Securing Indigenous children's well being

Terri Libesman , Law Faculty, UTS Sydney

There are two fundamental matters which need to be addressed with respect to Indigenous children's well being. The one is addressing the structural poverty and inequality which so many Indigenous communities face[1]. The second is addressing the cultural safety and identity of children and communities[2]. Both these issues are essential for securing Indigenous children's fundamental human rights including their safety, dignity and security.

There is considerable variation between well being of Indigenous children in different communities and within communities in different families. However we know from the empirical information which is available that Indigenous children and families are significantly over represented in all indicators of disadvantage and inequality. Statistics unfortunately tell us very little that we don't already know. That is that on average Indigenous people die earlier, live in much greater poverty, have less access to early childhood education, are less likely to complete school, are more likely to live in inadequate and overcrowded housing, are more likely to encounter violence and witness violence and that Indigenous children remain significantly over represented in all child protection systems in Australia. This information tells us very little about why Indigenous children are so disadvantaged or how to address this situation.

A considerable body of research tells us that a large proportion of Indigenous families and communities face **s**ystemic problems which are closely tied to the history and current legacy of colonial relations between Aboriginal and Torres Strait Islander people and the broader community[3]. One of the most destructive colonial policies, which has particular significance for child welfare departments, was the forced and unjustified removal of Aboriginal and Torres Strait Islander children from their families[4]. The trauma of this, and other colonial policies, is experienced intergenerationally by many Aboriginal and Torres Strait Islander communities. This trauma is often compounded by current and repeated traumatic experiences including violence, sexual abuse, substance abuse and related problems both experienced and witnessed by many Indigenous children[5].

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[1] See Appendix 1 which provides a statistical overview of Indigenous disadvantage.

[2] Chandler, M and Lalonde, C , 'Cultural continuity as a hedge against suicide in Canada's First nations', Transcultural Psychiatry, 35(2): 191-219 1998; Libesman, T, 'Building Resilience in Australian Indigenous Communities' Secretariat of Aboriginal and Torres Strait Islander Child Care, forthcoming.

[3] Cunneen, C and Libesman, T, 'Postcolonial Trauma: the contemporary removal of Indigenous children and young people from their families in Australia', *Australian Journal of Social Issues*, volume 35 (2), 2000.

[4] Human Rights and Equal opportunity Commission (HREOC), 'Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families', Commonwealth of Australia, Sydney 1997.

[5]Aboriginal Child Sexual Assault Taskforce, 'Breaking the Silence: creating the future; addressing child sexual assault in Aboriginal communities', Attorney General's Department, NSW, 2006; Robertson, B.,

Over the past year, considerable publicity has focused on child sexual assault in Aboriginal communities, particularly after the revelations of a public prosecutor, Nanette Rogers, in the Northern Territory. While these 'revelations' shocked many the issues have been raised over a considerable period of time with few effective responses[6]. We now have the Commonwealth Government's emergency response.

The Commonwealth Government has established an 8 member 'Northern Territory Response Taskforce' with terms of reference to provide expert advice on the implementation and operational aspects of the Cth's response to child sexual abuse in the NT, to promote public understanding of the issues involved, to alert the government to issues related to the implementation of the response and to report to the Government. Child sexual abuse is abhorrent and requires a decisive and effective response in all communities. It is distressing that Mr. Howard has chosen to ignore this issue, despite direct information and representations being made to him about it, over four years ago[7]. It is equally distressing that the government is using child abuse to promote an unrelated agenda for diminishing land rights and as part of an election strategy. Why enter communities in a heavy handed and potentially harmful manner with very little forward planning or evidence base for effective interventions? Why not examine and respond to the volumes of well researched reports and evidence based recommendations with respect to child sexual assault in Aboriginal communities? Why make derogation of Aboriginal control over land the centre piece of a response to child abuse, when not a single one of the hundreds of recommendations in the expert reports prepared over the last 20 years, including the Wild and Anderson report which the Government is responding to, consider land tenure to be related to child abuse or confiscation of land related to addressing abuse.

