

Essentials for Social Justice: Protecting Indigenous children

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Launch of the *Social Justice Report 2007* and *Native Title Report 2007*

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I begin by paying my respects to the Gadigal peoples of the Eora nation, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us. And thank you, Alan Madden, for your generous welcome to country for all of us.

Thank you to everyone for attending the launch of the latest *Social Justice Report* and *Native Title Report*. These reports were tabled in federal Parliament on the 20th March 2008. The video you have just seen has outlined the contents of the two reports.

This speech focuses on the findings of the *Social Justice Report*. The panel debate that follows will focus on the findings of the *Native Title Report*.

This speech is also part of a series of seven that I will be delivering nationally over the coming months outlining an agenda for change across all areas of Indigenous affairs. I have termed this series of speeches: *Essentials for Social Justice*.

Today's speech is titled: *Protecting Indigenous children*.

No one wants to see children abused, families destroyed, and the aspirations for a bright future dulled because hope has been overwhelmed by despair.

Aboriginal children – wherever they live in Australia – deserve a future in which they have the same opportunity as other children to thrive, develop and enjoy life.

They are entitled to such a future for no other reason than that they are human, born with dignity and in full equality to all other Australians.

Such equality involves being able to live and grow in safety, without fear of violence or intimidation, within a thriving, caring and loving family unit, and according to your culture.

It also involves living in an environment where individuals are able to exercise control over their own lives. Where they are able to make decisions. Are responsible for those decisions and their impact on their family and the community in which they live.

And where their choices are meaningfully backed up by the means to achieve them. This requires access to basic services and the provision of education in order to build dreams and hope, as well as create the personal capacity to achieve these.

For many Indigenous children across Australia, such equality is a pipedream.

For some, overwhelmed by environments of dysfunction, it is not even dreamed of.

It is a tragic fact that an Aboriginal or Torres Strait Islander child born today does not have the same life chances as other Australian children.

All Australian governments should be committed to ensuring an equal start in life for Indigenous children.

Without this, the most vulnerable members of our society are left in a position where they must overcome extreme obstacles and differing forms of adversity merely to access what all other Australians take for granted.

This is something that should not exist in 21st century Australia. Addressing it is the defining challenge for our nation.

And it is with this challenge in mind that I present to you the *Social Justice Report 2007*.

This year's report considers the most heart-wrenching and difficult issue that can be faced by any community - family violence and child abuse in Indigenous communities.

The *Social Justice Report* approaches this issue from four different perspectives:

- First, it provides an overview of the statistics and the evidence about the extent and patterns of violence and abuse in Indigenous communities. It includes detailed information about the findings of inquiries into violence and abuse. And it identifies a continuum of services and responses that are necessary to address *all* of the factors that ultimately contribute to such high rates of violence and abuse in our communities.
- Second, it considers efforts by Indigenous communities themselves to combat violence and abuse. It seeks to celebrate the successes that exist in our communities – for they do exist. And it identifies the significant challenges that communities face in keeping programs going. It also identifies some of the lessons that we can learn from our own people about successfully tackling violence and abuse. The report does this through 19 case studies covering programs nationally.
- Third, it provides an overview of current and recent efforts by all Australian governments to address violence and abuse. You will find in the report a very comprehensive overview of programs and policies as they exist in every state and territory, at the federal level and also COAG on Indigenous family violence.
- Finally, the report provides a detailed analysis of the Northern Territory intervention.

Barely a day goes by without another chilling and heartbreaking story of abuse, violence or neglect; or of new ideas, often borne out of frustration, for addressing this.

Ultimately, the sustained scrutiny and national level debate on issues of violence and abuse creates a momentum for change and for action.

Clearly we need such change.

What the report does, is to place this need for change into context to ensure that this change is considered, evidence based, capable of being achieved and systemic.

I have a major concern about Indigenous policy at the moment that it is developing in an ad-hoc manner – where significant new changes are made at short notice, with limited Indigenous involvement and in response to crisis situations.

We risk losing sight of our overall objective when policy develops in this way. If we are genuinely committed to protecting our children then we must ensure that the actions that we take are sound, into the longer term.

Short term expedience and undeliverable promises have no place in Indigenous policy generally – but specifically have no place where the safety and protection of children is involved.

As I will explain shortly, such expedience includes overriding human rights protections for Indigenous peoples. This is not some technical matter – it goes to the core of the effectiveness of the processes that are being introduced.

What we have seen in recent years is a growing despair and growing sense of urgency for governments to deal with issues related to child abuse and family violence in Indigenous communities.

When you combine this sense of despair, the growing sense of urgency with a determination to do things differently, you can see how something as radical, as intensive and as divisive as the NT intervention emerges as the basis for new policy approaches.

