

STOP in the Name of Who's Law? Driving and the Regulation of Contested Space in Central Australia

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Abstract

This article emerges from a study of the incidence of Indigenous driving offending conducted by the authors in the Northern Territory (NT) from 2006 to 2010 on two central Australian communities. It demonstrates how new patterns of law enforcement, set in train by an 'Emergency Intervention' in 2007, ostensibly to tackle child sexual abuse and family violence, led to a dramatic increase in the criminalisation of Indigenous people for driving-related offending. We suggest that the criminalisation of driving-related offending was part of a neocolonial turn in the NT through which the state sought to discipline, normalise and incorporate as yet uncolonised, or unevenly colonised, dimensions of Indigenous domain into the Australian mainstream. In terms of methodology, we adopted a mix of quantitative and qualitative approaches, blending criminal justice and policing data with insights from criminological, anthropological and postcolonial theory. We argue that running together the insights from different disciplinary traditions is necessary to tease out the nuances, ambiguities and complexities of crime control strategies, and their impact, in postcolonial contexts.

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Postcolonial, driver safety, policing, regulation, Indigenous, contestation, resistance, intervention

This article emerges from a study of the incidence of Indigenous driving offending conducted by the authors in the Northern Territory (NT) from 2006 to 2010 on two central Australian communities. It demonstrates how new patterns of law enforcement, set in train by an 'Emergency Intervention' in 2007, ostensibly to tackle child sexual abuse and family violence, led to a dramatic increase in the criminalisation of Indigenous people for driving-related offending. We critique the effectiveness of mainstream law enforcement in addressing driving-related offending on Indigenous communities and argue that alternative forms of regulating driver safety may be better adapted to Indigenous communities. We suggest that the criminalisation of driving-related offending was part of a neocolonial turn in the NT through which the state sought to discipline, normalise and incorporate as yet uncolonised, or unevenly colonised, dimensions of the Indigenous domain into the Australian mainstream. In Simon's (2007) phrase, the state was effectively 'governing through crime': amplifying and dramatising a particular crime problem (child sexual abuse) to legitimate an aggressive annexation of Indigenous space. Space also has distinct policing implications for Indigenous people. Because of the visibility of Indigenous people in urban public space, they are readily identified for public order offending (Blagg and Wilkie, 1997; Cunneen, 2005, 2001; Hogg, 2005). Colonial power expresses itself by marking boundaries of public order and public space. Edmonds (2010: 149) accordingly describes public order offending as 'a productive lens through which to understand the iniquitous and racialized politics of the settler-colonial streetscape'. What we are currently witnessing in the NT is an extension of these racialised politics into remote spaces of Australia through the redesignation of Indigenous space as public space.

The case studies we present show that, while Indigenous violence and sexual abuse were the federal government's *raison d'état* for new interventions, the processes and outcomes have been solidly fixated on eradicating key cultural differences between mainstream Australia and its Indigenous other. Before moving on to discuss these matters in detail, we first describe our approach to the issues, which involved embracing elements of postcolonial theory and critical anthropology, to compensate for what we perceived to be an epistemological deficit in criminological theory in relation to understanding the full significance of shifts in regulatory practice, where this involves the intensification of white power over a colonised people. Therefore, we do not begin this piece with a discussion of the suite of self-styled 'emergency measures' enacted by the Australian state to deal with the child abuse 'problem' and then move on to critique whether they 'worked' or not. Our approach is to begin by formulating the context within which it became imaginable for numerous layers of white government and a diversity of regulatory agencies to usurp control of the Indigenous domain in central Australia, and the characteristically assertive role of policing in the vanguard of white annexation.

Far from being novel, these emergency measures, we maintain, represent a new move in a long game of colonial power and Indigenous resistance. The sudden, massive increase in the police presence in NT remote communities, whatever its overarching rationale, was always likely to lead to a significant increase in the rate of arrest and imprisonment for a wide range of offences: once the moral gaze of the police was focused on these hitherto only lightly regulated liminal zones on the periphery, they would inevitably undertake a process of what Reiner (1994: 742) calls 'moral street-sweeping', even where the streets themselves were ill maintained and scarcely distinguishable from the red dirt around them.

Criminology, Lost in Space?

For western criminologists, navigating a passage through postcolonial space can be a daunting and unsettling experience. Criminology is a discipline firmly embedded in a historically specific assemblage of modernist space, landscape, time and place (prisons, police stations, courtrooms, cities, mean streets, neighbourhoods, Central Business Districts (CBDs), suburbs, nighttime economies, public transport, public/private spaces, etc.). These spaces have supported and nurtured various forms of disciplinary power and sustained a diversity of cultures and subcultures. They have also traditionally enjoyed a relatively secure, if not always uncontested, anchorage in the larger space of the nation state: conflict and contestation tending, on the whole, to work within hegemonically acceptable limits of sovereignty and the rule of law (Hall et al., 1978). However, as Ranajit Guha (1998) demonstrated, colonial power leans towards coercion not hegemony, exclusion not incorporation. 'Public space' reflects a form of hegemonic power that endows 'citizens' with certain, albeit constrained, rights to access and usage. No such 'public status' is accorded to the colonised: the inscription of public space is accomplished by restrictions on their movements and the denial of citizenship.

Recently, some critical criminologists have posed the question: what can a criminology, embedded in the space/time of the metropolis, contribute to the study of crime-related issues in places outside the metropolitan centre, where justice institutions arrived in the baggage train of colonial expansion and conquest (Agozino, 2003; Anthony, 2009; Blagg, 2008; Brown, 2011; Cunneen, 2006; Hogg, 2005; Pratt, 2006)? What can this criminology contribute to places where notions of sovereignty remain highly disputed and the boundaries and frontiers of the nation state are blurred and ambiguous? There has been a greater interest in the last decade or so (largely driven, alas, from outside the discipline, by legal and social historians) into the links between crime, criminalisation and empire (Douglas and Finnane, 2012; Finnane, 1994, 1997; Godfrey and Dunstall, 2005). Common to these critical histories of the colony is the belief that criminal justice policies and practices played a formative role in colonial domination, shaped postcolonial social relationships and remain sites of contestation, resistance and conflict. Those criminologists who have engaged with the colonial question have been particularly critical of criminology's presumed neutrality, dressed up in scientific garb with matching statistical 'outcomes', as an elaborate smokescreen for practices of othering, ethnic domination, dispossession and even genocide (Anthony, 2009; Blagg, 2008, 2012; Cunneen, 2001; Morrison, 2003, 2005; Sumner 1982). Many of these critics would support

Fanon's (1990) proposition that the apparatuses of law and criminal justice, particularly the police, maintained the division between colonisers and colonised. Furthermore, they may also argue that because the disciplines of western social science are themselves complicit in enabling and sustaining colonial discourse, they need to be radically deconstructed and refigured if they are to do justice to the experiences of the colonised (Hook, 2012; Meyer and Maldonado Alvarado, 2010; Nakata, 2007; Young, 1990; Zizek, 2001).

