

Overview of Northern Territory Emergency Response

by Laura Beacroft and Melanie Poole

Following the declaration on 21 June 2007 of an emergency situation in the Northern Territory, the Minister for Families, Communities and Indigenous Affairs, the Hon Mal Brough, announced several immediate emergency measures, including:

- Widespread alcohol restrictions on Aboriginal land
- Welfare reforms to restrict the way in which welfare payments are spent
- Linking income support and family assistance payments to school attendance for all people living on Aboriginal land and providing meals for children at school at parents' cost
- Introducing compulsory health checks for all Aboriginal children
- Acquiring townships prescribed by the Australian Government through five year leases including payment of just terms compensation if legally required
- Increasing policing levels in prescribed communities, including requesting secondments from other jurisdictions to supplement NT resources
- Requiring intensified on ground clean up and repair of communities by marshalling local workforces through work-for-the-dole
- Improving housing and reforming community living arrangements in prescribed communities including the introduction of market based rents and mainstream tenancy arrangements
- Banning the possession of X-rated pornography and introducing audits of all publicly funded computers to identify illegal material
- Scrapping the permit system for common areas, road corridors and airstrips for prescribed communities on Aboriginal land, and;
- Improving governance by appointing managers of all government business in prescribed communities.

(See http://www.fahcsia.gov.au/nter/media_archive.htm)

He also said the national emergency response would be overseen by a 'taskforce of eminent Australians', the composition of which he announced 4 days later:

- **Dr Sue Gordon OAM (Chair)** - Western Australian Magistrate in the Perth Children's Court, Dr Gordon is also Chair of the National Indigenous Council.
- **Shane Castles** - Career police officer with 32 years experience, including as Assistance Commissioner with the Australian Federal Police. Police Commissioner of the Solomon Island's until early this year.

- **Dr Bill Glasson** - Ophthalmologist and former Australian Medical Association President, who has volunteered in Indigenous communities. He recently travelled to East Timor as part of a team which treated over 3,000 East Timorese patients. He is a consulting ophthalmologist to the Australian Army with the rank of Lieutenant Colonel.
- **John Reeves QC** - Practicing barrister, and Chair of Red Cross NT and national board member. Was also the federal ALP Member for the NT. In 1998 he reviewed the Northern Territory Aboriginal Land Rights Act for the Australian Government.
- **Roger Corbett AM** - Chairman of CIES Food Business Forum, Member of the board of the Reserve Bank Australia and former Chief Executive Officer and Group Managing Director of Woolworths Ltd. Member in the Order of Australia (AM) in 2003 for service to the retail industry.
- **Miriam Rose Baumann AM** - Principal of St Francis Xavier Catholic School, Daly River, NT and current member of the National Indigenous Council and Chair of the NT Aboriginal Benefit Account Advisory Committee. In 1998, she was awarded an Order of Australia - Australia Medal - for her services to the community of Nauiya Nambiyu as a member of the community council.
- **Dr Peter Shergold** - Secretary of the Department of the Prime Minister and Cabinet since February 2003.
- **Paul Tyrrell** - Chief Executive of the Northern Territory Department of the Chief Minister and head of the Northern Territory Railway unit.

Major-General Dave Chalmers was put in charge of operations, headquartered in Alice Springs.

Terms of Reference

The Taskforce's Terms of Reference were:

1. Provide expert advice to the Australian Government on the implementation of the emergency response;
2. Provide oversight of the NTERT Operational Group;
3. Promote public understanding of the issues involved;
4. Alert Government to current and emerging issues that relate directly to the implementation of the response;
5. Report to the Prime Minister and the Minister for Families, Community Services and Indigenous Affairs on the progress of the response.

The Taskforce was anticipated to operate for at least 12 months and to be supported by full time administrative and field staff.

Steps to be taken

Seventy-three townships were identified for intervention throughout the Northern Territory.

Some interventions didn't require legislation, for example, government teams were sent to all 73 townships, initially to communicate the government's intention, and then to conduct follow-up surveys.

The teams consisted of NORFORCE vehicles, personnel and logistic support for a small group comprising officers from Families, Community Services and Indigenous Affairs, Health, DEWR and Centrelink.

Extra federal police were deployed, and the states also committed to provide police with the Australian Government agreeing to cover their costs.

Health checks were conducted for Aboriginal children under 16.

Legislation was quickly developed, and ultimately the Northern Territory National Emergency Response Bill 2007 and associated bills were introduced into the House of Representatives on 7 August, and on 17 August were passed by the Senate.

