

**PRESENTATION BY REX WILD QC AT THE HUMAN RIGHTS
CONFERENCE OF THE CASTAN CENTRE AT MONASH
UNIVERSITY, HELD IN MELBOURNE JULY 2011**

**INTERVENTION, INTERFERENCE OR INVASION?
DEALING WITH INDIGENOUS RIGHTS IN THE NORTHERN
TERRITORY, 2007-2011**

PREAMBLE

Although this short Paper was initially prepared for this Conference, I was asked to speak at Charles Darwin University last month to its newly formed Human Rights Education forum and I confess that the material was then used. I was also asked to reproduce it in Bali at the end of June at the biennial conference of the Criminal Lawyers Association of the Northern Territory [attended by over 200 criminal lawyers from around Australia]. Events rather overtook the writing, and the presentations both at CDU and at the CLANT conference took on slightly stronger tones. I have retained the more formal nature of the Paper, but have added to this draft, by way of these preliminary remarks, some of the comments I made *viva voce* at the two venues.

As discussed in the body of the Paper, crucial elements of the advice and recommendations, which were provided to government in early 2007 in *The Little Children are Sacred Report*, involved dialogue and consultation with the people most affected; the Aboriginal people of the Northern Territory. This was basic and obvious to all those who have looked at similar problems over many, many years. This was contained up front in the Report [discussed below] and in the verbal advice given to Government Ministers and to the incoming Labor Minister, Jenny Macklin, in a short interview [the only one by either of the Report's authors] in December 2007. (There had been no "talks" with Minister Brough), prior, or subsequent, to the announcement of the Intervention).

Similarly, the Report had identified the two principal areas requiring urgent attention as education and alcoholic use. Again, rocket science was not required to make this assessment of the problems facing Aboriginal Australia.

So, it was some surprise that I read the press release accompanying Prime Minister Gillard's announcement of *Stronger Futures in the Northern Territory* (which substituted for the 21 June 2011 birthday celebrations of the NTER) The Commonwealth Government [not, note, "with the NT Government"] had identified three priority areas:

1. *School attendance and educational achievement*
2. *Economic development and employment*
3. *Tackling alcohol abuse.*

And, it was said, the (Commonwealth) Government was going to consult on the newly announced proposals from late June 2011 to mid-August 2011. I calculated this as a period of six weeks! This was going to be by public

meetings, community meetings and feedback sessions. Would someone please read our Report and all the others written before and since? Our small team spent eight months in 2006-2007 doing exactly what they now propose to do in six weeks. We visited 46 communities, received written submissions, and conferred with Commonwealth and Territory departmental officers [who had knowledge and experience “on the ground”], We held meeting with groups and individuals, in local communities and in regional centres. Aboriginal people need time to consider, digest and agree [or not] to proposals and solutions. These are not, everyone concedes, likely to be simple or quick.

So, although it is encouraging that the penny has finally dropped, it is disappointing that the Commonwealth continues to go it alone and with limited insight as to the time required to talk things through.

Minister Macklin, in her introduction to the *Stronger Futures* document, states,

I have heard from many people that the way the NTER was introduced by the previous government, without consultation, has caused ongoing anger, fear and distrust among Indigenous people and communities.

Yes, Minister, but that was in June 2007, your government won power in November 2007, and it is now June 2011! The anger, fear and distrust continues.

As far as the education targets established by the *Stronger Futures* proposals are concerned, they appear to mirror those of the *Closing the Gap* model of 2008, which provided for pre-schools for all Aboriginal children by 2013. Our recommendation was that this was a matter of extreme and utmost priority and all three year-olds had to be in pre-school by the beginning of 2008. We are already another five years behind. What has happened to all those little kids in the years between?

There are no easy solutions to any of the problems identified. But there should certainly be adequate funding to finance them. In the year our report was delivered, the Commonwealth Government received \$6 billion dollars in alcohol tax revenue; more in one year than the trumpeted \$5 billion to be spent on the five years of the NTER.

