

The Hon Jenny Macklin MP  
Minister for Families, Housing, Community Services  
And Indigenous Affairs  
Parliament House  
Canberra ACT 2600

21st March 2011.

Dear Minister,

The Australian Government has finally admitted that the Northern Territory Emergency Response was a “major shock” and a “serious affront” causing “anger, fear and distrust” in Aboriginal communities. The Government and the Opposition Leader, Tony Abbott, also now admit that there was “no prior consultation” with Aboriginal people. Mr Abbott adds that, “One of the problems with the Intervention was its ‘top-down’ nature.”

If you seek “*a reformed approach to engagement with Indigenous Australians*” as you indicate, I urge you and the Prime Minister, Julia Gillard, to consult soon on their homelands with the overwhelming majority of leaders who oppose the Intervention, including Dr Djinyini Gondarra OAM of Galiwinku, Elcho Island and Rosalie Kunoth-Monks OAM of Utopia, because you have not addressed their grievances or indicated how the Australian Government sees a constructive way to move forward.

Your letter to me of 2<sup>nd</sup> March 2011 arrives after a long Government silence on the anguished protests by people in remote communities and the appeals by Traditional Owners, many eminent Australians and human rights advocates here and around the world who are disturbed by the ongoing, serious violations of Aboriginal rights as a result of the Northern Territory Emergency Response.

Your letter avoids these important facts:

1. The Committee for Elimination of Racial Discrimination (CERD) in Geneva has judged that the Intervention continues to discriminate on the basis of race and that it reduces people’s rights to land, property, social security welfare, adequate standards of housing, cultural development, work and legal remedies.
2. The UN Special Rapporteur, Professor James Anaya, one of the world’s most respected human rights authorities, states that the Intervention is clearly discriminatory and puts Australia in breach of the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the Declaration on the Rights of Indigenous Peoples.
3. The discrimination of the NTER remains in full force including compulsory leasing to Government of Aboriginal community lands, the loss of the right to dignity by the erection of discriminatory signs outside communities prohibiting alcohol and pornography, the targeting of Aboriginal people for social engineering through Basics Cards and management of half of their money, the authorizing of Government Business Managers to exert extraordinary and sweeping influence over Aboriginal community life and the unjust removal of Traditional Owners and Aboriginal community organisations from control over the destiny of their communities. Each provision puts Australia in breach of its obligations.
4. The UN Special Rapporteur, explicitly warns that the Australian Government “*should avoid imposing leasing or other arrangements that would undermine Indigenous people’s control over their lands.*”
5. By maintaining compulsory 5 year leases until 2012 the Australian Government is *undermining Indigenous people’s control over their lands*. Traditional Owners and community members have lost the right to make key decisions in the township area for the period of the lease.

6. The Australian Government's amendments to the *Land Rights Act (Northern Territory) 1976* and the *National Partnership Agreement for Remote Indigenous Housing* (COAG 2009) clearly is *undermining Indigenous people's control over their lands* by vesting authority in Executive Directors of Township Leasing and insisting on leases shamefully equivalent to the life expectancy of many people in these communities.
7. The Australian Government has not responded to the calls by an overwhelming majority of the Aboriginal leaders in these occupied communities to end the Intervention now.

Your words to me are strikingly different to those you used when the Howard Government made the first dramatic alterations to the Land Rights Act. You will recall that we both attended the National Reconciliation Planning Workshop in Canberra in May 2005 when Prime Minister John Howard declared that Aboriginal land tenure had to be changed. A year later, as Traditional Owners and communities lost direct control over development and township land, you said in Parliament:

*“The Aboriginal Land Rights Act of 1976 was the first and strongest legal recognition of the profound connection that Indigenous people have to their country. It recognized the communal nature of land ownership in Aboriginal law and culture through a form of freehold title. The Act, back in 1976, represented the most significant set of rights won by Aboriginal people after two centuries of European settlement.”*

Since you became a Minister in the Australian Government, however, we have seen further changes to the Land Rights Act, giving the Executive Directors of Township Leasing greater powers over Aboriginal people through leases over community living areas and subleases of town camps. Furthermore, you are extending this challenge to *Indigenous people's control over their lands* by expanding a policy aimed at ending or changing communal ownership of Aboriginal Land.