Sites of Contestation

In this article, we seek to redress the balance by blending a mix of qualitative and quantitative criminological inquiry with postcolonial theory and critical anthropology: bringing them to bear on the study of one particular site of cultural contestation between the Indigenous people (the Warlpiri) and the colonial state in Australia's NT. This mix of approaches and perspectives is not intended to create a frictionless and holistic thesis – for example, as privileged white researchers, we cannot assume to adequately express the views of the colonised. Rather, our aim is to assemble a critical account that acknowledges the weaknesses and limitations of what Derrida calls 'western metaphysics' (read, social science) to make substantive truth claims in relation to the colonised world (Chakrabarty, 2008; Derrida, 1978; Said, 1994). Instead, we 'run together' (Frosh, 2012) insights from different disciplinary traditions as a way of teasing out some of the nuances, ambiguities and complexities of crime control strategies in postcolonial contexts.

Postcolonial theory has been concerned with the ways colonial power creates and sustains forms of social, cultural and psychological practice that survive the formal colonial era. These practices are minutely interwoven into the fabric of postcolonial relations, creating intricate 'structures of attitude and reference' (Said, 1994: 73) that tend to uphold and maintain white privilege and normalise white possession. The strength of postcolonial theory, however, lies in its refusal to view colonisation as a completed project. It stresses the constant interplay of cultural contestation, which often takes place in the 'interstitial spaces' (Bhaba, 1994; Waters, 2001) between cultures. These interstitial spaces, referred to also as liminal spaces, third spaces, engagement spaces, intercultural spaces and contact zones, in postcolonial and anthropological inquiry, are the sites of ambivalence, hybridity, compromise, resistance and contestation. They take us beyond the focus on entrenched, binary opposition between coloniser and colonised, creating possibilities for fresh narratives to emerge within 'in-between' spaces (Bhaba, 1994). From postcolonial theory, therefore, we have adopted a notion of 'culture' that is, simultaneously, both profoundly and immediately 'real' as it is embroiled into the life-worlds of participants, while at the same time highly dynamic and labile, capable of constant re-negotiation. Indigenous culture in central Australia – as the romance with the motor vehicle demonstrates – has been able to absorb and accommodate radically new phenomenon, but has itself been affected by the encounter in both positive and negative ways, as we hope to demonstrate.

Foucault's (1988) work on regulatory practices also serves as a bridge between contemporary criminological theory, postcolonial theory and critical anthropology because his language and ideas have been influential on all three. Foucault employs the notion of

regulatory practices to describe the modern state's diverse range of techniques employed to manage and control populations (see also Foucault, 1998: 140). Rowse (1998), for example, uses the construct to map the colonial regime's use of rationing as a disciplinary technique: the distribution of white flour, at a time when Indigenous people were being moved off traditional land, inscribed white power into the landscape (Rowse, 1998). Said's (1994) epic works on orientalism and on culture and imperialism (Said, 2003) were strongly informed by Foucault.

The Postcolonial Landscape: Roads, Cars and Ambivalent Journeys

Povinelli (2006: 146) argues that Indigenous people increasingly confront a 'multidimensional and multifunctional intersection of law, public culture, and practical knowledge' even when 'doing nothing more than drive to an outstation on a rutted road'. On the other hand, to conclude that the increasing encroachment of western culture via the road and the motor vehicle into the Indigenous domain was a narrative of successful colonial domination would underestimate the capacity of Indigenous agency to assemble counter-narratives and creatively absorb colonial structures and commodities. Cars and roads on Indigenous spaces have created new cultural intersectionalities, new sites of contestation on the postcolonial frontier, rather than the successful completion of the colonial project.

Roads form a recurring motif in the universalising narrative of colonial discourse. In Ben Okri's novel *The Famished Road*, the road is an ambiguous entity, symbolising the promise of human progress, but delivering hunger, violence and chaos. Indigenous Australian narratives on the road and the motor vehicle are similarly ambivalent. As Frederik (2011) suggested that 'insofar as it "opened up" the outback for sustained exploration and settlement, the car may be viewed as a colonising agent and an extension of colonial administration'. Furthermore, roads enforce a process of what Spivak (1996) calls 'worlding', where the colonised space is inscribed by the worldview, systems, laws and practices of the coloniser. For Spivak, imperial power is secured by the inscription of colonial discourse directly into colonised space. Ashcroft et al. (1998: 241) suggests that 'this kind of inscription is most obviously carried out by activities such as mapping, both by putting the colony on the map of the world and by mapping it internally so as to name it, and by naming it to know it, and hence, control it'. In the Australian context, Frederik observes:

[R]oad travel is also one of the ways by which white belonging is enacted. Roads, highways, petrol stations and motels normalise the occupation and governance of land by non-Indigenous authority and capital. (Frederik, 2011)

Indigenous Elders fear that better roads bring with them 'grog' runners, drugs, unwanted visitors, troublemakers (white and black), sharks and con men (generally white). Indigenous women Elders involved in the Yuendumu Women's Council, community managed family violence services and the Women's Night Patrol, while desiring better links to off-community services concerned with women's safety, also expressed concern

that the erosion of traditional culture, had increased, not decreased, levels of violence against women and children: a point also made forcefully in the Wild and Anderson (2007) report into child abuse in Indigenous communities. In some instances the ability to rapidly 'escape' remote communities – and the controls of family and male relatives – has been a welcome option for some women victims of domestic violence. However, this has to be balanced against the fact that contact with white communities creates its own problems for Aboriginal women and children, including entrenched racism and racist violence, degrading stereotyping, institutional abuse, massive over-policing, and incapacity to provide what Indigenous women activists call minimum standards of cultural safety and security (see Blagg, 2008, 2012).