There is more to be said about the terrible way the Commonwealth [under three different Prime Ministers] has behaved. It has been in breach of its United Nations’ responsibilities and this continues. I invite readers who are minded to do so to consider the full remarks of the UN Rapporteur referred to at the end of this document.

I now move to the original material. However, it is unlikely that much of it will be addressed in the time available at the Conference.

[ORIGINAL] INTRODUCTION

Last month marked the fourth anniversary of the Northern Territory Emergency Response, variously described as an intervention, interference or invasion. I like the latter description, coming as it did with military personnel [were there tanks in Yuendumu?] and headed by a Major General.

In many respects I am very much yesterday's man in respect of this whole topic, but the media contacts me and wheels me out each year at about this time.

The immediate catalyst for the 2007 *intervention*, by whatever name, was the public release of *The Little Children are Sacred* report on 15 June 2007. Within a week, the Australian Government had moved into the Northern Territory. It renamed aboriginal child sexual abuse, in the Report said to be "an issue of national significance", as an *Emergency*. It ignored the remainder of the first recommendation [and many of the others, of which there were 97], which emphasized the critical need for genuine consultation between governments and aboriginal people. *The time for talking is over* was the justification for the speed and non-consultative nature of the takeover.

Indigenous communities, on the contrary, wanted shared solutions arrived at by cooperation, not by edicts delivered from remote politicians and bureaucrats. Time and time again, this method of long -distance control has failed.

Four years later, the major gain for all Australian indigenous communities is probably the increased national awareness of the problems; but the bitterness engendered by the dictatorial nature of the precipitous actions remains.

What are the future prospects for the wellbeing of the indigenous people of Australia? In human rights terms, they remain conjectural. The current Labor government has maintained the discriminatory effects and policies of its predecessor. At a time when Reconciliation is high on the agenda, it is odd that racial discrimination is at its highest.

Indigenous people continue to voice their disapproval of the manner in which their employment, land and pension rights have been disturbed. The tying of pension spending to school attendance continues to rankle, when no other section of the community is similarly discriminated against.

The so-called *Closing the Gap* criteria has produced marginal results at best. The two most important issues [alcohol consumption and education-admittedly very difficult areas] remain unresolved. Until and unless they are, then all the rhetoric, money spent and interference will not enable the current generation [or the next] to live satisfactorily in an Australian context.

BACKGROUND

The *Little Children are Sacred Report* was intended to stir the Territory and National conscience. It was written in strong terms. But it was made clear throughout that it was the underlying dysfunctionality and long-term neglect of

communities by successive governments that had led to the crisis situation. It is those issues which still need to be addressed.

The Report followed the appointment of Pat Anderson and the writer to study cases involving sexual abuse of Aboriginal children in remote communities in the Northern Territory. The Inquiry was to identify problems in the way in which Government Departments and agencies responded to cases and how communities could be better supported and educated.

The Report's findings were that child sexual abuse was widespread and often unreported but that Aboriginal people were not the only victims and not the only perpetrators. Much of the violence and sexual abuse occurring in Territory communities is a reflection of past, current and continuing social problems which have developed over many decades. The combined effects of poor health, alcohol and drug abuse, unemployment, gambling, pornography, poor education and housing, and a general loss of identity and control have contributed to violence and to sexual abuse in many forms.

It was clear that child sexual abuse is a complex and deep seated problem that, on any view, requires urgent, dedicated and collective action from the entire community.

Education is the key to helping children and communities foster safe, well adjusted families. School is the way to keep future generations of Aboriginal children safe. Getting children to school every day is essential. Alcohol remains the gravest and fastest growing threat to the safety of Aboriginal children. There is a strong association between alcohol abuse, violence and the sexual abuse of children.

It was our view that prevention was the key concept to be developed. We understood the necessity to deal with offenders and perpetrators where they were identified but that the underlying root causes needed to be attacked and eradicated. This could best be done in a cooperative scheme involving government agencies and community members.

IT'S ALL BEEN SAID BEFORE!

