

Protector Macklin's Intervention

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The shadow of Auber Octavius Neville, the great white Protector, once more falls across Aboriginal Australians as politicians agree to extend the Intervention in the Northern Territory.

A century ago Chief Protector Neville insisted that Aboriginal people “have to be protected against themselves whether they like it or not.” It was this logic that gave Australia the Stolen Generation as tens of thousands of Aboriginal children were removed from their families sending waves of trauma through successive generations.

There is a similar deep vein of paternalism and assimilation in today's extraordinary overreach by the Australian Government attempting to control for another decade so many aspects of the lives of Aboriginal people in the 73 targeted communities.

“Should we call Jenny... ‘Protector Macklin’? I think perhaps she fits that role at the moment all too well and it's a tragedy, “ said the former Prime Minister, Malcolm Fraser, at a gathering in Melbourne organised by the group, *concerned Australians*.

A growing number of eminent Australians including Traditional Owners, Church leaders, former judges, lawyers and over 33,000 citizens have signed a petition on a website, *Stand for Freedom*, opposing this poisonous political pact between Government and Coalition. Tens of thousands more have viewed the anti-Intervention documentary, *Our Generation*, and then complained that they have read so little in the Australian media about what could amount to fifteen years of Government assault on the most fundamental human rights of Aboriginal people. After screening that film in hundreds of cinemas and community halls, connecting the voices of Aboriginal elders directly with the Australian people, it is clear to me that mainstream television and newspapers are contributing to what A.E. H. Stanner called the *Great Australian Silence*. It is also revealing of the treachery of white politics aimed at Aboriginal people that Julia Gillard's Government and Tony Abbott's Opposition, so full of loathing for one another over most other policies, are nonetheless prepared to strike a devilish deal to continue and expand federal control over the remote NT communities beyond the end of the declared five-year emergency phase in July 2012 .

Dr Djiniyini Gondarra, a Mandela-like Yolgnu leader from Galiwinku, Elcho Island, had tears in his eyes as he warned Senators visiting the north that extending the Intervention would send many remote communities into a dangerous downward spiral with still more death and misery.

“This legislation is going to kill us. We are losing 9 or 10 people every week. People can't live. They have lost their will and all hope.”

After travelling with this brave elder statesman around the country through the years of the Intervention and having listened carefully to other highly respected Aboriginal leaders in the seized communities, I know that Djiniyini Gondarra's sense of foreboding is shared by many others.

Rosalie-Kunoth Monks from Utopia, Djapirri Mununggirritj from Yirrikala, Yananyumul Mununggurr from the Laynhapuy Homelands, Diane Stokes at Muckatty Station, Maurie Ryan and John Leemans at Kalkarindji, Reggie Wurridjal and Helen Williams at Manigrida, Joy White with the Larrakia mob in Darwin, Barbara and Walter Shaw in the Alice Springs Town Camps, Harry Nelson at Yuendumu, Dhanggal Gurruwiwi from Wallaby Beach and Matthew Dhulumburrk Gaykamangu from Ramingining...I want you to know these names and their homelands. These are the voices of courage and conviction that rise up to challenge the *Great Australian Silence*.

“I fear for the future of these people,” said Ian Viner, a former Minister of Aboriginal Affairs (1975-78) who still offers support to the remote communities. “This is not a *fair go*... The Northern Territory Intervention was un-Australian and the *Stronger Futures* legislation is equally un-Australian.”

With Orwellian irony, Protector Macklin calls the package of legislation that will bury genuine self-determination in the Northern Territory “*Stronger Futures*”. Don’t be fooled. It is the Intervention wolf in sheep’s clothing.

The three bills are loaded with discrimination, crafted with brazen deceit and appear to be invalid in the light of Australian and international law. After years of Labor politicians blaming John Howard and his Minister, Mal Brough, for the top-down approach of the Northern Territory National Emergency Response launched in June 2007, *Stronger Futures* is unquestionably Protector Macklin’s Intervention. Its hallmark is the distinctly punitive approach.

With incarceration rates of Aboriginal people increasing at a frightening rate, the Government is adding prison sentences for the transportation of even small amounts of alcohol across these vast white protectorates. As proposed by Protector Macklin and approved by the House of Representatives, carrying a single bottle of beer could bring a six month sentence or up to eighteen months jail for a six-pack. The Senate will resume debate on some amendments to these draconian penalties in May or June. Reducing the pattern of imprisonment by substituting infringement notices, on the spot fines for possession of small amounts of grog, might satisfy the politicians. But such fiddling with a heavy-handed policy would not change its glaring discrimination as an entirely different standard of law is applied to just one group of Australians.

