



Australian Government

Future Directions

for the Northern Territory Emergency Response

Discussion paper

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Minister's Foreword



As human beings, we all deserve to be treated with dignity and respect.

The Australian Government wants to bring the achievements of the Northern Territory Emergency Response (NTER) into a framework that looks to the long-term and respects human rights.

The truth is that human rights of Aboriginal peoples in the Northern Territory have been compromised for many years.

These include the right to healthy and affordable food; to a quality education and health care; to adequate housing; to the full protection of the law; and to live free from violence and abuse – to name just a few.

Connected to this, people's sense of responsibility and care for each other has also come under pressure and diminished in many cases.

When the NTER was introduced in June 2007, the previous government suspended the operation of the Racial Discrimination Act in affected communities.

The NTER Review found that the suspension of the Racial Discrimination Act, combined with a lack of consultation, left Aboriginal people feeling hurt, betrayed and less worthy than other Australians.

In response to this, the Government has committed to introducing legislation into Parliament in coming months so that the Racial Discrimination Act applies to the NTER.

Through the NTER, we have delivered school nutrition programs, crèches, child health checks, ear and eye surgery, extra police, safe houses, new food stores and more affordable healthy food in over 70 communities.

We have seen increased household expenditure on food and clothes and children and more families getting involved in household budgeting through the combined effect of income management and community stores licensing.

Evidence to date tells us that the NTER measures have delivered some improvements and benefited many Aboriginal people in the Northern Territory.

We also know that there is a lot more to be done. The level of disadvantage is still very high.

We are committed to improving the lives of Aboriginal people in the Northern Territory, and believe that we can achieve this by continuing and improving the measures under the NTER while conforming with the Racial Discrimination Act.

This will not be a straight-forward process – not for us, and not for Aboriginal people.

We will need to dig deeply into these issues to find solutions. There will be no easy answers.

But we want to get it right. We want to work with you to get it right.

We are prepared to really listen to people's views.

We will be consulting throughout the NT and want to hear the views of those affected by these measures.

A handwritten signature in black ink that reads "Jenny Macklin". The signature is fluid and cursive.

The Hon. Jenny Macklin MP

Minister for Families, Housing,
Community Services and Indigenous Affairs

21 May 2009

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1. Introduction

The Northern Territory Emergency Response – or NTER – was introduced by the previous Australian Government in June 2007.

The current Government, elected in November 2007, said that it would continue the NTER. It did this because the NTER aims to help protect children and make communities safer.

The new Government also said it would review the NTER after 12 months of operation.

The independent NTER Review Board reported to the Government in October 2008. The board found that the situation in remote Northern Territory communities and town camps remained sufficiently acute to be described as a ‘national emergency’.

It made three overarching recommendations, that:

- the Australian and Northern Territory Governments recognise as a matter of urgent national significance the continuing need to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory
- in addressing these needs both governments acknowledge the requirement to reset their relationship with Aboriginal people based on genuine consultation, engagement and partnership; and
- Government actions affecting Aboriginal communities respect Australia’s human rights obligations and conform with the *Racial Discrimination Act 1975* (RDA).

The Government said on 23 October 2008 that it accepted each of these recommendations and committed to introducing legislation into the Parliament in October 2009 to remove the provisions that exclude the operation of the RDA.

This discussion paper sets out how the Government is going to meet these recommendations. It will be changing the measures in the NTER, where necessary, so they conform with the RDA (which puts the Convention on the Elimination of all Forms of Racial Discrimination into legislation in Australia).

At the same time, the Government will also have regard to its other important obligations under international treaties such as the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women.

The Australian Government is committed to respecting Australia’s human rights obligations. Without this commitment, the Government believes that the improvements already made in the Northern Territory will not last, and the improvements planned for the future will not happen.

The Government believes that the NTER measures are beneficial and would like to hear more from people in the affected communities

This paper sets out proposals for these measures, including some possible improvements, as a starting point for discussion.

The Government is open to ideas and proposals. It will listen to ideas put forward in consultations.

The NTER Review Board said that many of the NTER measures were not as effective as they should have been because Aboriginal people were not involved in their original design. There was no consultation or engagement. This Government is committed to real consultation with Aboriginal people in the Northern Territory so the NTER measures can be improved.

More detail on how the Government is going to consult with Aboriginal people is included in Section 5 of this paper. Section 6 has information on how the community can have their say, mainly through community consultation meetings.