It is not necessary to once again recapitulate the findings and recommendations of a number of other reports made in recent years in the Australian States. We were very conscious of the fact that other bodies had looked at the same problems that confronted the Northern Territory and that recommendations made by them were not receiving as much attention as they deserved. The problems were obvious and, in our view, the solutions did not involve the application of rocket science. It is worth repeating some remarks made by a Territory judge 30 odd years ago and to which we referred in our report.

'...in dealing with Aboriginal children one must not overlook the tremendous social problems they face. They are growing up in an environment of confusion. They see many of their people beset with the problems of alcohol; they sense conflict and dilemma when they find the strict but community-based cultural traditions

*of their people, their customs and philosophies set in competition with the more tempting short-term inducements of our society. In short the young Aboriginal is a child who requires tremendous care and attention, much thought, much consideration.'*¹

These words were cited to an inquest conducted in respect of the deaths of four young Aboriginal people in the Tiwi Islands prior to 1999. They were then said by the Coroner to be as apt in 1999 in describing youth on the Tiwi Islands as they were in 1977 in describing the youth in and around Alice Springs. We made the comment in our report that they were just as applicable in 2007 to the situation everywhere in the Territory. That is, of course, that nothing changes!

THE RECOMMENDATIONS

As I said, it was clear that child sexual abuse is a complex and deep seated problem that, on any view, requires urgent, dedicated and collective action from the entire community. The recommendations we made were intended to offer advice to the Government (it being recalled that our report was to the Northern Territory Government) on how it could best support and empower communities to prevent child sexual abuse now and in the future. In our report we highlighted a number of action areas which in our view held the key to success.

In addition to education and alcohol abuse, we also targeted Family & Community Services and the Police, Family Support Services, the Empowerment of Aboriginal Communities [we said that communities could and should take more control and make decisions about the future, and suggested ways in which this could happen including the role which men and women can play] and a Commissioner for Children and Young People.

THE ESSENCE OF THE RECOMMENDATIONS

In framing the recommendations, we were conscious of and referred to the critical importance of Governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities, whether these be in remote, regional or urban settings. Thus, the thrust of the recommendations which were designed to advise the Northern Territory Government on how it could help support communities to effectively prevent and tackle child sexual abuse was for there to be consultation with, and ownership by, the communities, of those solutions. The underlying dysfunctionality where child sexual abuse flourishes needed to be attacked and the strength returned to Aboriginal people. It was our view that prevention was the key concept to be developed. We understood the necessity to deal with offenders and perpetrators where they were identified but that the underlying root causes needed to be attacked and eradicated. We accepted that

this might take a long period of time. Our recommendations nevertheless provided for some short-term and immediate steps.

It is useful to set out the first three recommendations which we regarded as central to our scheme. They were in these terms:

1. That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments and both Governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both Governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.
2. That while everybody has a responsibility for the protection of all children, the Northern Territory Government must provide strong leadership on the issue of child sexual abuse, and that this be expressed publicly as a determined commitment to place children's interests at the forefront in all policy and decision-making, particularly where a matter impacts on the physical and emotional well-being of children. Further, because of the special disadvantage to which the Aboriginal people of the Northern Territory are subject, particular regard needs to be given to the situation of Aboriginal children.
3. That the Northern Territory and Australian Governments develop long term funding programs that do not depend upon election cycles nor are limited by short-term outcomes or overly bureaucratic reporting conditions and strictures.

PRESENTATION OF THE REPORT

We had a deadline of 30 April 2007. We were anxious to comply with that deadline because the problems we had re-identified needed to be addressed as a matter of urgency. We were also determined that our report would not be consigned to the shelf but that it would receive a significant and appropriate response from Government. With this in mind, during the course of our consultations, we had spent some time with the departmental stakeholders within the Government services so that they knew, effectively, what was coming. Moreover, we received considerable input and assistance from them in framing our recommendations. The report handed to the former Chief Minister was distributed, as we understood it, in that same form to the various departments (or at least those parts of it relevant to them) for their consideration and action. The final report, in its more pristine state, was then sent to the printers and was subsequently 'launched' by us at a media conference on 15 June 2007.

