

## **NATSIEC Briefing Note – The Northern Territory Intervention and the Re-instatement of the Racial Discrimination Act (RDA)**

### **Background**

In 2007, the Federal Government introduced the Northern Territory (NT) Emergency Response (NTER, also known as the Intervention) ostensibly to address sexual abuse of Aboriginal children in the NT as identified in the Ampe Akelyernemane Meke Mekarle *Little Children are Sacred* report<sup>1</sup>.

The measures introduced under the Intervention were broad in nature and far reaching and were grouped under seven areas<sup>2</sup> as summarised below.

### **Welfare Reform and Employment**

Welfare and employment measures included compulsory income management and licensing of community stores. There was also a commitment to increase employment opportunities in remote areas and to transition those on CDEP<sup>3</sup> into real jobs; CDEP was then to be ended.

### **Law and Order**

Alcohol, drugs and pornography were banned in prescribed areas. Police presence was to be increased. Other promises were the expansion of night patrol services and additional legal services. A National Indigenous Intelligence Taskforce and a Child Abuse Desk were also to be established.

### **Enhancing Education**

Measures included additional classrooms; accelerated literacy programs; school nutrition programs and improving the quality of teaching.

### **Supporting Families**

These measures included the establishment of more children's' services and family support (crèches, playgroups and early childhood services). Increasing child-at-risk workers for Northern Territory Child Protection Services and to provide safe places for families escaping family violence as well as youth alcohol diversionary services.

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<sup>1</sup> Anderson, P and Wild, R., (2007) Ampe Akelyernemane Meke Mekarle "Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, <http://www.inquirysaac.nt.gov.au/> accessed 9/11/10

<sup>2</sup> For a full description of the measures see Northern Territory Emergency Response Review Board Report. [http://www.nterreview.gov.au/docs/report\\_nter\\_review/ch2.htm](http://www.nterreview.gov.au/docs/report_nter_review/ch2.htm) accessed 18/11/10

<sup>3</sup> Community Development Employment Program/ Project

### **Improving Child and Family Health**

This was predominately to be child health checks, medical follow-up and treatment.

### **Housing and Land Reform**

These measures included the compulsory acquisition of five year leases; providing urgent repairs to infrastructure; scrapping of the permit system and community clean ups.

### **Coordination**

These measures were basically the administration of the scheme and included a temporary NTER taskforce. Also, the installation of Government Business Managers (GBMs); the provision of temporary accommodation for “whole of government” staff; Commonwealth ombudsman support for NTER and the logistical support of NTER.

Significant resources were attached to these measures; however the Intervention was introduced without any consultation with Aboriginal people and was a blanket approach to some very complex issues.

At the time NATSIEC welcomed the Government’s recognition that urgent action needed to be taken, but raised several serious concerns relating to the implementation of the Intervention and the complete lack of consultation with Aboriginal people. In particular, NATSIEC was concerned about linking issues such as land tenure to child abuse<sup>4</sup>.

Of great concern was the fact that to introduce the NTER legislative package the Government also had to “roll back” the *Racial Discrimination Act 1975* (Cth) (RDA). Although the NTER legislation was aimed only at Aboriginal people, the Government argued that it was not discriminatory as these actions were “special measures” and were designed for the benefit of Aboriginal people.

With regard to special measures, the Committee on the Elimination of Racial Discrimination (CERD) has stated that<sup>5</sup>:

- Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need, grounded in a realistic

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4 Read NATSIEC’s initial statement on the Intervention at  
[http://www.ncca.org.au/files/Natsiec/NTER\\_position\\_statement\\_July\\_07.doc](http://www.ncca.org.au/files/Natsiec/NTER_position_statement_July_07.doc)

5 General Recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination. CERD, Seventy-fifth session, August 2009.

appraisal of the current situation of the individuals and communities concerned.

- Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating gender perspective, on the socio-economic and cultural status and conditions of the various groups in the population and their participation in the social and economic development of the country.
- State parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.