While the Government's response is on the run, and therefore 'unfolds' in an ad hoc way, the central ideological tenets of the response have been made clear. Implementation of land reforms will include the mandatory acquisition of Aboriginal land held under various tenures, for lease to the Cth for at least five years, resumption of town camp leases, abolition of the permit system to control entry onto Aboriginal lands, and institution of free market principles such as market based rents to housing. All these measures have been on the Government' agenda for a number of years and all will derogate from Indigenous peoples control over their land.

The prior reports which I am aware of which recommend derogation of control by Aboriginal owners over their land through removal of the permit system are the Reeves

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'The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report', Department of Aboriginal and Torres Strait Islander Development, QLD, 2000; Atkinson, J, Trauma Trails: recreating Song Lines, Spinifex press, Melbourne, 2002.

[6]ABC Lateline transcript , 'Prosecutor reveals sexual abuse and violence in NT Indigenous communities' 15/05/06 accessed November 19 http://www.abc.net.au/lateline/content/2006/s1639133.htm

[7] Murial Bamblett, chairperson of The Secretariat of National Aboriginal and Islander Child Care (SNAICC) noted in a press release on the 22 June. "I spoke to the Prime Minister about child abuse in the Northern Territory four years ago. He told me then that states and territories were doing fine."

Review of the NT Land Rights Act commissioned in 1999[8], and the Federal Government's discussion paper of October 2006 on access to land under the Northern Territory Aboriginal Land Rights Act[9]. Both were rejected by the Northern Territory land councils and to my knowledge there is not a single Indigenous organization which supports them. John Reeves QC recommended in the Reeves report a breakdown of the Northern Territory land councils into regional land councils, the removal of permits for entry onto Aboriginal land and that the NT Government be enabled to resume Aboriginal land for public purposes. There is no mention of child abuse in the Reeves Review. Mr. Reeves is one of the members of Mr. Howard's 8 person emergency response taskforce.

The Commonwealth's arguments with respect to the relationship between child protection and the removal of the permit system are disingenuous. The Government's discussion paper on the abolition of permits states, "the Minister put the view that, on balance, increased external scrutiny would be in the interests of the victims of crimes and disadvantaged or vulnerable in what are now closed communities." However section 70 of the *Aboriginal land Rights (Northern Territory) Act*1976 provides that a permit is not required for any Government personnel to enter land and carry out activities in accordance with any NT Law. The failure to provide law enforcement personnel, including child protection workers, police, victim support workers or any other services to investigate, report crimes or support victims of crimes has nothing what so ever to do with the permit system. In fact communities have been asking for these services for a very long time and have not been provided them. Permits have not stopped child protection or law enforcement. A failure on the part of governments to provide these and other basic services to communities has.

Other claims which the Government makes for the removal of permits are equally tenuous. They suggest that open media access to communities will provide publicity for crimes committed and thereby make communities safer. There has been extensive coverage of violence in Indigenous communities over the past year and this has not been silenced by the permit system. The permit system is an expression of cultural control over land and it is also a practical mechanism for limiting undesirable people who are predatory, such as peddlers of pornography, drug traffickers and pedophiles as well as others who simply want to prey on and exploit communities, from freely accessing Aboriginal lands.

The appointment of government managers for all government businesses will further institutionalize a transfer of control away from communities. The Government's Welfare to Work policy and legislation has made clear its punitive approach to poor and disadvantaged sections of the population, in particular single parents and disabled people. These measures are already having a disproportionately adverse impact on Indigenous families who are significantly over represented in both groups. In the first three months

[8] Reeves, John 'Building on Land Rights for the next generation Report on the review of the Aboriginal Land Rights (Northern territory) Act 1976, ATSIC, Canberra, 1998.
[9]Department of Families, Community Services and indigenous Affairs, 'Access to Aboriginal Land under the Northern territory Aboriginal Land Rights Act 1976 – Time for Change? October 2006 at http://www.oipc.gov.au/permit_system/docs/Permits_Discussion_Paper.pdf accessed 8 July 2007.

of operation 140 Aboriginal people lost all income support for 8 weeks and in WA Aboriginal people made up almost a third of all breaches.[10] The measures enumerated in the Cth's emergency response are consistent with the Welfare to Work approach, but they are considerably harsher and more paternalistic. Half of all Indigenous families' social security income, in the targeted communities will be quarantined, regardless of any evidence with respect to how the money has been spent in the past. Other entitlements, such as family payments, will be dependant on school attendance. Punishing financially deprived families, in communities where malnutrition is already a significant problem, and where many people live chaotic lives marked by crises, which makes compliance with rules often difficult, will inevitably bring about greater hardship and suffering for some of the most disadvantaged children. What long term assistance is being provided for families to become part of school communities and to create an environment which is conducive to children attending school?

