

Launch of *In the Absence of Treaty* – Canberra

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I would like to acknowledge the Traditional custodians of the land...

In the Absence of Treaty is the fourth in a series of books looking at different aspects of the Northern Territory Emergency Response or Intervention.

Produced by ‘concerned Australians’ one of the strengths of these books is that they present the point of view of those who are most affected by the Intervention and its successor the so called *Stronger Futures*.

To say there have always been problems with the Intervention from its very beginnings would be to understate the harsh realities of what these draconian policies brought in to being. Who can ever forget John Howard and Mal Brough invoking the spectre of paedophile rings and telling the nation what have now been proven to be lies and in the process causing irreparable damage to the wellbeing of Aboriginal peoples around the Territory.

Who can forget the constant mantra of “this is an emergency” – yes it was an emergency that had been ignored by all levels of Government for at least four decades. Yes there needed to be action- God knows Aboriginal people had been crying out for help for years - but what was brought in to being in 2007 was an ongoing assault on the human rights and the dignity of Aboriginal peoples in the Northern Territory.

It’s now almost 7 years since that Emergency intervention came in. In 2012 it was extended for another ten years. As Jeff McMullen often points out that means that someone born in 2007 will be fifteen before this regime expires. I thought we had moved on from the protector days but it seems not.

The transfer of power from Aboriginal communities to Government since 2007 has been immense. In some ways it is subtle, and you really have to understand the intricacies of Governmental relationships in the NT to understand the impact of what might seem to outsiders as relatively benign processes. One example is that the Minister now has to approve all Alcohol Management Plans or AMPs. Perhaps that sounds like a good idea, the Minister can make sure that the AMPs are being initiated. But not really – in fact it undermines the communities at many levels. Many communities were already Dry communities before the Intervention, I think it was something like 70% already had AMPs of one sort or another in place. Communities have been trying to address these issues for a very long time. Now what can happen is that a community can work on an AMP, can take ownership of the issues, but the Minister can override their decision making process as he or she sees fit.

The inability of communities to retain control over their lives, and the move to micromanagement has increased in this Interventionist era. Likewise the move to take over land has been one of the most worrying aspects of these policies – perhaps one that has been overlooked as much more focus has been given to things like addressing alcohol issues and income quarantining.

There is no doubt in my mind that taking over land has always been a significant part of the Intervention agenda. Removal of the permit system and compulsory five year leases over communities were just two of the initial activities. The rationale was that Government needed leases so it could provide services and infrastructure. I have yet to hear anyone explain adequately why Government was unable to provide these services without compulsory leases. Why couldn't they enter into negotiations with land owners

as they do elsewhere in the country in order to deliver infrastructure and other services? As they have been able to do for over three decades since the NT Land Act was introduced. The lack of services and infrastructure in communities has nothing to do with land title and everything to do with lack of political will.

Certainly Aboriginal peoples in the Northern Territory feel that their lands have been taken off them. As they are quoted in the book, seven Elders made a statement in 2011 it is quite a long quote, but I think it is important to hear what these Elders have said:

We are the people of the land. The land is our mother. For more than 40,000 years we have been caring for this land. We are its natural farmers.

Now after so many years of dispossession, we find once again we are being thrust towards a new dispossession. Our pain and our fear are real. We are again being shamed.

Under the Intervention we lost our rights as human beings, as Australian citizens, as the First peoples of the Land. We feel very deeply the threats to our language, our culture and our heritage. Through harsh changes we have had taken from us all control over our communities and our lives. Our lands have been compulsorily taken from us. We have been left with nothing.

Think about that for a minute, think about the current dialogue about Reconciliation and Constitutional Change, and wonder how we can be talking about those high ideals when we have people saying they have been left with nothing; that they are being thrust towards a new dispossession. How on earth

can this country talk about reconciliation when its elected representatives are still creating policies and laws that dispossess Aboriginal peoples?

This book particularly looks at changes to Community Living Areas, CLAs. These are areas that have been excised from pastoral leases for the benefit of Aboriginal peoples. As Indigenous rights expert Greg Marks is quoted as saying in the book, they are a “toehold” on their former territories. These toeholds are now threatened. Under the *Stronger Futures* legislation there is no guarantee of consultation with traditional owners about the use of this land, and in fact the Minister has almost unlimited control over the use of these areas, including development. So if, for example, someone wanted to build a commercial enterprise, the Minister can approve it - in effect without consultation.

I’m no lawyer, but to me that sounds like it undermines the NT Land Rights Act which was so hard fought for. Aboriginal Peoples might own the land, but in signing leases there is the very real probability that they lose all control over that land and in practical terms ownership has passed to the Government.