It was always our hope, in presenting the report to the Chief Minister, that it would find its way, almost immediately, to Canberra and hopefully land on the Prime Minister's desk. It is obvious, from our perspective, that this was a matter of

national significance and required the cooperation of the Commonwealth and Territory Governments (and, as it turns out other governments throughout Australia). Immediately after the ‘launch’, there was a burst of media interest and both Pat and I spoke separately, and together, to the media. We saw it as part of our role as the co-chairs of the Inquiry to ensure that the recommendations and findings were given substantial coverage. It was important in our view that the goodwill established with the Aboriginal people, and the exposure of the curse of sexual abuse, be used as the basis and starting point for an attack upon it.

It was our earnest hope that the matter would receive sufficient national coverage to interest the Prime Minister and his Government in addressing it as a matter of urgency.

We expressed ourselves in this way in the overview to the Report:

‘What we have attempted to do in this final part of this Overview is nominate a set of priorities through which matters would be managed. However, it must be said again that the problems that we – and anyone else who has investigated or even visited Aboriginal communities – have encountered are so fundamental that nothing short of a massive reform effort, coupled with a long-term injection of funds, can hope to turn them around.

In Australian Government terms, the money is clearly available. What is required is committed long-term funding. So the question we pose for the Northern Territory Government and Australian Government (the latter holding the bigger chequebook) is what will it take to make you, on behalf of the people of the Territory and Australia, realise the national shame and racial disorder existing in this lucky country and what will you do about it?’

THE COMMONWEALTH RESPONSE

It was against the whole of this background that we considered the response that has been made by the successive Commonwealth Governments. So, although we as the co-authors of the Report were ‘very, very happy that our report had landed on the Prime Minister’s desk’ and it had played some part apparently in him deciding to do something about the plight of Aboriginal people, it seems to us that it has missed the central point of our recommendations.

The first recommendation, set out above, was absolutely clear. No solution should be imposed from above. We regarded it as of critical importance that Governments commit to genuine consultation with Aboriginal people in designing initiatives for their communities. That was a recommendation in line with what every other study prior to that time had found. That is, that community involvement of indigenous people with the Government should be designed as a bottom-up rather than top-down approach. When the Prime Minister and his Indigenous Affairs Minister initially announced their emergency response, which included the imminent mobilisation of the military, they had no specific consultation with, as we now know it, the Northern Territory Government and certainly not with the authors of the report. In fact, it appears from what ex-Minister Brough has recently said

publicly, that the *Intervention* was devised in a secret bunker-style Canberra bureaucratic love-in in the three days before its announcement.

It always seemed significant to us that the Commonwealth interventionists seized on the first sentence of our first recommendation and ignored what followed immediately which gave it its context. Interestingly, the Australian Government's publication *One Year On*, with foreword by Minister Macklin dated 20 June 2008 contains the following introduction under the heading *About the response*:

*The Northern Territory Emergency Response was announced in response to the first recommendation of the **Little Children are Sacred** report . This asked that: **Aboriginal child sexual abuse ion the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory governments.** (My emphasis)*

In my view, this perpetuates the mischievous and misleading manner in which the Commonwealth Government(s) has always presented the findings of the report. It ignores, as successive silent bureaucrats have continued to ignore, the necessity to grapple with the underlying significant cultural, social and legal issues confronting Indigenous Australians.

And if it is suggested that urgent steps were required to deal with existing perpetrators and offenders, it may be questioned how many such villains have been identified in the year or so since the former Prime Minister's announcement. That is, as a result of the intervention rather than because of other existing police investigations.

Many communities throughout Australia have of course welcomed intervention. It is consistent with the desires of communities that there be attention given to the underlying causes of the malaise. One of the central tenets of our recommendations was that this whole procedure required the cooperation of the three major stakeholders (the two Governments and the Aboriginal communities) and that the predominant role of the Commonwealth would be to provide the funding necessary.

In an interview that I gave nearly 4 years ago, which was reported in the *Weekend Australian Financial Review* (June 30 – July 1 2007) the following was noted.

'Wild is still reeling from the impact his report appears to have had, and desperate to ensure that its effects will be lasting.