The package comprised five Acts:

- two appropriation Acts providing in excess of \$580 million in 2007-08
- the *Northern Territory National Emergency Response Act 2007*
- the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*
- the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007*.

The ***Northern Territory National Emergency Response Act 2007*** deals with: alcohol; audit of computers; the acquisition of land and property; business management areas, particularly the legislation that will underpin the authority of the government business managers; bail and sentencing laws, and specific measures to do with community stores.

The ***FACSIA and Other Legislation Amendment Northern Territory National Emergency Response and Other Measures Act 2007*** deals with: issues of pornography, law enforcement, infrastructure and permits.

The ***Social Security and Family Assistance Legislation Amendment Welfare Payments Reform Act 2007*** deals with: social security amendments, welfare reforms – i.e. the management of welfare payments, the types of the payments, the people affected, the special accounts and the individual bank accounts. It has a new part 3(b) under the *Social Security Administrative Act 1999*.

Two appropriations bills made available \$587 million the intervention would cost in the first 12 months.

The measures in this legislation generally apply in Northern Territory communities on:

- land scheduled under the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act)
- community living areas, which are located on a form of freehold title issued by the Northern Territory Government to Aboriginal corporation
- town camps, in the vicinity of major urban areas, held by Aboriginal associations on special leases from the Northern Territory Government
- other areas prescribed on advice from the taskforce.

The Northern Territory National Emergency Response Act 2007

Alcohol restrictions

One of the key measures in this Act provides for widespread alcohol restrictions. (The Government was not satisfied that the proposals put forward by the Northern Territory Government were anywhere near adequate.)

This Act:

- enables the government to introduce a general ban on people having, selling, transporting and drinking alcohol in prescribed areas.
- applies tougher penalties to people who are benefiting from supplying or selling grog to these communities.
- requires people across the Northern Territory to show photographic identification, have their addresses recorded and be required to declare where the alcohol is going to be consumed if they want to buy a substantial amount of takeaway alcohol.

Some licensed premises on Aboriginal land will still be able to operate, but only if they have strict alcohol management rules in place. These licences will be reviewed within one month of proclamation. Current permits to consume alcohol on Aboriginal land will also be subject to review.

Computer audit

This Act includes a requirement to undertake regular audits of publicly-funded computers, and to provide the results to the Australian Crime Commission. Failure to undertake these audits will be an offence.

The Australian Crime Commission will be able to use the results of an audit, or may pass it on to a relevant law enforcement agency, where investigation of a possible criminal offence is necessary.

An audit must also be undertaken if there is a suspicion that a computer may have been misused, and the outcomes will be provided to the Australian Crime Commission.

Five-year leases

This Act provides for the Australian Government to acquire five year leases over townships on Land Rights Act land, community living areas and over certain other areas.

It provides for the immediate and later acquisition of these leases to correspond to the roll out of the emergency response.

The underlying ownership by traditional owners are preserved, and compensation when required by the Constitution will be paid. This includes provision for the payment of rent. Existing interests will be generally preserved or excluded, and provision will be made for early termination of the lease, such as when a 99-year township lease is granted.

This is not a normal land acquisition. People will not be moved from their land.

The areas covered by the five-year leases are major communities or townships, generally of over 100 people, some of several thousand people. The leases give the government the unconditional access to land and assets required to facilitate the early repair of buildings and infrastructure.

The most significant terms and conditions of the leases are provided for in the legislation. However, additional terms and conditions will be determined and these will be in place when the leases start.

Any native title in respect of the leased land is suspended but not extinguished.

There is provision for the five-year leases to be terminated early.

Town camps

The Act provides for the Australian Government to exercise the powers of the Northern Territory Government to forfeit or resume certain leases, known as 'town camps', during the five year period of the emergency response.

If necessary, the Commonwealth can acquire freehold title over town camp areas.

If the government acquires town camp property, then compensation required by the Constitution will be paid. Native title will not be extinguished.

The Act also provides for regulations to remove listed town camp land.

This will enable town camp leases to be exempted from Commonwealth action to forfeit the leases, or resume or acquire the land, where the association subleases all, or a substantial part, of its lease for 99 years.

Government Business Managers

Powers introduced to support their role include powers:

- to terminate or vary Commonwealth funding agreements
- to give directions on the carrying out of government-funded services and the use of assets to provide those services
- to give an authorised person a position as a non-voting observer on bodies carrying out functions or services
- to place certain bodies in external administration for failures relating to the provision of government-funded services.

