

***Restoring Social Order through Tackling 'Passive Welfare':  
The Statutory Intent of the Northern Territory National Emergency  
Response Act 2007 (Cth) and Social Security and Other Legislation  
Amendment (Welfare Payment Reform) Act 2007 (Cth)***

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***Abstract***

The findings and recommendations of a body of Indigenous scholarship dating back to the 1980s, which indicated that violence and child sexual abuse had long existed as prevailing problems within Indigenous communities, was reinforced through the release of *AmpeAkelyernemaneMekeMekarle 'Little Children are Sacred'* – the Report of the Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory in June 2007. The scholarship identified the multi-faceted factors contributing to violence and child sexual abuse in Indigenous communities, such as inter-generational transmission of trauma; community dysfunction; socio-economic disadvantage; and substance abuse. It also identified a range of community-based measures for overcoming violence and child sexual abuse within Indigenous communities, such as community restorative justice, counselling and offender rehabilitation programs, education programs, and boosting funding to child protection services already existent within the communities. Yet the former Howard Government's emergency response to violence and child sexual abuse has ignored this scholarship and the 97 recommendations set out in *AmpeAkelyernemane-MekeMekarle 'Little Children are Sacred'*, choosing instead to treat violence and child sexual abuse as symptomatic of the breakdown of social order associated with past government policies of welfare and autonomy initiated in the early 1970s. This comment argues that the former Howard Government's legislation, largely aimed at addressing passive welfare and creating viable economies within Indigenous communities, fails to address the problems and effects of violence and child sexual abuse.

**Indigenous Scholarship on Violence and Child Sexual Abuse**

Indigenous scholars have been engaged in researching violence and child sexual abuse using empirical quantitative and qualitative methods and Indigenous methodologies for over 25 years. This research identifies a matrix of historical, structural and situational factors contributing to violence and child sexual abuse within Indigenous communities, such as racism, marginalisation and dispossession, institutionalisation and removal policies, loss of land and traditional culture (including kinship systems, customary law and traditional roles), entrenched poverty, overcrowding and lack of amenities, and alcohol and drug abuse (Stanley et al. 2002:18-19).

For example, Miller's (1992) study entitled 'A Community Development Approach to Crime Prevention in Aboriginal Communities' considered possible social explanations for the growing rate of violence in Indigenous communities, exploring community conflict in terms of historically and culturally based social divisions (Miller 1992:18). Miller (1992) does not separate violence within Indigenous communities from the history of violence toward Aboriginal people and the socio-psychological effects of anger, powerlessness and aggression, which she argues were being displaced through homicide, assault, domestic

violence and child abuse (Miller 1992:19). Miller (1992:19-20) also considers personal violence, examining it through a functional, eco-cultural view of Aboriginal intra-cultural aggression and violence.

Of central consideration to Miller's case study of the Arukun community in Northern Queensland is the 'artificial' nature of this community and the problems that this poses. As Miller (1992) describes it, the Arukun community consists of different clan groups, with longstanding hostilities, who were brought together and placed on the mission. The artificial community refers to the artificial nature of what were formerly reserves and missions and 'euphemistically re-named "communities"' in the late 1960s and early 1970s (Tatz 1999:30). In the late 1800s and early 1900s, the regulation of Aborigines of the Northern Territory and northern Queensland, for example, involved literally removing Aborigines from their traditional land; different groups were placed together and institutionalised in centralised reserves that were effectively penitentiaries, which effected the spatial division of separation between the Aborigines and whites. For Miller and others, such as Dodson (2003), this itself has implications for understanding and addressing violence in Indigenous communities.

Violence in Indigenous communities has been constructed as a community-based social problem, rather than an individual-based psychological problem commonly associated with the abuse of power in intimate non-Indigenous relationships. The move away from references to the dominant paradigm of Western conceptualisations of domestic violence to family violence deeply rooted in a social context of colonisation, loss of culture and poverty and the contextualisation of violence within the 'community' context is a key feature of this scholarship (Atkinson 1990a, 1990b, 1990c, 1990d, 1991, 1994, 1996a, 1996b, 1999; Miller 1992; Atkinson & Robertson 1999 & 2000; Keel 2004). This shift was aimed at situating violence in terms of the constructed nature of 'community' and inter-generational effects of dispossession, segregation, separation, integration and assimilation (Atkinson 1996).