You bluntly assert that “economic development on Indigenous lands has traditionally been hampered by the communal ownership of land”. This is an ideological view, easily contested by a wider knowledge of Indigenous history both here and around the world. I would refer you to the work of the Harvard Project on American Indian Economic Development (2008) and research by Nobel Laureate economist, Elinor Ostrom, who has shattered the myth of the so called “tragedy of the common” while producing evidence that, for Indigenous people, communal land ownership is so often a key ingredient of successful development.

The Indigenous concepts of custodianship, community and family, not only have guided humanity through countless millennia, they still have lasting value for Australia today.

Custodianship tells us that every one of us has an individual and a collective responsibility to contribute to the wellbeing of family and community. This sense of communal value gives us a longer view, a concern for what we may leave for our children and all of those to come. In this way it shares something with earth science in that it invites us to look past narrow, material self-interest to think of the common good.

It was these values that sustained the Children of the Sunrise and explain why Indigenous people today, as a collective, a people valuing the communal right, are the world's oldest, continuous Culture. It was these communal values, custodianship, community and family, that gave Indigenous people the resilience to survive the invasion, the theft of their land, the spilling of their blood, the gaoling of their people, the removal of their children and all of the perverse policies that express the relentless assault on their right to land and Culture.

I ask you, why is Australian Government policy still bent on the assimilation of Indigenous people and the destruction of their communal values, when these have proven to be, through the longer timelines of history, the essence of their identity and their well-being?

The most damaging feature of contemporary Government policy towards Indigenous Australians is your determination to exert far greater control over their lives and their lands. This is evident across the country, from Western Australia to Cape York.

The West Australian State Government of Colin Barnett has compulsorily acquired land at James Price Point on the Dampier Peninsular, trampling Native Title negotiations to allow Woodside to proceed with a 30 billion dollar gas processing facility. This is theft of Aboriginal land.

A Noongar Native Title victory on some land around Perth was blocked at once by an appeal by the State Government. Despite the rulings of our High Court that *terra nullius* was a lie and the historic rulings on Wik and Mabo, we continue to look right through Aboriginal people who protest that they have never surrendered their sovereign land rights.

Here and there Indigenous people win back a few local rights after years of court battles and the deaths of many of their elders, but this occurs when there is no clash with the dominant settler society. The theft of Aboriginal land continues. Native Title is little more than a legal contest for the scraps and an affirmation that the economic and political forces dictating to the rest of Australian society control the wealth of the land.

There is a widespread and profound misunderstanding about the importance of Indigenous Land Rights. The prevailing policies of the A.L. P. Government and the Coalition in Opposition share a fixation on controlling Aboriginal people and their communities so that there is no impediment to the rapid exploitation of minerals that feeds this so called once in a lifetime commodities boom.

Ironically, it is the wealth of Indigenous lands that could transform the poverty, welfare dependency and that critical gap in life expectancy. While so much has been taken away from Indigenous people, restoring their genuine land rights and control of their lives is one of the few reasonable measures of redress that could lead to social equality. Having denied the Stolen Generations compensation, what compensation does your Government have in mind for the exploitation of mineral wealth and the outright theft of Aboriginal lands?

In 1947, the year I was born, one of Australia's finest jurists, Justice Dixon ruled that there was a clear difference between "*compensation*" in the sense of full monetary equivalence and "*just terms*" that implied "*fairness*" in dealings with Indigenous claims. Let us apply the fairness test to the current compulsory acquisition of Aboriginal lands and imposition of leases. If a fair and just portion of the mineral wealth flowed to our half a million Indigenous citizens, Australia would have none of those gaps within a generation.

Despite our national mythology about the land of the fair go, we continue to deny "just terms" and "fairness" in our most important dealings with our most disadvantaged citizens.

In this sense, the new assimilation is the same as the old assimilation, reeking of injustice, paternalism and discrimination. Indigenous Australians are the only whole social group whose freehold land and communities have been taken over by Australian Government.

Aboriginal communities have always had the option of approving investment and development on their terms. For a very long time, Governments simply shirked their responsibility to make such an investment. The Australian Nation has failed to invest fairly in the wellbeing of all of its children.