These racially discriminatory measures will impacts on parent's self esteem, their sense of control or lack there of in their lives, and their feelings of marginalisation. Many parents will experience the requirements as arbitrary and may perceive the system as another example of unfair subjection to a non Indigenous system. This is likely to lead to greater feelings of exclusion. This policy is therefore likely to exacerbate the very factors which contribute to feelings of hopelessness, despair and more broadly alienation from society. Punishing parents and reducing an income which is already below the poverty line will not help them to improve the factors which place them or their families at risk. It will in fact exacerbate them.

A prohibitionist response to alcohol abuse, with the banning of alcohol in the targeted communities, is likely, as a number of commentators have noted, to lead to a black market trade in alcohol, which the abolition of the permit system will facilitate, and a transfer of the alcohol and related problems to areas where it is available.

Banning x rated pornography, auditing government computers and provision of extra police all seem to be useful measures which are part of the Government's emergency response. Likewise voluntary health checks may benefit some families. However these services will only be of benefit if they are sustained and if the resources to follow up on initial investigations are provided. There is no point in diagnosing children and then providing no follow up treatment. Likewise communities need police services which work effectively for victims of crime and the community more broadly on a permanent basis not simply for a few weeks or months.

The Government's discussion paper suggests that, "the permit system is a vestige of a former protectionist system of Aboriginal reserves under which entering or leaving Aboriginal land was restricted." This is incorrect information, which appears to have been lifted directly out of the Reeves Report of 1999. The permit system, like all other provisions of the NT land rights legislation, has its origins in the Woodward Report[11].

[10] ABC online February 26, 2007. Information supplied by Greens Senator Rachel Siewert. I understand that her office has attempted to get updated figures on breaches but these have not yet been released.
[11] Woodward J, Aboriginal land Rights Commission Second report, AGPS, Canberra, 1974.

The Woodward report recommended a permit system to enable Aboriginal people to have greater control over their land. I would suggest that the Government's intervention in the NT have more in common with former protectionist policies, which were racially discriminatory, left individuals and communities vulnerable to predators, undermined and in some communities devastated Aboriginal culture and have left a legacy of disorder and despair. In recent consultations with 9 focus groups across the country, seeking Aboriginal and Torres Strait Islander parents and carers' views about what are risks for children in their communities and what helps to create resilience, a consistent response was that strong and clear cultural identity provides great strength to children and communities. A key message from all focus groups was that families which are supported by their community are more likely to remain strong and succeed in the face of adversity. A second key message was that respect and support for Indigenous culture assists children and families to build self esteem and a stable and proud identity. Land and cultural connection are extremely important protective factors for families in Indigenous communities. Cultural stability and security is also an important aspect of maintaining the rule of law within communities. It therefore plays a vital role in the development and well being of Indigenous children.

In all jurisdictions in Australia Indigenous children are more likely to come into contact with child welfare departments as a result of neglect rather than abuse[12]. Neglect is directly tied to poverty. Poverty and marginalisation from the mainstream economy is also a legacy of colonial relations experienced by Indigenous communities. If child protection legislation and policy is to be effective it needs to understand, facilitate and complement policy which addresses the underlying causes of Indigenous children's over representation in child protection systems. The over representation of Indigenous children in colonial child welfare departments has been a problem which governments , and communities have attempted to address in all Australian jurisdictions, and in other countries with parallel histories of colonisation of minority Indigenous peoples. There is therefore considerable experience which can assist to inform effective immediate and longer term responses. The Federal Government's response is out on a limb and seems to be based on ideological goals with respect to free enterprise and assimilationist aspirations rather than long term solutions for communities and children's well being.

What needs to be addressed?