These powers will apply to any further areas over which the government takes a five-year lease under the legislation and will only be exercised for the five year period of the Northern Territory emergency response.

Bail and sentencing

The Commonwealth implemented the COAG decision through bail and sentencing legislation in relation to Commonwealth offences. This Act ensures that the decisions of COAG will also apply in relation to bail and sentencing discretion in the Northern Territory.

It is the Government's intention that, if the Northern Territory enacts sufficiently complementary provisions, the bail and sentencing provisions contained in this Act will be repealed.

Community stores

A substantial slice of welfare payments will be quarantined for food and other necessities during the emergency period. If a store wants to participate, they will be required to be licensed to do so, meaning that they will need to meet certain standards.

The Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007

Banning prohibited pornographic material

This Act contains measures which ban the possession of pornographic material and advertisements in the prescribed areas.

This measure in the Act is intended to prevent children being exposed to pornography, by removing this material from homes and preventing it from entering communities. For the purposes of this Act, 'pornographic material' is described as 'prohibited material' and is defined as:

- X18+ classified films
- Category 1 Restricted and Category 2 Restricted publications
- films and publications that are Refused Classification
- unclassified films and publications that, if classified, would be Refused Classification or X18+ or Category 1 or Category 2 restricted publications
- prohibited advertisements.

The Act makes it an offence to possess or control prohibited pornographic material in the identified communities.

Unlike existing offences in the Northern Territory, the complete ban also applies to possessing prohibited material without the intention to copy or sell the material.

To make sure that the ban on possession will be effective, this Act also bans delivering or sending prohibited pornographic material into these areas.

This Act provides for heavier penalties for the supply of five or more items of prohibited material - the quantity is considered likely to indicate a commercial transaction rather than material solely for personal use.

Police have appropriate powers to seize material found in an identified community where a police officer suspects on reasonable grounds that it is prohibited. This means material can be immediately removed from communities.

Seized material will be returned, on application, if the responsible officer, or a magistrate, is satisfied on reasonable grounds that it is not prohibited material.

Re-establishing law and order

This Act ensures AFP members deployed in this role, and appointed as special constables of the Northern Territory police service, can exercise all the powers and functions of the local police service.

Further amendments will allow the Australian Crime Commission Board to authorise the *National Intelligence Taskforce into Violence and Child Abuse in Australia's Indigenous Communities* to have the Commission's full coercive powers, and capacity to access relevant information held by state agencies, to support the operations of the Taskforce.

Retaining government ownership of facilities constructed on Aboriginal land (infrastructure)

This Act provides for the Commonwealth and Northern Territory to have continuing ownership of buildings and infrastructure on Aboriginal land which are constructed or upgraded with government funding.

In the past, the Australian Government has not usually retained ownership of the buildings and infrastructure, nor has it obtained an interest in the land on which they are constructed.

This has meant the government has been unable to protect its investment and has also led to very poor outcomes.

Any construction or renovation will be undertaken with the consent of the relevant Land Council under the processes of the Northern Territory Aboriginal Land Rights Act, which require traditional owner consent.

Access to Aboriginal land

Under the Act permits will no longer be needed to access common areas in the main townships and the road corridors, barge landings and airstrips connected with them.

However, the government will revoke the changes made to the permit system by the previous government. The government believes that Aboriginal people should have the right to decide whether members of the public should be allowed to visit their land.

The government will make some minor changes to the permit system to ensure that people engaged as agents of the Commonwealth and journalists working in their professional capacity can enter Aboriginal land without a permit.

Under the Act, in the townships and the road corridors where the permit system no longer applies, the Northern Territory Government will be given the power to restrict access, temporarily, to protect the privacy of a cultural event or to protect public health and safety.

Government officials and members of Parliament will be able to enter and remain on Aboriginal land without a permit to do their job.

Both Land Councils and traditional owners were previously able to issue permits and revoke permits issued by another party.

The Act therefore provides that Land Councils and traditional owners cannot revoke permits issued by another party.

The Act provides for temporary restrictions to the public access to common areas and access roads to protect the privacy of a cultural event or to protect public health and safety.

The Northern Territory Government is provided with the power to make laws on these matters.

Other land rights and lease amendments

Schedule 5 to this Act provides for several miscellaneous amendments to the Land Rights Act, including several minor changes to clarify some of the arrangements for township leases.

The Land Rights Act previously provided that, where there is a township lease in place, subleases may be granted. Since there will be circumstances where the grant of a licence is more appropriate than a sublease, the amendments clarify that licences may also be granted.

