several guests farewelled Peter Tiffin on 16 October, at a gathering prior to his departure to Adelaide.

Peter has been a good friend of the Society, acting as a Councillor and appearing at most admission ceremonies.



Left: Barbara Bradshaw thanks Peter Tiffin for his involvement with the Society.

Right: (Top) Justice Mildren and Matthew Storey.

(Bottom) Master Coulehan and John B Lawrence.