Regardless of your views on the appropriateness of the approach adopted in the Northern Territory – and I have a lot to say about that in a moment – the intervention has blown out of the water once and for all the *status quo* in Indigenous policy making.

This status quo is the fallacy that if governments continue on their existing path, eventually the substantial issues facing our Indigenous communities will be resolved. That the violence will be addressed. That the entrenched poverty will be addressed, and so on.

It is the fallacy that governments have to date been doing everything within their power and resources to address this. And it is the fallacy that government efforts are sufficiently targeted to achieve their desired outcomes.

This fallacy has been perpetuated by successive governments at the federal and the state and territory level.

Through their actions in introducing the NT intervention, the former federal government has admitted to three key things that should forever change Indigenous affairs.

- First, that governments were not providing Indigenous peoples with basic services that other Australians take for granted. Services such as policing and law and order; health and education services; and adequate infrastructure to name but three areas.
- Second, it admitted to the fact that the scale of investment in our Indigenous communities to date has not been sufficient to enable real change – sustainable, long term gains that can turn communities and peoples lives around.
- And third, it admitted that the change needed is not going to be achieved quickly and will require long term investments.

These admissions in turn reveal how simplistic it is to draw a line under all past efforts as failed and to strive for newness. They clearly demonstrate that past approaches didn't work because they never had the chance to work.

The NT intervention is, therefore, emblematic of the challenges that we face more broadly in Indigenous policy.

We know that similar problems such as lack of adequate service delivery by governments – all governments; abject poverty; lack of schooling; and high rates of violence, exist in communities outside of the Northern Territory and particularly in our regional centres and urban environments.

How should we respond to this? Ignore it until we hear revelations in the national media about a certain community or region? Then cobble together some quick response for that area? Such an approach is too ad hoc.

The NT intervention represents the appeal and seductive charm of embracing new approaches and breaking from the past. But it also represents the danger of such change without looking back over your shoulder and considering where you have been, what has worked, and what has been the source of the problems faced to date.

And it also represents the danger of unilateral action – without recognising the importance of undertaking action in partnership with Indigenous communities. In the intervention, this is reflected in processes that treat Indigenous peoples as passive recipients of policy rather than active agents for change.

I am a firm believer that many of the answers to Indigenous problems can be found in Indigenous communities. This is why it is so crucial to learn from successes, as well as challenges, rather than reinventing the wheel every time a new policy or program is announced.

Tomorrow's national strategy should come out of today's success stories as we consolidate knowledge and experience.

That is a major reason why this year's *Social Justice Report* seeks to highlight success stories and to show how Indigenous peoples are taking control of these issues in many communities.

This offers hope as well as valuable evidence and learning to inform better service delivery in the future. It is intended to also restore some confidence and dignity to Indigenous Australians who have suffered from the wholesale negative portrayal of Indigenous society by some politicians and media.

Accordingly, the 19 case studies in the report aim to encourage individuals in communities by showing what can be achieved; to inspire service providers to think critically about how effectively they are delivering these services; and to challenge governments to be responsive and flexible to innovative programs and responses to family violence and abuse.

I would urge you all to take some time to read about some of the initiatives included in the report. They cover a vast range of different approaches ranging from community education and development initiatives, to healing services, alcohol management, safe houses, family violence perpetrator programs, to initiatives aimed at building the self-esteem of men and creating support structures for men, through to innovative processes for the interface with the care and protection system and supporting women in raising their children.

I would urge you to read about:

- Shane, whose life has turned around since he began attending the Yerli Birko men's group in Adelaide; or
- Dave, and his experiences in the Spirited Men program at Murray Bridge; or
- Liz, a young woman with kids who was considered in the high risk category by child protection but who has been able to be supported by the *Strong Young Mums* program in Bourke;
- As well as the other personal stories contained in the report.

When you read the report, you will see that I identify a range of success factors and lessons from each case study. Some of the most significant include that these programs are:

- **First, community generated:** The most successful programs are those that are developed by the community, and that respond to individual community needs.
- **Second, created with genuine community engagement:** This engagement involves more than just consultation. Communities need to have real power to make decisions and have input into the program development and implementation. This can take time and requires flexibility and patience but ultimately reaps long term rewards.

- **Third, recognises the need for community development:** Community development and capacity building often needs to take place before communities are able to take ownership of family violence initiatives.
- **Fourth, be built on partnership:** All of the successful case studies were built on partnerships, be it with government departments or other agencies.
- **Fifth, adopt a holistic approach:** The underlying, situational and precipitating factors of violence and abuse all need to be tackled, often simultaneously. So while a person participating in a healing program, might present with issues around alcohol or drug use, a whole range of practical, cultural, psychological and emotional needs might need to be dealt with as well.

