“A human rights agenda for the Northern Territory”

The annual Eric Johnston lecture presented by

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Australian Human Rights Commission

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- distinguished guests and
- my many family and friends from Darwin and across the Territory

Good evening and thank you for coming out in force tonight.

I begin by paying my respects to the Larrakia peoples, the traditional owners of the land where we gather today. I pay my respects to your elders, to the ancestors and to those who have come before us.

Thank you Donna Odegaard for your warm welcome on behalf of the Larrakia peoples, many of whom I see here tonight. For those who are not aware, our Kungarakan traditional lands share a common boundary with the Larrakia.

Thank you Minister Scrymgour for your introduction, and to Natalie May and Jo McGill from the Northern Territory library for the invitation to address you tonight.

I am honoured to be invited to speak to you this evening in memory of Commodore Eric Johnston – a man who epitomises what it is to be a Territorian, and who served us well both in his military career, during cyclone Tracy, and as the Administrator of the Northern Territory.

I join a very distinguished list of previous speakers and I am also honoured to stand in their company.

I noticed that on the website for these lectures it states that the purpose of the lecture is to ‘fill a serious gap’ in Darwin’s cultural calendar, and that the lecture is delivered annually, ‘in general alternating between a prominent Territorian and a reputable interstate / overseas personality’.

I have spent a lot of the past two years calling on all Australian governments to ‘close the gap’ in Indigenous health inequality, so am pleased to be able to assist tonight in ‘filling the serious gap’ that exists in the Darwin cultural calendar.
I am, however, not sure if I am intended to be a ‘prominent Territorian’ or ‘a reputable interstate or overseas personality.’ Given last year’s lecture was given by The Honourable Austin Asche – a local and a ‘prominent Territorian’ – I assume I am intended to be a ‘reputable personality’.

I can live with that.

I am, of course, also a proud Territorian – whose traditional lands (those of the Iwaidja and Kungarakan tribes) are close to Darwin, which is the place where I spent most of my life until 1992.

In considering what to cover in tonight’s speech I reflected on the experiences of my family, many of whom are with us tonight. I particularly reflected on one aunty who lives at Adelaide River, a small community 111 km south of Darwin, and other aunties who lives in the Amangal Aboriginal community, 200 metres across the road. One aunty can live in dignity and spend her aged pension at the local shop while the others must travel up to 100 km to spend 50% of their pensions at a designated supermarket or store because Amangal is a prescribed community under the Northern Territory intervention.

So in accepting this speech, I wanted to reflect on what it is that is unique and special about the Territory, and on some of the human rights issues that we particularly face among our Aboriginal communities.

We in the Territory face so many issues – often uniquely – and are also often the testing ground, the incubator, for a range of policies and approaches before there is an attempt to introduce them more broadly to the States.

I provided the organisers with the rather bland title for this lecture of ‘a human rights agenda for the Northern Territory’.

It may be a bland title but I can assure you it is not a bland topic.

Not that I need to tell you about this – as you are, after all, living through one of the most intensively controversial Indigenous experiments in Australian history in the NT intervention.

This raises enormous human rights challenges for Indigenous men, women and children in the Territory. Particularly in ensuring that we deal with violence among our people while also settling a path of respect and equality.

And it also raises enormous human rights issues for all non-Aboriginal Territorians.

When you go to the local shop and there is a separate line for Aboriginal people to purchase their products, because of the store cards that they are required to use – this is also a human rights issue for you.

When you consider that you are covered by all the protections of the law – be it anti-discrimination laws or trade practices laws or guarantees of just terms
compensation under the NT Self-Government Act – but Aboriginal people are not, this affects your human rights.

And if you consider that forms of compulsory welfare quarantining could tomorrow be applied to you – be you a pensioner, a single mother or unemployed – then this affects your human rights.

The simple fact is that so long as Aboriginal people in the Territory do not enjoy equal rights, access to justice and procedural fairness – or in short, the benefit of the rule of law – then no Territorian enjoys equal rights or is secure in the protection afforded by the law.

And in a great democracy like Australia, the vulnerability of such basic protections is a matter of great concern.

