

# After the apology

## Why are so many First Nations children still in foster care?

### A summary of the research on ethnic over-representation and structural bias

Cindy Blackstock

*Although the undesirable child outcomes arising from the chronic over-representation of First Nations children and young people in child welfare care have been broadly acknowledged in Canada, research on this critical issue is just emerging. This paper summarizes the North American literature on ethnic over-representation and structural risks to inform future research directions in First Nations child welfare. Comparisons to the situation of Aboriginal children in Australia are also discussed.*

**KEYWORDS:** Aboriginal, First Nations, over-representation, child welfare, race, structural risks

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In 2008, the Governments of Australia and Canada apologized to the Aboriginal peoples in their respective countries for the forced, and unnecessary, removals of Aboriginal children from their families, resulting in multi-generational trauma and the erosion of Aboriginal cultures and languages. It was important that the apologies were made, but these important words did not take away the reality that far too many Aboriginal children in both countries continue to live in state child welfare and juvenile justice institutions (Blackstock 2008; SNAICC 2007).

The scale of the problem in Canada is troubling and dramatic. Best estimates suggest that the number of First Nations children in child welfare care today outstrips the number enrolled during the height of residential school operations by a factor of three (Blackstock 2003). The over-representation is not sourced in higher rates of abuse, rather it is neglect fueled by structural risks such as poverty, poor housing and resource inequities (Blackstock 2008; Trocmé, MacLaurin, Fallon, Knoke, Pitman & McCormack 2006).

Although the undesirable child outcomes arising from the chronic over-representation of First Nations children and young people in child welfare care have been broadly acknowledged in Canada (Amnesty International 2006; Assembly of First Nations [AFN] 2007; Blackstock, Prakash, Loxley & Wien 2005; McDonald & Ladd 2000; Royal Commission on Aboriginal Peoples [RCAP] 1996), research on this critical issue is just emerging. This paper summarizes the North American literature on ethnic over-representation and structural risks to inform future research directions in First Nations child welfare. Comparisons to the situation of Aboriginal children in Australia are also discussed.

#### LEARNING FROM THE LITERATURE ON ETHNIC OVER-REPRESENTATION IN CHILD WELFARE

Needell et al. (2007) provide a useful way of describing over-representation (also known as disproportionality) as the rate of an event for a particular racial group being higher than what would be expected given the proportion of

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**Cindy Blackstock, M.M., PhD (candidate)**  
Executive Director  
First Nations Child and Family Caring Society of Canada  
(www.fncaringsociety.com)  
Email: cblackst@fncaringsociety.com

*A member of the Gitksan Nation, Cindy Blackstock has worked in the field of child and family services for over 20 years. Key interests include exploring the over-representation of Aboriginal children in child welfare care, structural drivers of child maltreatment in First Nations communities, and human rights.*

population for that group and describing disparities in terms of comparisons between different racial groups.

An analysis of the child in care data from three sample provinces in May 2005 found that approximately one in 10 of all status First Nations<sup>1</sup> children were in child welfare care, compared to one in 200 non-Aboriginal children (Blackstock, Prakash, Loxley & Wien 2005.) Year-end data collected by the Department of Indian and Northern Affairs Canada indicates that the number of status First Nations children living on-reserve<sup>2</sup> entering child welfare care increased a staggering 71.5% from 1995 to 2001 (McKenzie 2002). The Canadian Incidence Study on Reported Child Abuse and Neglect (Trocmé et al. 2001) found that neglect was the primary reason why First Nations children were coming into care at disproportionate rates. Controlling for poverty, substance use, and poor housing substantially accounted for the over-representation (Trocmé, Knoke & Blackstock 2004; Trocmé, MacLaurin, Fallon, Knoke et al. 2006).

The over-representation of First Nations children occurs at every phase of child welfare intervention from reports, investigation, substantiation, entry into care and placement in permanent child welfare care (Blackstock 2007; Trocmé, MacLaurin, Fallon, Knoke et al. 2006). Preliminary analysis of children in care data from three provinces<sup>3</sup> and 27 First Nations child and family service agencies indicates that First Nations children also make up a disproportionate number of permanent wards in Canada (First Nations Child and Family Caring Society of Canada [FNCFCS] 2006). For example, Aboriginal children represent 7.3% of the child population in the Province of British Columbia (Statistics Canada 2001) but 47.8% of all children in care as of May 2005 (British Columbia Ministry for Children and Family Development [BCMCFD] 2005). Moreover, Aboriginal children represent 53.5% of all children in permanent care in BC and 47.6% of all children in temporary custody (BCMFD 2005). In 2005, a survey of 27 First Nations child and family service agencies across Canada (excluding Ontario) found that 47% of the children served were in permanent care (FNCFCS 2006). Despite this over-representation throughout the child welfare systems, there are no Canadian studies that specifically explore the role of structural factors after the child is placed in child welfare care.