2. Benefits achieved through the NTER and other initiatives

The NTER has brought significant additional funding and government effort to the Northern Territory's Indigenous communities. It is clear that this has resulted in important improvements:

- 83 community stores have been licensed to ensure they provide a better range of healthy food.
- Four new stores have been set up, in Yuendumu, Epenarra, Ti-Tree and Manyallaluk.
- School nutrition programs have been set up in 69 communities providing breakfast and lunch to school-aged children. These programs are encouraging children to go to school, providing better nutrition, and employing around 130 local Aboriginal people.
- Five new crèche facilities have been established and six existing crèches have been upgraded.
- More than 13,000 child health checks have been completed, with over 2,500 children receiving follow-up hearing services and over 2,100 receiving follow-up dental services.
- Up to 66 extra police are now working in remote communities to help make communities safer.
- Four permanent police stations have been upgraded and 18 temporary stations set up.
- Sixty-nine active community-run night patrols have been set up.
- There are 13 new safe houses to provide protection from violent situations.
- A mobile child protection team is working across the Territory.
- New Remote Aboriginal Family and Community Workers are on the ground in eight communities.
- More than 15,000 people are subject to income management. This means half of people's Centrelink money (and all of most advances and lump sum payments, and Baby Bonus) can be spent only on essential items and expenses. During the first 20 months of income management, 71 per cent of income managed money was allocated towards food.
- Around 2000 new jobs have been funded in government service delivery. Much of this work was previously done by people on CDEP. The new jobs provide award wages, superannuation and access to training and professional development.
- Sixty Government Business Managers (GBMs) are serving 73 remote communities as well as town camps in Darwin, Tennant Creek and Alice Springs. GBMs help government to work better with communities; and
- 20 Indigenous Engagement Officers have been appointed to support GBMs and to help government talk with local communities.

These measures are backed by a lot of extra government funding in areas such as health services, education, policing and community safety.

The different measures work together to deliver wider benefits. For example, the extra police and the alcohol restrictions are helping to make communities safer. Income management combined with licensing of community stores has improved the range and quality of food available in communities. These initiatives, combined with school nutrition programs and child health checks, are improving the health of children. The NTER Review Board found that GBMs are helping communities to get better access to government services.

It is recognised that a great deal more needs to be done, and that levels of family violence, alcohol and drug abuse, economic participation, education and health remain critically dire.

Improvements already made to the NTER

The Government has already taken action to improve the NTER.

People on income management will be able to appeal against administrative decisions, as a result of legislation now in Parliament.

Last year, the Government moved to reinstate the requirement for permits in prescribed areas that was removed previously by the NTER laws. The Government's legislation was defeated in the Senate. The permit system continues to operate over the majority of Aboriginal owned land in the NT.

Other Government work in the Northern Territory

The Australian Government is working with the Northern Territory Government to reduce overcrowding in communities and help make people's houses safer and healthier. Around \$1.7 billion over 10 years will help to meet the urgent need for better housing and infrastructure in remote Northern Territory communities.

So far Aboriginal land owners in the Northern Territory have agreed to leases in nine communities. These include Angurugu, Umbakumba, Milyakburra, Nguju, Maningrida, Galiwin'ku, Gunbalanya, Wadeye and the Tennant Creek town camps. The finalisation of leases is followed by detailed consultation on the design and location of housing.

These nine communities cover more than a 1000 existing houses, most of which will receive upgrades as part of the construction program. There will also be as many as 200 new houses depending on the outcome of the community consultations.

The Government also reversed the previous Government's decision to abolish CDEP in 25 NTER communities and five towns and reformed CDEP across Australia.

The new CDEP will start in most remote Northern Territory communities from 1 July 2009. It will help people to get a job by providing more training for work and work experience. It will also help to back community projects that strengthen the community overall.

The Council of Australian Governments (COAG) – made up of all the State/Territory governments as well as the Australian Government – has recently agreed to a new way for governments to work together to improve services in remote Indigenous communities. This is spelt out in the National Partnership Agreement on Remote Service Delivery. This approach is being rolled out in 15 priority locations in the Northern Territory. Governments will work much more closely with people living in communities to plan and deliver better services.

Re-setting the relationship

The Australian Government is committed to a more respectful and supportive relationship with Indigenous Australians. This is part of the Government's wider strategy to Close the Gap between Indigenous and non-Indigenous Australians.

In February 2008 the Prime Minister made a National Apology to Australia's Indigenous People, and in particular the Stolen Generations.

Earlier this year, the Government indicated our support for the United Nations *Declaration on the Rights of Indigenous Peoples*.

We have progressed our commitment to establish a national Indigenous representative body, by engaging the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, to conduct further consultations and present a preferred model to government by the end of July.

The Australian Government is working through COAG to make Indigenous programs and services more effective and coordinated. All Australian Governments are committed to meeting the national targets to Close the Gap.

Budget 2009–10 – Making the NTER sustainable

The 2009 Budget, announced on 12 May, provides additional funding to continue the NTER. With this funding the Government wants to move towards a sustainable-development phase, so we can build on improvements already made and make those benefits last.

