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"Lifestyle choice":
The racially discriminatory treatment
of remote Indigenous Communities

**"Lifestyle Choice":
The racially discriminatory treatment of remote
Indigenous Communities**

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Introduction:

- The Australian Prime Minister Tony Abbott recently described living in remote Indigenous communities as a "lifestyle choice" (10 March 2015)
- Commonwealth funding has been withdrawn
- Proposed closure of "unsustainable" remote Aboriginal communities (18 March 2015 WA Premier Colin Barnett)
- Hardly a life style choice: grinding poverty, little employment opportunity, chronic substance abuse
- The final nail in the coffin that started with the Howard government
- This era was exemplified by racially discriminatory legislation (ALR (NT)Act, NTAct and NTNERAct)
- The rejection of self determination and reinstatement of policies based on paternalism and cultural superiority (ie shared responsibility agreements)
- Another attempt at stealing traditional lands



Background: The Self-Determination Era

- The failure of earlier Aboriginal policy to accommodate Indigenous needs led to increased Indigenous activism in the 1960's and 1970's
- Greater concern in the international arena for the plight of Indigenous peoples
- Spurred the adoption of policies of 'self-management' and 'self-determination'
- Finally accepted assimilation policies were based on a denial of human rights and tainted by notions of cultural superiority
- Aboriginal policies began to reflect support for Indigenous claims to social and political rights such as self determination



The Self-Determination Era

- The election of the federal Whitlam Labor government in 1972 marked the beginning of a new era respecting the inherent right of Indigenous people to practice their own culture and manage their affairs
- First Commonwealth Department of Aboriginal Affairs
- National Aboriginal Consultative Committee created to advise the Department and Minister
- NACC replaced by the Fraser government by the National Aboriginal Conference
- The Aboriginal Development Commission established to administer monies allocated to Aboriginal affairs
- Heralded as a new era of self-determination



The Self-Determination Era:

- Both Whitlam and Fraser federal governments sought to return some autonomy to Indigenous people through land rights legislation
 - For example, Aboriginal Land Rights (Northern Territory) Act 1976
 - Not just a mechanism for the return of land
 - Self-management fostered through the creation of local and regional Aboriginal Land Councils
 - Creation of a further representative body, the Aboriginal and Torres Strait Islander Commission
 - Creation of Council for Aboriginal Reconciliation
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- The "rise of the Indigenous sector": Rowse (2002)



The Self-Determination Era

- Mabo No 2 (1992)
 - Prime Minister Paul Keating's response:
 - *Native Title Act 1993* (Cth)
 - The establishment of the Indigenous Land Fund
 - The Social Justice Package
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- HREOC Report, Bringing them home (1997)
 - Howard government elected soon after
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- Self-Determination era was not perfect
 - Criticised by the Royal Commission into Aboriginal Deaths in Custody (1991)
 - But it was based on the recognition of Indigenous rights and the importance of Indigenous autonomy



The Retrograde Era: The Howard Era

- The Howard era marked an extraordinary retrograde period of Australian Indigenous Policy
- Self-Determination discarded in favour of policies based on so-called "mutuality" and "equal rights"
- A denial of Indigenous autonomy
- The imposition of racially discriminatory policies
- Abandoned the formal process of "reconciliation" and adopted "practical reconciliation": McRae et al
- Rejection of CAR recommendations and its abolition
- Indigenous policy based on paternalism and the consequent implication of cultural superiority
- A theme throughout this period was refusal on the part of the Howard government to acknowledge past injustices to Indigenous Australians
- Fuelled by the 'new right' Howard maintained an idealised past of the Australian nation: Brett (2001)



The Retrograde Era: The Howard Era

- Shift to "self-management" / "self-empowerment" (quasi-assimilationist) and rejection of self-determination: Minister of Indigenous Affairs John Herron (1996)
- An "active partnership and consultation with government": Commonwealth Govt Response to CAR Final Report (2002)
- As NT Intervention laws and Shared Responsibility Agreements evidence, far from self-management
- CERD Report (2000) concern re Howard Government's disregard of the right to self determination (Art 1 ICCPR 1966)
- Voted again UNDRIP 2007, Art 1 right to self determination
- Abolition of ATSIC and ATSIIS (2005) and funding shifted to mainstream non-Indigenous government departments
- CERD Report (2005) expressed concern re the reduced participation of Indigenous peoples as required by ICCPR



The Retrograde Era: The Howard Era

Shared Responsibility Agreements:

- Under this new policy Indigenous communities were not autonomous
- Rather working in "partnership and consultation with government" and had "shared responsibilities"
- SRAs are agreements between Indigenous communities and government whereby funding is conditional on satisfaction of a prerequisite(s), often behavioural
- Under these agreements basic facilities are at times only conditionally extended to Indigenous communities



The Retrograde Era: the Howard Era

- A number of concerning aspects of the SRA policy
 - First, racially discriminatory
 - Not applied to non-Indigenous communities
 - Indigenous communities must bargain for basic rights and services they are entitled to as citizens
 - A breach of s 9 RDA and the Convention
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- Second, based on retrograde notions of paternalism
 - For example, Mulan Indigenous community
 - SRAs are akin to the assimilation policy; to coerce Indigenous Australians to adopt western ways in the same way as rationing: Lawrence and Gibson (2007)



The Retrograde Era: The Howard Era

- Third, SRAs are imposed in an environment founded on an imbalance of power
 - Powerless remote Indigenous communities pitted against the federal government and mainstream government Departments
 - The abolition of ATSIC was part of introducing SRAs (Minister for Indigenous Affairs, Amanda Vandastone (2004))
 - For example, the Northern Territory Mutitjulu Aboriginal Community
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- Fourth, SRAs are ad hoc
 - Not integrated into broader regional or national programs
 - They are not needs based