Although the over-representation, also termed disproportionate representation or disproportionality in the literature, of specific racial groups is broadly acknowledged in the American and Canadian child welfare systems, this is

a relatively new, and growing, area of child welfare research. Most of the literature in the United States focuses on the experiences of African American or Hispanic children. Where Native Americans are included, the sample size is often too small to do in depth analysis (Bowser & Jones 2004). Moreover, the studies themselves tend to be either descriptive summaries of the over-representation at referral and investigation stages using administrative data which is sometimes augmented by qualitative interviews (Earle-Fox 2004) or snap shot descriptions of over-representation throughout various stages of placement in limited geographic regions (Clegg & Associates 2004; Wulczyn 2003). Inconsistency in variable and ethnic group definitions as well as variable metrics across studies makes it difficult to compare or synthesize findings. Despite these limitations, important methodological lessons and research findings are beginning to emerge. The following section of the paper reviews the implications of research relying on administrative data sets and substantiated cases before moving on to describe the influence of race in child welfare.

## RESEARCH USING ADMINISTRATIVE DATA SETS

One of the most prominent studies on ethnic disproportionality in the United States was conducted by Fluke et al. (2003) using a sample of over 700,000 children from five US states taken from the National Child Abuse and Neglect Data System (NCANDS). Researchers used two indexes to examine disproportionality among the White, Hispanic, African American, Asian/Pacific Islander and American Indian cultural groups in each state:

- 1) the Investigation Disproportionate Representation Index (DRI) which measures the proportion of children for each cultural group reported to child welfare against census population estimates for that group, and
- 2) the Victim DRI which derived from the percentage of children for each group found to be a victim of maltreatment divided by the number of children investigated for child maltreatment.

For both indexes, values close to one are consistent with no over-representation, values below one indicate under-representation and over one indicate over-representation. Findings indicate that African American children score higher than one in both Investigation and Victim DRI across all five states whereas Native American children score below one in the investigation DRI for four out of five states and below one for two out of the five states for the Victim DRI. Researchers attribute disproportionate child welfare reports rates for African Americans as the primary reason for the Investigation and Victim DRI scores usurping those of white children. Although Fluke et al. (2004) do not question validity of the NCANDS data system in relation to documenting ethnic origin, the work of Earle-Fox (2004)

<sup>1</sup> Refers to children registered as status Indians pursuant to the Indian Act.

<sup>2</sup> Refers to lands set aside by the Crown for Indians pursuant to the Indian Act.

<sup>3</sup> Data from three provinces that collect disaggregated data by Aboriginal cultural group on children in care as well as data from a sample of 27 First Nations child and family service agencies.

suggests that the under-representation of Native American children using the Investigation and Victim DRI measures may be related to the under inclusion of American Indian child data in the NCANDS system. Earle-Fox's (2004) analysis of the NCANDS found that American Indian children are under-represented in the data set as child welfare data submitted by Native American Tribal child welfare authorities are not uniformly incorporated into the NCANDS system.

Ards, Myers and Malkis (2003) explored racial over-representation among child welfare referrals and report substantiations in a sample of African American, White, Hispanic, Asian and Native American children based on the Minnesota Social Services Information System [SSIS] data system. The study sample was drawn from three metropolitan counties selected by the research team because they had the largest proportion of what they term 'children of color' of the total 87 counties in Minnesota. Ards et al. (2003) find that although child, caregiver and socio-economic factors substantially account for the over-representation at both the report and substantiation levels for African American children, racial bias could not be discounted as a factor. When researchers analyzed Native American children, they found over-representation at both the report and substantiation stages in all studied counties but found a reverse effect in the non-studied counties which appear to under-substantiate Native American cases. Researchers argued that in effect, the over-representation in the studied counties was cancelled out by the under-representation in the non-studied counties. The problem is that the sample only includes counties in metropolitan areas and many of the Native American reservations in Minnesota are in the non-studied counties, raising questions as to the degree to which tribal data was included in the SSIS system in these rural areas. This concern is reinforced by a notation in the Minnesota Department of Human Services (2007) SSIS newsletter dated April 20, 2007, indicating that the first Native American Band began using the SSIS system on April 17, 2007 – four years after the Ards et al. (2003) study was published.