This body of Indigenous scholarship identifies a range of community-based measures for overcoming violence and child sexual abuse within Indigenous communities, such as community restorative justice, counselling and offender rehabilitation programs, education/awareness programs, and boosting funding to child protection services already existent within Indigenous communities (Stanley et al. 2002; Stanley 2003). The literature also identifies the importance of devolving power and decision-making to Indigenous communities and allowing them to develop culturally appropriate prevention and intervention programs that are systematic and multifaceted (Stanley et al. 2002; Stanley 2003). This work asserts that self-determination is critical to overcoming violence and sexual abuse (Atkinson 1990b, 1991, 1996a; Martin 1992; Hunter 1993; Robertson 2000; Stanley et al. 2002; Dodson 2003a; Behrendt 2006). Indigenous spokespeople and scholars emphasise the importance of allowing Indigenous peoples and communities to be 'the architects of their own solutions' (Robertson 2000:195; Dodson 2003a; Behrendt 2006). The empowerment of Indigenous communities is also consistently linked to the development and effectiveness of Indigenous dispute resolution mechanisms aimed at helping to heal individuals, families, and communities more generally. The constructive features of Indigenous strategies and dispute resolution approaches, such as night patrols and circle sentencing, have been increasingly put forward as an alternative to law and order and western models of policing (Wright 1997; Blagg 2000a, 2000b; Stanley et al. 2002; Dodson 2003a).

The quantitative studies and qualitative accounts detailing the extent and effects of violence and child sexual abuse in Indigenous communities has been presented to Federal, State and Territory governments since the late 1980s. Judy Atkinson's (1992) Report on the National Inquiry on Violence stated that sexual abuse and violence was endemic and an epidemic in Indigenous communities. In 1996, the year the Howard Government came into power, Maggie Brady published her article 'Aboriginal Domestic Violence and Child Abuse' detailing again the damage and suffering caused by violence and abuse in Indigenous communities. In 2000, Boni Robertson's Report to the Aboriginal and Torres Strait Islander Women's Task Force on Violence stated that 'sexual violence against Indigenous children had reached epidemic proportions with Indigenous and non-Indigenous people being perpetrators'. In 2001, the ABC's *Lateline* ran a feature story titled 'Solutions to Indigenous violence', exploring how the Yarrabah community was grappling with the issue of endemic family violence. In 2003, Janet Stanley presented a paper about Child Sexual Abuse in Indigenous communities at the Child Sexual Abuse: Justice Response or Alternative Resolution Conference convened by the Australian Institute of Criminology. In 2003, Julian Pocock published a detailed study on the neglect and abuse of Indigenous children in the Northern Territory titled 'State of Denial'. This is but a sample of the many cries of warning aired in the academic and public arena.

Then, in June 2007, the Report, titled *AmpeAkelyernemaneMekeMekarle 'Little Children are Sacred'*, an Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory, Chaired by Rex Wild QC, was presented to the Northern Territory Government. The Report detailed cases of child sexual abuse in 43 Indigenous communities in the Northern Territory. The Inquiry found that child sexual abuse is 'serious, widespread and often unreported'. The Report made 97 recommendations to directly address child sexual abuse in Indigenous communities. The findings and the recommendations were not new. *AmpeAkelyernemaneMekeMekarle 'Little Children Are Sacred'* drew on the existing body of scholarship and identified a number of important international case studies within this literature. The Report recommended the adoption of similar models to successful Indigenous initiatives already in operation, including Canadian and New Zealand models, for addressing serious trauma, dysfunction and law and order problems in Indigenous communities. The Hollow Water community initiative is one such model. In 1984 Hollow Water, an Indigenous reserve in the Central Western Plains of Canada, had reached a point of *crisis* – 75% of the community were victims of sexual abuse, 35% were the perpetrators of sexual abuse, and violence was the norm. Through community empowerment and the application of Indigenous strategies and dispute resolution processes, Hollow Water restored law and order and the wellbeing of the community (The Law Report 2007).

The findings and recommendations of the *AmpeAkelyernemaneMekeMekarle 'Little Children Are Sacred'* Report and other Indigenous, and complementary non-Indigenous, scholarship, however, had little actual influence on the Federal Government 'emergency response' to violence and child sexual abuse in Indigenous communities of the Northern Territory.

## From State of Denial to State of Emergency

Within two weeks of the public release of *AmpeAkelyernemaneMekeMekarle 'Little Children are Sacred'*, the Prime Minister declared a *state of emergency* in the Northern Territory. The framing of its intervention as a *national emergency response* contributed to a sense of *devastation* and *crisis* reported in the media (Howard 2007:3). Referred to as the

'save the Aboriginal children of the Northern Territory' *blitzkrieg* (Tomlinson 2007), troops and police were sent in 'to stabilise the situation', allowing for particular strategies to be developed hastily in response to the *crisis* in Indigenous communities.

