A "NATIONAL EMERGENCY" IN AUSTRALIA: THE HOWARD GOVERNMENT’S INTERVENTION IN NORTHERN TERRITORY ABORIGINAL AFFAIRS

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On 21 June 2007, Australian Prime Minister John Howard and Minister for Indigenous Affairs Mal Brough declared a “national emergency” in respect of widespread allegations of child sexual abuse in Australia’s Northern Territory (NT), which is home to about 15 per cent of Australia’s Indigenous population and includes some of the most remote and traditionally-oriented communities in the country. Their reference point was the recently released report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Ampe Akelyernemane Meke Mekarle, Little Children Are Sacred, which found child sexual assault to be widespread throughout Aboriginal communities, and made 97 recommendations for a comprehensive response.

The sheer scale of the measures foreshadowed by the Prime Minister took many in Australia by surprise – taken together they constituted a governmental intervention unmatched by any other policy declaration in the last 40 years of Aboriginal affairs.

Since the passing of the Aboriginal Land Rights Act in 1976, over half the Northern Territory has been returned to Aboriginal traditional owners. Under this legislation, traditional owners hold freehold title to their lands and the right to control who enters that land through a permit system. These rights were recognised as part of a broader policy of self-determination that framed Indigenous policy in Australia from 1972 until Prime Minister Howard declared the end of self-determination with the abolition of the Aboriginal and Torres Straight Islander Commission in 2004.

In the name of protecting children, the Commonwealth announced it would introduce the following measures, which would apply to all people living in 73 prescribed remote Aboriginal communities in the Northern Territory:

- widespread alcohol restrictions;
- welfare reforms to stem the flow of cash going toward substance abuse and to ensure that funds meant for children’s welfare are used for that purpose;
- enforce school attendance by linking income support and family assistance payments to school attendance and providing meals for children at school at parents’ cost;
- introduce compulsory health checks for all Aboriginal children to identify and treat health problems and any effects of abuse;
- compulsorily acquire these townships, most of which are held under Aboriginal freehold title, for a leasehold period of five years, possibly without payment of just terms of compensation;
- increase policing levels, including requesting secondments from other jurisdictions to supplement Northern Territory resources;
- require intensified on-ground clean-up and repair of communities to make them safer and healthier by marshalling local workforces through work-for-the-dole;
- improve housing and reform community living arrangements, including the introduction of market-based rents and normal tenancy arrangements;
• ban the possession of x-rated pornography and introduce audits of all publicly funded computers to identify illegal material;
• scrap the permit system (which had been introduced with the recognition of land rights to allow traditional owners to determine who could enter their lands) so that permits would no longer be required for common areas within townships, road corridors and airstrips for prescribed communities on Aboriginal land; and
• appoint managers for all government business in prescribed communities to override the decision-making powers of Aboriginal community-based organisations and their elected Aboriginal Boards.3

The police and army would be mobilised to help facilitate the implementation of these “measures”. Doctors and other professionals would be encouraged to “volunteer” their time and expertise to the cause. This was part of a wide-ranging program in which the government planned to “stabilise, normalise and exit” remote Northern Territory Aboriginal communities, and its intervention would commence immediately.

In the three months that have passed since the national emergency declaration, the various planks of the government’s initiative have undergone considerable modification. Indeed, it was clear from the outset that the dramatic announcement by Howard and Brough on June 21 was made prior to the detail of many of the interventions being worked out. It is indeed noteworthy, given the stated need for urgent action, that three months on not one arrest has been made, not one referral to the authorities in relation to child sexual abuse allegations from across the 73 prescribed communities.

Complex legislation passed in no time

On August 7, the Federal government introduced three Bills containing the “emergency response” legislation into the House of Representatives of the Australian Parliament. Five hundred pages of hastily compiled and complex legislation passed through the House with the support of the opposition Labor Party on the same afternoon as it was tabled. In response to widespread calls for some semblance of decency in the treatment of legislation with such far-reaching consequences (but against the wishes of the Minister), the government assented to holding a one-day Senate enquiry on 10 August. Reflecting the breadth and depth of concern for the issues under consideration, 154 submissions were received by the committee in the 48 hours between the announcement of the enquiry and its sitting. The committee sat on a Friday and tabled their report the following Monday. The majority report recommended that the legislation be passed but that progress on its implementation be reported at 12-monthly intervals and a review conducted at the end of the first two years. The legislation passed the Senate on Friday 17 August – without even these minor amendments.