Correspondence from the National Indian Child Welfare Association (2008) indicates under-representation of American Indian and Alaskan Native children problems exists in the other major US child welfare dataset known as the Adoption and Foster Care Analysis and Reporting System (AFCARS) which collects data on children covered by Title IV-B and Title IV-E protections pursuant to the federal *Social Security Act*. Likewise in Canada, First Nations child welfare authorities are not uniformly linked to provincial or national data systems, meaning that analysis of provincial child welfare administrative data alone will likely under count First Nations children (Blackstock et al. 2005). This suggests that studies exploring over-representation of American Indian/Alaskan Native children in the USA or

First Nations children in Canada should include both mainstream and Aboriginal data systems to achieve more reliable estimates of child welfare over-representation.

Along with providing good examples of why it is essential that researchers are clear about what data on Aboriginal children may or may not be included in administrative data sets used to assess the over-representation of various groups, these studies suggest that report and substantiation rates for cultural groups should be measured against census data and as a proportion of each other – for example, taking the number of substantiated reports for any given group and dividing by the total of reports received.

## IMPLICATIONS OF RELYING ON SUBSTANTIATED CASES IN OVER-REPRESENTATION RESEARCH

Given that many of the research projects on over-representation focus on substantiated cases, it is important to understand if there are significant differences in child outcomes between substantiated and unsubstantiated cases. Secondary analysis of the National Survey of Child and Adolescent Well Being (NSCAW) (US Department of Health and Human Services 2008) helps answer this question. The NSCAW collected data on over 5000 cases drawn from a nationally representative sample of 97 child welfare agencies across the USA during a three month period spanning 1999 and 2000. Data is collected on children in care as well as those receiving services in their homes and is derived from a combination of administrative records and interviews with children, parents, teachers and social workers. Secondary analysis on all children in the dataset indicates that differences between child well-being outcomes among substantiated and non-substantiated cases are not significant; however, social workers are more likely to provide service referrals in substantiated cases (US Department of Health and Human Services 2008). Although race was not explored as a factor in this study, this finding raises important questions regarding the degree to which child functioning factors influence substantiation decisions and should raise a caution among child welfare workers and policy makers about viewing unsubstantiated cases as being in less need of services.

## EXPLORING RACIAL BIAS IN CHILD WELFARE

The Ards et al. (2003) study suggests aggregation bias and racial bias should also be explored. This is consistent with the findings of Trocmé et al. (2006), suggesting that although child and caregiver factors substantially accounted for the over-representation of First Nations children in the Canadian child welfare system, racial bias regarding child placement decisions could not be eliminated as a factor. Important when drawing conclusions on racial bias using

administrative data alone, there is no control for the fact that social workers may assess families of different racial groups disproportionately for any given factor. For example, it is possible that racial bias could result in social workers assessing African American or First Nations caregivers as having substance misuse problems more often than Caucasians. This limitation was not noted in the Ards et al. (2003) or the Fluke et al. (2003) studies, but was noted in the Trocmé et al. (2006) report.

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Studies on post placement case trajectories suggest that researchers should include child, family and structural factors (Courtney & Wong 1996; Harris & Courtney 2003; Trocmé et al. 2006). For example, Courtney and Wong (1996) examined the various ways that children exit the child welfare system (i.e. running away, family reunification and adoption) among a longitudinal cohort study of 8,625 children in the care of California child welfare authorities. Findings suggest that predictors varied among the exit destinations and that families provided with preventative services prior to placement were more likely to have their children returned to them and less likely to have the child placed for adoption. Poverty significantly reduced the rates at which children would return home or be adopted but had no effect on running away. Researchers recommend further examination of whether or not child welfare services are aimed at alleviating the negative impacts of poverty. Harris and Courtney (2003) built on these findings by conducting an exploratory study examining the interaction between race and family structure on the likelihood of family reunification and found that race had a differential effect. African American lone parent families were less likely to reunify compared with their Hispanic or Caucasian peers whereas African American and Caucasian two parent families were less likely to reunify than Hispanic families. Overall these results suggest poverty, preventative service provision, and family structure should be included along with race when exploring child welfare trajectories for over-represented groups.

