



Message from the Commissioner

Federal Government Response to Indigenous Sex Abuse Allegations



The measures proposed by the Federal Government to deal with allegations of indigenous sex abuse in response to the Report of the NT Enquiry into the Protection of Aboriginal Children from Sex Abuse (“Little Children are Sacred”) are clearly discriminatory.

Child abuse is a nationwide scourge, but the proposed measures will only result in the imposition of restrictions - most of which have only an indirect connection to child abuse - on some Territorians because of their race.

Some readers will be aware that “motive” is irrelevant under the *Anti-Discrimination Act*. So even if the government is sincere about indigenous welfare the fact that the proposed measures involve less favourable treatment based on race makes them in all likelihood discriminatory.

Many commentators have argued that the suspension of human rights obligations is justified in the circumstances – an “end justified the means” argument. However if the proposed measures won’t work (as I will indicate briefly below) this argument does not bear scrutiny.

Briefly, my specific concerns are as follows:

1. Quarantining welfare payments to prevent misspending is unfair because responsible parents are penalised, but how does it prevent child abuse? It’s discriminatory. Child abuse is a problem Australia-wide. Would the government quarantine non-indigenous welfare payments? Not likely.
2. Attachment of family assistance payments to school attendance. Truancy is an Australia-wide issue. Why apply restrictions to indigenous families only?
3. Alcohol prohibition for six months. Prohibition has never worked in the past. Alcohol abuse is a Territory-wide, not just indigenous, problem. Restriction on supply, rather than prohibition, is the way forward.
4. Compulsory medical checks for indigenous children under 16 years old. This measure is also potentially offensive. Does it mean vaginal/anal examinations? If so, what happens if the kids and/or their parents don’t consent? Will they be forced to submit? Would the government consider compulsory medical tests for non-indigenous children who are alleged victims of child abuse? How do medical tests prove child abuse? How do medical tests reveal the perpetrators of child abuse?
5. Relaxing the permit system. How is this measure connected with the issue of child abuse? Unrestricted entry of journalists and other outsiders to indigenous communities will not miraculously expose child abuse nor will the abuse miraculously stop because outsiders are in the vicinity. Preventing indigenous people from restricting access to their private land is discriminatory. Non-indigenous people are not forced to suffer unauthorised access to their private properties.
6. Recruitment of additional police. This measure may reap benefits in the long term, but the immediate posting of police to remote locations will not assist in reducing child abuse. This is because victims and/or “whistleblowers” are too frightened to complain to police for fear of retribution. The police delegation to Mutijulu in 2006 encountered this difficulty – not one direct complaint of child abuse was received. Immediate action is needed to address the problem of sex abuse. However the government’s top-down, coercive, heavy-handed, short-term response is not the answer.

Remedies for stricken indigenous communities lie in social change. Social change is brought about by long term policies devised in collaboration with local people, not by short term coercive measures.

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No government, state or federal, in the last 220 years has successfully engaged with local indigenous communities to work out long term strategies for social change and good governance. If governments fail to effectively engage as a minimum requirement, and if governments continue to impose measures without agreement or consent, then future initiatives will fail too.

A critical aspect of local engagement is for governments to finally accept the fundamental proposition that "one size does not fit all". There is no universal solution because communities vary in size, culture, climatic conditions, demographics and a host of other factors.

I don't pretend to know all the answers but the following measures are essential to future success of efforts to combat child abuse:

1. Permanent support for whistleblowers/complainants. We need to turn around the current climate of fear and develop trust by creating a permanent force of locally-based educators, welfare workers, and family/community service workers.

2. Infrastructure improvements.

Better Housing: 2006 NT Government figures estimate that 4000 new dwellings require immediate construction NT wide to reduce occupancy rates in overcrowded houses from 30 to 7 people per dwelling (* see my article in edition 11 of "Fair Go" which considers in detail various components of a successful housing strategy such as design, cost, ownership, repair regime, attracting private investment, educational support).

Better Education: there are only about six dedicated secondary schools in all of remote NT. Some primary schools offer secondary modules/units. More schools are needed.

Unlike the Federal Government's latest ill-founded initiatives, the link between overcrowded housing and poor education and child abuse is both direct and obvious.