Vehicles have become objects of desire, fuelling aggressive 'demand sharing' (Peterson, 1993) amongst kin and undermining family relationships. Yet, they also offer scope for resistance to modernity and the strengthening, rather than destruction, of Indigenous law and culture. Representations of 'carwork', such as 'Toyota Dreamings', feature prominently in many Indigenous visual representations of Indigenous ceremony. Roads and red dirt tracks fuse together in the paintings of the great Warmun artist Rover Thomas, creating a vivid, multivocal and hybrid landscape. The car, far from killing off culture, has made possible the renewal of law ceremony, taking Elders and initiates over once unimaginably vast distances to old, precolonial, traditional law grounds (Peterson, 2000). Cars and tracks facilitate connection between remote communities for sports festivals, conducting family business and renewing connections. They allow the creation of outstations where families can escape the feuding and fighting on community; they facilitate access to hunting grounds and bush tucker. Women from remote communities traverse vast distances to hold ceremonies and to convene their meetings, dance and singing. The prized 'Night Patrol' vehicle allows Indigenous people to police themselves to some degree and prevent grog running, petrol sniffing and family violence (Blagg and Valuri, 2003, 2004) – but also remains as a site and source of conflict as different clan groups or men and women groups attempt to 'capture' the resource (Blagg, 2008). Cars and carwork create heroic myth-making as that woven around the celebrated Yuendumu Bush Mechanics¹ whose capacity to fix the white man's motor by the ingenious use of bush materials creates a curious cultural bricolage and a celebration of Indigenous guile and cunning. The Toyota and the road are the objects of ambivalence; they bring modernity but allow tradition to flourish, allowing Indigenous people to negotiate the boundaries between premodernity and modernity. Most roads on remote communities in the NT are generally poorly maintained, pot-holed and dusty, with no gutters or marked lanes; however, as we shall demonstrate, Indigenous people remain ambivalent about road improvements, which generally come at a significant cost. Before discussing these issues in detail, we will briefly describe our methodological approach.

A Methodological Mix

In terms of criminological methodologies, we adopted a combination of quantitative and qualitative approaches. For quantitative data, we drew on local court data on offences heard in Yuendumu, Lajamanu and Mutitjulu local courts. The number and proportion of driving offences are then aggregated in the 4 years before and after 2006 when federal

law and order interventions commenced. In addition, based on daily local court lists obtained from the Department of Justice website,² we ascertained a broader snapshot of the proportion of driving offences to overall offences in prescribed communities between March and June 2010. The second primary source is the Northern Territory Police, Fire and Emergency Services (NTPFES) Annual Reports, which are analysed to discern the trend in offending between 2002 and 2010 (4 years before and 4 years since 2006). The statistics in the NTPFES Annual Reports are based on the Police Realtime Online Management of Information Systems, which covers any incident that necessitates investigation, resource allocation or any form of NTPFES action. Based on this system, the NTPFES (2005: 143) notes that the clearance rate for driving offences is 95%. The study is concerned only with minor driving offences that are heard in the local courts and are victimless crimes.

In terms of qualitative research, we conducted interviews with Warlpiri people and non-Warlpiri service providers in the case study communities of Yuendumu and Lajamanu, Commonwealth and local government ('Shire') officials and police as well as non-government service providers and policy makers in relation to driving issues. Formal interviews mainly took place in Darwin and Alice Springs, but we were also able to intercept a number of government officials from the three tiers of government, mainly lower level functionaries, on communities.

We sought to identify problems, issues and strategies for reducing driver offending – especially drive unlicensed, unregistered and uninsured, also more broadly, driving disqualified and drink driving. It needs stressing that the research did not occur in a relational vacuum. Both the researchers have accumulated cultural capital in the centre, in the sense of being repeat visitors and creating a network of ongoing trust relationships.³ This does not mean that we are able to 'speak for' Indigenous people, but it does mean that we did not fall victim to the 'seagull' mode of white research, where researchers (usually accompanying white officialdom) descend on remote communities by air, conduct so called 'consultations' and leave again (depositing, like any seagull, crap as they go).

Case Study Communities: Lajamanu and Yuendumu

The two Warlpiri communities of Lajamanu and Yuendumu (each with a population of approximately 1000) constituted the qualitative case studies for this study. They are amongst the 21 'growth towns' that the NT and federal governments have identified as hubs for service centralisation and 'normalisation' that will enable them to integrate into the market economy.⁴ The governments regard driving as important to fulfilling this role of market integration in terms of providing a capacity to travel to employment and drive heavy vehicles as part of employment. The size and services available in these communities are well beyond many Indigenous communities across the NT. Since tackling/overcoming driving offending is likely to require more services for drivers, these communities are well positioned for a consideration of the initial possibilities for expanding driver and vehicle services.⁵

Yuendumu and Lajamanu communities continue to practice Warlpiri law. The 'tjukurrpa' or 'tjukurrpawarnu' (the intricate thread of 'dreamings' and ceremonies that underpin Indigenous law and culture in the centre) remain central to daily life and govern

social relationships (Northern Territory Law Reform Committee, 2003). Given that law and culture are so strong in Warlpiri country, it would make sense to ask whether driver education, services, regulation compliance and penalties may be adapted to cultural understandings of law and safety – especially so since, as we suggested earlier, Indigenous people have syncretically accommodated aspects of ‘automobility’ (Frederik, 2011) into their cultural landscape. We sought to examine not only the production of culturally appropriate educational resources and licensing systems but also how Indigenous peoples themselves may be involved in the sentencing and justice directions in relation to Indigenous driving offenders. This seemed particularly necessary to counter the dominant narrative that assumed Indigenous communities were incapable of generating solutions. The problem was that the government’s approach to driving issues was coloured by a powerfully enunciated belief that Indigenous law and culture were part of the problem – if not, indeed, the problem itself in central Australia, as we will demonstrate later.

While the case studies of Lajamanu and Yuendumu do not claim to represent the experience of Indigenous communities across the NT, with fewer drinking problems and lower violent offending than previously ‘wet’ communities (those where alcohol was available legally), they nonetheless have comparable levels of driver offending as other prescribed Indigenous communities. Therefore, considerations in relation to Lajamanu and Yuendumu are likely to be relevant to other Indigenous communities in the NT, and perhaps more broadly across Australia.⁶ Indeed, lawyers from the North Australian Aboriginal Justice Agency (NAAJA) said that driving matters are fairly similar ‘from bush court to bush court’. This confers with our observations of court lists from a range of communities. Moreover, by studying two communities in-depth, we were able to identify differences in policing and driver licensing/registration facilities that indicate the relevance of local circumstances.