The amendments also ensure that a township lease can only be transferred in accordance with the terms and conditions of the township lease.

The Act has the effect of disapplying the *Lands Acquisition Act 1989* to dealings related to township leases.

The Act also provides that the definition of estate or interest in land for the purpose of sections 70 and 71 of the Land Rights Act includes certain types of licences as well as the statutory rights that are conferred under the new infrastructure provisions in Schedule 3 to the Act.

This Act extends the defence in relation to entering or remaining on Aboriginal land that is covered by a township lease to land that is covered by a five-year Commonwealth lease, which will enable people who have a valid reason for entering land subject to a five-year Commonwealth lease to do so without a permit.

The Acts contain provisions that clarify the operation of the *Racial Discrimination Act 1975* and other anti discrimination laws.

From the second reading speech:

The bills contain provisions that clarify the operation of the *Racial Discrimination Act 1975* and other anti discrimination laws.

The provisions of the bills for the Northern Territory national emergency response are drafted as 'special measures' taken for the sole purpose of securing the advancement of Indigenous Australians.

The impact of sexual abuse on Indigenous children, families and communities requires decisive and prompt action. The Northern Territory national emergency response will protect children and implement Australia's obligations under human rights treaties.

The Government's response will allow Indigenous communities in the Northern Territory to advance and enjoy the same human rights as other communities in Australia.

The Social Security and Family Assistance Legislation Amendment Welfare Payments Reform Act 2007

This Act extends the mutual obligation framework. It outlines the following five welfare reform measures.

Income management model

The Act outlines the broad framework under which the management of a person's welfare payments is to occur.

The Act ensures that welfare payments are spent on the priority needs of a person and his or her family. Individuals do not lose any of their entitlements.

All managed income is initially placed into an individual's income management account, and is for use by the relevant person only.

To ensure this, it is special public money under section 16 of the *Financial Management and Accountability Act 1997*.

This Act establishes as priority needs things such as food, clothing, housing, health, child care and development, education and training, employment and transport.

It enables a person to receive an amount of discretionary cash and there are no restrictions placed on how that amount can be spent.

However, Centrelink must ensure the remaining managed income is used to meet the current and reasonably foreseeable priority needs of the person and their family.

It wants individuals to work with Centrelink to identify their expenses and manage their priority needs.

Once Centrelink is satisfied current and reasonably foreseeable priority needs are met, it cannot unreasonably refuse a person access to their entitlements for another purpose, provided the funds will not be used to purchase excluded items - alcohol, tobacco, gambling and pornography.

The mechanisms include vouchers, stored value cards, the payment of expenses, payments to various accounts (including stores, debit cards and bank accounts).

Child abuse and neglect

Responsibility for child protection services rest primarily with each state and territory government.

The measures being introduced in this Act will provide another tool to be used by the child protection authorities in states and territories.

State and territory governments will be given the option of notifying the Commonwealth that a person be placed on income management if a child is found to be at risk of neglect.

Under income management, up to 100 per cent of a person's welfare support payments can be set aside and directed to appropriate expenditure.

This approach will help ensure income support is used to provide shelter, food and clothing for children at risk of neglect.

Income management will remain in place for the family until the child protection authority withdraws or revokes the notice requesting income management.

School attendance and enrolment

In relation to school enrolment, if a parent is receiving income support, has care of a compulsory school-aged child and the child is not enrolled at a school, then both parents could be subject to income management.

If children are not enrolled at school, Centrelink will notify parents and carers that they need to take action to enrol their children and provide proof of enrolment within a specified period with a warning of the consequences of a failure to do so.

Centrelink will consider any 'reasonable excuse' for a failure of a parent to provide the documentation (such as events beyond the person's control, changes in the level of care which might relate to particular children and foster care arrangements) and, where no reasonable excuse exists, a period of income management could be immediately applied.

Both parents can also be subject to income management if their child does not attend school sufficiently and there is no reasonable excuse as to why the child is not attending school.

The government is proposing a national benchmark for attendance of not more than five unexplained absences each school term.

Before parents are subject to the income management regime due to exceeding the national benchmark, parents will be given a formal warning.

These measures will come into affect in the following phases:

- The school enrolment and attendance measure commenced as soon as possible in the Northern Territory to support the government's emergency response.
- From the start of the 2009 school year, the school enrolment and attendance measure will be implemented nationally for parents of primary school-aged children.
- From the start of the 2010 school year, the school enrolment and attendance measure will be implemented nationally for parents of high school-aged children.