The following major initiatives were announced in the Budget:

- \$156.6 million over three years for extra NT Police officers, to continue support of existing temporary stations and build five new police stations;
- \$131.1 million over three years to improve child and family health services in the NT, including follow-up treatment for conditions identified in the NTER child health checks;
- \$80.2 million over three years for law and order measures, including support for 81 night patrols and the NT Aboriginal Interpreter Service;
- \$34.6 million over three years to help local communities work towards a sustainable future, including through the employment of Indigenous Engagement Officers;
- \$46.3 million over three years for services to support families, including safe houses, crèches, playgroups and the Mobile Child Protection Team;
- \$56.9 million over three years to help remote schools in the NT, including assistance to improve children’s literacy and numeracy skills and funding for extra teachers’ houses;
- \$35.7 million over three years to continue the School Nutrition Program;
- \$28.4 million over three years to provide social and recreational activities that will help address the negative effects of youth substance abuse in the NT; and
- \$18.3 million over three years to continue and improve the licensing of community stores.

3. *The Racial Discrimination Act 1975 (RDA)* and other human rights obligations

When the Government accepted the third overarching recommendation of the NTER Review Board it committed to ensuring that Government actions affecting Aboriginal communities respect Australia's human rights obligations.

This does not mean that the NTER measures will have to stop. The Government is committed to addressing the unacceptably high level of disadvantage experienced by Aboriginal people living in remote communities throughout the Northern Territory, with particular attention to the well-being of most vulnerable groups including children.

The Australian Government is a party to a number of international treaties, including the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women. The Australian Government takes its responsibilities under these United Nations Conventions very seriously.

For example, Australia has obligations regarding the protection of women and children from violence, and the right of children to a safe and nurturing environment.

The RDA implements the Convention on the Elimination of all Forms of Racial Discrimination as domestic law in Australia.

The RDA requires that all people be treated equally before the law, regardless of their race, colour or ethnicity.

This can be achieved in two ways. First, through the Government making laws which are non-discriminatory and secondly, through what are known as "special measures". Special measures are measures that help people of a particular race to enjoy their human rights equally with others.

The concept of "special measures" in the RDA comes from the Convention on the Elimination of all Forms of Racial Discrimination. Special measures are an important part of the RDA, this Convention and other international conventions dealing with discrimination. They enable governments to make special laws to protect the people who need it most.

Under the Convention the government has an obligation, when circumstances require, to take special measures for the purpose of guaranteeing the full and equal enjoyment of human rights and fundamental freedoms.

Special measures under the RDA have a number of key features:

- the measure must result in a benefit to some or all members of a class of people
- membership of this class must be based on race, colour, descent or national or ethnic origin
- the measure must be for the sole purpose of improving the situation of the beneficiaries so they can enjoy and exercise their human rights and fundamental freedoms equally with others
- the protection given to the beneficiaries by the measure are necessary in order to achieve this equal enjoyment of human rights and freedoms; and
- the measure must end as soon as it has achieved its aims.

Examples of measures that are special measures include the Abstudy program and the national legislative scheme for the incorporation of Indigenous corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

This discussion paper outlines the Government's proposal for the future of a number of measures that are part of the NTER.

The Government believes that the NTER measures are beneficial and would like to hear more from people in the affected communities.

The Government will listen carefully to the views expressed during the consultations before deciding on any changes to the measures.

Action proposed by the Government

The Government will introduce legislation into the Parliament in October 2009 to remove the provisions in the three pieces of legislation that exclude the operation of the RDA and the Northern Territory anti-discrimination laws.

The provisions that will be removed are contained in three pieces of legislation, namely the:

- *Northern Territory National Emergency Response Act 2007*
- *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007*; and
- *Social Security and Other Legislation Amendment (Welfare Payments Reform) Act 2007*.

The Government proposes to bring legislation before the Parliament that will repeal the provisions that exclude the operation of the RDA and the Northern Territory anti-discrimination laws from the day the new legislation comes into operation. However, any changes to the NTER measures should occur smoothly without causing any major disruption to individuals and communities, and without undoing the gains that have been achieved so far. In redesigning the various measures the Government will look at how to ensure a smooth and effective transition to the redesigned measures.

4. Individual NTER measures

This section discusses the main NTER measures affected by the RDA.

For each of these measures, it outlines:

- what they aim to do
- improvements achieved since the measures started; and
- proposals for changing the measures, if necessary.

For the NTER to deliver long-term benefits, the individual measures may need some changes so that they recognise and build on the strengths and skills of Aboriginal people and help to foster greater personal and community responsibility. This is vitally important in achieving sustainable results.

The Government will work closely with Aboriginal people to improve the measures. It believes the success of the NTER depends on individuals and communities having a say in how the measures should work.

