



# Australian Children's Rights News

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## “Constitutional Niceties or the Care and Protection of Young Children?": Aboriginal Children and the Silencing of Debate

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On 17th August, the Commonwealth Parliament passed unamended, the full package of bills<sup>1</sup> implementing the Federal government's national emergency response to Ampe Akelyernemane Meke Mekarle, the Little Children are Sacred report.<sup>2</sup> The legislation implementing the intervention includes alcohol restrictions; prohibition on the use of customary law in bail and sentencing; changes to welfare including abolition of the Community Development Employment Program (CDEP); changes to the permit system and compulsory acquisition of five year leases over prescribed aboriginal townships.

Interrogation of the (mis)use of children by political actors in the public discourse that immediately followed the NT Plan should not be jettisoned on the basis that protecting innocent children renders nugatory policy contestation. Rather policy debate is crucial to the effective functioning of liberal democracies, particularly for Indigenous Australians who are 2% of a 20 million population.

The complexity of the legislative and policy framework of the NT Plan particularly in relation to those initiatives that have no apparent link to the welfare of children inevitably evoked passionate responses from Aboriginal

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representatives. Questions were raised about the paucity of evidence-based policy underpinning the framework. Moreover concern was expressed about the lack of Federal government consultation with those Northern Territory Aboriginal communities affected by the intervention. The questioning of elements of the intervention by Indigenous and non-Indigenous organisations such as the Northern Territory police were aggressively censured as willing the prolonged suffering of “the innocents”. Questions about the discriminatory and rushed nature of the legislation were dismissed as “constitutional niceties” by the Prime Minister who deemed critical analysis of the plan as irrelevant because the safety of Aboriginal children was paramount.<sup>33</sup> Mal Brough referred to critics of the legislation as “soul less” and Noel Pearson described the questioning of the NT Plan by “nay sayers” as a “terrible indulgence”.<sup>4</sup>

The attempt to silence critics by aggressively deploying images of innocent, suffering Aboriginal children is insidious. It is insidious because it seeks to censor legitimate policy contestation and it shields from interrogation those public institutions that have failed Aboriginal children over the decades. According to Pearson, “I’m amazed that anybody would put the protection of children secondary to anything ... those who have objections to immediate intervention have to ask themselves whether they’re willing this whole exercise to fail, and geez, if you’re willing the whole exercise to fail, what kind of priorities do you have in relation to the wellbeing of indigenous children?” Pearson is being disingenuous, because he freely admits everything in Indigenous affairs occurs within a political context and that people are justified in being suspect of Howard’s motives, yet simultaneously says that we must put the care and protection of Aboriginal children above everything. Yet most of the reporting of Indigenous sexual child abuse is done by members of the Aboriginal community. The life stories of Aboriginal children that NT Crown Prosecutor Nanette Rogers recounted in a cool and precise manner on *Lateline* instigated renewed national focus on the problem. Yet those stories taken from case law had been brought to the attention of the authorities by Aboriginal people working in the community.<sup>5</sup> In fact for over three decades Aboriginal people have tried to bring to the attention of government the serious problems of alcoholism and sexual abuse in Aboriginal communities and the impact upon children.

It is perfectly legitimate for Aboriginal people to

question why is it an emergency now while simultaneously wanting Aboriginal children to be safe. Particularly given the absence of a causal link between land tenure and the permit system and child sexual abuse, then it would be politically naïve of Indigenous peoples not to question the need for such a measure in the emergency response. The response also included the prohibition of the use of Aboriginal customary law in the mitigation of bail and sentencing. Again, there is no evidence-based casual link between the use of aboriginal customary law in the mitigation of bail and sentencing and child sexual abuse. Both the issue of the permit system and Aboriginal and land tenure and the issue of aboriginal customary law in bail and sentencing were in fact the subject of Senate inquiries and legislative reform in 2006. Yet in 2006, the reforms were sold under the banner of economic development which many Aboriginal people viewed as assimilation and were strongly resisted and protested by Aboriginal people in the Northern Territory. However in 2007, the use of “children” to bolster radical legislative reforms that wind back Aboriginal rights that traditionally the conservatives have been critical of has been effective. The typical response has been to ignore the obvious flaws in the legislative framework and the almost universal expectations that they won’t work because children are involved.