What appeared as an extremely reactionary intervention was marked by profound antipathy to welfarism, autonomy and self-determination (Garland 2001:98). In publicly discussing the Federal Government's response, then Prime Minister John Howard constructed violence and child sexual abuse as symptomatic of 'extreme social breakdown' of the 'community' resulting from a mixing of welfare policies and the programs and rationalities of autonomy and self-determination, which had failed to facilitate economically viable Indigenous communities (Howard 2007). The Federal Government, using its constitutional and political powers to intervene in the affairs of the Northern Territory combined with its *parens patria* power, asserted its 'duty of care'. The government moved the power of decision-making, management and control of the 73 Indigenous communities out of the hands of these communities and the Northern Territory Government and into the hands of the Federal Government and its appointed representative bodies and organisations, initiating a radical restructuring and rebuilding of social order in the Indigenous communities. The new laws went beyond banning the sale and consumption of alcohol, installing filters onto computers to control access to pornography, increasing policing numbers and other law and order mechanism, allowing health checks, scrapping permit systems, assuming control of Indigenous land, and instituting welfare reform measures, more generally.<sup>1</sup>

The *crisis* in Indigenous communities of the Northern Territory was thus contextualised alongside the *crisis* in the Indigenous population, more generally, resulting from welfare dependency and separate governance (Howard 2007). The Federal Government had three years earlier redirected its Indigenous affairs policy objective; it had turned to 'reducing dependency on passive welfare and boosting employment and economic development in Indigenous communities' (Vanstone 2004). The Federal Government demonstrated its ongoing commitment to undoing the social arrangements that were established in the 1970s onwards and the political and economic orthodoxies that underpinned these (Garland 2001:98).

The various mechanisms set out in the Northern Territory National Emergency Response Bill 2007, Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 and Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 legislated the Federal Government's political and economic intent. For example, the Explanatory Memorandum for the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 indicates that the Bill is intended to make 'changes

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1 Part 2 – Alcohol – Divs 2, 3 and 4 of the Northern Territory National Emergency Response Bill 2007 restricts the sale and consumption of alcohol. Article 26, Pt 3 of the Northern Territory National Emergency Response Bill makes it an obligation to install filters in publicly funded computers. Part 4 – Acquisition of rights, titles and interests in land – Div 1 – grants the Commonwealth five year leases. Part 4 – Acquisition of rights, titles and interests in land – Div 2 – deals with the acquisition of rights, titles and interests relating to town camps. Part 1, Sch 2 of the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Measures) Bill 2007 amends the *Australian Crime Commission Act 2002* (Cth). Part 2 Sch 2 of the Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Measures) Bill 2007 amends the *Australian Federal Police Act 1979* (Cth). The Social Security and Other Legislation Amendment Bill 2007 institutes welfare reform measures.

to the provisions governing access to Aboriginal land to increase interaction with the wider community and promote economic activity'.<sup>2</sup> The reasoning behind this is set out in the Second Reading Speech accompanying the introduction of the Northern Territory National Emergency Response Bill 2007 into Federal Parliament, in which violence and child sexual abuse are attributed in part to the fact that 'no natural social order of production and distribution' exists in Indigenous communities and, as such, 'grog, pornography and gambling often fill the void' (Scullion 2007:16). Viable economies and jobs are deemed to give a 'point to life beyond abuse and despair' (Scullion 2007:16). Social order is to be re-established through participation in the mainstream economy, including real jobs and changes to land tenure. For example, a restructuring of land usage and tenure facilitates entrepreneurial initiatives through the move away from a community-based approach to land management and ownership to a model of individual housing/leasehold tenure (Scullion 2007).<sup>3</sup>