The complete lack of consultation with affected peoples in the development and implementation of the Intervention was a serious issue and raises questions about whether “special measures” do in fact meet the criteria above. According to a report prepared for the advocacy group ‘concerned Australians’<sup>6</sup> describing NTER measures as “special measures pre-empted judicial scrutiny of them”.

### ***Changes to the Intervention***

The Rudd Labor Government, when in opposition, had supported the passing of the NTER legislation; however the Labor Party committed to restore the RDA to its full operation during the election campaign in October 2007.

In June 2010, the Australian Government passed new legislation to “reinstate” the RDA. It was contained in a raft of changes introduced in the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination) Act 2010*. Through this legislation the Government sought to either modify the original NTER legislation to remove its discriminatory nature or define those aspects of the NTER which would be deemed “special measures” to continue their exclusion from the provisions of the RDA. Those aspects which were to be called special measures, albeit with some changes to the original measures, were alcohol restrictions; pornography restrictions; five year leases; community store licensing; controls on use of publicly funded computers; law enforcement powers; and business and management powers. Changes to income management were addressed through significant welfare reform initiatives introduced with this legislation.

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<sup>6</sup> Nicholson, A., Harris, M., Gartland, G., (July 2010), *Loss of Rights – the Despair of Aboriginal Communities in the Northern Territory. A submission to the UN Committee on the Elimination of Racial Discrimination – Australia*, for concerned Australians (p19), available at <http://concernedaustralians.com.au>

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## Income Management

Compulsory Income Management has been modified to ostensibly remove the discriminatory nature of the policy. Rather than applying to all Aboriginal welfare recipients in prescribed areas it now applies to all welfare recipients in certain categories and in areas designated by the Government as disadvantaged (see *Loss of Rights*, p 20 for details).

While the legislation broadens the impact of income management and allows Aboriginal people on certain benefits to remove themselves from income management (there are cash incentives to remain in the system), the reality is that the legislation will still have a disproportionate affect on Aboriginal people. In the NT the majority of welfare recipients are Aboriginal and elsewhere in places that may be geographically defined as “disadvantaged” it is likely that there will be a higher proportion of Aboriginal people. Therefore this measure is still considered discriminatory<sup>7</sup>.

The Government relies on “special measures” to maintain other aspects of the NTER legislation. As mentioned above, there are specific definitions of special measures contained both in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) as well as Australian domestic law<sup>8</sup>. ‘concerned Australians’ make the point in their report “*Will They Be Heard*”<sup>9</sup> as well as their submission to CERD that the Government has a duty to ensure appropriate consultation has taken place to ensure that the wishes of Aboriginal people have been taken into account.

The Government’s claim to have undertaken a comprehensive consultation process has been disputed (see for example *Will They be Heard* report).<sup>10</sup> The issues with the process include a lack of translators and a lack of genuine dialogue about the impact of the Intervention and a lack of participation of affected people in making decisions about the future (or ending) of the Intervention. Instead, a discussion paper was presented to communities which gave some few options but which asserted the continuation of the NTER, without question. Despite repeated assertions about the comprehensive consultations they have undertaken, the Government has not released proper evidence which

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<sup>7</sup> For a full discussion about this area see: *Loss of Rights* (p 20-22); Australian Human Rights Commission (2009, *Draft Guidelines for Ensuring Income Management Measures are Compliant with the Racial Discrimination Act* and Parliamentary Bills Digest, Australian Parliamentary Library.

<sup>8</sup> *Loss of Rights* p 24.

<sup>9</sup> Nicholson, A., Behrendt, L., Vivian, A., Watson, A., Harris, M., (November 2009) *Will they be Heard? - A response to the NTER Consultations June – August 2009 available at [www.concernedaustralians.com.au](http://www.concernedaustralians.com.au)*

<sup>10</sup> *Ibid*, p 9

supports their claim that Aboriginal people affected by the Intervention are supportive of its continuation.