There are many other lessons included in the report. In brief, these include:

- recognising the importance of tailoring projects so they are culturally appropriate;
- ensuring a strong connection to culture and respect for traditional law to reinforce anti-violence messages and build positive community identity;
- recognising the importance of family and utilising extended family ties in developing solutions, including for child safety;
- Involving men in the solutions to family violence while at the same time empowering women;
- Building on existing community strengths; and
- Recognising the important role of Indigenous staffing in building legitimacy with the community and in challenging violent behaviour.

The case studies also strongly show that community education, particularly around human rights, needs to be part of a strategic approach to addressing family violence and abuse in order to assist communities to grow and develop capacity, ultimately creating safer environments for women and children.

Although none of these lessons are necessarily new, taken together they provide a framework for developing good family violence interventions.

And that leads me back to the NT intervention.

If we consider the measures introduced in the NT, there is a disturbing lack of connection between the actions under the intervention and these success factors that I have just discussed.

Now I note the intention that the intervention proceed in several stages – from an emergency intervention to ‘stabilise’ communities, through to a longer term development process. Some of the critical steps in this include the conduct of surveys of need in communities that are under the intervention; along with the child health checks process.

So there remains potential for some of the early actions already undertaken as part of the intervention to form the basis for modifying the intervention's approach so that it may take these lessons into account over time.

Ultimately, the analysis in the *Social Justice Report* on the intervention focuses on whether the legislative basis for the intervention is consistent with Australia's human rights obligations.

I argue that measures that violate the human rights of the intended beneficiaries are more likely to work in ways that undermine the overall well-being of the communities in which they live in both the short and the longer term.

For example, the Government has clearly stated that the NT intervention seeks to address a breakdown in law and order in Aboriginal communities. And yet it potentially involves introducing measures that undermine the rule of law and that do not guarantee Aboriginal citizens equal treatment to other Australians.

If this is the case, then it places a fundamental contradiction at the heart of the NT intervention measures. This will inhibit the building of relationships, partnerships and trust between the Government and Indigenous communities. It would also undermine the credibility of the measures, and ultimately, threaten the sustainability and long term impact of the measures.

This is the type of 'short term expedience' that I spoke of earlier.

My starting point for determining the human rights implications of the NT intervention measures is to recognise that they are intended to address family violence and child abuse in Indigenous communities.

It is essential that governments undertake action to address violence and abuse, particularly when there is compelling evidence that it is widespread. Governments that fail to act in these circumstances would be in breach of their human rights obligations.

But ultimately, the report has raised significant concerns about the consistency of the legislation underpinning the NT intervention with Australia's human rights obligations.

Human rights law is clear that any measures must be non-discriminatory in their application and impact. This obligation is non-negotiable and unable to be deviated from.

Put simply, all measures to address family violence and child abuse should themselves respect human rights. It would be outrageous to suggest that it is not possible to achieve this.

The main concerns identified about the NT intervention legislation from a human rights perspective are as follows:

- **First, the NT legislation is inappropriately classified as a special measure.** It is not possible to support the government’s contention that all of the measures contained in the NT intervention legislation can be justified as special measures. It is therefore also not possible to say that in its current form the legislation is consistent with the RDA.

There are two concerns in this regard. When seeking to classify ‘restrictive’ measures as beneficial to a community, you need to demonstrate that consultation has occurred and community consent has been sought for such measures. There is then a second requirement that measures must be appropriate and adapted to the end of child protection. The scope of income management provisions – such as quarantining of 100% of welfare in some circumstances and its application to everyone regardless of circumstance – may also not be an appropriate and adapted response. This limits the ability of these measures to be legitimately characterised as special measures under the RDA.

- **Second, the NT intervention legislation contains a number of provisions that are racially discriminatory.** There are also a number of provisions in the legislation that deny Aboriginal people in the Northern Territory democratic safeguards and human rights protections that exist for all other Territorians and Australians.

Examples include the lack of merits review of decision making; removal of access to schemes for just terms compensation; exemptions from the application of all laws that deal with discrimination at the federal and territory level; and the removal of requirements to obtain consent for the management or control of Indigenous property.

These provisions deny Aboriginal people in the NT procedural fairness and access to justice.

- **Third, the NT intervention removes protections against discrimination that occurs in the implementation of the intervention measures.** Immunity is provided for any act of discrimination that occurs under the provisions of the legislation. This includes in decisions made by bureaucrats or other agents – such as store owners – in communities. This provides an extraordinarily broad exemption from the protection of discrimination.

The report additionally identifies a range of specific concerns about the consistency of the income management regime with the rights to social security, privacy and non-discrimination; and the alcohol management regime with the right of non-discrimination.

It also expresses concerns about the absence of effective participation of Indigenous peoples in decision making that affects them.