My direct experience over many years in the First Nations of the United States reinforces the historical evidence that the carving up of Indigenous communal lands does not miraculously create private home ownership. Instead it often leads to debt traps, where low-income people are forced into foreclosure, eventually losing their home and their land. Over time this degrades the collective value of their land.

Impoverished Aboriginal people are so easily exploited. Since Indigenous unemployment over the years of your Government has grown from 13.8% to 18.1% there is little prospect of people in remote communities realising your dream of privatisation. Even the World Bank after researching the global pattern of Indigenous development concluded that "*eliminating or replacing customary tenure is often neither necessary nor desirable.*"

Your letter omits any recognition that if Australia is to live up to its stated support of the Declaration on the Rights of Indigenous Peoples (even with your Government's hesitancy to enforce this with a legal framework here in Australia) our nation must acknowledge the rights of Indigenous people to control their lands and to practice their Culture.

The NTER legislation (s 91) is glaringly inconsistent with the Declaration on the Rights of Indigenous Peoples and Australia's Racial Discrimination Act. This is not addressed in your letter.

Only Indigenous Australians have been discriminated against through this loss of a fundamental legal right to have their Customary Law and Cultural practices considered by a judge during legal proceedings.

In the Northern Territory Supreme Court in January 2011, Justice Steven Southwood, lamented the fact that the NTER Act prevented a sentencing court *“from taking into account information highly relevant to determining the true gravity of an offence and the moral culpability of the offender”*. You would be aware that this case involved the desecration of a Sacred Site at Numbulwar in the NT Gulf Country by an Intervention building crew. If this had happened in St Mary's Cathedral in Sydney there would be outrage and the legal judgement would reflect the grave slight this caused to people of Christian beliefs.

Australia is denying Indigenous people full justice and recognition of an important legal precedent in Australia's Common Law system. Why not listen to the Supreme Court Judge? Acknowledge that this right must be restored to Indigenous people by repeal of the NTER Act (s 91).

I am surprised that you do now acknowledge that the *“instigation of the NTER by the previous government was a major shock to many Aboriginal people and communities in the Northern Territory and was seen as a serious affront. There was no consultation before it was initiated, and the nature of some of the measures and coercive tone utilised undoubtedly caused anger, fear and distrust.”*

Given the haste of the A.L.P. to support the NTER legislation while you were in Opposition, it would have been wise to establish an open, transparent process of genuine consultation. Instead you have choreographed meetings and expected Aboriginal people to rubber stamp the policy paper you presented. Your own review of these consultations revealed the widespread opposition as the bitterness and sense of betrayal of Aboriginal people deepened.

There was and is no “prior, informed consent” to the Intervention. This policy, as Tony Abbott now admits, has been imposed by Government, “top-down” against the will of the majority of Aboriginal people in these communities undermining any claim to its legitimacy and underscoring its unlawfulness in the judgement of International human rights authorities.

While you refuse to meet the Traditional Owners whom reject your policy you continue the “serious affront” that you attribute to the manner in which the Intervention was launched in 2007. By refusing to enter a genuine partnership with these communities you undermine the trust and goodwill that was in the air after the National Apology to Indigenous people.

Aboriginal people are still waiting for a Government Apology after the ruling by the Australian Crime Commission that there were no paedophile rings in the 73 remote communities targeted by this state of emergency. Have we forgotten the shame and the lasting damage done by this dangerous slander of all Indigenous people? It is not fair for you to attribute this “serious affront” only to the Howard Government as your political party supported the NTER from the outset.

Much of your letter is a defensive and dubious argument about the good you claim to have delivered through this Intervention. You show no willingness to acknowledge that by the Northern Territory Government's reckoning the number of Aboriginal children at risk of neglect has more than doubled during the years of the Emergency. The Intervention has caused a sharp and painful increase in stress on Aboriginal people. School attendance in many of these communities targeted by the Intervention has worsened. Most disturbingly, suicides have increased.

A consequence of the shock and awe in Indigenous policy-making is that the political discourse has become hysterical. *The Australian* newspaper recently carried a front page story in which Mal Brough, former Minister for Indigenous Affairs and one of the architects of the Intervention, says the NTER has become too soft under your Government and that he supports the call for more desert detention camps to sweep up the fallen and the forgotten from the streets of Alice Springs.