I have spoken of this issue many times, so I don’t intend to repeat those issues here tonight. Instead, I intend to focus on two key human rights challenges that are very much Territory issues. This is welfare quarantining through the NT intervention and education delivery in remote Aboriginal communities.

First, welfare quarantining.

One of the critical flaws of Indigenous policy that we have seen in the last decade has been the lack of serious engagement and participation of Indigenous peoples in Indigenous policy development and implementation.

The ‘fundamental flaw’ of the federal government’s efforts over the past five years has been to apply government policy to Indigenous peoples as passive recipients. The lack of engagement has frequently undermined the policy initiatives themselves as we have seen with the Northern Territory Intervention.

A few weeks back the federal government announced their preliminary response to the NT Review Board on the NT intervention. They announced that they agree in principle with the 3 overarching recommendations of the NTER Review Board’s report. These recommendations:

- emphasise the need to continue to address the unacceptably high rate of disadvantage in remote Aboriginal communities in the NT;
- to do so by resetting the relationship with Aboriginal people based on genuine consultation, engagement and partnership; and
- to do so by ensuring that all government actions respect human rights obligations and conform with the Racial Discrimination Act 1975 (Cth).

The Government stated that in agreeing with these principles they would continue to protect women and children from violence as well as to ensure that in the longer term the NTER measures cannot rely on the suspension of the Racial Discrimination Act (RDA).
In relation to this, they have indicated that they intend to consult with Indigenous communities about a non-discriminatory form of income management for communities over the next twelve months.

Now I am keen to see the specific information about the measures and process by which the government intends to engage with Indigenous communities and individuals on this issue. And I acknowledge that the government has indicated that it intends to provide a fuller response to the recommendations of the *NTER Review Report* before the end of 2008 and so I can only guess that this is the point at which we will see this detail.

But speaking generally, I support this announcement and I see these two commitments: non-discrimination and protecting women and children: as complementary and not as competing priorities.

I am, however, disappointed that it will take at least twelve months to implement these announcements and that the compulsory regime will stay in place in the meantime.

The big question though, is how do we ensure community engagement on this issue?

Federal government departments have, in my view, got out of the habit of regularly consulting with Indigenous peoples and in many instances don’t seem to know how to do it.

We need to reach a point where bureaucrats value such engagement and understand its importance in terms of respect but also in terms of improving the quality of their decision making and policy formulation.

This is a huge problem. And one that is particularly concerning when we look at the difficult issue of income management.

I understand and I support the objective of ensuring that women are not humbugged and that children are fed and clothed.

In my Social Justice Report to the parliament last year I provide a detailed analysis of the income management system under the NT intervention and how it stacks up against human rights standards.

In this I note that the human right to social security permits governments to introduce measures that are targeted to ensuring that children and women benefit from social security.

So it is possible within a human rights approach for there to be some form of quarantining in order to guarantee that benefits actually reach their intended beneficiaries.
But it is about doing this in a way that is not coercive, or lacks dignity, or is poorly targeted or unworkable. And these are the problems of the existing scheme under the intervention.

The challenge that we face here in the Territory is to refocus the current intervention approach from an emergency to a community development approach in improving the lives of Northern Territory Aboriginal children.

Unless the Government restores respect to and constructively engages with Aboriginal people in the NT, the community ownership so essential for enabling functional, resilient communities, will not be achieved.

As the NT Review report by Peter Yu, Marcia Ella Duncan and Bill Gray points out:

No matter how good the framework, no matter how much money is available, you cannot drive change into a community and unload it off the back of a truck. That is the lesson of the Intervention.

Deep seated change — safe healthy families — must be grown up within the community. That is the challenge for Aboriginal people.

So careful and thorough consultations with all sections of the affected communities is essential. There should be a process that is inclusive of both women and men and where the free, prior and informed consent of community members is sought.

And this should guide changes to the income management system.

Ensuring the safety of community members, particularly women and children should be of paramount concern in this process.

This is particularly the case given the fears by women in some communities that immediate lifting of compulsory income management could lead to violence and intimidation associated with the practice known as humbugging.

Governments have an absolute duty to take action to ensure the safety, security, access to adequate food and other fundamental human rights of men, women and children where these fundamental rights are being denied by the actions of other members of a community.

