Ad hoc and bad land tenure reform and the 'national emergency'?

By Professor Jon Altman*, Australian National University

As part of its national emergency response to protect Aboriginal children in the NT announced on 21 June 2007, the Howard government introduced 11 coercive policy measures. Since then, some of these measures, especially the introduction of compulsory health checks for all Aboriginal children, appear to have been modified considerably. Then on 23 July, an additional coercive measure, the wholesale abolition of the CDEP scheme throughout the NT (but not elsewhere in rural and remote Australia) was announced.

Here I focus on just two of these 12 measures, the acquiring of townships prescribed by the Australian Government through five year leases, including a Commonwealth commitment to just terms compensation; and the scrapping of the permit system for common areas, road corridors and airstrips for prescribed communities on Aboriginal land. I trace the origin of these two measures that are quite unrelated to child protection and question their logic and the practicality of their implementation.

Land rights reform has been on the Howard government's agenda since 1996 and probably on the PM's personal agenda since this law was passed in 1976 by the Fraser government. In 1998 the Report Building on Land Rights for the Next Generation was completed. This Inquiry was chaired by John Reeves, a prominent member of the Law Society Northern Territory. The Reeves Report was so contentious that its recommendations were immediately referred by its commissioning Minister John Herron to the House of Representatives Standing Committee on Aboriginal and Torres

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Strait Islander Affairs. In a bipartisan report Unlocking the Future, completed in 1999, all Reeves's recommendations were rejected.

This recent history is revisited for two reasons. First, one of the two measures, examined here, the abolition of the permit system, was recommended by Reeves and rejected outright: no-one wanted to abolish the permit system except for the Amateur Fisherman's [sic] Association of the NT (AFANT). Second, and somewhat ironically, John Reeves has been appointed as a member of the National Emergency Task Force: his ability to approach this issue afresh and impartially looms large here, at least from my perspective.

Reform of ALRA resurfaced as an issue in the aftermath of the 2004 federal election when the Howard government unexpectedly won control of both houses of parliament and carte blanche to amend any Commonwealth law. In early 2005 the specter of compulsory acquisition of land, as allowed under the Northern Territory (Self Government) Act 1978, was raised by both Warren Mundine, an Aboriginal man from NSW and then a member of the government-appointed National Indigenous Council, and the Office of Indigenous Policy Coordination (OIPC). This fed into debate at that time about private home ownership on Aboriginal land.

But amendments to ALRA in August 2006, passed with indecent haste and little consultation, as noted by a Senate Inquiry, sought neither compulsory acquisition nor abolition of the permit system. Instead, a voluntary scheme was introduced to allow communities to transfer a 99-year head lease (to a Commonwealth or NT entity) to administratively facilitate sub-leasing. The first agreement between the Mantiyupwi, the traditional owners of Nguiu on Bathurst Island and the Australian Government is nearing completion, although locked in court disputation as this piece is completed.

Not long after ALRA was amended, in October 2006, the permit issue was revisited in a Discussion Paper released by the Australian Government that canvassed four options for reform. OIPC invited submissions and about 100 were provided by 28 February 2007, but all have remained 'confidential' even though this was not the basis for submission—I know I provided one. The veil of secrecy suggests the majority favoured option 1: the status quo. On 21 June the Government announced its measure for scrapping permits. This decision is deleterious to Indigenous interests as in many situations traditional owners use the permit system to regulate visitation onto

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their group-owned lands.

At places like Gunbalanya, traditional owners will also be economically disadvantaged by this measure as an entry fee is charged to visit the community. These traditional owners will, I presume, be eligible for some form of compensation. There is a precedent here as in the 2004 election campaign, the Australian Government abolished entry fees to Kakadu National Park and then negotiated to compensate traditional owners about $1 million per annum in lieu of fees. This shifted the impost to pay traditional owners from the private to the public sector. Scrapping permits will also mean that 200,000 visitors from Kakadu National Park and 400,000 visitors from Uluru National Park could enter Gunbalanya and Mutitjulu communities respectively: the social impact of this would be a disaster.

The new proposal for compulsory leasing of prescribed towns on Aboriginal land for five years is confusing given the introduction of the voluntary 99-year head leasing proposal just last year. This radical change can be explained perhaps by Ministerial anxiety at the snail's pace take-up of his new deal? Compulsion means that just terms compensation will need to be paid although the Bill currently before the Parliament seeks to use s122 constitutional powers to avoid such payment if possible. Given that townships are not properly surveyed and fixed asset registers are rarely in existence, depending on what is compulsorily acquired there may be enormous contestation over who owns assets, what constitutes just terms compensation and whether the Commonwealth can unilaterally avoid making such payments as 'a special measure' under the RDA. Valuable public resources that could be used for housing and infrastructure will be wasted in legal disputation. The urgency that is the Government's justification for the rushing of three Bills totalling nearly 500 pages through Parliament in a week will be undermined by delays from legal challenges!

Given the original rationale for 99-year leases was that leasehold can be effectively equivalent to freehold if the term is long enough (to encourage bank finance), reducing the term to five years makes no sense. The real issue in remote Indigenous communities is liquidity and the size of markets, not tenure. If this reform is about improving housing and ensuring normal tenancy arrangements, then it will be incumbent on the Commonwealth to deliver normal housing and infrastructure with a financial commitment estimated at between $1.4 and $2.3 billion. There is no such commitment included in the over $500 million committed in 2007–08 to the 'national emergency'.

Both these land reform measures are bad public policy being made on the run. Some, like the suspension of NT planning laws for five years and lack of clarity about ownership of assets and land when compulsory leasing ends will prove very costly for the NT and/or future federal governments to resolve: they are irresponsible. Such bad policy will prove costly and unworkable and needs immediate reappraisal. Canberra-based politicians are seeking to paternalistically micro-manage social and economic development in prescribed communities in the NT, without local knowledge, without negotiation, and without consensus or consent. As problems become apparent, there will be less and less goodwill extended to the national emergency intervention that is starting to look more and more like what Amanda Vanstone termed 'conspicious compassion' rather than workable enabling by the state. When things go wrong, the legacy, as always, will be borne by Aboriginal people and their institutions. Unfortunately, that seems to be the nature of accountability in John Howard's Australia. Oh, and about those children …

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