In his latest foray into Indigenous politics, Tony Abbott calls for a “new Intervention” in the larger towns in the Northern Territory including Alice Springs, Katherine and Tennant Creek. Mr Abbott states bluntly that the Intervention has caused many Aboriginal people to move from the remote settlements increasing social dysfunction in the larger towns where they have largely unrestricted access to alcohol, inadequate accommodation and few support services.

This worsening crisis is a direct consequence of the NTER and the Government policy of concentrating funding in twenty so called “Growth Towns” in the Northern Territory. The hard drinking in the long grass on the fringes of many of the larger towns has confirmed the expected pattern of family disintegration and social drift.

The Intervention is social engineering at its worst and the most damaging policy inflicted on Indigenous people since the Stolen Generation.

A reasonable discussion of the alcohol problems in Alice Springs, which both you and Mr Abbott say that you seek, would begin by admitting that Australia has a drinking problem. Stop stereotyping Indigenous people and targeting them with calls for “behavioural change”. Address alcoholism and unrestricted use of alcohol as a national, social problem.

The Northern Territory is Australia’s binge-drinking frontier. We all must face up to this honestly. Global estimates show that in Ireland people consume 13.7 litres of pure alcohol per annum, 13.0 litres in the Czech Republic, but, think about this, 14.9 litres per person in the Northern Territory as a whole and in Alice Springs, 20.38 litres per person. Australia’s average as a whole is 9.8 litres. We lose track of these facts in the relentless stereotyping of Aboriginal people, forgetting that if you walk the main streets of Darwin or Alice Springs you will see a huge cross section of Australian society drinking to violent excess.

Courageous Aboriginal community leaders like June Oscar and Maureen Carter from Fitzroy Crossing in the Kimberley, have demonstrated that black and white people can work together to stop this poisoning of the human spirit. Are we willing as a society to curb the profits from grog, tax the liquor industry in a targeted way, treat addiction with care and compassion, while at the same time building the other community resources that are essential for well being? Social problems will get worse until we recognize the solution means acting responsibly together within the framework of custodianship, community and family. This is the antithesis of the discriminatory policies aimed at Aboriginal people.

Finally Minister, your letter bristles with indignation at my observation that the legislation that came into effect on January 1 2011 was a “feigned reinstatement” of the protection afforded to Indigenous people by the Racial Discrimination Act. Aboriginal elders and many other eminent Australians including Church leaders, barristers and former Prime Minister Malcolm Fraser, have characterised this action by your Government as seeking a “veneer” of non-discrimination or respectability.

Your letters to Australians concerned about discrimination may mislead some into believing that you have actually repealed the NTER policies, when in fact, as I have stated here at considerable length, the policy approaches essentially remain the same.

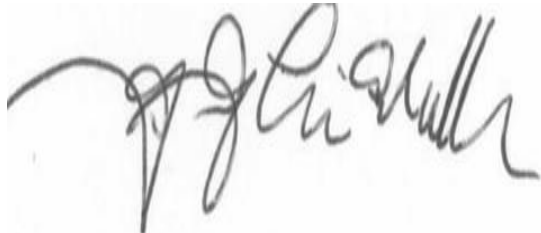
No amount of Ministerial spin can hide this fact. Your Government and its predecessor knew the Intervention was loaded with discrimination against Aboriginal people. That is why the Racial Discrimination Act had to be suspended from applying to the NTER. For over three years Australians, officially, have lived with discrimination. The discrimination remains.

Only Aboriginal people in Australia have ever suffered this humiliation of losing the right and the protection of the Racial Discrimination Act. Without a Charter or Bill of Rights, without changes to the race power in the constitution, without a commitment *never to use the means of discrimination to justify the end*, without such a commitment Indigenous Australians are without their most fundamental human rights.

I have saved some very personal words until last.

I am sorry to inform you today that one of the powerful, truthful voices you listened to in the film, *Our Generation*, the courageous woman who invited Australians to look at the overcrowding of her home and the poverty her family was left to endure, has died of chronic illness. This beautiful human being reminds us that the real emergency, the epidemic of chronic illness, is scything through another generation of Aboriginal people. She gave her every breath to end the Intervention.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Dr. Jeff McMullen". The signature is written in a cursive, flowing style with some loops and flourishes.

Dr Jeff McMullen AM