Tony Fitzgerald Anti-Discrimination Commissioner

HREOC Community Forum

On 17 May 2007 at the NT Supreme Court Jury Muster Room in Darwin, ADC hosted a well-attended community forum entitled 'It's About Time: Women, men, work and family' presented by the Human Rights and Equal Opportunity Commission (HREOC).

The keynote speaker was John von Doussa QC, HREOC's President, who was introduced by ADC Commissioner Tony Fitzgerald.

Attendees at the forum included representatives from Anglicare, Chamber of Commerce, Community Justice Centre, Office of the Information Commissioner, Charles Darwin University, Multicultural Council of the NT, Darwin Community Legal Service, Office of Women's Policy and union delegates.

Mr von Doussa discussed, and sought contributions from the audience about, the impact of wage differentials between men and women in the workforce. For example, women who earn less than men for the same work are more likely to relinquish their paid employment to meet family obligations which in turn diminishes womens' superannuation lump sums. The HREOC President also raised the topical issue of work/life balance initiatives such as paid time off to care for ill children or elderly parents, longer entitlement to paid parental leave, and increased options for return to work part-time after childbirth.

HREOC plans similar forums in other States and territories over the next few months.



John von Doussa QC, President, HREOC, Tony Fitzgerald, NT Anti-Discrimination Commissioner



New Staff

Surya Silva has recently taken up a six month contract with the Commission as the A/Director of Public Education and Training. She has worked in adult education and training for many years and brings experience from both the public and private sectors to her role. Human rights has always been an area of special interest with social justice underpinning much of her life's work. Surya is looking forward to expanding into her new role and welcomes enquiries about public education and training.

HUMAN RIGHTS' CIRCUS

We take no credit for this but thoroughly endorse Circus Oz' public dedication of its Friday 13 April evening show at Darwin Entertainment Centre to "diversity, tolerance and human kindness".





The Honourable Chief Justice Martin, The Honourable Syd Stirling and Dr Rev Djiniyini Gondarra during the Mawul Rom Ceremony celebrating the launch of the Project as an annual event.

Mawul Rom Pilot Project

In recent times governments throughout Australia have been pre-occupied with the concept of “shared responsibility” between themselves and indigenous communities. While some government ultimatums have been reasonable, and some not so reasonable, it appears that there has been little agreement so far with most of the parties reluctant to move very far from their virtually fixed positions.

Most commentators agree that a consistent flaw in indigenous policy formulation in the past has been government failure to accurately establish, and perhaps indigenous failure to adequately articulate, indigenous needs.

A project that has the potential to inform governments on ways to focus on needs and interests, rather than positions, is the Mawul Rom (traditional Yolngu peace making ceremony).

In 2004 the first Mawul Rom Pilot project was held at Galiwin'ku, Elcho Island NT. This successful event attracted 45 people from across Australia and overseas, who engaged in a unique learning experience exploring cross-cultural mediation, leadership and communication.

On 21 March this year, the Mawul Rom Association celebrated the launch of this Project as an annual event. The event took place at the NT Supreme Court in Darwin, hosted by Chief Justice Brian Martin. This was a fitting place for the launch of a project that explores Indigenous and non-Indigenous dispute resolution, law and peace-making. The Honourable Syd Stirling, MLA, Minister for Justice and Attorney-General launched the event, which was also attended by project partners – The Australian Federal Police.

Guests were welcomed to the event by traditional Yolngu performers, who set the scene for a unique cross-cultural Project. This was followed by the opening address from the Hon. Syd Stirling and Commander Alan Scott (representing the Australian Federal Police). Both highlighted the importance of such cross-cultural training both for business in the Territory, nationally and internationally. Mawul Association Co-Chairs Pat McIntyre and Rev Djiniyini Gondarra OMA then explored the aims and principles behind the project. They highlighted the importance of equally valuing both contemporary non-Indigenous and traditional Yolngu traditions of mediation, conflict resolution and leadership. The experiential nature of the Project allows participants to learn from each other. The capacity developed during the Mawul Rom Programme will assist participants to find common ground between cultural spheres allowing for sustainable solutions and partnerships.