We visited Lajamanu twice and Yuendumu once in 2010 to conduct interviews with Warlpiri and non-Warlpiri people. The Warlpiri men and women who we interviewed included 16 in Lajamanu, comprising seven respected Elders, four younger people (approximately between the ages of 21 and 35 years) and five people who had committed a driving offence in the past year. Within Yuendumu, we were able to talk to five senior community Elders and law men and women, including several who sat in the community court (in the local court); we were also able to talk to three male workers from the Yuendumu men’s night patrol. They were asked about reasons for offending – that is, driving without licence, registration or while intoxicated (either themselves or in the community) and how to assist licensing drivers, registration of vehicles and reduction of drink driving. We also interviewed local police, police prosecutors, shire managers, government staff, health clinic doctors, youth workers and lawyers from Indigenous legal services in relation to the reasons for the high and increasing levels of unlawful drivers and their criminalisation, causes of driver offending and ways to reduce driver offending.

A further 23 defendants in Lajamanu local court were observed in sentencing for driving offences and 11 in Yuendumu local court, including one sentenced by the Yuendumu community court. In this study, our court observations over 2007 and 2008 in Lajamanu and Yuendumu are raised briefly for the purposes of comparison. Harry Blagg had been visiting Yuendumu since 2006, and Thalia has made trips to Lajamanu since 2008, as part of series of fieldwork on justice-related matters (Blagg, 2008; Anthony and

Chapman, 2008; Anthony, 2010). Court observations sought to identify the reasons for offending and measures to overcome their offending behaviour. Such reasons are filtered through the representation provided by the defendants' advocates: the NAAJA in Lajamanu and the Central Australian Aboriginal Legal Aid Service in Yuendumu.

The Case Study

This case study addresses the question of driving-related offences in the NT from 2006 when federal police were deployed to the NT, just preceding the official Federal Government Emergency Intervention (explained in detail later), until 2010. Adopting a strictly positivist stance on this topic would entail taking for granted that 'road safety' was a problem for all 'Territorians' – irrespective of race – and that the role of research should be to measure the scale of the problem, assist in developing solutions and monitor the outcomes of interventionist strategies. As noted above, we acknowledge that road safety is an issue that needs to be addressed. However, researching the issue of road safety in isolation from its social and political context is to leave untheorised and unaddressed the profound pressures exerted by the colonial state to normalise the outback. Instead, we stress the extent to which these strategies were part of broader suite of colonial techniques designed to 'homogenise and standardise' remote Australia and bring it into the fold of the nation state. In this respect, Foucault's notion of 'bio-power' has obvious relevance. Here, we have a nation state imposing new forms of regulatory practice and control on a subject population in the name of improved health and safety (Foucault, 1998).

The criminalisation of driving matters in the NT increased dramatically when the Howard federal government began the deployment of police to Indigenous communities in mid-2006. The offences are primarily driving unlicensed, driving an uninsured vehicle and driving an unregistered vehicle. These three offences, often brought together against the one offender, are referred to collectively as the 'driving offence trifecta'. These minor offences have consumed the resources of the criminal justice system without positive impacts on deterrence or driver safety. As early as 1991, there were calls for minor driving matters to be dealt with through programs outside the criminal justice system and especially for diversion from prison as a sentencing option. Recommendation 95 of the Royal Commission into Aboriginal Deaths in Custody (1991) recommended programs to reduce imprisonment for driving offences. However, there had been minimal attempts to implement this recommendation. Figures from 1993/1994 revealed that 92.4% (231/250) of people imprisoned for driving offences were Indigenous. By contrast only 45% of people given community service orders for driving offences were Indigenous. Furthermore, while the ratio of Indigenous to non-Indigenous people being charged for serious driving offences is 1:1, the imprisonment rate is 9:1 (Human Rights and Equal Opportunities Commission, 1996: Ch 11). The increase in the number of Indigenous prisoners for driving offence in the NT demonstrates that this recommendation has not been effectively addressed. A key policy imperative for law enforcement strategies against unlawful driving is the role of driving to road injuries and fatalities. This policy is based on two questionable assumptions: first, the behaviours and attitudes relating to driving are responsible for road injuries (as opposed to infrastructure, facilities available for driver

training, etc.); second, that law enforcement is effective in altering Indigenous behaviour in relation to driving. Our analysis does not set out to minimise the seriousness of road safety on Indigenous communities; Indigenous people in the NT are almost three times as likely to be killed on the road as non-Indigenous people. Rather, this study critically interrogates the assumption that law enforcement 'works' in improving driver safety for Indigenous people and argues that, as in other areas of concern to Indigenous people such as family violence and alcohol abuse, the assumption tends to foreclose debate on alternative, community managed strategies that work through collaboration between the government and Indigenous communities.

Space Invaders: The State Declares an Emergency in Remote Australia

Although drivers have been on the receiving end of greater policing since 2006, the impetus for more police in NT communities was the targeting of violent sexual crimes. On 15 May 2006, the Australian Broadcasting Corporation's (ABC) flag ship current affairs program *Lateline* reported that endemic child sexual abuse in Mutitjulu (an NT remote community) was occurring beyond the reach of the criminal law. Nanette Rogers, a Crown Prosecutor in Alice Springs, pointed to a number of child sexual assault cases and commented on the difficulties associated with prosecuting child sexual offenders in the NT (Jones, 2006). This report led to an initial mobilisation of federal police to the NT in mid-2006. At the same time, the NT Government initiated an inquiry into how to tackle sexual abuse in NT Indigenous communities. A year later, the report *Little Children Are Sacred* (Wild and Anderson, 2007) was released. Although it did not investigate the incidence of child abuse in Indigenous communities,⁷ its recommendations to address child abuse (mainly through community-based mechanisms) were used to support the federal government's intervention, on the basis that a crime epidemic in Indigenous communities had reached crisis levels. The Government depicted the crime as endemic and entrenched in order to justify an emergency. Prime Minister John Howard described the Indigenous victims as 'children living out a Hobbesian nightmare of violence, abuse and neglect' (Howard, 2007: 1). The implication was that the situation required broad-sweeping legislative measures to address Indigenous dysfunction.

Within two weeks of the release of the report the *Little Children Are Sacred*, the federal government announced that it would be taking control of 73 Indigenous communities in the NT. The federal government introduced a number of legislative and nonlegislative measures to increase law enforcement in Indigenous communities. The key legislative measure was the *Northern Territory National Emergency Response Act 2007* (Cth), which was directed at protecting Indigenous children from abuse (Brough, 2007: 10). Minister Brough (2007: 10) stated that it was 'time to intervene and declare an emergency situation' in relation to child sexual abuse in Indigenous communities.