One of the few American studies to explore child welfare service provision to ethnic minorities was done over 25 years ago, finding that Native American children and

families were the least likely of any racial group in the USA to receive family support services via the child welfare system (Olsen 1982). More recently, Libby et al. (2006) measured the incidence of substance misuse/mental health problems among an unweighted sample of 3,340 American Indian, White, Black and Hispanic caregivers using the National Survey of Child and Adolescent Wellbeing (NSCAW) dataset. After establishing mean rates for reported substance misuse and mental health problems, researchers went on to describe social work referrals for mental health and substance misuse assessment and service for each ethnic group. Results indicate that Native American caregivers were less likely to be reported as having substance misuse problems than White and Black caregivers and were slightly more likely than Hispanic caregivers. American Indians were less likely than Hispanic caregivers to be referred for assessment or services but not significantly different from White or Black caregivers. These results need to be interpreted with some caution given the unweighted nature of the data. Burns et al. (2004) explored the connection between race and the need for, and use of, mental health services using a nationally representative sample from NSCAW. Results indicate that almost half of the children in the sample of over 3,800 cases had some emotional or behavioral problems. Factors contributing to reduced likelihood of care were African American ethnic status among latency aged youth, youth living at home and reduced clinical need.

Overall, race appears to be an important factor affecting case outcomes and service provision. However, the limitations found in sample size and/or composition, the use of un-weighted data, the focus on specific service provision (i.e. substance misuse or mental health), lack of disaggregated data on Native Americans and the US cultural and contextual base raise questions regarding the ability to generalize these findings to other Indigenous peoples.

It is critically important to build on the existing research on over-representation in order to ensure more equitable and positive child welfare outcomes among children in an increasingly diverse society. The growing body of literature on the relationship between structural risks and ethnic over-representation in child welfare is particularly promising.

## **PROMISING RESEARCH: EXPLORING STRUCTURAL RISK IN INDIGENOUS CHILD WELFARE**

Child welfare research on Indigenous populations in Australia and the United States reveal striking parallels to the experience of First Nations children in Canada in terms of the primary type of child maltreatment and the contribution of structural factors to the over-representation of Indigenous children in out-of-home care.

In Australia, Aboriginal children are on average seven times more likely than non-Indigenous Australians to be in child welfare care and the numbers are rising (Australian Institute of Health and Welfare 2008). The primary type of child maltreatment experienced by Aboriginal children is neglect — not abuse (SNAICC 2007.) According to the Australian Institute of Health and Welfare (2008), the key contributing factors to neglect are poverty, low socio-economic status, cultural difference in child caring, and the intergenerational impacts of colonization. Similarly, in the United States, Native American children are over-represented for neglect but not for other forms of child maltreatment (Earle-Fox 2003; US Department of Health and Social Services 2006). In a secondary analysis of data from the National Child Abuse and Neglect Data System (NCANDS) supplemented by key informant interviews with social workers, Earle-Fox (2004) found that Native American children substantiated for neglect were more likely to come from families misusing alcohol, experiencing domestic violence, and relying on public assistance than other Americans.

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Research from other child and family related fields underscores the importance of structural factors on the well-being of Indigenous<sup>4</sup> children. For example, Chandler and Lalonde (1998) studied suicide in First Nations communities in British Columbia (BC) and found that collectively, the rates are amongst the highest in the world. When they disaggregated the data amongst the 197 First Nations in BC, they found that over 90% of the suicides occurred in 10% of the communities. Key factors influencing lower suicide rates were related to higher degrees of self-determination as expressed by women in government, First Nations-controlled education, health, fire, police, and child welfare services, and advancement in treaty negotiations. This is consistent with the findings of Cornell and Kalt (1992) who found that improved socio-economic outcomes in American

<sup>4</sup> Indigenous refers to the distinct and diverse groups of people who self-identify as Indigenous. The term is used in this paper to refer to Indigenous peoples in an international context.

Indian communities were related to higher degrees of sovereignty.