A convenient opportunity for the government to act on its wider aspirations

It was not until the three Bills were tabled in parliament that the extent of the government’s intentions became fully apparent. A number of commentators observed soon after the June 21 announcement that there was a clear political intent in the measures that went well beyond what might be credited as a genuine desire on the part of the Commonwealth to tackle child sexual abuse. The plan to amend the Aboriginal Land Rights Act4 in order that the Commonwealth could take control of communities, including compulsory acquisition of leases to towns for five years and the abolition of the permit system, suggested that the response to Little Children Are Sacred was being used as an opportunity by the government to act on its wider aspirations, more particularly to undermine the kin-based forms of ownership that characterise Aboriginal land title and substitute these with individual forms. Child sex abuse, noted some prominent Aboriginal commentators, was being used as a “Trojan horse” for undermining land rights.5

With the tabling of the legislation, it became clear that this revolution in Indigenous affairs would indeed be profoundly far-reaching in its consequences. The passing of this legislation enables the government to:

• control the way all Aboriginal people living in prescribed townships in the Northern Territory can spend their welfare payments (with no provision for exemption). Goods and services to be controlled include alcohol, pornographic material, gambling and tobacco;
• confer new powers on police to enter private properties without warrant to pursue a person believed to be affected by alcohol;
• require detailed records be kept for three years about all users of all computers purchased with government funds; and,
• direct courts to no longer take customary law or cultural practices into account in setting bail conditions or sentencing.

The legislation also confers on the Commonwealth the power to:

• vary or terminate or unilaterally alter existing funding agreements with community organizations;
• direct persons to undertake specified tasks at the instruction of new government business managers through the work-for-the-dole (work for welfare entitlements) scheme;
• direct government-funded assets to be used for specific tasks;
• gain oversight of local governance processes, including having a representative attend meetings of members of any government-funded organization and to sack employees of government-funded bodies;
• supervise and control community government councils;
• assess the operations of community-managed stores and, if deemed substandard, appoint new managers; and,
• a right to exclude any person, including a traditional owner of that land, from township land that was to be unilaterally leased by the Commonwealth for five years (see comment 3).

Aboriginal people’s calls for help ignored

At the outset, there seemed to be a double paradox in the government’s announcement that urgent action would be taken. Firstly, for many years Aboriginal people have been appealing to governments to help turn around the escalating social crisis experienced in many communities. The symptoms of this crisis are familiar – substance abuse, poor health conditions, dilapidated and overcrowded housing, domestic violence, high levels of unemployment, social malaise. It is a crisis that many observe has been compounded by the Howard government’s 11 years in office. But rather than respond to Aboriginal people’s calls for help, the government chose to take action unilaterally, without consultation, in a campaign led by military personnel. It was a response that denied the hard work that Aboriginal people themselves were undertaking.

The second aspect of the paradox is perhaps a little less obvious. The communities in question are organized around broad extended family networks. In these kin-based societies, children grow up being cared for intensively by siblings, cousins, grandmothers, aunts and uncles as they move frequently between households and, indeed, townships, in and out of the care of various relatives in a way that can be bewildering to observers from nuclear family backgrounds. The government’s application of punitive measures to all Aboriginal people – including controlling the way people spend their welfare payments to ensure children are looked after – ignores the fact that for most Aboriginal people in this region care of family is the defining principle of their lives. Rather than acknowledge this set of values as the norm and see the crisis gripping such places in terms of a disruption to that norm, the government’s ‘emergency’ typcasts all remote living Aboriginal people as irresponsible and incapable of looking after their children.

A strategically important move for the government

Painting a picture of dysfunction and pathology as the norm in remote Aboriginal Australia is a strategically important move for the government – it not only legitimises the actions of the emergency intervention but also of the government’s wider aims in Indigenous affairs. For it was clear very soon after the emergency was announced that this intervention was about much more than child sexual abuse.

Legal experts have argued that there is ambiguity in the legislation over reference to “just terms” compensation that might be paid to traditional owners for the compulsory leasing of their land. Questions have also been raised as to whether the government intends to pay compensation or would seek to offset this with the delivery of services usually funded as citizen entitlements (such as the maintenance of roads and provision of basic infrastructure). Yet such debate overlooks the possibility that, for traditional owners – for whom land provides the anchorage and inspiration of their very identity – no amount of compensation might be regarded as “just”. In this regard, the government’s approach illustrates an utter failure to comprehend that Aboriginal people hold land to be valuable in radically different terms to the economic.

A radical shift in Indigenous affairs

There are a number of initiatives that are likely to receive widespread support from Aboriginal residents...
of the towns in question – especially increased police numbers, increased support for child and family health, improved housing and infrastructure, and improved quality of goods and management of community-managed stores. But, as suggested by the scope of the legislation and statements made by the Minister subsequent to its tabling, this intervention is about much more than “fixing” existing conditions. At the heart of the government’s coercive approach lies a clear intent: to bring to an end the recognition of, and support for, remote living Aboriginal people pursuing culturally distinctive ways of life.

Evidence of this intent can be observed clearly in a number of the measures, especially those concerning welfare reform and land tenure reform. Applying new controls to the welfare payments of all Aboriginal residents of remote townships treats all parents and carers as if they are irresponsible. Moreover, the quarantining of welfare monies will not just alter the Aboriginal people’s spending patterns, it will place limits on where they can spend their money, potentially curtailing the high levels of mobility that characterise the rhythms of daily life in these parts of the Northern Territory as people travel continually to attend to kin, ceremony and country.