The emergency legislation is applied to Indigenous land and prescribed Indigenous communities across the NT. The legislation criminalised the possession, transportation, sale and consumption of alcohol in prescribed areas (which involved extending preexisting alcohol restrictions over Indigenous communities) and modified NT legislation relating to alcohol restrictions and police powers regarding the apprehension of intoxicated

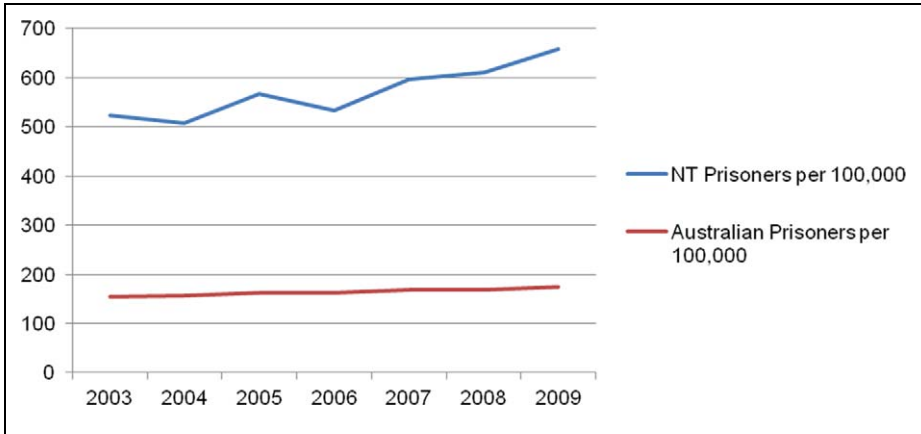


Figure 1. Comparison of Northern Territory rate of imprisonment with Australian average, 2003–2009. Source: Australian Bureau of Statistics (2009: 33, Table 3.4).

people.⁸ It also provided bans on pornography, of cultural and customary law considerations in bail and sentencing, 5-year leases over townships on land rights, watering down the Indigenous land permit system, the abolition of the Community Development Employment Projects (a kind of work for the dole scheme that acknowledges structural unemployment in remote communities), the appointment of government business managers for Indigenous communities and quarantining at least 50% of all Indigenous peoples' welfare income. These legislative measures required the suspension of the *Racial Discrimination Act 1975* (Cth) – a legislative instrument which seeks to protect against racial discrimination.

The intensity of the change was reinforced by the imposition of a new form of local government which disempowered Indigenous communities. In 2008, the NT government abolished the patchwork of 61 small local councils to create 11 centralised 'super-shires' based in regional centres. At a stroke, Indigenous community councils lost funding. Coupled with the draconian regulations of the emergency intervention, this constituted a new phase in the dispossession of Indigenous Australia by a colonial power. The following section discusses the impact of the intervention on policing in Indigenous communities.

The Empire Strikes: The Police Roll Out

The initial response to the report on Mutitjulu aired on *Lateline* was not a legislative one. Minister Brough pointed to the need for more policing. The report identified that only eight of the 40 central Australian Indigenous communities had a police presence at the time (Smith, 2006). Following the *Lateline* reports in mid-2006, and a year before the *Northern Territory National Emergency Response Act*, the federal government committed \$130 million towards law and order strategies in Indigenous communities, including \$40 million for police stations and police housing and \$15 million for Australian federal intelligence gathering and federal police 'strike teams' (Cripps, 2007: 6). The immediate

objective of the intervention was 'to provide for more police and police stations, and to give police additional powers' (Select Committee on Regional and Remote Indigenous Communities, 2009: 98). The Northern Territory Emergency Response (NTER) Taskforce was set up before the legislation to provide oversight for the measures (Brough, 2007: 11). However, the army were also given a role; Major General Dave Chalmers was put in charge of the NTER operational command. Convoys of army, police and government vehicles encamped on Indigenous communities, met with alarm and dismay by most inhabitants. Australia, several observers suggested, was the only member of the then 'Coalition of the Willing' to actually invade itself (Altman and Hinkson, 2007).

Taskforce Themis constituted a major part of the policing strategy. It was set up in 2007 to lead the building of 18 new police stations in Indigenous communities.⁹ It sought to supplement the 39 police stations that previously covered NT communities (Allen Consulting Group, 2010: v; Northern Territory Emergency Response Review Board, 2008: 36). From 2007, 45 Australian federal police and interstate police and 18 NT police were deployed (Select Committee on Regional and Remote Indigenous Communities, 2009: 98). There was also an expansion of NT night patrol services, but their control was controversially handed over from Indigenous people (especially women's patrols, such as the highly regarded Yuendumu Women's Night Patrols) to local shire councils (Northern Territory Emergency Response Review Board, 2008: 4.164). In introducing the Northern Territory Emergency Response Bill, Minister Brough (2007: 11) stated that 'We have begun to provide extra Federal Police to make communities safe. The states have committed to provide police and the Australian government has agreed to cover all their costs'.

Counting the Costs: The Impact of the Intervention on Incarceration Rates and Indigenous Driving

The impact of the federal government's 'law and order' strategy in the NT correlated with increased Indigenous incarceration rates. The NT prison rate increased faster than any other state or territory since the intervention, with a 23% increase between 2006 and 2009 (Australian Bureau of Statistics, 2009: 33). This is 16% above the increase in the average Australian imprisonment rate between 2006 and 2009. Figure 1 depicts the NT growth rate compared with the Australian growth rate in the 3 years before and after the government interventions. Augmenting this trend, by 2011, the NT prison population had grown by a further 16% and had the highest imprisonment rate in Australia at 762 prisoners per 100,000 adult population (Australian Bureau of Statistics, 2011: 27). This is more than four and a half times the national rate of 167 per 100,000 (Australian Bureau of Statistics, 2011: 8). For the year 2007–2008, NT prisons were operating at a capacity of 103%. The following year, 2008–2009, this had rose to a capacity of 120% (Jackson and Hardy, 2010: 1).

The Indigenous population constitutes 82% of the total prison population. This was the highest Indigenous prison population of any Australian jurisdiction and totalled 57% above the Australian average (Australian Bureau of Statistics, 2009: 31). This has been identified by the Productivity Commission (2009: 67) as a major problem confronting Indigenous communities in the NT. However, while incarceration rates have been

high and increasing for Indigenous people in the NT, there has not been an increase in the proportion of Indigenous people being incarcerated. In fact between 2006 and 2009, there was a very slight decrease from 82.4% to 81.8% (Australian Bureau of Statistics, 2009: 35). This indicates that although the intervention has increased imprisonment across the NT, it has affected Indigenous and non-Indigenous people equally. Therefore, despite special measures to increase policing in NT Indigenous communities, there was no evidence to show more Indigenous offending resulting in imprisonment compared with non-Indigenous offending resulting in imprisonment, revealing that there was no vast swamp of Indigenous offending waiting to be drained.