Nicholson *et. al.* (2010) conclude that the “so called special measures contained in the 2010 legislation are thinly disguised versions of what went before”<sup>11</sup>. This report draws attention to the following issues:

- Controls of alcohol and pornography apply to no other ethnic group in Australia, despite issues of drunk and violent young people in Australia’s capital cities, pornography and inappropriate sexual imagery of women and a higher rate of sexual abuse of children in the White community;
- Aboriginal lands are acquired compulsorily on five year leases for no apparent purpose or benefit to Aboriginal communities;
- Schools are understaffed and unsupported which contributes to attendance problems yet the solution is deemed to be depriving parents and carers of “meagre social security support”;
- Traditional owners are pressured into signing long leases in return for promises of housing which they are entitled to anyway;
- Aboriginal people are being forced off their traditional lands into “hubs”;
- Control of Aboriginal lands has been taken over by the Federal Government and administered by bureaucrats funded by mining royalties paid to Aboriginal people;
- The CDEP (Community Development Employment Program) has been phased out without the establishment of real jobs to replace it causing serious hardship to individuals and whole communities;
- Aboriginal offenders (who are disproportionately represented in the justice system) are dealt with under a “different and more punitive code” than other people because their own law and culture is not taken into account.

### **The RDA today**

While the changes to the income management took effect in July 2010, the suspension of the RDA to existing measures does not take effect until December 31<sup>st</sup> 2010.

The new legislation has drawn some harsh criticism. For example, the Committee on the Elimination of Racial Discrimination (CERD) has expressed “its concern that the package of legislation under the Northern Territory Emergency

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<sup>11</sup> Ibid p26

Response (NTER) continues to discriminate on the basis of race as well as the use of so called “special measures” by the State Party.”<sup>12</sup>

CERD also says it is “concerned by the continuing difficulties in using the Act to challenge and provide remedies for racially discriminatory NTER measures”<sup>13</sup>.

In addition to these criticisms NATSIEC is particularly concerned at the loss of control over communities and land. We are concerned at the move towards establishing “hub” towns and moving people off homelands. The Intervention is causing previously functioning communities and projects to fall apart. During a recent visit to the NT with a World Council of Churches delegation, every community we visited reported that life had become worse since the Intervention and that people felt they were losing control over their lives and in particular the land that they had fought so hard to regain.

### **Where to from here?**

The RDA changes, as amended in the *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination) Act 2010*, will come into effect in December 2010. However, NATSIEC considers this legislation to be incomplete and that we can not leave such vital aspects of the NTER as “special measures”. The Act as it stands will not provide protection against racial discrimination and seemingly actively promotes racial discrimination. Amendments to the legislation “reinstating” the RDA are urgently needed.

NATSIEC calls on the Government to urgently address the discriminatory nature of the legislation and to introduce amendments which will ensure the rights of Aboriginal peoples are protected and respected.

In particular we urge the Government to:

- Introduce amendments to reinstate the RDA in full;
- Ensure that any welfare reform is just, non-discriminatory and does not impinge on the rights of any recipients;
- Review the NTER measures to ensure that they fully comply with the RDA and our obligations under human rights standards such as the Convention on the Elimination of all Forms of Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples.

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<sup>12</sup> CERD (August 2010), Consideration of Reports submitted by States parties under article 9 of the convention. Concluding observations of the Committee on the Elimination of Racial Discrimination – Australia (p4, 16).

<sup>13</sup> Ibid p4.

Write to, or phone, the Prime Minister

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House of Representatives  
Parliament House  
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Tel: (02) 6277 7700 or 03 9742 5800  
Fax: (02) 6273 4100

Or send a message to the Prime Minister through  
[http://www.pm.gov.au/PM\\_connect](http://www.pm.gov.au/PM_connect)

Write to your Member of Parliament and/or visit  
<http://www.aph.gov.au/house/members/index.htm>

For more information about the Northern Territory Intervention

<http://www.ncca.org.au/departments/natsiec/advocacy/issues>  
[www.concernedaustralians.com](http://www.concernedaustralians.com)