The Social Security and Other Amendment (Welfare Payment Reform) Bill 2007 set out the framework for welfare payment reform, which complements the objectives of the primary legislation. The Explanatory Memorandum accompanying the introduction of the Bill into Parliament outlined the intent as providing 'new national welfare measures to help address child neglect and encourage school attendance'.<sup>4</sup> As noted in the Second Reading Speech, the Welfare Payment Reform Bill was introduced with the objective of 'promot[ing] socially responsible behaviour aimed at protecting and nurturing the children in our society and offering them the opportunities that a supportive family, a solid education and a healthy and safe environment can provide' (Scullion 2007:11). The Second Reading Speech also states that the legislation is aimed at 'tackl[ing] the scourge of passive welfare and to reinforce responsible behaviour through the establishment of [the] mutual obligation framework' (Scullion 2007:11). While targeting social security recipients more generally, specific reference is made to the application of this new legislation to Aboriginal and Torres Strait Islander people, and in particular it mentions the Indigenous communities of the Northern Territory, falling within what are defined in the legislation as a 'declared relevant Northern Territory area' (Welfare Payment Reform Bill Explanatory Memorandum 2007:12). While the legislation puts in place general mechanisms to allow for social security payments to be 'income managed' to 'promote better parenting behaviours', if deemed necessary, 'remote Indigenous communities' ... 'where normal community standards and parenting behaviours have broken down', will have 50% of their income managed for the first 12 months of the life of the legislation (Brough 2007:1).<sup>5</sup> The Second Reading Speech sets out that '[t]his broad-based approach is needed to address a break down in social norms that characterise many of our remote Northern Territory communities' (Scullion 2007:13).<sup>6</sup> This approach is deemed necessary to ensure 'income

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2 See Outline Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 – Access to Aboriginal Land.

3 The Federal Government is now facing a High Court challenge by Maningrida residents, one of the 73 Indigenous communities identified within the legislation, over the invalidity of certain aspects of its Northern Territory national emergency response laws in relation to the scrapping of permits and compulsory acquisition of land and assets and the provision of 'just compensation'.

4 See Outline – Social Security and Other Amendment (Welfare Payment Reform) Bill 2007.

5 Social Security and Other Legislation (Welfare Payment Reform) Bill Second Reading Speech – House of Representatives – Minister for Families, Community Services and Aboriginal and Torres Strait Islander Affairs.

6 Social Security and Other Legislation (Welfare Payment Reform) Bill Second Reading Speech – Senate – Senator Scullion.

support is used to provide shelter, food and clothing for children at risk of neglect' (Second Reading Speech). The legislation also includes measures 'for income management arrangements to apply for parents who fail to ensure the enrolment, or sufficient school attendance, of their children' (Explanatory Memorandum 2007:4). The correlation between 'school non-attendance and under-achievement at school, criminal activity, poverty, unemployment and homelessness' is drawn on to support the move toward income payment management to force school enrolments and attendance relating to five or more unexplained absences (Scullion 2007:13).

Ignoring the body of Indigenous scholarship over the last 25 years, the Northern Territory national emergency response focuses on restoring social order and reinforcing responsible behaviour. It gets 'tough on violence and child sexual abuse' through harsh penalties for the purchase, supply or consumption of alcohol and pornography, extra police to re-establish law and order and the surveillance of people's movements through the use of photographic identification, used to stem the flow of alcohol, drugs and pornography, as well as the management of welfare payments to limit the amount of cash available for alcohol, drugs, gambling and pornography (Scullion 2007:15-16).

In a recent ABC *Four Corners* Report titled 'Tracking the Intervention', reporter Mathew Carney interviewed the members of the Maningrida community, including some of the 15 women running the Maningrida Child Safety Service, which was set up following the repeated rape of a 12 year old boy 'over a period of months by a gang of men and juveniles' and has been in operation for 12 months now (*Four Corners* 2007). Those interviewed spoke about the effectiveness of their Child Safety Service that involves operating night patrols within the community, rounding up those children wandering the streets at night and taking them home, teaching the community about child sexual abuse, and rebuilding community standards. The Intervention Taskforce, however, refuses to fund the program, which is problematic because funding runs out next month. The Intervention Taskforce does not fund child safety programs, as this is the jurisdiction of the Northern Territory. Here we have a community developed and operated intervention program that is directly aimed at reducing child sexual abuse in the Maningrida community, which is refused funding because such programs do not fall within the jurisdiction of the Federal Government's national emergency response.

The situation in Maningrida is illustrative of the many emerging cracks and flaws in the former Howard Government's intervention, which are clearly developing as a result of the application of a one-size fits all, top-down approach lacking community consultation. What is also deeply troubling is the fact that the intervention was initiated a mere four months ago, despite many years' warnings of the extent of the problem. The former Howard Government's emergency response is a highly interventionist approach and one aimed at the social engineering of Indigenous peoples and communities. It fails to address the multi-faceted nature of violence and child sexual abuse in Indigenous communities and demonstrates a lack of any real understanding of the extent of the problems within Indigenous communities and the importance of incorporating mechanisms that will heal the community, victims and perpetrators of violence and child sexual abuse. The Northern Territory national emergency response is silent on these essential issues.

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