Because of the improvements made so far, the Government believes it is important that each of these measures continue. Governments have an obligation to protect children from violence, abuse and neglect, and to improve their chances for a better life.

The Government currently proposes that the individual measures should continue to operate in much the same way as they have been operating. For some measures, proposals for possible change are presented to assist discussion.

The Government wants to hear any suggestions about whether or not changes should be made to the measures to improve the way they work to deliver even greater benefits for people and communities.

The discussion on each measure includes some questions to guide feedback.

A. Income management

Income management aims to ensure that people receiving welfare payments use this money in a socially responsible way. This means protecting and providing for children and vulnerable people and ensuring that people's basic needs are met. Together with other NTER measures, income management works to promote healthy and safe communities.

Income management is also a budgeting tool for parents and carers, ensuring there is money available to feed, clothe, house and provide for the education of their children. People can get extra help with money management and household budgeting skills from special support services.

Income management has worked together with new arrangements to license and improve community stores. Prior to the NTER there was a very poor range of food available in many communities, and very few food outlets. Income management has given people the means to spend more on food and household items. As a result community stores have been able to stock a greater variety of priority goods. A number of communities now have new stores or they get regular fresh food drops.

What are the current arrangements?

People on income management in the Northern Territory have part of their welfare and family payments income managed so it can be spent on priorities, such as food, clothing and rent. Money set aside includes:

- 50 per cent (half) of most income support and family assistance payments; and
- 100 per cent (all) of most advances and lump sum payments, and of Baby Bonus (which is paid in instalments).

Centrelink staff help individuals to work out what priority needs their income managed funds will be spent on.

Income managed funds can be made available on the BasicsCard for buying essential and everyday items. Other income managed funds can be used to pay bills, rent and other expenses.

Funds that are income managed cannot be used to buy excluded goods such as alcohol, tobacco, pornography and gambling products.

Income management does not change the amount of income support and family payments that an individual is entitled to receive.

Income management currently applies to people in the 73 prescribed areas and associated outstations in the Northern Territory who receive income support and family payments. It also applies to people who live in town camps in and around major centres.

What has been achieved?

Evidence shows that income management has produced substantial benefits in communities.

In a submission to the NTER Review Board, the Central Land Council noted some of the positive impacts of income management, including:

- increased household expenditure on food and other essential items
- more contributions from males to family shopping
- less gambling and drinking; and
- better quality stock in community stores.

The NTER Review Board did not support the continuation of *compulsory* income management in the Northern Territory. It did note, however, that women in many communities had expressed support for income management.

As at 30 January 2009, more than 87 per cent of income-managed funds had been spent on housing or in purchasing items in stores that trade mainly in food and clothing.

Store operators report that most community members have a good understanding of income management. They have also noted:

- an increase in the amount of healthy food purchased, such as fruit and vegetables, dairy foods and meat
- changed family spending patterns with more male participation in family budgeting; and
- the use of income management to save for major household goods e.g. freezers, fridges and washing machines.

Further challenges

The Government recognises that there have been a number of criticisms about income management. These include:

- criticism that income management is applied to all people in a community, regardless of how well they can manage their money and care for their children and families;
- criticism that people are only able to do their shopping at certain stores;
- problems with operation of the BasicsCard, including breakdowns of computer systems, and difficulties obtaining information about the balance on a person's BasicsCard; and
- concerns that income management in the prescribed areas has not helped itinerant people (for example, those living in "the long grass" on the fringes of major urban centres).

Future arrangements

The Government believes that income management should continue because it is doing a good job. It is helping children, making families more financially secure and improving community safety by diverting money away from alcohol and gambling.

The Government is looking for community views on how to improve income management so that it better supports and assists communities and individuals.

Description of the proposed model

As a starting point for discussions, the Government is seeking community views on two options:

Option 1: Individuals may apply for an exemption from income management based on an individual assessment.

This option would continue income management in its current form – that is, income management would still be compulsory for all welfare recipients in prescribed communities, outstations and town camps.

But individuals could apply to Centrelink for an exemption from income management. Getting an exemption would require an assessment of the person's circumstances against set criteria. People who can show that they do not need income management would then be able to exit.

Centrelink would take a number of factors into account to assess whether a person should remain on income management, including:

- level of financial literacy and budgeting skills
- extent of family responsibilities
- evidence of participation in or exposure to antisocial behaviours, and
- vulnerability to violence, coercion or 'humberging' if the person is not income managed.

The Government will seek input from social workers and other professionals as well as relevant stakeholders, in designing the assessment process that could lead to an exemption.

Option 2: No change to the current income management arrangements.

Under this option income management would continue to be compulsory for all welfare recipients in the areas where it currently applies.