In all jurisdictions it has been recognized that delivery of children's services by government departments has not provided good outcomes for Indigenous children and families[13]. It has also been recognized that a case based focus, that is looking at each child's situation in isolation from the broader community issues, has not been successful[14]. While child protection workers from outside of Indigenous communities

[12] See statistics produced by the Australian Bureau of Statistics and the Australian Institute of Health and Welfare footnote 1 Op Cit.
[13] Human Rights and equal Opportunity Commission Op Cit at note 3.
[14] Gungil Jinibah Centre, Learning from the past, Southern Cross University, Queensland, 1994; Cunneen, C and Libesman, T (2002) 'Removed and discarded: the legacy of the stolen generations' *Australian Indigenous Law Reporter*, vol 7, no 4, pp1-20.

may be sympathetic, and some may be empathetic, those people who live in a community, have an understanding of the issues which their children and families are facing which is not easily learned by outsiders. It is this experience which grounds an understanding of the problems which children are facing, and the barriers which families and communities face in addressing issues with respect to Indigenous child protection and Indigenous children's well being.

In some Indigenous communities the devastation of colonial policies is such that all law and order has broken down. This is facilitated and exacerbated by the lack of services including inadequate policing and infrastructure such as adequate housing. Many other Indigenous communities have to struggle to maintain their cultural authority and the laws and traditions which sustain it. The rule of law is a central tenet of the Australian legal system. It is a core legal principle which fosters stability and security for many Australian children. The rule of law is founded on two essential principles. The first being that law making powers are not exercised arbitrarily and the second that laws sustain a normative order and thereby law and order in a community. Australian Indigenous communities have and continue to be denied both fundamental limbs of the rule of law[15]. The arbitrary exercise of powers at the most intimate level of Indigenous community life, the family, has been well documented[16]. We are now seeing the Howard government again disregarding the rule of law, with the arbitrary exercise of powers embedded in their response to child abuse in the NT. The active suppression of Aboriginal and Torres Strait Islander languages, laws and culture has also been extensively documented[17]. We now see the Howard Government proposing measures which undermine control over land, which is for many communities integral and essential to their cultural identity. This denial of the laws and cultural norms which define appropriate conduct goes to the heart of the anomie which is faced by some Indigenous communities. If the underlying causes of violence and child abuse which is experienced in some Indigenous families and communities is to be addressed, then support for the culture, laws and traditions which nurture and provide order and stability in communities is needed. There needs to be respect for and support of the rule of law.

Colonial experience has impacted on effective order in Indigenous communities in a number of ways. Two of the deepest impacts have been policies of explicit suppression of Indigenous laws and norms followed by more subtle denial and swamping of these norms and laws with Anglo powers and systems[18]. The second is the introduction and availability of the worst of western culture including drugs and pornography into many

[15] For a discussion of the failure to apply the rule of law to Indigenous peoples in the Canadian context see John Borrows, *Recovering Canada – The Resurgence of Indigenous law'* University of Toronto Press, chapter 5, pp 111 – 137, Toronto , 2002.
[16] Human Rights and Equal Opportunity Commission op cit at note 3; Haebitch Anna, *Broken Circles – fragmenting Indigenous families* 1800-2000, Freemantle Arts Centre Press, 2000.
[17] John Chesterman and Brian Galligan, *Citizens without rights*, Cambridge University Press, 1997.
[18]. Bain Attwood and Andrew Markus, *The 1967 Referendum or When Aborigines Didn't get the Vote*, Aboriginal Studies press, 1997.

communities already suffering dispossession and loss on multiple levels[19]. The combination of these impacts need to be addressed if Indigenous children are to be afforded the opportunity of growing up in communities which sustain and support their basic human rights including their right to a secure identity[20]. They need to be addressed by supporting and harnessing Indigenous community capacity and by fostering contemporary Indigenous law and order. This requires a fundamental change in the way non Indigenous organisations including police and welfare departments work with Indigenous communities. A shift which respects and recognises Indigenous peoples' difference and the ongoing impacts of colonisation would provide the foundation from which collaborative efforts to address Indigenous children's well being could be grounded. Within such a framework Indigenous children and communities could benefit from the best of Indigenous and non Indigenous, laws, services and experience.