For this to occur, the support of the states and territories and the non government school sector is needed, to assist in providing the necessary information, and the government will be undertaking consultations to achieve this.

Income management in the Northern Territory

Fifty per cent of the welfare payments of all individuals in the affected communities will be income managed for an initial period of 12 months.

With some very limited exceptions, all individual residents in a community who receive income support payments will be subject to income management at the same time.

Any individuals who move into the community will become subject to income management when they move there.

The amount to be set aside for income management will be 50 per cent of income support and family tax benefit instalment payments.

Advances, lump sums and baby bonus instalments will all be subject to 100 per cent income management.

The new arrangements may follow an individual even if they move out of the prescribed community to ensure they cannot easily avoid the income management regime.

Income management will continue until the initial declaration of 12 months expires or until it is revoked.

CDEP

Changes to the Community Development Employment Projects (CDEP) program which will be implemented in the Northern Territory are included in this Act.

However, the government has placed a moratorium on the dismantling of the CDEP program in the Northern Territory.

Under the Act, CDEP participants were assisted to move into more mainstream employment arrangements, to training or onto income support, through work for the dole or other appropriate benefits instead of CDEP payments.

The phasing out of CDEP participant payments was to happen on a community by community basis.

Some existing CDEP participants in the Northern Territory may have been eligible to receive a Northern Territory CDEP Transition Payment.

Where income support payments are to be subject to income management, so will be the Northern Territory CDEP Transition Payment.

Moving CDEP participants on to income support will allow a single system of income management to apply to welfare payments.

Cape York

This Act provides for the support and funding of a proposal by the Cape York Institute to trial a new approach to welfare in four Cape York Indigenous communities: Hope Vale, Aurukun, Coen and Mossman Gorge.

A major feature of the trial to be introduced in Cape York is the introduction of a set of obligations which welfare recipients would be expected to meet, including requirements that parents send their children to school and protect them from harm and neglect.

There will also be reforms to tenancy arrangements, and obligations on tenants to comply with lease conditions.

The Act provides for the recognition of a new body to be established under Queensland law.

This body will have authority in relation to the income management of welfare payments to encourage compliance with the obligations.

Subject to state legislation, the body will have the authority to obtain information from state child protection authorities, courts and schools to assist it to determine whether there has been a breach of one of the obligations.

This new body may issue a notice to Centrelink, requiring that some or all of a person's welfare payments be subject to income management.

The Racial Discrimination Act 1975

[This is taken from the government's fact sheet about how the NTER interacts with the RDA. http://www.facsia.gov.au/nter/docs/factsheet_28.htm]

The Australian Government legislation contains provisions that clarify the operation of the *Racial Discrimination Act 1975* and other anti-discrimination laws.

The provisions make it clear that the Northern Territory emergency response and related legislation are 'special measures' for the purposes of the *Racial Discrimination Act 1975* and excluded from Part II of the Act.

'Special measures' are measures that provide a benefit to a particular group so that group can enjoy human rights on the same basis as others in the community. 'Special measures' are not considered unlawful discrimination under the *Racial Discrimination Act 1975*.

The provisions in the legislation provide legal certainty in relation to anti-discrimination laws. Without this certainty, quick and effective implementation could be hampered.

The emergency response is consistent with Australia's obligations under human rights treaties including the Convention on the Rights of the Child and the Convention for the Elimination of all Forms of Racial Discrimination.

Many of the legislative provisions are time limited and designed to stabilise communities so that longer term action can be taken.

Racial Discrimination Act

- (1) The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the *Racial Discrimination Act 1975*, special measures.
- (2) The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the *Racial Discrimination Act 1975*.
- (3) In this section, a reference to any acts done includes a reference to any failure to do an act.

Funding

The previous Government announced funding of \$1.3 billion for the NTER:

- \$587 million was provided in two Appropriation Acts in August 2007 and
- \$793 million (in two announcements of \$514 million and \$279 million) from the ARIA program.

The Rudd Government has reaffirmed its commitment to provide total funding of \$793 million over four years from 2007-08 for Indigenous housing and infrastructure in the Northern Territory.

The majority of funding in the two Appropriation Acts is for 2007/08 only. Funding for future years and/or new activities will be considered as part of the 2008/09 Budget.

The Appropriation (Northern Territory National Emergency Response) Acts numbers 1 and 2 provided \$587 million in supplementary appropriations to Commonwealth agencies in support of the NTER in 2007-08.