The Retrograde Era: The Howard Era

- SRAs are not the only example
- 2006 Aboriginal Land Rights (Northern Territory) Amendment Act
 - To "improve access to Aboriginal land for development, especially mining"
 - To encourage 99 year leases of Aboriginal land to the government which would be subleased for establishing businesses and private home ownership
 - As with SRAs funding and services were tied to granting the 99 year leases
 - These forced leases have continued under subsequent Labor and Liberal governments
 - Prime Minister Tony Abbott has just announced proposals to amend NTA 1993 to facilitate development on Aboriginal land



The Retrograde Era: The Howard Era

- Further examples include the overt racial discrimination through deliberate breaches of the RDA
- Native Title Amendment Act, note esp ss 7(2) and (3)
- CERD Reports re breaches of The Convention
- NT Intervention legislation 2007
- Spearheaded by an unprecedented peace time military presence in remote Northern Territory Aboriginal communities
- Includes compulsory acquisition of Aboriginal lands by forced leases: Part 4 NTNERA
- Overriding just compensation: ss 60 and 134 NTNERA
- Again, express sections overriding RDA ie s 132 NTNERA
- Claims that they are special measures and thus do not breach RDA ie s 132 NTNERA
- Does not meet the definition: sole purpose of advancement of racial group and requires consent of affected community (Art 1(4) Convention and Gerhardy v Brown)



Indigenous policy today: One step forward two steps back

- Five months after the announcement of the NT Intervention the Labor party was elected to government
- While there were a number of positive gestures, very much one step forward two steps back
- Labor completed CERD Reports, including for periods under Howard era (Combined 15th, 16th and 17th Reports)
- Labor adopted a very different attitude to UN monitoring
- However, did not address CERD concerns regarding, inter alia, RDA breaches in NTA and NT Intervention legislation (discussed further)



Indigenous policy today: One step forward two steps back

- Labor signed UNDRIP
- Art 1 recognises the right to self-determination
- Prime Minister Kevin Rudd apologised to the stolen generation and recognised the damage caused by past government policies (13 February 2008)
- However, steadfastly refused to provide any compensation
- Policy of privatising Aboriginal land for private home ownership continued
- Policy of forced long term leases for services and infrastructure continued
- The forced five year leases under Part 4 NTNERA continue



Indigenous policy today: One step forward, two steps back

- *Promised reinstatement of RDA into NTA did not happen*
- *CERD Reports did not address the suspension of RDA*
- *Promise of RDA reinstated in NTNERA legislation*
- While ss 1-3 repealed by Reinstatement of RDA Act 2010, detailed provisions overriding RDA remain in NTNERA
- CERD Report (2010) noted the absence of any entrenched prohibition against racial discrimination in the Constitution
- Final Report of the Expert Panel (2012) had recommended insertion of new s 116A into the Constitution
- Prohibiting the Commonwealth, a State or Territory discriminating on the basis of "race, colour or ethnic or national origin"



**Indigenous policy today:
One step forward, two steps back**

- *In the lead up to the election, the then Labor government announced in September 2012 it was postponing the referendum for two years*
- On 12 March 2013 ATSI People's Recognition Act 2013 passed recognising the first occupants
- Did not include a statutory endorsement of s 116A
- Prime Minister Tony Aabbott's opening of parliament referred to the proposed constitutional recognition of Aboriginal and Torres Starit Islanders
- No reference to proposed prohibition against racial discrimination
- Abbott has subsequently rejected such a clause



Indigenous policy today: One step forward, two steps back

- *Tony Abbott: cannot "endlessly subsidise lifestyle choices", referring to remote Aboriginal communities (10 March 2014)*
- *Hardly a "lifestyle choice"*
- "Remote Hope" Four Corners 11 May 2015
- These are their traditional lands
- Offered WA government a final lump sum of \$90m
- WA Premier Colin Barnett announced in parliament that there would be mass closures of up to 150 communities
- He referred to the current 273 remote Aboriginal communities as not been "sustainable into the future"
- WA Aboriginal Affairs Minister, Peter Collier: there is no list on remote community closures, but says there are "too many"
- Communities will have to show "sustainability"
- Must prove a "safe, nurturing environment for the children; it can provide job opportunities and training ... Outcomes for the entire community"



Indigenous policy today: One step forward, two steps back

- *What will happen to the closed communities*
- History repeats itself: the modern fringe dweller
- Most recently White paper on developing northern Australia (18 June 2015)
- A more efficient native title process to create more certainty for investors
- Amend A&TSI Heritage Protection Act 1984 (Cth)
- Increase individual property rights in townships
- Transfer of communal land to home ownership
- Conversion of Indigenous communal land to ordinary freehold with no restrictions on commercial leasing
- More 99 year township leases in NT
- Head lease to Executive Director of Township leasing, subleases to third parties, these sublease assignable without consultation or consent of traditional owners
- Uses the term "willing" but coincides with no funding



destroying plaintiffs' racial
the claim for damages
asserting justice

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Concluding thoughts

- *The racially discriminatory legislation enacted by Howard continues under both Labor and Liberal governments*
 - *Racially discriminatory policy of SRAs continues*
 - *Proposed constitutional prohibition against racial discrimination has been rejected*
 - The forced dispossession via 99 year leases is now a key plank in Abbott's plans for Northern Australia
 - The closure of remote Aboriginal communities living on their traditional lands
 - Assimilatist policy of converting communal land to individual property interests, focus on "home ownership"
 - Allotment policies have lead to dispossession
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- Stolen Generation finally received an Apology on 13 February 2008
 - But governments refuse to compensate
 - Hardly a lifestyle choice