Some form of ongoing income management is therefore appropriate for individuals who are proven objectively, through due process, to be negatively impacting on the rights of other community members - especially women and children - to personal security, adequate food, clothing and shelter.

But what is required is a carefully - targeted approach.
Such a targeted approach is fundamentally different to maintaining the type of blanket income management measures on the basis of race that currently exists.

Any measures to be applied to the entire community should only be implemented with the voluntary agreement of the community, including affected women and children.

Compulsory income management is at best a stop gap measure and no substitute for the sustained, long term action needed to make these communities safe for women and children.

Now, my Social Justice Report 2007 to the federal parliament set out a 10 Point Plan to ensure the intervention is non-discriminatory. This provides a mechanism that can assist the Minister in making the transition from emergency intervention to community development.

Action 9 of my 10 Point Plan involves using ministerial discretion to remove communities from the prescribed list of communities following the development of Community Partnership Agreements.

This could enable a staged and incentive-based approach to removing compulsory income management and other measures once the Minister is satisfied that a particular community has sufficiently dealt with the issues of violence and abuse or has a locally tailored plan to achieve this.

It is important that there is proper consideration of alternative mechanisms to enable communities to transition to new arrangements according to their specific circumstances and needs, and to ensure that transition occurs within reasonable time-frames.

This could enable, for example, some communities to be removed from the prescribed list immediately. Others could remain prescribed until such time as community safety issues are addressed through Community Safety Plans (as recommended by the Review Panel) or where Community Partnership Agreements are initiated.

Independent advice could be provided to the Minister to guide decision-making. For example, a specially constituted panel could be established to make recommendations to the Minister over whether a community should be removed from the prescribed list drawing on the results of community consultations as well as advice from the Department, police, the Australian Crime Commission, Government Business Managers and other bodies.

This process that I am proposing would allow a transition from the current model to the one outlined by the NTER Review Panel, in a way that does not compromise the safety of vulnerable community members.
And it would enable the Government to respond to the specific circumstances of individual communities, rather than maintaining blanket measures on the basis of race.

It allows for communities to decide on the most appropriate measures to meet their particular needs.

I urge the government to set deadlines and targets for when the transition from the emergency to community development phase of the intervention is to be completed and how the process will be undertaken. And I urge them to ensure that their full response to the NT Review Panel’s report contains these details of how they will consult about income management.

That is something that remains too vague at this point.

Of equal importance is the need to change the skewed priorities and wasted expenditure of the NT intervention so that resources are directed to areas of most need.

For example, as the NT Review Report notes as at July 2008:

- there were safe houses in only 10 out of 73 target communities (none of which were operational),
- night patrols in only 14 out of 43 target communities that previously did not have these,
- extra police in only 17 out of 73 target communities that had not previously had police,
- child special services in only 12 out of 83 target communities,
- only 20 additional alcohol and other drug (AOD) workers for the entire NT; and
- Considerable backlogs remaining in adequate housing for Aboriginal people in the NT.

There is also a deadlock between Centrelink and FAHCSIA about who would bear the costs of providing a 1800 number for Indigenous people to be able to change their details or make inquiries of Centrelink under the intervention. This is particularly important due to the difficulties in accessing money where details are wrongly recorded or change.

At present, there are only 1300 numbers that can be accessed from payphones in many remote Aboriginal communities.

Calls from your home phone to Centrelink 13 numbers from anywhere in Australia are charged at a fixed rate. That rate may vary from the price of a local call and may also vary between telephone service providers. Calls to 1800 numbers from your home phone are free.

Calls from public and mobile phones may be timed and charged at a higher rate, and there is anecdotal evidence that this is proving to be a costly burden on Indigenous peoples in communities. A 1800 number is a practical issue
that has been continually raised as potentially making things easier for communities.

The government is well aware of this issue and well aware that it is causing hardship. I am assured by some senior officials that the issue is well-known at the highest levels of government. And yet the issue is not fixed because Centrelink and FAHCSIA cannot agree on who would bear the cost.

This type of bureaucratic inaction disadvantages Indigenous communities and needs to be resolved.

I’d now like to turn my attention close to home and talk about education policy – past and present.