Questions for discussion during consultation

- What are the main benefits of income management for individuals and communities?
- What are the main problems with income management for individuals and communities?
- If income management were to continue, how could it be improved?
- What difference would it make to income management if it were changed so that some people in the community could be exempted from income management based on an assessment process? Would this approach be better than the current income management arrangements? Are there other ways to achieve the same aims?
- Will individuals or communities benefit from a continuation of income management?

B. Alcohol restrictions

The *Little Children Are Sacred* report said that alcohol abuse was ‘destroying communities’ and was the ‘gravest and fastest growing threat to the safety of children’. Alcohol restrictions were therefore seen as a necessary part of the NTER in order to protect children, make communities safe and create a better future for Aboriginal people in the Northern Territory.

Description of the current arrangements

Under the NTER, new laws were introduced:

- to ban drinking, possessing, supplying or transporting liquor in a prescribed area, and
- to monitor take-away sales across the whole of the Northern Territory.

Licensees currently have to record details of purchases of \$100 or more of take-away liquor (including GST) or more than 5 litres of wine. This includes recording the customer’s name and address and where the liquor will be consumed.

The Northern Territory Government has also introduced legislation to reduce access to alcohol, including extension of ‘dry’ areas, in some regional centres.

What has been achieved?

Many families in remote communities report feeling safer because of the extra police and lower alcohol consumption.

Government Business Managers (GBMs) report there has been a decrease in alcohol use in 24 per cent of communities, ‘no change’ in 58 per cent of communities, and an increase in alcohol use in 14 per cent of communities. The alcohol restrictions were seen as the main reason for the lower consumption.

GBMs have also reported a decrease in the level of violence in 39 per cent of communities, an unchanged level in 45 per cent, and an increase in violence in 7 per cent of communities. Those reporting a decrease in violence say it is due to reduced access to alcohol.

On the other hand, official statistics on reported instances of alcohol-related domestic violence showed an increase of 23 per cent across the whole of the Northern Territory between 2006-07 and 2007-08 (from 585 incidents to 756).¹ This increase may be due in part to the extra police in communities, leading to more reporting and recording of violent incidents – incidents that would have previously gone unreported.

Alcohol abuse and untreated alcoholism remains rife, contributing to high levels of family violence, incarceration and lifelong damage to health.

Further challenges

The Government also recognises that alcohol restrictions have caused a number of concerns:

- complaints about the size and location of signs relating to alcohol restrictions;
- reports of increased drinking just outside prescribed area boundaries, particularly in dangerous places close to roads;
- ongoing concerns about illegal alcohol trafficking (“grog-running”);
- people moving to regional centres to avoid restrictions;
- complaints that the monitoring of take-away sales is impractical and ineffective; and
- communities wanting to have their own community alcohol plans reinstated.

¹ All data in this section is taken from: *Monitoring Report, Measuring progress of NTER activities, August 2007 to 30 June 2008*; FaHCSIA, September 2008

Future arrangements

The Australian Government believes that alcohol restrictions need to be continued in the Northern Territory.

The *Little Children Are Sacred* report provided stark evidence of the damage caused by alcohol.

The NTER Review Board also supported the continuation of the alcohol restrictions, particularly the laws banning alcohol in prescribed areas.

As a starting point for discussion, the Government believes that the alcohol restrictions in their current form, including bans, should be retained for the immediate future.

But the Government is prepared to consider modifying these restrictions to better reflect the circumstances in individual communities – as opposed to the current blanket restrictions that apply regardless of the circumstances of each community.

Description of a possible model

Under a potential new model the level of alcohol restrictions in each community or region could be set by taking into account:

- community views
- evidence on the level of *alcohol-related harm* in individual communities or regions; and
- the presence of community-developed alcohol restrictions including Alcohol Management Plans (AMPs).

This model would require wide community consultation and the rigorous collection of evidence about conditions in communities.

The Government would have to talk with community members and other relevant individuals and organisations to get their views.

The Government would also work closely with the Northern Territory Government to obtain an accurate picture of how alcohol is affecting individuals and the community as a whole, with a particular focus on the safety and wellbeing of women and children.

A number of communities have already successfully negotiated and implemented AMPs. As a long-term aim, the Australian Government will be supporting the Northern Territory Government to increase the number of communities with AMPs.

Other elements

The Government proposes to remove the requirement for a licensee to record the sale of take-away liquor over \$100 or more than 5 litres of wine, as this has proven to be impractical and has not been as effective as intended.

Current exemptions from the alcohol restrictions relating to tourism, recreational boating and commercial fishing will not be changed.

