

Protecting the vulnerable in NT

By Clifton Baker

An oft-quoted maxim is that 'a society is to be judged by how it treats its disadvantaged and vulnerable'. A relatively neglected area in the politics of justice is the protection of children.

I have regularly given the ALA National Council updates on the Northern Territory intervention. Although the 'national emergency' invoked to justify that intervention was the incidence of child abuse in Aboriginal communities, disclosed by the *Little Children Are Sacred* report in 2007, much of the subsequent discussion of the intervention was related to incidental provisions including housing, land tenure, and the suspension of the *Racial Discrimination Act* so income management could be imposed on Aboriginal welfare recipients.

Childcare and protection issues have returned to prominence with the findings of two inquests in January 2010, a report by Dr Howard Bath, and a Full Federal Court decision compelling an Aboriginal Health Service to disclose the medical records of adults and children with a sexually transmitted disease.

The inquest findings and the Bath report were the subject of extensive coverage in *The Australian* on 6-7 February 2010. The inquest into the death of Deborah Melville involved the death of a child in foster care. She contracted a severe leg infection, which was left untreated. It spread into the bone and led to her incontinence. Her foster carers put her outside in the backyard, where she died. A Family and Community Services worker visited Deborah on the day before her death, but did not intervene.

The inquest into the death of Peter (who was non-indigenous) involved a seven-week-old child who starved to death when his mother drove him to South Australia to avoid intervention by Family and Community Services, which had previously made ineffectual attempts to remove him from his mother's care. At the time of his death, Peter weighed 1kg less than his birth weight.

Dr Bath had been appointed to conduct an audit into Family and Community Services, and reported to the Northern Territory government in 2007. However, the full report has never been released. The government has refused even to disclose it to the Northern Territory Ombudsman. Dr Bath has subsequently been appointed as the Northern Territory Children's Commissioner. *The Australian* reported that the audit disclosed a near total breakdown of child protection systems in the Northern Territory.¹

Less media attention has been given to the case of *C Incorporated v Australian Crime Commission* [2010] FCAFC 4. In that case, judicial review was sought of a decision by the Australian Crime Commission (ACC) to issue a summons for medical records directed to C Incorporated, an Aboriginal Health Service. The records sought related to patients with sexually transmitted diseases. It was clear that the objective in issuing the summons was to obtain information to prosecute individuals who had committed sexual offences against children.

The Full Federal Court dismissed the judicial review application in its entirety. Maintaining the privacy of the individuals' records did not outweigh the public interest in



identifying the perpetrators of child abuse. The conferral of jurisdiction on the ACC in relation to child protection offences under the Northern Territory intervention is one of the less well-known incidental aspects of the intervention legislative package. To use a body, the principal function of which is to combat organised crime, for those purposes, appears to be a significant overreaction.

Protecting the vulnerable is important in tort law. At the centenary of the High Court conference in 2003, Professor Jane Stapleton,² in her address on 'The Golden Thread at the Heart of Tort Law: the Protection of the Vulnerable', asked whether the law of tort has a role to play in protecting aboriginal Australians in relation to the removal of children from communities. Those considerations may also be relevant where there is a failure to intervene. Deborah Melville's mother is taking civil proceedings in respect of the death of her daughter.

We need to ensure that such protection is secured for children. ■

Notes: 1 Peter is the pseudonym used by *The Australian*. The case is reported under another pseudonym as *Inquest into the death of Kalib* [2010] NTMC. 2 (2003) 24 *Aust Bar Review* 41.

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