This year in my Social Justice Report 2008 I devote a chapter to Indigenous education. The purpose of this chapter is to outline processes that will guide governments, parents and education providers in their efforts to create a coherent educational environment for remote Indigenous young people.

I, like others, see the shortfalls of the education systems in remote Australia.

I despair at the negligible improvements in English and numeracy outcomes along with the simultaneous erosion of Indigenous languages and culture.

School attendance rates are poor and Indigenous students are facing ever reducing life chances. But where I depart from many of the vocal education commentators is about why there is failure.

I am concerned that we are not addressing what it is that makes remote schools viable and successful providers of quality education, and are instead too focused on ideological debates about language and culture vs mainstreaming.

Despite decades of educational debate and fluctuating attention on Indigenous education, there appear to be no definitive approaches, no givens, no fundamental positions that bureaucracies adhere to and categorically apply when delivering education to Indigenous students.

This is borne out by two facts. Firstly, new approaches are being continuously trialled in an effort to improve the less than acceptable benchmark test results, and secondly the various approaches have not significantly improved the academic achievements of Indigenous students over time.

Those people who have followed Indigenous education policy in past decades will have witnessed a cyclic and repetitive process of ‘new’ and favoured educational initiatives and approaches.

People who have been teaching for long enough will have noted how some approaches are promoted, then demoted, only to re-emerge a decade later.
New attendance schemes, new literacy approaches and new curriculum frameworks are worked and reworked. Some are funded for a short time and enthusiastically embraced by schools, only to find that they have been defunded at the end of the funding cycle.

Schools continue to be the experimental grounds.

There are good reasons to explain why a sustainable and transferable Indigenous education approach is elusive.

Education approaches are highly influenced by the environmental context. The outcome of any approach is affected by the quality of the school leaders and educators – where quality fundamentally includes the ability of these professionals to adapt to the cultural context in which they are teaching. It depends on the resources available to the students; the environment in which the students are learning; and the general health and well-being of the student.

In remote areas, the school environment is often less predictable than in urban settings. At the school level there are the following variables:

- How well funded is the school?
- Do the student numbers attract at least one full-time teacher?
- What kind of books and learning materials are available?
- Is there internet access?
- How good is the school leadership?
- Are there Indigenous leaders and teachers at the school?
- Have the best qualified and most appropriate teachers been recruited to the school?
- To what extent are the educators competent communicators in a cross-cultural environment?
- How well trained are the teachers in literacy and numeracy approaches?
- Are the teachers experts in their fields?
- Are they even trained in the subjects that they teach?
- What is the teacher turnover?
- If the turnover is high, is the school curriculum structured in a way to avoid repetition and ensure continuity of content and complexity?

The outcome of any educational approach can be influenced by resources in the local community.

- What level of pre-schooling or early childhood learning is available and accessible to the children in the community?
- How well resourced is the community in terms of healthcare services, housing, policing and access to affordable, nutritious food?
- Is this influencing the health and the learning abilities of the children? For example, how prevalent is hearing impairment?
The governance and leadership within the community and the region can also have a large impact on educational outcomes for students.

- Are there regional plans or community plans that tie together pre-schooling, primary and secondary education and post school options like further study or employment pathways?
- Are there leaders in the community to provide role models for the students?
- To what extent is the community involved in the school and supportive of its aims?
- Is there employment or employment plans for the community and beyond so that students can see the relevance of learning and a life after school?

These are – of course – the type of issues that should be integrated into the objectives of something like the NT Intervention – at the community level and more broadly.

We know that the impacts that local resources, community governance and school staff expertise can have on education are enormous.

Each school and each community is unique with its own strengths and challenges. Therefore, while we can look at a whole school approach to literacy for example, and know that it may have some impact on the students’ learning of literacy, we know also that there are numerous other variables at work.

We know that the approach will be influenced by the expertise of the teacher and the functioning of the community. We know that just getting the child to school is a factor.

All of this gives us some important information.

It tells us that any educational approach is only part of the equation.

There are numerous variables and a one-size-fits-all approach will not achieve the same results in different environments.

Yet there is a problem here. Departments of education do not operate in a way which provides a school-by-school approach to resource allocation. Departments are not usually in a position to provide site analyses of schools and communities and to tailor approaches to meet specific school and community needs.