Following these speeches, Yolngu Elders then lead VIPs as participants in the Mawul Rom Ceremony. Yolngu community members and Mawul Rom past participants performed as VIPs sat in the sand sculpture and shared ceremony. At the conclusion of this spectacular ceremony all guests and attendees were invited to assist in the ending of ceremony. This coming together of many cultures symbolised the core principles of Mawul Rom – engaging to explore common ground for peaceful, successful and sustainable communities.

Hopefully techniques developed through Mawul Rom will assist those operating in any cross cultural environment.

For more information on the Mawul Rom Project, please contact the Community Justice Centre in Darwin on 1800 000 473 or visit www.mawul.com



Conciliated Complaints

Race (2007)

An Aboriginal employee alleged that his supervisor had racially abused him and work colleagues were constantly making discriminatory remarks about Aboriginal people in his presence. He found these remarks offensive and humiliating and causing stress.

The complaint was accepted and after receiving formal notice of the complaint, the Respondents were given the opportunity to resolve it an early conciliation.

At the early conciliation it was agreed that there was a culture that allowed racist comments and the employer apologised and agreed that the culture needed to change with training in discrimination being a priority for all staff.

Race (2006)

An Aboriginal woman attended her NT bank branch to withdraw money from her account. While she was waiting in line a staff member called out from behind the counter and told her she was not allowed in the bank without shoes on.

The woman was asked to leave the bank and was not able to withdraw her money.

The woman complained to the Anti-Discrimination Commission (ADC) because she believed she would not have been asked to leave the bank if she had not been Aboriginal.

ADC accepted the complaint and sought an explanation from the bank. The bank explained that the requirement to wear shoes in the bank was part of its Occupational Health and Safety Policy and was applied to all persons entering the bank.

The bank also pointed out that a sign noting the requirement to wear footwear in the branch at all times had been posted on the front door of the branch for several years.

Further investigations by ADC established that several non-aboriginal people who entered the bank without shoes on were not asked to leave and were in fact served despite the existence of the policy and the sign.

ADC advised that the policy could indirectly discriminate against aboriginal people and other groups in the NT who might be less likely to wear shoes. ADC also advised the bank that the inconsistent way the policy was being enforced could clearly be seen as discriminating against aboriginal people.

After considering the ADC's advice the bank agreed to remove its policy requiring all customers to wear shoes in the bank, while retaining the right to refuse admission where there were health and safety concerns (for example people with bleeding feet).

The bank also apologised for any distress or embarrassment suffered by the complainant.

The complaint was resolved when the Complainant accepted the bank's apology and the change of policy.

Sexual Harassment (2007)

An employee alleged he was being sexually harassed and victimised by his boss with whom he had previously had a sexual relationship.

A few days after making his complaint the employee advised that his casual contract had been terminated and alleged this was further victimisation.

The employer was contacted immediately and agreed to participate in an early conciliation conference while the employee was still in the office. After both parties had an opportunity to listen to the other person's perspective an agreement was reached and the matter was resolved to everyone's satisfaction.

This is an example of the ADC's ability to handle complaints in a flexible manner to meet the needs of our clients and resolve complaints very quickly.

Launch of ADC Television Advertisements

The ADC's first ever television campaign was launched by the Hon Syd Stirling MLA, Minister for Justice and Attorney-General, at a function held in the Members and Guests Lounge, Parliament House on Wednesday 13 June 2007.

The Attorney-General told the audience of the Government's enthusiasm not only for the TV ads themselves but also for a proactive public education program. At ADC we are well aware that the community expects more from us than successfully managing the large number of enquiries and complaints that we receive.

The three locally produced TV ads have an equality of opportunity theme, and the topics featured are disability, sex and race discrimination. Two ads employ graphics and are of 14 seconds duration, and the third ad featuring live local actors is 45 seconds long.

The ads will initially be shown for a three week period commencing 24 June on TV channels 7 Darwin, 7 Central, 9 Darwin and Imparja.

If you are unfortunate enough to miss the ads on TV they may be viewed from our website www.adc.nt.gov.au.



Training Program Training Program for July – December 2007 is now available from the website www.adc.nt.gov.au

FOR FURTHER INFORMATION OR ADVICE, TO REQUEST TRAINING OR TO BE ADDED TO THE MAILING LIST CONTACT:

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