“This undermines that fundamental proposition that everyone is equal in the eyes of the law and it creates a dangerous precedent,” declared the President of the Australian Lawyers Alliance, Greg Barnes, at a forum I chaired in the Parliamentary Theatre in Canberra on the eve of the vote on the *Stronger Futures* legislation.

The passage of *Stronger Futures* through the House of Representatives has been an exercise in contempt by most politicians for genuine democracy in Australia and especially for the rights of Aboriginal people. On 27th February 2012, the day of the Canberra leadership spill that isolated Kevin Rudd, the one Prime Minister to deliver a National Apology to Aboriginal people, only a handful of MPs were in a near empty House of Representatives as this extraordinary social engineering shaping the future for a whole era ahead passed without even a formal division in the Parliament.

Where were all the other hollow men and women? What does this say of the state of our democracy?

Frank Vincent, a former Justice of Victoria's Supreme Court observed sadly that the legislation offended just about every reasonable view of what it is to be Australian. "They believe racism sells. They accept we have a racist society....but is that what we are really like? I hope it is not," he said.

"This is largely racist legislation...both major parties have sold out Aboriginal people...it's a complete denial of democratic process," added former Chief Justice of the Family Court, Alastair Nicholson, one of the strongest legal voices opposed to the Intervention. Along with leading Aboriginal lawyers including Professor Larissa Behrendt and Nicole Watson, Nicholson has helped author a significant challenge to the Government's misleading attempts to pass off *Stronger Futures* as a form of so-called "positive discrimination" based on "special measures".

"*Listening but not Hearing*", a lengthy study by Jumbunna Indigenous House of Learning, at the University of Technology Sydney, exposes the new legislation as unjust and on-going discrimination. By showing that the Government's consultation process was a sham in the remote communities, the report establishes some of the legal grounds that lead Alastair Nicholson to believe that the High Court of Australia might well strike down *Stronger Futures*. "There is a very strong argument," he said, "that this legislation is unlawful and ...won't stand up to a legal challenge."

Nicholson and others, including Associate Professor Eva Cox, have studied transcripts of ten of the community consultations, concluding that the process was unethical, that the new legislation was based on the Government's pre-determined policies and that Aboriginal people had not given *free, prior and informed consent* to a ten year take over of their lives.

When the Intervention was launched by then Prime Minister John Howard it was so replete with discrimination that a Government, unconcerned with constitutional niceties, and a cowardly Opposition that did not want to risk losing any votes by being too soft on Aboriginal people, shamefully removed all of these citizens from the protection of the Racial Discrimination Act (RDA). This prompted strong condemnation by the UN Committee for the Elimination of Racial Discrimination in Geneva as well as visits to Australia and highly critical reports by the UN Special Rapporteur, Professor James Anaya and the UN High Commissioner on Human Rights, Dr Navi Pillay. Both international law authorities insisted that the Government's Intervention was in breach of Australia's commitment to honour the Declaration on the Rights of Indigenous Peoples and other human rights covenants.

Protector Macklin's response in late 2010 was to feign reinstatement of the RDA but then plunge ahead with the same discriminatory policies tricked up with a few cunning political amendments. By extending to some other unfortunate communities the compulsory income management scheme and the punishing of parents whose children missed five days of school, the Government hopes Australians will believe that this is no longer aimed overwhelmingly at Aboriginal families.

The ruse of adding income management "trials" in Bankstown (NSW), Shepparton (Vic), Playford (SA), Rockhampton and Logan (Qld) is a highly dubious attempt to

avoid the charge of discrimination, so much so that Protector Macklin has refused to reveal her legal advice from the Solicitor General's Department.

"In my experience, " former Chief Justice Nicholson said, "the courts of this country, particularly the High Court, are not stupid." The discrimination is obvious and the Government's claim of "special measures" benefiting Aboriginal people and of "free, prior and informed consent" clearly would not stand up in court when the available evidence of transcripts from the consultations showed such widespread opposition to the continuing Intervention.

After their own legal assessment, the Greens in the Senate prepared a dissenting report on *Stronger Futures* with Senator Rachel Siewart observing that the legislation is deeply flawed and discriminatory, does not reflect the wishes of the Aboriginal communities and therefore must be opposed by all fair minded Australians. Senator Siewert noted that Canberra's persistence with the "top-down approach", criticised so readily last year by both Julia Gillard and Tony Abbott, now continued to undermine and disempower Aboriginal people. She called on Jenny Macklin to abandon the expensive failure of the punitive approach.