Questions for discussion during consultation

- What are the main benefits of alcohol restrictions for individuals and communities?
- What are the main problems with alcohol restrictions for individuals and communities?
- If alcohol restrictions were to continue, how could they be improved?
- What difference would it make to alcohol restrictions if they were changed so that each community had its own set of restrictions, based on that community's circumstances? Would this approach be better than the current alcohol restrictions? Are there other ways to achieve the same aims?
- Will individuals or communities benefit from a continuation of alcohol restrictions?

C. Restrictions on pornography

The *Little Children Are Sacred* report found that pornography was a problem in many communities, increasing the risk of child abuse and problem sexual behaviour.

This measure aimed to reduce this risk by banning the possession and supply of sexually explicit or very violent material in prescribed areas.

Description of the current arrangements

The possession and supply of certain material is prohibited in prescribed areas under the NTER laws. This includes:

- material that may contain content of a sexualised nature; and
- material that includes content exceeding the standards generally accepted by reasonable adults. (This material cannot be legally imported, sold or advertised in Australia.)

What has been achieved?

The NTER restrictions have raised awareness about pornography in prescribed areas and opened up a discussion with community residents about pornography.

The Australian Government funded a Northern Territory Government education program to help people in prescribed areas to understand what material is not appropriate for children to view. At May 2009, 33 workshops had been held across 17 communities, with more to be run.

Further challenges

The Government is aware of concerns expressed by a number of people that the signs relating the pornography restrictions give an unfair impression that all Aboriginal people are involved in pornography and are not concerned about protecting their children from viewing pornographic material.

Description of the proposed model

The Australian Government believes that restrictions on prohibited material should continue to be available to Aboriginal communities in the Northern Territory.

The Government proposes to change the current restrictions so that they can continue on the basis of requests from a person resident in a prescribed area, or a person acting on a resident's behalf.

The Australian Government Minister with responsibility for Indigenous Affairs will receive and decide on these requests. The Minister may decide that the restrictions on prohibited material will continue in a prescribed area.

Before making a decision, the Minister must consider the wellbeing of people in the prescribed area and whether there is reason to believe that:

- people in the prescribed area have suffered sexual abuse or other problem sexual behaviour during the previous 12 months
- people in the prescribed area have expressed concern about sexual abuse or other problem sexual behaviour during the previous 12 months; and
- children in the prescribed area have been exposed to prohibited material during the previous 12 months.

In assessing these matters, the Minister will consider the views of other residents of the particular area and consult with relevant law-enforcement authorities.

Where there is no application to impose restrictions in a prescribed area, or the Minister decides not to impose restrictions, the *Classification of Publications, Films and Computer Games Act (NT)* will apply. This controls access to pornography across the Northern Territory.

Transition to new arrangements

The current restrictions on prohibited material will remain for a period of up to twelve months after the passage of the legislation implementing the changes. This transition period will ensure people in prescribed areas know about the changes and have time to make applications.

The Government will review the use of restrictions in the longer term – to consider whether they are effective and continue to be necessary.

Questions for discussion during consultation

- What are the main benefits of pornography restrictions for individuals and communities?
- What are the main problems with pornography restrictions for individuals and communities?
- If pornography restrictions were to continue, how could they be improved?
- What difference would it make to pornography restrictions if they were changed so that people could apply to have restrictions on pornography applied in their community? Would this approach be better than the current pornography restrictions? Are there other ways to achieve the same aims?
- Will individuals or communities benefit from a continuation of pornography restrictions?

D. Five-year leases

Under the NTER legislation the previous government acquired five-year leases over Aboriginal community townships in the Northern Territory, as well as the power to acquire additional leases.

This measure provided security of tenure and prompt access for the delivery of services, repair of buildings and upgrade of infrastructure in communities.

Description of current arrangements

The Government currently holds five-year leases over 64 Northern Territory communities. The lease areas were originally set using aerial photographic maps. A later ground-based survey project has enabled a closer match of the lease boundary with the town footprint. This has substantially reduced boundaries (an overall reduction of approximately 50 per cent) by leaving out areas not essential for service delivery.

The underlying title of the land is not affected by the leases. Traditional owners still own the land. All existing arrangements have been retained. People using the land immediately before the commencement of the five-year leases have continued to do so.

The Government is responsible for approving new or changed uses of land on five-year leased communities. This includes planning approval, ensuring competing claims to land are considered, and seeking information on community views through the GBMs.

What has been achieved?

The five-year leases have provided temporary tenure to underpin the provision of safe houses and GBM accommodation, and will underpin substantial housing refurbishments under the Strategic Indigenous Housing and Infrastructure Program.

Further challenges

The Government recognises that there have been a number of criticisms of the five-year leases:

- some saw them as a “land grab” that had nothing to do with the protection of children; and
- there have been concerns that the Government has not yet paid rent to Aboriginal land owners.