Roads to Freedom? The Criminalisation of Indigenous Driving in the NT

These regulatory offences, such as not having a licence or a roadworthy vehicle or vehicle insurance, are not crimes arising from affirmative acts, such as driving dangerously or stealing a vehicle, but omissions. Driving offences that present no immediate risk and were previously informally tolerated are now the object of robust law enforcement in remote communities. The contribution of driving offending to imprisonment rates is 9% on any given day.¹⁰ Their annual contribution to prison rates is 25% (McCarthy 2011). This figure represents the 'flow' over a year, as opposed to the 'stock' on any given day and is much higher given that driving offenders tend to be in prison for a short period – on an average of 75 days (McCarthy 2011). Of these prisoners, 97% are Indigenous (Collins and Barson 2011: 26).

In NT Indigenous communities, half of the offences are driving-related (Anthony, 2010: 103). Since the intervention, there has been a 250% increase in traffic offending (Northern Territory Police, Fire and Emergency Services (NTPFES), 2006–2010). There have been particularly dramatic spikes in driving unlicensed and uninsured when comparing the 4 years preceding and the 4 years succeeding the roll-out of intervention police in 2006 (Anthony, 2010: 103, Figure 3). In remote communities, where roads are usually unsealed, unguttered and unlined, the police have increasingly taken a zero-tolerance approach to the infringement of road rules. Law enforcement assures that space use coheres with 'whiteness' (Hage, 1998). Indigenous roads on Indigenous land are increasingly being policed in the same way as urban streets with the kind of modern infrastructure that makes a focus on road rules comprehensible: including footpaths, gutters, a diversity of lines and markers, urban freeways, no-standing signs, street lights and incessant traffic

While the state has intervened in relation to law enforcement, it has been slow to provide the kinds of support necessary to ensure that Indigenous people can comply with the new regulations. Many Indigenous people lack driving licences, which can only be obtained after passing test in English that is formulated on intimate knowledge and experience of urban road rules. Given that police are responsible for conducting licence tests and processing licence renewals, they are only too aware of the disconnect between white expectations and Indigenous realities. Yet, they have, in most instances, enthusiastically embraced a zero tolerance approach that emphatically denies these realities as mitigating factors. The head of Taskforce Themis – a federal operation to establish

police stations in remote NT communities – vividly enunciates the doctrine: ‘if you’re caught driving an unregistered, uninsured motor vehicle[. t]he police officer must stop you ... [h]e doesn’t have any choice about that’ (quoted in Pilkington, 2009: 63).

Red Dust, White Law and Desolate Services

Many Indigenous people drive on bush tracks and for hundreds of kilometres to visit other communities. Unsealed roads do irreparable damage to cars. The roads in communities are unroadworthy and have little resemblance to roads driven on by whites in the white domain. In addition, registered mechanics are not on hand to fix cars (Anthony and Blagg, 2012: 59). There is a fantasy of racial neutrality in the management of Indigenous community space and the application of the *Traffic Act* (NT) and *Motor Vehicle Act* (NT). This is not matched with access to services and the provision of ‘white’ infrastructure. The police can be said to be acting as the ‘spatial manager’ who constructs the ‘Other’ as standing between them and their ‘spatial fantasy’ (Hage, 1998: 47). The road in the Indigenous community is now emphatically imagined as a white road and the Indigenous criminal is defying its rules – they are standing in the way of nationally desired homogeneity, in which everyone obeys the same laws. Law enforcement of driving offences has had epistemic effect – creating knowledge and truths about Indigenous roads as tantamount to white roads. Policing the Indigenous streetscape is critical to the creation and normalisation of such knowledge. Coupled with this process is an emerging instrumental approach whereby the NT government is simulating white suburbs by implanting road signs in the red dirt of desert communities. The streets will soon be gazetted in this strategy of normalisation and integration into the market economy (Northern Territory Government, 2011; Northern Territory Coordinator General for Remote Services, 2011: 9)

The introduction of a ‘STOP’ sign in the Tanami Desert community of Yuendumu, at the main road junction in town (symbolically close to the court house) epitomised the new regulatory framework. In a 2011 report, we found that ‘at Yuendumu there was a degree of consternation when a brand new STOP sign was placed at the main ‘junction’ between roads at the centre of the community and the police began charging people who failed to stop’ (Anthony and Blagg, 2012: 41, see also Blagg, 2008). Furthermore, ‘A group of Warlpiri people expressed concern that this was just another layer of rules that would make Yuendumu like a ‘white-fella’ town, with no place for Yapa (Warlpiri people)’ (Anthony and Blagg, 2012: 41). From the government’s perspective, the STOP sign transformed a dangerous, unpredictable space, where rules were negotiable and fluid, into a lawful, regulated, predictable and managed space, like any other crossing, in any other corner of the national community. For the Warlpiri, it symbolised the unnecessary encroachment of white law into their domain. The STOP sign was unnecessary because, as they saw it, there were never any problems at the intersection that could not be managed ‘Yapa way’ (meaning with courtesy and mutual respect). The Warlpiri, like many communities in Indigenous Australia, knew that once a space has been reimagined or ‘worlded’ by white power as a form of public space, it become subject to sets of rules and regulations that tend to marginalise Indigenous people. New rules require new forms of discipline, new attitudes, mentalities and new cultural practices. Inscribing these new principles creates a demand for new sanctions to enforce compliance.