Community engagement

Effective child protection requires effective engagement and inclusion of communities. This requires genuine collaboration between Indigenous communities and organisations and non Indigenous institutions including police and child welfare departments. An Indigenous understanding needs to permeate all aspects of legislation, service design and delivery. While measures such as inclusion of Indigenous staff in mainstream systems does serve to improve these systems, these improvements are within a framework which is not attuned to addressing the structural or underlying needs of communities. Fundamental improvement requires acknowledging and facilitating community capacity to make and implement policy and programs which address individual and community child protection needs and more broadly requirements with respect to Indigenous children's well being. This requires an integrated approach towards addressing individual and community trauma, building community capacity with a particular focus on children and families, and establishing processes and legislative structures for transferring responsibility, including resources, to community agencies. A comprehensive and developed model which can provide some guidance as to how this is being implemented is found in Manitoba, Canada. The Aboriginal Justice Inquiry – Child Welfare Initiative negotiations have resulted in the Province, First Nations peoples and Métis peoples sharing jurisdiction over child welfare in Manitoba. This integrated legislative, financial and policy reform is a program which has been planned and was to be implemented over a period of 5 years between 2000 and 2005. It is in its final implementations stage. This initiative provides an example of reform seriously committed to improving Indigenous children's well being[21].

International standards

[19] Robertson op cit note 4, Gordon, S, Hallahan, K, Henry, D, 'Putting the picture together: Inquiry into response by government agencies to complaints of family violence and child abuse in Aboriginal communities' State Law Publisher, Perth, 2oo2.
[20] Bamblett, Muriel, 'Stop the abuse of our children's culture' *SNAICC News*, August – September 2006.
[21] See the Aboriginal Justice Inquiry – Child welfare initiative at http://www.aji-cwi.mb.ca/

Most child protection legislation includes objectives and principles which broadly reflect the articles in the United Nations Convention on the Rights of the Child (CROC). There are however a number of problems with the way in which these principles are framed and enacted. For example in NSW the objectives and principles section of the legislation does not 'confer any right or entitlement at law.'[22] While the objects and principles section in most Australian child welfare legislation are derived from CROC they do not adopt or mirror CROC. CROC is a treaty which Australia is a signatory to and which all Government departments, State and Federal, should comply with. It is a treaty whose provisions are regularly interpreted and refined by the Committee on the Rights of the Child. The participation of Indigenous and other diverse groups in the development of the jurisprudence of CROC offers the potential for standards which are inclusive of Indigenous children and communities to develop[23]. It would therefore make sense to adopt CROC principles, rather than a composite of similar ideas, in local child welfare legislation. These principles could provide safeguards for Indigenous and all children, regardless of whether an Indigenous or non Indigenous agency is working with the community.

Conclusion

It appears to be very difficult for Government departments to relinquish some of their power and collaborate with Indigenous communities . It is also very difficult for Indigenous communities to assume responsibility where this has been denied over a long period. Further many communities not only need to develop appropriate decision making structures and expertise but suffer endemic problems because of the widespread trauma and loss of capacity over a number of generations and because of the huge deficit in basic structural and service support. It will therefore take considerable resources and commitment to build community capacity in many areas. It is not in Indigenous children's best interests to retain legislative and departmental structures which are not serving them effectively. Neither is it in Indigenous children's best interests to transfer responsibility for their well being to Indigenous agencies which lack the capacity to support children. However, a process of decolonising attitudes, establishing new Indigenous child protection structures and building capacity in Indigenous agencies through training and provision of resources, over a period of time, will improve relations between mainstream and Indigenous agencies and communities and will facilitate over the longer term improvements for Indigenous children. Addressing the underlying causes of Indigenous children's over representation in child protection systems requires redress of the huge deficit in infrastructure and services in communities in a culturally competent manner which is informed by the past and builds on Indigenous culture and traditions.

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[22] Section 7 of the *Children and Young Persons Care and Protection* Act 1998, NSW.

[23] Libesman, T., "Can international law imagine the world of Indigenous children?' *International Journal of Children's Rights*, forthcoming 2006.