While there may be some provision for local requirements, departments are usually reliant on formulas that drive staffing allocations and school resource allocations.
Smaller schools, and those that are more remotely based, are often under-resourced in terms of people and expertise and therefore they can be limited in their ability to advocate for improved infrastructure and learning resources.

And a lot of the IESIP or Indigenous Education Strategic Initiatives Program funding is grant-based and discretionary so it requires schools to apply for funding, advocate for their school in a highly competitive process and then coordinate the grant such as bringing on personnel and then of course they have to administer the funds and report them.

A remote school with two to three teachers will be pressed to deliver the curriculum program alone, and unable to dedicate resources for local advocacy. In fact it is usually the successful schools and the loud advocates that attract departmental resources.

Success can often bring additional resources and disadvantage can often breed further disadvantage.

Schools perform poorly because they may be under-resourced and remote from support services. In turn, education departments question the performance and the viability of underperforming schools. Departments may be under pressure for results from Commonwealth funders and state or Territory Ministers and underperforming schools become a problem to be solved rather than a problem to be resourced.

Underperforming schools are usually the small remote schools with high proportions of Indigenous students who do not speak English as their first language. It is these schools and these students who become the subjects of the ‘mainstream education’ verses ‘education in the community’ debates.

While I have said that there are no agreed givens governing Indigenous education approaches, implicit in the questions I ask here are assumptions about the fundamentals that are required for a sound educational environment.

They are:

- healthy children,
- top quality teachers and school leaders,
- Indigenous school leadership and Indigenous educators,
- excellent learning resources,
- pre and post school options, and
- a well functioning community and region.

These all go a long way to providing for a good learning environment. Developing processes to achieve these ends is the way forward to achieve improvements in Indigenous education outcomes.

Now 9 years ago in this lecture series, the focus was on the lessons learnt in Indigenous education. For reasons I will explain, it is a matter of enormous
shame that the same lecture could have been given tonight and the problems and criticisms that existed would be equally valid.

As many of you will know, ten years ago the CLP Government took steps to end the Bilingual education program here in Northern Territory.

There was much outcry and as I recall, Aboriginal people from affected communities lined the runways of their airstrips to protest when any visiting government representative flew into their community.

The outcry was so strong and so sustained that it took the government by surprise and in 2000 the decision was overturned.

Well it must seem like a strange sense of deja vu to find that we are back at that same point ten years on under a Labor Government which is trying to take away the Bilingual programs.

As many of you will also know - in recent weeks the Northern Territory Government has announced that it will make it mandatory to begin each school day with four hours of English literacy. This will effectively finish Bilingual education.

This is a dramatic back flip for this government. In April of this year it had professed commitments to supporting partnerships with remote schools. The Department of Education had been requested to develop Community Partnership Education Boards which would:

- allow communities to assume more responsibility and accountability for the delivery of quality education and training services by empowering them to coordinate the effective use of resources and expertise.

The Northern Territory schools that have Bilingual education approaches do so with the full support and partnership of the local communities.

The Bilingual programs are driven by the commitment and expertise of trained Indigenous teachers who are members of the community. Parents and community members work in partnership with the local school and the Education Department. This is exactly an example of an approach that the government had sought to achieve through the Community Partnership Education Boards.

Nine government Bilingual schools will be affected by the government’s decision and possibly one independent and three Catholic schools may lose the additional funding that is required to run these programs.

But it is the children and the communities that have the most to lose.

And they are already telling me about their concerns.
This past fortnight my office has received information and a petition from two affected communities.

The petition reads in part:

Our kids do not understand much English when they start school. If we teach them only in English, they will not understand. They will miss out on learning the important things they need to learn in the first years of school. We teach the children English gradually. Bilingual is the doorway to education for our kids, where it leads them to the wider world.

I find this all very disturbing for a number of reasons.

Firstly the government’s policy back flip effectively takes us away from a school and Community Partnerships Approach – something that is essential for sustainable outcomes into the future. Such a dramatic change in approach can only be confusing for students, parents, teachers, community members and Departmental staff. It epitomises the situation consistently faced in Indigenous affairs nationally.

Secondly, I am bothered by the fact that this policy will only really affect Bilingual schools and yet there is no evidence to say that Bilingual schools do worse than non-Bilingual schools.