Fixing the War Zone

Official narrative, supported and mediated by the main news media, created images of remote communities as ‘war zones’, broken beyond repair by alcohol-fuelled violence, incapable of self-government due to entrenched nepotism and clan conflict. This image does not reflect the realities of life on most remote communities. Both Lajamanu and Yuendumu have a proven track record of creating and sustaining a diversity of community owned initiatives, including night patrols, safe houses, law and order committees, healing centres and crime prevention committees (for a review of law and justice strategies involving Lajamanu and Yuendumu, see Ryan, 2001, 2005; Ryan and Antoun, 2001). The Warlpiri based Mt Theo Youth Diversionary Program, established by traditional owners Peggy Nampijimpa Brown, Barney Japangardi Brown and Johnny Japangardi Miller, to stop petrol sniffing (with the support of another Indigenous organisation, the Central Australian Youth Link-Up Service (CAYLUS), run by Tangentyere Council in Alice Springs) is acknowledged to be a model program. Mt Theo, with support from CAYLUS, has eradicated petrol sniffing on Warlpiri land and has developed a sophisticated, holistic program involving education, employment and cultural engagement to offer meaningful and safe programs for youths on communities in central Australia: an approach endorsed by more recent government announcements post-NT intervention (Department of Families, Housing, Community Services and Indigenous Affairs, 2009; Productivity Commission, 2009). Our conversations with organisations such as Mt Theo, also the Men’s Shelter, which has expertise in working with mainstream agencies to translate (culturally and linguistically) government policy into Warlpiri (for example, an educational program on sexually transmitted disease involving Warlpiri community workers and health workers was taking place while we were on the community) and the well established women’s group (which, with the indomitable Peggy Nampijimpa Brown, runs the longest running women’s night patrol in Australia) found that, despite well established mechanisms for translating government policies into community programs and using local law and culture to explain them ‘Yapa way’, government preferred more draconian methods based on the use of the criminal law. Our discussions with government workers found evidence that some agencies were deliberately bypassing Indigenous organisations.

Subjugated Voices: Warlpiri on Road Safety

Nonetheless, there was also a clear belief amongst Warlpiri people that they should obey the law and drive safely. They had little tolerance for antisocial driving behaviours. We observed most people in the case study communities drive at a speed of approximately 20 km/h. ‘Hoon driving’ was frowned upon and we observed that on community roads, drivers behaved impeccably. Based on our interviews in Lajamanu and Yuendumu, there was limited appreciation as to why a licence is required beyond the fact that it is the law. On the basis that it is the law, Warlpiri people with whom we spoke universally recognised that they and others in the communities should get a licence. However, there is not a deeper recognition of the safety implications of learning to drive and road rules; in other words, how it impacts on their driving behaviours and affects other drivers and pedestrians on the road. Given that there are virtually no road injuries in communities, according to the local health

clinic staff, there is no inherent understanding of the need to abide by road rules whilst in communities or learn the requisite rules for a licence. The road rules, signs and street configurations that are examined in obtaining a licence do not exist in communities – or are only slowly and unevenly emerging. Therefore, a driver's licence is regarded as a legal necessity rather than a reflection of possessing a relevant skill to be used in communities.

Moreover, Warlpiri people who were willing to get licences identified a number of barriers: a lack of interpreters for driving tests, driving tests difficult to understand, marked reluctance to go to police station to get licences, lack of income to afford a licence, inability to source documentation for identity points required for a licence, inability to keep licence if they do not pay a fine. Warlpiri people, particularly those with cultural authority, acknowledged that there were instances where Warlpiri would be placed under extreme pressure – by relatives in particular – to drive while unlicensed. Younger people who had driven unlawfully spoke of pressure from Elders to be driven to the health clinic, shops and cultural and family occasions (including funerals). While the Elders were critical of the failure of young people to obtain licences, they nonetheless relied on them for transportation. For young people, driving to meet cultural obligations, or where there was a special relationship with the passenger, were non-negotiable, with or without a licence.

The main barrier for having a registered car, as identified by Warlpiri interviewees, was the cost of maintaining a roadworthy vehicle and the cost of insurance. We were told that cars sold to Warlpiri 'are shiny on the outside but bad on the inside'. They are 'dangerous and too expensive and you can't drive them'. They felt ripped off by unscrupulous car dealers and could not afford to maintain their cars and consequently the police would not register their vehicles. Some also expressed dismay at the high compulsory third party insurance costs that were approximately \$800. Old methods for fixing cars, popularised by the Yuendumu Bush Mechanics, mentioned above, were no longer feasible – it is impossible to cannibalise a motor vehicle these days because of computer driven electronics. Warlpiri people expressed frustration that they do not know what to do when a car was refused registration 'so just keep driving car'. At the same time, registration was recognised as legally necessary. Both Elders and young people recognised the need to attain registration, but felt incapable of meeting the requisite vehicle standard for registration.

Drink driving, by far, attracted the most direct response in relation to its dangerousness. It was deeply forbidden by community members who understood its link to injuries and death. Punishment – by both laws – was regarded as an appropriate response to drink drivers, particularly where this resulted in injury or death. Some who had been disqualified understood that driving disqualified was wrong, but many thought they had not driving for sufficiently long for it to represent the period of their punishment. Therefore, the main concern with drive disqualified was the prohibitively long period (e.g. 5 years) that the punishment represented. In general, they did not understand why drive disqualified was such a grievous offence. They did not comprehend how it was an offence against the administration of justice.

The Failures of Intervention

Over the lifetime of the study, we witnessed few indications that the state was effectively uncovering, let alone prosecuting, cases of child sexual abuse and/or family violence, but

we did see significant changes taking place in the physical lay out of the community and a significant increases in the numbers of Indigenous people being prosecuted for failing to adhere to new rules. Despite extensive investigative efforts in relation to child abuse (Bromfield and Horsfall, 2010), substantial convictions have not followed (Department of Families, Housing, Community Services and Indigenous Affairs, 2009: 57). Policing of Indigenous child abuse has mainly uncovered and neglect (Bromfield and Horsfall, 2010: 4; Department of Families, Housing, Community Services and Indigenous Affairs, 2009: 57; Nair and Scott, 2012). Figures have remained steady since 2004, according to NTPFES Annual Reports. Other crimes targeted by the intervention policing have not seen an increase in prosecutions. For example, the criminalisation of pornography in prescribed communities under Part 3 of the *Northern Territory National Emergency Response Act* only resulted in one pornography matter having gone to court in the first year (Northern Territory Emergency Response Review Board, 2008: 4.139). The Northern Territory Emergency Response Review Board (2008: 116) found that the number of people arrested or summonsed for sexual abuse offences against Indigenous children in prescribed communities decreased from 39 in 2006–2007 to 26 in 2007–2008. Furthermore, the increase in adults arrested for physical assaults against children in prescribed communities has been insignificant – from eight in 2006–2007 to nine in 2007–2008. Similarly, the government figures on child abuse have merely indicated a sharp increase in ‘child welfare’ incidents between 2007 and 2009 (Department of Families, Housing, Community Services and Indigenous Affairs, 2009: 57). According to the Police Annual Reports, the number of investigations of domestic violence matters increased slightly from 971 in 2006–2007 to 986 in 2007–2008. The Select Committee on Regional and Remote Indigenous Communities (2009: 4.139) concluded that it was ‘too early to tell whether the additional police presence was preventing crime in the prescribed areas’ (also see Northern Territory Emergency Response Review Board, 2008: 26).