The work of Costellano et al. (1997) further emphasizes the importance of structural risk in their longitudinal study of children's mental health amongst Native American children of the Eastern Band of Cherokee Indians in North Carolina. As expected, they found disproportionate rates of mental illness amongst Native American children. However, during the course of this research, the tribe opened a casino, employing a number of the children's parents. Costellano et al. (1997) found that the rates of mental health problems amongst children whose parents worked at the casino actually decreased because parents' incomes rose above the poverty level. This resulted in significant improvements in the mental health of their children being observed.

Psychologist James Garbarino (1995) notes that 'socially toxic' families experiencing disproportionate rates of poverty, discrimination, and poor housing have heightened stress levels and are more likely to experience family problems such as substance misuse, family violence, and child maltreatment.

A growing body of research challenges the presumption that poverty is related to higher rates of abuse (Sealander 2003). This finding appears to be reflected in Indigenous populations as well, given that First Nations in Canada experience poverty at far greater rates than non-Indigenous people and yet do not have higher rates of abuse. This is also true of Indigenous children in Australia (SNAICC 2007) and in the United States (Sealander 2003). Lindsey (2003) argues that, despite various reforms in the child welfare sector, there is no evidence that the child welfare system has made any gains in reducing the incidence or ill effects of child abuse in the United States. He suggests that given the failure of the child welfare system to adequately respond to child abuse, it should be dealt with by justice authorities, leaving child welfare to focus on the structural factors that affect the ability of so many caregivers to provide adequately for their children.

Despite growing evidence that structural factors play a key role in predisposing First Nations children to higher risk for social disadvantage, research in this area continues to be limited. This may be because Canadian child welfare tends to focus primarily on child and family interventions, paying only subsidiary attention to the impact of structural factors such as poverty, poor housing, and the multi-generational impacts of colonization (Blackstock 2003). This focus on risk in child and family environments is reflected in child welfare risk assessment models and methods that do not account for structural risk, other than how it may manifest at the level of the child. For example, a social worker may assess a child as malnourished but not take account of the impoverished conditions in the community or the lack of services which have interfered with parents' capacity to

provide a nutritious diet. The problem with this approach is that it opens up the possibility that caregivers living in areas where structural risks are more prevalent (e.g. on reserves or in low income areas) will be held responsible for poor nutrition or unsafe housing, when they are not reasonably capable of affecting the causes.

There is a substantial need for more research to better define structural risks impacting on the over-representation of First Nations children in child welfare care in order to inform effective interventions. While increased research in this area is contemplated, it is critical to redress existing child welfare service inequalities experienced by First Nations families. These inequities can compound the problem of over-representation by denying families equitable opportunities to care safely for their children and undermine the ability of progressive child welfare agencies to implement evidence based practice as the understanding of structural risks in First Nations child welfare grows.

## THE IMPORTANCE OF ADDRESSING RESOURCE INEQUITIES WHILE ADDRESSING OTHER STRUCTURAL RISKS

A growing body of research points to First Nations children and families receiving far fewer public and voluntary sector services than other children, despite the overwhelming evidence that First Nations children are at greater risk across the socio-economic, health and education spectrums (Blackstock 2005a; Blackstock, Prakash et al. 2005; Blackstock & Trocmé 2005; McDonald & Ladd 2000; Nadjiwan & Blackstock 2003). A study done in 2003 found that First Nations children on reserves receive negligible benefit from the voluntary sector, which delivers services valued at over \$90 billion per year to other Canadians (Auditor General of Canada 2008; Blackstock 2005; Nadjiwan & Blackstock 2003).

The shortage of voluntary sector services is aggravated by insufficient levels of child welfare funding provided by the federal government to reserves (AFN 2007; Blackstock 2003; Blackstock, Prakash et al. 2005; Blackstock & Trocmé 2005; McDonald & Ladd 2000; McKenzie 2002). The federal funding shortfall is particularly severe for least disruptive measures, meaning that First Nations families receive far fewer child welfare services to help them safely care for their children at home (AFN 2007; Blackstock et al. 2005; McDonald & Ladd 2000). The Department of Indian Affairs and Northern Development (INAC) and First Nations agree that the current child welfare funding is inadequate but differences exist on the extent of the problem and how it should be addressed. In February 2007, the Assembly of First Nations in partnership with the First Nations Child and Family Caring Society of Canada submitted a complaint to the Canadian Human Rights Commission alleging that current and proposed INAC

funding options are inadequate and inequitable. The Auditor General of Canada (2008) recently evaluated both the old and new funding approaches advanced by INAC and found them both to be inequitable, and yet INAC has not advanced any meaningful plan to redress the shortfalls. The Canadian Human Rights Commission has formally accepted the complaint and referred the matter for full inquiry before the Canadian Human Rights Tribunal (AFN 2009). The federal government has applied to the federal court to have the matter dismissed. It is unlikely the federal court will grant the dismissal and the tribunal is expected to hear the case in 2009.