What I want to see is change to the current model for the intervention so that it is consistent with human rights, and draws on the strengths of communities so they are part of the solution and not just treated as if they are the problem.

And so, the report sets out a **ten point plan** for modifying the NT intervention.

The simple objective of this action plan is to remove the discrimination from the legislation and in its operation.

The first five points of this action plan are on the screen before you. They identify changes to the current framework for the intervention to ensure that the legislation is applied fairly with the ordinary protections that apply for all other Australians.

For these measures, I challenge **anyone** to explain how providing these basic democratic protections could possibly hinder the goal of protecting children. The only possible answer is 'short term expedience' prevailing over guarantees of access to justice. And that is not a good enough answer.

Actions 6 and 7 then seek to address the arbitrariness of the existing regimes for income management and alcohol restrictions provided for under the intervention legislation. The report states that some form of quarantining and some form of alcohol restrictions can be justified consistently with human rights. The sweeping and discriminatory approach adopted through the legislation, however, is not that approach. The report recommends that the government seek to implement voluntary community based schemes in place of the blanket bans currently provided for.

I expect that there will be a number of circumstances where excellent alternative processes can emerge that are more effective and owned by the communities involved.

As an example, the report notes that there were alcohol management plans in place prior to the intervention in all but one of the communities under the legislation. The case study of the Umbakumba community shows how they voluntarily had developed a highly successful alcohol management system.

Action points 8 - 10 then look to how the intervention can transition back to a process that is a partnership with Indigenous communities and where the ambitions are shared rather than imposed.

What I am challenging the government to do through this action plan is to set a timetable for transitioning the emergency intervention from its stabilisation phase to a community development phase.

I propose that this occur through a new mechanism - Community Partnership Agreements.

By utilising the existing community survey information that is supposed to have been completed in each community, as well as building on the lessons through the Indigenous Coordination Centre networks across the Territory, I expect that the government now has a clear view of what needs to occur in each community.

If it doesn't then it has failed to do what it said it would do when the intervention was introduced.

A Community Partnership Agreement provides a way of formalising a relationship and agreed vision between a community and the government of Australia and the NT as to what will happen in that community.

It will create hope and ambition that the specific needs of the community will be addressed.

And to be frank, there is strong incentive for communities to come on board with such an approach. Such an agreement would provide the basis for the introduction of community based and supported mechanisms to deal with the issues of child protection, family violence, alcohol, and related community development needs. Responsibility would be truly shared, rather than imposed.

Having developed this community plan, the Minister for Indigenous Affairs could then declare at some later point– using her powers under the Acts – that more appropriate arrangements are in place in a particular community and therefore there is no longer a need for that community to be subject to the generic arrangements set out in the intervention legislation.

The approach I am recommending here sets out a major challenge to government and to communities. It is also, however, a case of challenging the government to deliver what it has promised to do through the intervention. And it would enable the government to do this in a manner that respects human rights and human dignity.

A final comment on this action plan: it strongly endorses the call for an independent review at 12 months of the intervention.

An independent review should take place to ensure that the goals of the legislation are being achieved in a manner that is consistent with human rights, and allow for any negative consequences to be identified and addressed as soon as possible.

Fundamental to the success of such a review will be the involvement and input of Aboriginal people from the communities involved. Ongoing participation from individuals on the ground will not only ensure the legitimacy of the measures undertaken, it will also help to contribute to their ongoing success as the needs and aspirations of communities change over time.

Finally, less than a fortnight ago I co-convened the National Indigenous Health Equality Summit in Canberra. In a historic event on Thursday 20 March, the Australian Government entered into a new partnership with the indigenous health sector to close the gap on Indigenous life expectancy.

I want to close by recalling some of the commitments that the Prime Minister and Minister for Indigenous Affairs signed in the historic *Statement of Intent* on closing the gap.

The Statement of Intent commits:

- To developing a comprehensive, long-term plan of action, that is targeted to need, evidence-based and capable of addressing the existing inequities in health services, in order to achieve equality of health status and life expectancy between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by 2030.
- To ensuring the full participation of Aboriginal and Torres Strait Islander peoples and their representative bodies in all aspects of addressing their health needs.
- To building on the evidence base and supporting what works...
- To respect and promote the rights of Aboriginal and Torres Strait Islander peoples... and
- To measure, monitor, and report on our joint efforts, in accordance with benchmarks and targets, to ensure that we are progressively realising our shared ambitions.

These ambitions should equally apply in making the NT intervention a joint effort to maximise the benefits of this unprecedented opportunity and to ensure that our children are indeed safe and protected.

The *Social Justice Report* provides a pathway to achieving this on a basis of mutual respect, partnership and good faith. I commend it to you.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.