While the emergency response was hastily conceived, and needed broad ranging and complex legislation to back it up, the government’s intentions were stated at the outset: in the words of the minister this was an intervention to “stabilise, normalise and exit” remote NT communities. Jon Altman and I employed these terms as the sub-title for a new book Coercive Reconciliation that brings together essays by Aboriginal leaders, academics and social commentators as the first comprehensive critical response to this intervention because we feel that they indicate a radical shift in Indigenous affairs. Any doubt that this was the case was dispelled in statements made by John Howard at the end of August, when he told residents of Hermannsburg that “whilst respecting the special place of indigenous people in the history and life of this country, their future can only be as part of the mainstream of the Australian community”.7

Normalising the Aboriginal population
If the circumstances of remote communities are viewed as pathological or dysfunctional, then the Prime Minister’s singular vision of Aborigines entering the mainstream appears perfectly reasonable. If Aboriginal people’s cultural difference is to blame for the circumstances they find themselves in – and much has been said in the mainstream Australian media to suggest this is the case – then ending support for culturally different practices and values is clearly necessary. Minister Mal Brough argues that a large part of the problem is that Aboriginal people have been “locked into communal land ownership”. He suggested that ownership of land needed to be properly mixed with economic opportunity: “If we get that balance right, people will flourish.”8 He has directed the courts not to take customary law or cultural practices into account in sentencing procedures. In this sense, the intervention is aimed at nothing short of the production of a newly-oriented “normalised” Aboriginal population – one whose concerns with custom, kin and land will give way to the individualistic aspirations of private home ownership, career, self-improvement. From this perspective, bringing to an end wider Australia’s recognition of customary law and communal land ownership, support for outstations and programs such as bilingual education is simply part of a process of helping Aboriginal people along the road to “normalisation”.

Of particular concern since the passing of the emergency legislation has been the government’s announcement that it will abolish the Community Development Employment program (CDEP). CDEP is a community development program that has operated in remote Aboriginal communities since 1977. It has multiple objectives, including community development, employment creation, income support and enterprise assistance. In recent years, CDEP has come under attack as a form of “passive welfare”, and a barrier to Aboriginal people entering the “real economy”. Under the terms of the intervention, the government declared that CDEP positions would be replaced with “real jobs, training and mainstream employment programmes”.9 But the reality is that there are very limited employment opportunities in remote Australia. CDEP delivers not only employment but also myriad services both within the prescribed communities and to the hundreds of smaller outstations that exist on Aboriginal lands. The abolition of CDEP will ensure the demolition of some highly innovative enterprise, and will put several thousand Aboriginal people in the Northern Territory out of work.10

Undermining cultural redevelopment
There are many things that get overlooked in the government’s mainstreaming vision – not least the aspirations of Aboriginal people themselves. While there is some diverse opinion surrounding the intervention, Aboriginal people in the communities in ques-
Much dynamic activity has occurred around the de-
remote Indigenous communities have been profound.
As Valerie Napaljarri Martin, a senior Warlpiri
woman from the central Australian township of Yuen-
dumu, put it recently: “Without our cultural side, the
country, the ceremony, the sacred sites that we are
connected to, the land – absolutely we are nothing.
Our dignity is going to be taken away and our rights.
We are nothing then.”11
The government’s vision also ignores the fact that
Aboriginal people in the NT have been responding to
the circumstances of post-colonial life for decades. It
has been a slow and at times painful process, and by
no means always successful. Yet history suggests that
cultural redevelopment will only ever be successful
where the people in question are centrally involved in
determining the manner and pace of change.
Over the past thirty years, the transformations in
remote Indigenous communities have been profound.
Much dynamic activity has occurred around the de-
velopment of community-based enterprise – in the
arts, media production, youth programs, tourism,
natural resource management.12 A number of these
programs have grown as a direct response to prob-
lems of substance abuse and disaffected youth. Rather
than locking people into some form of separatist way
of life, as some commentators suggest,13 these enter-
prises have opened up the interface between Aborigi-
nal communities, the wider Australian society and,
increasingly, a global arena. It is in such activity that
people develop a new sense of self-worth and begin
to imagine positive futures for themselves and their
families. This is cultural redevelopment at work. This
is how hope is fostered. Many have observed that the
implementation of the government’s vision will en-
sure the demolition of some highly innovative enter-
prise, and bring to an end the only employment pros-
spects for several thousand Aboriginal people. It will
also kill hope.
Is there anything positive to be found in the inter-
vention? There is certainly optimism among Aborigi-
nal people and their supporters that the circumstances
of Aboriginal people living in the Northern Territory
have become visible in the mainstream media in a
way that is unprecedented, and there appears to be
willingness on the part of government to make a con-
siderable investment of funds to tackle Aboriginal
disadvantage. The current focus provides a unique
opportunity to regenerate debate and bring fresh
thinking to bear on Indigenous policy in Australia.
The destruction promised by the current course of
action also raises the question of what kind of Aus-

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academics and public commentators to critically respond to
the intervention, Coercive Reconciliation: Stabilise,
Normalise, Exit Aboriginal Australia, Arena Publica-
tions. This essay is taken partly from the introduction to
that volume. For more information visit www.arena.org.
au/coercive_order.pdf