Service access inequities undermine the capacity of families and child welfare authorities alike to design, and implement, meaningful strategies to tackle structural risks affecting children. It is simply not reasonable to expect equal child welfare outcomes on a foundation of unequal resources.

*The outstanding question is whether First Nations children are over-represented amongst those in child welfare care because they are at greater risk and/or whether they are over-represented because the services provided to them fail to adequately address the primarily structural risks they experience.*

## SUMMARY

Given the limited government and voluntary sector services available to First Nations children in care and their over-representation in care, it is critical to maximize service outcomes for existing programs while the inequity issue is addressed. The lack of research on structural risks and First Nations children makes it almost impossible to develop effective interventions to redress their over-representation in child welfare care. The outstanding question is whether First Nations children are over-represented amongst those in child welfare care because they are at greater risk and/or whether they are over-represented because the services provided to them fail to adequately address the primarily structural risks they experience. The available evidence suggests it is the latter, implying that the best chance to reverse the tragic over-representation of Aboriginal children in care in Canada, the USA and Australia lies in supporting Aboriginal peoples to leverage western and traditional knowledge to design, and implement, culturally based child welfare interventions targeting structural risks. ■

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## INVITED COMMENTARY by Sue Green and Eileen Baldry

### on 'After the apology: Why are so many First Nations children still in foster care?' by Cindy Blackstock

The striking thing about the description and analysis of the context and experiences of Canadian First Nations children, as Professor Blackstock notes, is the strong similarity with those of Australian Aboriginal and Torres Strait Islander (Indigenous) children. The percentage of children and young people amongst the Australian Indigenous population is double that of the non-Indigenous (Australian Bureau of Statistics [ABS] 2008), indicating how crucial it is to ensure these young people are cared for and supported.

Aboriginal and Torres Strait Islander children are similarly over-represented in out-of-home care (OOHC) and in care and protection orders as in Canada. Indigenous children comprise 3.6% of the total population of Australian children but 22% of the OOHC population and those on care and protection orders; that is, they are over 8 times as likely to be in OOHC and 7 times as likely to be on a protection order (AIHW 2008:61-62,74).

They are also ...

... more likely to be the subjects of a substantiation of a [protection] notification received during the year than other children. In 2006-07 in all jurisdictions, except Tasmania, the substantiation rate for Indigenous children was higher than the rate for other children. Across Australia, Indigenous children were more than 5 times as likely as other children to be the subject of substantiation (AIHW 2008:40).

But similarly to the Canadian findings, neglect is the most likely reason for a substantiation, with emotional abuse following closely – significantly higher than for other children (AIHW 2008:43). And, as in Canada, to date most research in this area in Australia has been descriptive and quantitative.

Methods of data gathering are of concern in the Australian context as verification of child sexual abuse notifications, for example, are often based on community reports, especially in rural and regional areas, and substantiation of any notification may be confused with welfare matters. A brief analysis of a current intervention by the Australian government highlights these issues.

The moral and media panic over Indigenous child sexual abuse and the inequity of access to and appropriateness of services are being challenged currently in Australia in the context of what has become known as the Northern Territory Intervention (NTI). In June 2007, the former Australian government, under the Prime Ministership of John Howard, announced the Northern Territory Emergency Response, which was positioned as a response to a report on child sexual abuse in the Northern Territory (NT) (Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007). The NTI was literally a military, police and welfare intervention into the lives of a large number of selected remote Indigenous communities in the NT and required the suspension of the Racial Discrimination Act to allow the federal government to apply discriminatory management of welfare payments and the seizure of some Aboriginal controlled lands. Not one of the recommendations of the original report, *Little Children are Sacred*, was implemented and the response did not once mention children. There was no consultation with these Indigenous communities. There was no question that all these communities were suffering lower levels and standards of all social and human services than other Australians enjoy. The NTI, though, framed the Indigenous peoples in the communities as the problems, conflated welfare needs