In this book, *In the Absence of Treaty*, the issue of CLAS and loss of land more broadly is considered in detail. In particular, the authors look at various inquiries and discussion papers which relate to this aspect of the *Stronger Futures* legislation. Also raised is the lack of independent advice that communities are able to access. Indeed the lack of independent advice is a growing issue. I recall the current Minister late last year talking about 99 year leases and referring to his push to sign up communities to these leases as a “blitz”. How are communities able to engage in proper negotiations under these circumstances? There is a clear agenda from both the current Government and previous Governments to undermine the ability of Traditional

owners to determine how their lands will be used and under what circumstances. These processes are fast and do not allow for proper consultation or consideration. The pressure on Traditional owners to sign away their lands for 99 years is immense. If they get it wrong it will change their communities for ever. 99 years is several generations and you can never go back. It's a big decision with far reaching consequences. It's a decision that must be made with full disclosure and a full understanding of the implications of what the Government is offering. These are not decisions that should be rushed through in a blitz with no independent advice.

Another aspect of the Stronger Futures Interventionist approach considered in this book is the consideration that the Parliamentary Joint Committee on Human Rights – the PJCHR - gave to the Stronger Futures Bills. The PJCHR was set up in March 2012. Its role is to scrutinise Bills and to see if they are compatible with human rights. The Committee was established after the Stronger Futures Bills had passed through the lower house, but before they were passed in the Senate. Because the Stronger Futures Bills were introduced before Human Rights scrutiny was required they did not have to be examined by the PJHCR. However, following a request from the National Congress of Australia's First Peoples the committee asked the Minister to provide an assessment of the Bills compatibility with Human Rights and reviewed the legislation.

Whilst the report produced by the PJCHR is in effect toothless and the Committee has no power to change the legislation I did find the report useful in that it confirmed much of what we have all been saying all along – that is if you read between the lines of the diplomatically worded report. In particular we have been very critical of special measures. These are the measures that

Government basically says can be discriminatory because they are for the benefit of Aboriginal peoples.

The thing about Special Measures is that they have to meet certain criteria to be considered “special”. In particular the people who are going to be impacted by the special measures have to be consulted and agree to them. It has always been our contention that the measures that are identified as special measures are not - they are simply discriminatory. The Labor Government, of course, has jumped through hoops to claim the Intervention and Stronger Futures is non-discriminatory since they reinstated the Racial Discrimination Act. Many have disagreed over the years and James Anaya the UN Special Rapporteur on the Rights of Indigenous Peoples addressed this when he visited Australia in 2010. But the Government has always vehemently defended their position and ignored all comments from critics both in Australia and from the International community. So I felt somewhat vindicated when the PJCHR report said:

The Committee is not persuaded by the material put before it by the Government that the Stronger Futures legislation can properly be characterised as ‘special measures’ under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) or other relevant human rights treaties.

The Committee also says that whilst they might not be special measures, there may still be some justification for discriminatory measures but that case needs to be made and dealt with. The fact that the PJCHR found that the Government is wrong to be calling these policies special measures is of course a hollow vindication because it has no meaningful outcome - it certainly won't change anything in the daily lives of those affected by Stronger Futures. As we have

seen already, successive Governments have ignored mounds of evidence and opinions critical of the effectiveness of the Intervention. They are doggedly pursuing their own agenda and I have no doubt they will ignore the PJCHR report as well.

A consistent feature of the Intervention was the lack of consultation with Aboriginal peoples. I always remember a scene in the great film called *Our Generation* when Nigel Scullion, now Minister for Aboriginal Affairs, was on camera responding to Elder's complaints about not being consulted. His response was "well we didn't talk to anyone" – as if that makes it ok.

Like the plethora of reports that go before it the PJCHR report also highlighted the lack of proper consultation. And I do mean proper – not the sort where someone flies in and flaps a so called "discussion paper" around, gives no time for communities to absorb and discuss the matter and then flies out claiming they have community agreement. That is not consultation – that is manipulation.

This book goes through these various aspects of the PJCHR report in greater detail than I am going into tonight. It highlights that Aboriginal peoples, in this case in the NT, but elsewhere as well, are having to deal with constant changes in policy, the undermining of their land rights, the loss of other human rights and the Government's persistent failure to follow advice and to consult and to respect Aboriginal peoples as willing participants in creating their own futures.

Governments often talk about resetting relationships with Aboriginal peoples. Mostly this means same old same old with different buzz words. What we need is for Government to heed what Aboriginal peoples have been telling them for years about how to work with us and negotiate properly. As is

suggested in the book this could mean a binding legal contract to ensure Aboriginal peoples have the certainty required to obtain real self-determination. These contracts might be considered treaties. Not just a mention in the Constitution or recognition that we were here first but a strong and legally binding contract that holds us all accountable to the way that we relate to each other and treat each other.

Without such a treaty we will always be in danger of the kind of things that have happened in the Intervention. I urge you to read this book and keep in mind that the Intervention is still ongoing, it's euphemistically called Stronger Futures, but the futures that it describes are created in Canberra with the same mindset that created protection and assimilation. We have the right to demand better than that.