Future arrangements

All five-year leases will expire in August 2012.

When approving land use, the Government encourages individuals and organisations to approach the relevant Land Council or incorporated association to secure a long-term lease.

The NTER Review Board recommended that the Government make fair payments for five-year leased land. The Government has asked the Northern Territory Valuer-General to determine reasonable amounts of rent to be paid to the Aboriginal owners of five-year leased land. Payments will begin as soon as the independent determination is made.

Proposed enhancements

The Government proposes to make some changes to the legislation relating to five year leases to help clarify the purpose and operation of the leases.

These changes will include:

- making the objectives of the five-year leases clearer
- defining the permitted use of the leases as improving the wellbeing of communities
- excluding mining or other developments inconsistent with the continuing use of the areas as towns

- requiring the leases to be administered in a way that respects Aboriginal culture; and
- outlining the Australian Government’s commitment to move to voluntary leases.

The Government also proposes to develop clear guidelines to govern the land use approval process to ensure the transparent allocation of lots.

Questions for discussion during consultation

- What are the main benefits of five-year leases for individuals and communities?
- What are the main problems with five-year leases for individuals and communities?
- If five-year leases were to continue, how could they be improved?
- Will individuals or communities benefit from a continuation of five-year leases, including the enhancements outlined in this paper?

E. Community stores

The NTER brought in a licensing scheme for community stores. The aim was:

- to improve the range and quality of groceries available in communities
- to make sure stores are well managed and able to take part in the income management arrangements.

Description of the current measure

Community stores in prescribed areas of the Northern Territory are eligible to participate in the licensing scheme.

Stores are assessed and licenses issued to operators on the basis that stores:

- have a reasonable quality, quantity and range of groceries and consumer items available and promoted at the store, including healthy food and drinks
- demonstrate the capacity to participate in the requirements of the income management regime; and
- have sound financial structures, retail and governance practices.

What has been achieved?

More than 80 community stores have now been licensed. The licensing of stores, combined with income management, is improving the quality and range of foods being purchased from community stores.

A review of the first 41 stores to be licensed found that:

- Customers' shopping habits have changed significantly, with more healthy food purchased, including fruit and vegetables, dairy foods and meat – this was most marked in stores where customers had not been buying much healthy food; and
- The turnover of goods in stores has increased so the stores are more able to stock a wider range of goods, including fresh fruit and vegetables.²

The stores licensing scheme has also improved the overall performance of stores. For instance, most community stores have received upgrades to their point-of-sale monitoring systems and now have better access to the internet. These upgrades have allowed stores to improve their overall retail management and financial management systems, and helped to make store managers more accountable.

Further challenges

The Government recognises that there are still concerns that the licensing scheme has not done enough to improve the affordability of food items, particularly fresh healthy food.

Future arrangements

The Government believes that the licensing scheme for community stores needs to be continued and strengthened in order to keep up the improvements that have been made.

To stop the licensing scheme would see a return to lower quality stores and increase the risk to health in many locations.

2 Commonwealth of Australia 2008. *Second Stores Post Licensing Monitoring Report – 41 Stores*. http://www.fahcsia.gov.au/nter/docs/reports/second_monitoring_report.htm

Description of the proposed model

Under the proposed new licensing conditions, stores would be assessed in relation to:

- the quality, quantity and range of groceries and consumer items for sale
- the nutritional focus of the store operation
- the retail and financial management practices of the store operator; and
- the character of the operator.

Stores that meet expected standards would continue to be licensed to operate.

Some stores may be assessed as having problems that can be fixed. In this case the licensing conditions would require them to make improvements. Where a store is assessed as having problems that cannot be fixed, the store would not be issued with a licence.

Penalties could apply where a store is operating without a licence, or where licence conditions are breached. The Government would also have the power to require the store owner to appoint a new store operator where the store is not being operated in a satisfactory manner, or is operating without a licenced operator.

Some elements will change

Currently the NTER legislation provides the Australian Government with the power to compulsorily acquire a community store in a prescribed community. It is proposed that this provision would be removed.

To ensure that stores are managed in accordance with the most appropriate standards of corporate governance, those Indigenous-owned and controlled stores that are currently incorporated under the *Associations Act 2003* (NT) would be required to transfer to registration under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

In addition, decisions taken by the Government to refuse, revoke or vary a licence or to refuse to approve a nominated manager would be able to be reviewed by the Administrative Appeals Tribunal.

Questions for discussion during consultation

- What are the main benefits of community stores licensing for individuals and communities?
- What are the main problems with community stores licensing for individuals and communities?
- If community stores licensing were to continue, how could it be improved?
- Will individuals or communities benefit from a continuation of community stores licensing, including the stronger licensing arrangements outlined in this paper?