There is no chance of a change of heart because the Protector's big stick is about to come down even harder on Aboriginal families. The discriminatory use of a Basics Card to quarantine the spending of meagre welfare payments will have an added nasty edge when Centre Link officials are given the power to slash three months welfare money from parents whose children skip school. Punishing families by cutting money for food on the table was never a solution put forward by Aboriginal people or school principals. Leading education reformers, such as Dr Chris Sarra of the *Stronger, Smarter Institute*, insist that engagement with parents and students, the hard work that requires patience and persistence, is the only method of improving and sustaining attendance in remote school communities.

Aboriginal children have a *right* to attend a school that is truly part of their community and the test of that is whether the system of the Chief Protector values Aboriginal Cultures and their ways of seeing the world. Bi-lingual education, learning first in your own language, is today shunned in the Northern Territory even though this is set down as a fundamental human right in the UN Declaration on the Rights of Indigenous Peoples.

This is an area where I have worked closely with Aboriginal students, teachers, parents and principals for almost twelve years in some of the very communities subjected to the disastrous Intervention approach. I guarantee that *strong and smart* school leadership, making children feel valued and safe, respecting their right to learn their languages and be proud of their Culture, welcoming their families and Aboriginal elders into the school community, and ensuring that teachers are culturally competent and well trained for this most important education work, are the keys to the success of the best schools.

The Government continues to send contradictory messages to Aboriginal children and their families. There is constant talk of *Closing the Gaps* but then these large blue signs appear in the targeted communities shaming Aboriginal people and telling the country that *these children* must be subjected to special laws and punishment. This has been crushing. Such appalling discrimination will have long-lasting effects, just as Chief Protector A.O. Neville's break-up of families created damage still visible today.

If the Government had any evidence that the Intervention is improving the lives of Aboriginal children, Malcolm Fraser said in a challenging speech to *concerned Australians*, then surely Protector Macklin would be singing loudly about this triumph. Instead there are alarming signs that the wellbeing of children, supposedly the Government's reason for the Intervention, has actually declined.

In evidence given to the Senate Committee on Communities and to a Parliamentary Inquiry in Darwin, Northern Territory Children's Commissioner, Dr Howard Bath, reports that 70% of these children suffer from the serious and often painful learning disability of otitis media, anaemia rates have climbed to around 40% and almost 60% have multiple developmental disabilities.

Most disturbingly, Dr Bath warns that the Northern Territory is now experiencing a terrifying escalation of youth suicides, particularly hangings. In the 1980s there was no discrepancy between Indigenous and non-Indigenous suicides in the Territory and the youth suicide rate was about the same around the country. But a complex combination of community stresses and conflicts, Dr Bath says, have made this fearful contagion far worse in the Top End.

Instead of punishing young people in genuine distress and shaming and blaming their parents, surely these families have some fundamental needs and rights that are now being ignored. *The Little Children are Sacred Report* (Anderson and Wild, 2007) insisted from the outset that genuine consultation and involvement of Aboriginal communities was essential to improve wellbeing.

The fundamental mistake of the prolonged Intervention is that it alienates and disempowers the families and communities who are plainly the only ones who can bring about improvement in the lives of thousands of Aboriginal children. The evidence confirms this but is ignored by the great white Protectors.

In the Howard years when the Culture Wars raged fiercely, academics like Professor Helen Hughes, the disgruntled cabal of the Bennelong Society and a considerable number of weary anthropologists, came to see Aboriginal Culture as a significant part of what was so often described as the "Aboriginal problem". Aboriginal parents were judged incapable of responsibly caring for their children. Aboriginal organisations, Land Councils and even the Northern Territory Government were viewed as part of a "failed state". Federal Intervention was deemed the answer.

Under *Stronger Futures* Protector Macklin will emerge with far greater ultimate power to control development decisions on community living areas and in town camps. The Parliamentary website explains that the legislation will facilitate possible moves towards private home ownership. Access for future mining or pastoral development could be dictated from thousands of kilometres away in Canberra.

Traditional Owners and Aboriginal Lands Councils will surely be divided and conquered, as Djiniyini Gondarra warns, unless they find a new unity with other Australians to oppose the federal grab for land and power.

Musicians including Jimmy Little, Archie Roach, Shellie Morris, Shane Howard and John Butler are calling on us all to raise our voices and insist that we will not live with discrimination.

Put yourselves in the shoes of these children. Unless they live in one of the Northern Territory's twenty growth towns, positioned nicely alongside large mines or new discoveries of iron ore and uranium, most of these children will be living with discrimination, judged to be worth less of our care, less education, less health, less housing and less opportunity.

The development agenda has always been clear across Northern Australia but is there any coherent Australian agenda for the children of the Intervention?

The architects of this fatal assimilation have never been honest, hiding still behind the lie that Aboriginal people *must be protected from themselves, whether they like it or not*.

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