Concluding Comments: The ‘Worlding’ of Central Australia

The issue of driving and roads became a site of contestation and conflict between mainstream government and Indigenous communities who resisted the new rules. At the centre of the conflict lay a radical shift in government actions that unilaterally abrogated on an uneasy and fluid series of compromises between Indigenous and non-Indigenous domains about driving ‘on country’. Morphy (2008) has suggested that Indigenous people in remote Australia have not simply been hopeless ‘victims’ of negligence by the state, but their position on the margins gave scope for creating distinctively local practices that allowed them to practice law and culture with little intrusion. The remoteness of their space, the ownership of their space and the distinct images of their space was core to the continuation of Indigenous identities and practices outside of the colonial sphere. The scope for these is rapidly diminishing with not only new interventions into this space but also new parameters of righteous behaviour on this space. The failure of the Intervention cannot be measured simply against the self-set and the self-enforced benchmarks of postcolonial institutions. To do so would be to concede to the normalising agenda underpinning the Intervention. By contrast, Indigenous resistance may be the true indication of the intervention’s capacity to invoke change.

Postcolonialist theory positions crime within a 'contest for space' (Anthony, 2011: 386). Hage (1998: 38) claims that the postcolonial state governs through 'spatial management' that involves an 'imagined privileged relation' over 'race' and 'national space'. Remote communities were being remapped/mapped, rebooted and renetworked into the space/time of mainstream Australia. The inscription of white/urban road signs, virtually overnight, was a symbol of this remapping. Kristeva (1991) observes that the strangeness of the 'Other' is the strangeness of the self. This strangeness of the 'white' self arises from the failure to reconcile Indigenous sovereign societies to the postcolonial legal system and government. Roads are the symbols of sameness to quell the strangeness.

The 'normalisation' of the Indigenous domain in central Australia over recent years has seen an intensification of strategies intended to unify and consolidate what were generally accepted to be fluid spaces that supported a patchwork of locally negotiated compromises between law enforcement and Indigenous agency. It had generally been accepted that policing remote space was a qualitatively different practice to policing urban space. What we are witnessing is the end of policing strategies based on this premise and the emergence of new strategies that explicitly dissolve the distinction between urban and remote space, bringing new disciplinary and regulatory practices in to play. Our research found that the increased criminalisation of minor driving offences predated the formal emergency 'intervention' which was largely concerned with the wholesale dismantling of Indigenous forms of governance and imposing white governmental control. The experience, here, neatly reflects the history of European colonisation of the Australian continent, where aggressive policing and mass criminalisation presaged the imposition of white structures of power (Finnane, 1994). But more than ever, the car is cultural capital in Indigenous communities. It is mobilised as a tool for resisting restrictions placed on Indigenous people in prescribed communities.

We maintain that an understanding of the contested nature of national space, between coloniser and colonised, is an essential prerequisite for making sense of the current situation in the NT. We progressed a reading of the current conjuncture as marking a new phase in a long, multifaceted, conflict between colonial power and Indigenous people, as the former attempts to discipline and normalise, and the latter strives to retain relative cultural autonomy in a highly politicised atmosphere charged with cultural conflict and mutual incommensurability. For government, 'road safety' became one amongst a number of signifiers of community dysfunctionality. We found that government road safety campaigns became entangled with a suite of 'emergency' measure designed by the federal government to 'normalise' the Indigenous badlands and rid them of the scourge of family violence. The strategies adopted to increase road safety in Indigenous communities in the NT reflected a hegemonic colonial discourse that viewed Indigenous people as hopeless and dysfunctional and incapable, not only of self-management but also of constructive participation. The solution was a series of top down, top heavy and coercive strategies designed to elicit behavioural change, underpinned by a widely held belief that law enforcement 'works' in Indigenous affairs.

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Notes

1. See <http://www.rebelfilms.com.au/bush-mechanics.html> (accessed 1 February 2013).
2. <http://www.nt.gov.au/justice/courtsupp/mclist.shtml> (accessed 1 February 2013).
3. Both researchers had long standing relationships with Warlpiri and non-Warlpiri people in Lajamanu and Yuendumu over a number of years and since 2007 had observed in courts the high incidence of driving offending. Prior to this research Thalia Anthony had links with Lajamanu during work on stolen wages and policing (Anthony and Chapman, 2008) while Harry Blagg had particularly well embedded links with Yuendumu have visited over a 12-year period on a diversity of justice-related research projects, including night patrols, safe-houses, youth justice, community safety and youth integration through sport (Blagg, 2008; Blagg and Valuri, 2003).
4. See: http://www.growingnt.nt.gov.au/growing_centres/20_growth_towns.html (accessed 12 November 2012).
5. Smaller communities have even greater problems; one includes travelling to court to have driving matter heard. There is an unwillingness for courts and the prosecution to accept written pleas or videolink/telephone linkup.
6. There are high levels of driver injury in Indigenous communities across Australia and overall over-representation of Indigenous people in driving injuries (Henley and Harrison 2010: 2).
7. The report actually noted that the exact rate of child sexual abuse remained unclear because no detailed child maltreatment or abuse prevalence studies had been conducted (Wild and Anderson, 2007: 235). The Report also acknowledged that there was 'nothing new or extraordinary about the allegation of sexual abuse of Aboriginal children of the Northern Territory' (Wild and Anderson, 2007: 5).
8. Part 2 of the *Northern Territory National Emergency Responses Act 2007* (Cth) modified provisions of the *Liquor Act* (NT), *Liquor Regulations* (NT) and the *Police Administration Act* (NT) and imposed new requirements on the Northern Territory Licensing Commission. These offences overlapped with preexisting legislation that restricted alcohol licensing and ongoing community initiatives such as dry areas and alcohol management plans (Northern Territory Emergency Response Review Board, 2008; Select Committee on Regional and Remote Indigenous Communities, 2009).
9. These communities were Mutitjulu, Imanpa, Santa Teresa, Haasts Bluff, Nyirripi, Arlparra (Utopia), Willowra, Galiwinku, Ramingining, Gapuwiyak, Yarralin, Peppimenarti, Minyerri, Bulman/Weemol, Minjilang, Waruwi, Numbulwar, Alpururulam.
10. Contribution of Corrections Department to Darwin Focus Group, July 2010.

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