In fact there is evidence that Bilingual students do better in English reading literacies than ‘English’ schools in their regions. And the English schools offer education in English for all of the hours of the school day.

So let’s put that one to bed. Bilingual education does not kill off English literacy. And Bilingual education has the added benefit of developing literacies in the first language - meaning that children are learning literacies in both their first Indigenous language(s) and in English.

I am also bothered about this policy from a human rights position. The Convention on the Rights of the Child tells us at article 29.1 that:

... education of the child shall be directed to (c) the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own ...

The Declaration on the Rights of Indigenous Peoples, at Article 14.1 also tells us that:

Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
It is time to stop developing policy from ‘on high’ without the input and collaboration of Indigenous Australians.

I’d like to see Indigenous education policy that is led from our strengths – from what works.

Let me give you a striking example.

I understand that this year, seven students from five homeland communities in North East Arnhem Land will be the first homeland students to graduate with the Year 12 Certificate.

This is truly extraordinary given the context and the history of education in the remotest regions of the Top End.

I am aware that much of the effort that has delivered this outcome at the Garrthalala School is due to parents, some dedicated Indigenous and non-Indigenous teachers, Geelong Rotary Club who built an extra classroom, and one or two committed government officers.

Students at Garrthalala receive formal school tuition for only three days per fortnight. The community only got the electricity on this year. It relied on volunteers to build the classroom. It is an extraordinary tale of success against the odds.

Surely the preconditions that make these graduations possible should write the policy that drives remote education.

So let me conclude.

Addressing the human rights challenges that we currently face is about settling the foundations into place to ensure sustainable outcomes for the future.

We simply won’t have such outcomes without respect for human rights – and that is a lesson that emerges from every period of the relationship between Aboriginal and non-Aboriginal people in Australia.

This is because human rights are about recognising and respecting the inherent value and dignity of all people. Human rights are very noticeable by their absence – it is a feeling that something is not right.

Ultimately, human rights are for everyone, everywhere, everyday. Male and female, young and old, rich and poor. Regardless of our background, where we live, what we think or what we believe.

This is why human rights are described as ‘universal’.

Why are you entitled to human rights? Simply, because you are a human being.
You don’t have to be deemed ‘worthy’ by someone or by a government in order to possess rights.

They simply apply on the basis that a child born tomorrow has the same start, the same chance to succeed as everyone else – by virtue of the fact they are born and for no other reason.

What human rights do is they set out minimum standards of protection for vulnerable people and indicate what type of treatment is considered unacceptable. This is treatment by governments, and also in how we interact among ourselves as individuals and groups.

But human rights do so much more than this. Human rights also provide a framework for engaging on issues and for setting a pathway of action. They emphasise process and participation that ensures equality and non-discriminatory treatment.

They provide an accountability tool to guide governments in the development of laws and policy.

A human rights based approach to policy development premises equality and fairness in both the procedural aspects of policy making as well as in resource allocation.

This can work in two ways – it can enable governments to set a proactive agenda for the realisation of rights. And secondly the human rights framework can provide corrections to government laws and policies when they disadvantage or discriminate.

If we look back over the past five years in particular we saw that a ‘practical’ approach to issues allowed governments to devise a whole series of policies and programs, but without any ultimate accountability for meeting the aims, or any accountability for instigating real change.

The challenge now is to redefine and understand these issues as human rights issues in ways that holds governments accountable for protecting these rights.

In my work I have spoken of the human rights based approach to engagement with Indigenous peoples. This requires:

- All policies and programs relating to Indigenous peoples must be based on the principles of non-discrimination and equality, which recognize the cultural distinctiveness and diversity of Indigenous peoples.
- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives.
• Such participation shall be based on the principle of free, prior and informed consent, and
• Capacity building always needs to be considered and resources made available to facilitate meaningful participation by Indigenous peoples as equal partners in planning, design, negotiation, implementation, monitoring and evaluation of policies that affect them.

We are a long way from this situation. And I think it is no coincidence that we are also a long way from the level of success and sustainability that we ought to be achieving.

Please remember, from self respect comes dignity, and from dignity comes hope.

Thank you.