"Pat Anderson and I are very, very happy our report landed on the Prime Minister's desk and has been part of him deciding to do something about the plight of Aboriginal people," he says. "But if the funding doesn't follow the police and the army... it will all be a complete waste of time".

We sincerely hoped that this is not the case but that rather, as we expressed in our Report, no Aboriginal child will at any future time suffer from sexual abuse .

WHERE ARE WE NOW?

Somewhere, I wrote a comment on the first anniversary of the intervention [now three years ago] to the effect that it was sad that this was not a time for celebration. That is, that the Commonwealth Government response to the enormous public and political interest in the plight of Indigenous people, arising to some extent from the (further) public exposure of that in our Report, had not been more positive and welcomed by the people.

The disappointment has been in a lost opportunity; a chance to harness goodwill developed all over the Territory, and Australia, to demonstrate real leadership and do something creative and wonderful for the Indigenous people. We are left to continue the arguments about specific funding needs and programs rather than *working together*. How hard is it to understand that concept?

The following comments from the late Tony Fitzgerald, who was the Territory Anti-Discrimination Commissioner are instructive. In his June 2008 Newsletter, he concluded a critical article on the Intervention in this way:

The only unqualified success of the intervention is that it has drawn attention to disadvantage in remote communities, and highlighted the need for long term reform. Federal and NT governments have known about this disadvantage for decades yet they have continued to neglect, systematically underfund and impose policy from afar.

The incidence of child abuse in remote communities will not diminish until disadvantage-especially in the areas of health, housing and education- is removed. This will happen when remote communities receive their fair share of the resource cake over the long term. This has never happened to our eternal shame.

Necessary reforms including housing upgrades to eliminate overcrowding, health policy refinements, education enhancement (especially pre-school construction- a central recommendation of "The Little Children are Sacred Report"), and long term placements of additional police and family workers, are achievable without continuing to incur the unnecessary expense of an intervention.

What's needed is for government and remote communities to commit to the ongoing negotiation required to deliver (on a regional basis-one size does not fit all) sustainable social reform in partnership.

Amen!

HUMAN RIGHTS: THE BIGGER PICTURE

Aboriginal people can and do speak for themselves in respect of their perceptions as to their loss of human rights consequent upon the NTER. In a publication *This Is What We Said*, Australian Aboriginal people recorded the views they expressed in a series of meetings held in the second half of 2009. These came from a consultative process undertaken by the Commonwealth Government in Territory communities. It is suggested by the publishers that the views expressed are

strongly reflected across the Territory. The introduction refers to the *LTAS* Report and summarises some of its findings. It refers to the 97 recommendations including one which dealt with the empowerment of Aboriginal communities. It regarded that recommendation as particularly significant, given what was to follow. The report had spoken of the need for *better dialogue between mainstream society and Aboriginal communities*.

The NTER required the suspension of the *Racial Discrimination Act* in the NT and the imposition of *special measures*. Those are well-known. A review of the intervention was conducted by Peter Yu and a panel of experts [all decent people]. They made a number of recommendations which included immediate reinstatement of the *Racial Discrimination Act*. The Government response was to start another consultative process [the catalyst for the book referred to in the preceding paragraph].

The Government does not appear to be listening. I suggest that those of you who are interested in the topic might like to read this little book. Not only does it include Aboriginal views but also those of some very eminent Australians which include Sir William Deane, Alastair Nicholson, Elizabeth Evatt, Julian Burnside QC and Malcolm Fraser. It also contains the critical comments on the NTER, in terms of human rights violations, by Professor James Anaya, Special Rapporteur from the United Nations [27 August 2009] and Anand Grover [4 December 2009]. Time does not permit me to develop this area, except to say that the Commonwealth Government does not appear to be meeting its obligations pursuant to the *Convention on the Elimination of All Forms of Racial Discrimination*, to which it is a party. Its actions are also incompatible with the *Declaration on the Rights of Indigenous People* to which Australia has affirmed its support.

Controversy has continued.

ⁱ *Jabaltjaril v Hammersley* (1977) 15 ALR 94 (NT) Muirhead J, at 98.