F. Controls on use of publicly funded computers

This measure aims to protect Aboriginal women and children in remote Northern Territory communities from inadvertent exposure to pornographic and/or violent material on publicly funded computers.

Those responsible for publicly funded computers usually located in NTER prescribed areas are required to install filters, and to record and audit the use of those computers.

Illegal material was found on some organisations' computers in audits carried out in June and December 2008.

The Government is proposing to retain the current controls. They were introduced in response to complaints from Aboriginal women about their distress at finding pornographic, violent and possibly illegal material on computers provided to community organisations through government grants or other funding.

Questions for discussion during consultation

- What are the main benefits of controls on use of publicly funded computers for individuals and communities?
- What are the main problems with controls on use of publicly funded computers for individuals and communities?
- If controls on use of publicly funded computers were to continue, how could they be improved?
- Will individuals or communities benefit from a continuation of controls on use of publicly funded computers?

G. Law enforcement measures

The Government has announced that it will continue funding for the Australian Crime Commission (ACC) for its activities under the NTER until June 2010. This will provide government, law enforcement and human rights agencies with improved understanding and evidence of the nature of violence and abuse in Indigenous communities. This adds to the Government's other commitments to improving safety in communities, including building five new police stations and supporting 60 additional police who have been placed in communities.

The ACC has unique, special powers that are used to deal with nationally significant crime where ordinary law enforcement methods are not effective. These powers can be used only with the approval of the ACC Board. Under the NTER, the ACC's special powers have been approved for use by the National Indigenous Violence and Child Abuse Intelligence Taskforce (NIITF).

The powers include strong secrecy provisions, which provide witnesses with confidentiality and protection against incrimination. The secrecy provisions protect people who may otherwise be reluctant to provide information or testimony for fear of retribution from people they know, or in some instances from their employer.

This is important to ensure that people have the confidence to take appropriate action against perpetrators of violence and abuse.

Since using the special powers, the NIITF has found many service providers and community members who want to speak about the nature and extent of violence and child abuse in Indigenous communities. They have asked to be protected by the privacy and confidentiality conditions provided by the special powers. Without these powers, it would be difficult to access data held by service providers on child abuse and violence in Indigenous communities.

The Government believes it is necessary to continue the use of the ACC's special powers so that the NIITF can collect information that is otherwise difficult to obtain. This will improve the quality and credibility of the intelligence gathered, leading to more convictions of offenders, greater protection for families, and reduced levels of violence and child abuse.

Questions for discussion during consultation

- What are the main benefits of the ACC's special powers for individuals and communities?
- What are the main problems with the ACC's special powers for individuals and communities?
- If the ACC's special powers were to continue, how could they be improved?
- Will individuals or communities benefit from a continuation of the ACC's special powers?

H. Business management powers

The NTER laws included a power that allowed the Government to stop funding an organisation in a community if it felt the organisation was not properly doing its job of delivering services. This power has not been used, and is not needed because the Government has other ways to ensure its funds are managed properly. The Government proposes to remove this power from the legislation.

5. Next steps

The Government is committed to a process of genuine consultation with Aboriginal people in the Northern Territory.

The proposals set out in this paper will be discussed with communities from June through to September 2009. Interpreter services will be provided.

The consultation process will include:

- ongoing and specific consultations in all communities and town camps subject to the NTER
- regional workshops in Darwin, Katherine, Nhulunbuy, Tennant Creek and Alice Springs; and
- three regional workshops with key NT Aboriginal organisations.

As this discussion paper indicates, the Government believes that the current measures should continue – but the form of some of these measures may change.

The Government wants to hear community views about continuing the NTER measures and how they could be changed to deliver greater benefits. It is prepared to consider these views before finalising its position.

The Government proposes to introduce legislation in October 2009 to remove the current provisions that exclude the operation of the RDA in relation to the NTER. At the same time the Government would introduce legislation for any changes it decides to make to the individual NTER measures, following the consultation process.

Where changes are proposed, the Government will ensure that the transition to new arrangements is as smooth as possible. Government officials will continue to work closely with communities to explain the changes and support them in transition.

Individuals and communities affected by any changes will be provided with comprehensive and up-to-date information.

Stakeholders will also have opportunities to help plan the implementation of new arrangements.

6. Providing feedback

Further information can be found on the internet at:

www.indigenous.gov.au.

The main opportunity for providing feedback will be through the community consultation process. Details on the timing of the consultation sessions in individual communities are included on the website. Further information is also available from GBMs in communities and from the Indigenous Coordination Centres in:

- Darwin (phone 8936 6366)
- Alice Springs (phone 8959 4211)
- Tennant Creek (phone 8962 1999)
- Katherine (phone 8973 2000)
- Nhulunbuy (phone 8987 8468).