The indifference of our public institutions to Indigenous voices must not be overlooked in fashioning a response to the serious issue of child abuse in the Northern Territory. The lack of consultation with Aboriginal communities and the timeframe provided to respond to the proposed legislation not only undermines the democratic process but continues the deleterious trend of indifference among public institutions toward Indigenous peoples’ opinions, ideas and worldviews. The first recommendation of the Anderson Wild report stated,

That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

This key recommendation endlessly cited by the government to justify its emergency response promotes collaboration and the importance of genuine consultation with Aboriginal communities. Evidence-based research shows that Indigenous peoples must be included in formulating solutions to the complex problems in their communities and best practice reveals that very few policies and laws are effective if Aboriginal people are not consulted from the outset.

Consultation fosters a sense of ownership and that feeling of ownership has been incontrovertible in the success of economic development of indigenous communities globally. It manifests in a sense of control over one's own destiny and life. Evidence-based research shows that all the good intentions in the world are irrelevant if the people affected are not consulted. In fact, the non-Government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia noted,

Current problems with substance abuse, violence and poverty are closely tied to historical experiences of dispossession and enforced separation. They create and recreate a climate of trauma for many Aboriginal and Torres Strait Islander children. Addressing the problems that beset Aboriginal and Torres Strait Islander communities requires a holistic approach, which facilitates and supports Indigenous communities developing and delivering their own solutions.<sup>1</sup>

An evidence-based response by the Federal Government would instead emphasise the salutary influence of consultation with Aboriginal people in fostering a sense of ownership over solutions will result in real and beneficial outcomes for Aboriginal communities. Already reports indicate how ineffective the implementation of the NT Plan is. For example, the new federally-appointed manager of the Yuendumu Aboriginal community in Central Australia designed a scheme for school truancy. The plan was to force Aboriginal schoolchildren into work gangs and make them pick up rubbish until they are visibly tired. This caused outrage in the Central Australian Aboriginal community.

In concluding, it is important to note that in recent months one of the Aboriginal political responses to the NT Plan has been to establish a new political body. This body advocates that the legislation be overturned, that the NT Plan is genocide and that the government's

actions was because of a lack of Indigenous voice, "These attacks against Aboriginal people in the NT are a consequence of the lack of representation ... had there been a powerful black political voice in place, we doubt these attacks could have succeeded".

Yet many Indigenous peoples are expressing caution at reactionary politics in that we must be careful not to throw the baby out with the bathwater. The Aboriginal and Torres Strait Islander Commission failed also, as a public institution, to respond to the crisis in Aboriginal communities. In recent months critics of the NT Plan have argued that ATSIC cut significant women's and childrens programs because the Howard government reduced ATSIC funding. It is true that Howard reduced funding, however, it was the decision of the ATSIC Board alone that chose to cut these programs because of a lack of funding. The current crisis was not because of a lack of national representation but because of a serious epidemic of child sexual abuse in Aboriginal communities. This was confirmed by three state reports in Western Australia, Northern Territory and New South Wales. It is not sufficient to simply vocalise the proposition that we care for our children. We must grasp the opportunity to initiate a cultural change in urban, rural and remote Aboriginal and Torres Strait communities that domestic violence, alcoholism and child sexual assault will not be condoned nor swept under the carpet.

## Footnotes

1. Northern Territory National Emergency Response Bill 2007 ('NTNER Bill'); and Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Bill 2007 ('FaCSIA Bill'); *Social Security and Other Legislation Amendment (Welfare Reform) Bill 2007* ('WR Bill').
2. The Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse 2007.
3. 'Indigenous child abuse 'emergency' prompts PM action' *ABC News* June 21 2007.
4. For comments censuring those who question aspects of the Federal Government intervention, see generally, ABC television, 'Noel Pearson discusses the issues faced by Indigenous communities' *Lateline*, 26 June 2007; 'NT intervention cost blow-out' *The Age* (Melbourne) 6 August 2007.
5. Australian Broadcasting Corporation, 'Crown Prosecutor speaks out about abuse in Central Australia', *Lateline*, 15 May 2006, <http://www.abc.net.au/lateline/content/2006/s1639127.htm> at 4 July 2006.
6. 'The Non-Government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia - May 2005', 66.