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When Prime Minister Kevin Rudd delivered an apology to members of the stolen generation on 13 February 2008, it was indeed an historic occasion.

It was a significant day because the apology was long overdue. Having been a key finding in the 1997 *Bringing them Home* report, the most comprehensive study of the impact of the removal policy on Aboriginal people who were taken away and the families who lost their children, it made the recommendation that an official policy should be made by all governments.

All state governments had already delivered an apology in some form long ago but Prime Minister John Howard's tenacious view that such an apology was unnecessary ironically meant that, when

an apology was finally delivered 11 years later, the occasion took on national and historical significance.

The day was also important for many of the Aboriginal people I spoke to around the country because they were heartened at just how many non-Indigenous Australians obviously believed that the day was significant and important to them too. They turned up in Canberra, in public places and at community events to share the moment and, along with Aboriginal people, were moved and uplifted by the Prime Minister's speech.

To his credit, Prime Minister Rudd devoted a section of his speech, which it is believed he wrote himself, to addressing the sector of the Australian community who did not understand why the apology was necessary. And in part he can take credit, I think, for the fact that before the apology, only a third of Australians were in favour of the apology but after it had been delivered, two thirds thought it was a positive thing.

I think the speech moved so many Australians because for so long, especially during the Howard era, we had been governed by the politics of fear: fear of others, fear of terrorism, fear of economic insecurity.

And for so long, during that same period, Australia had a Prime Minister who had a personally held ideological view that the history and experiences of Aboriginal people, particularly that of the stolen generations, should be downplayed and trivialised, if not hidden altogether.

Over the period of his time as Prime Minister, John Howard reinforced and perpetuated his view that our country's history should not acknowledge events or perspectives if it made people feel guilty about their past. I think that a majority of the people responded positively, after such a period of negativity, to the more

forward looking and inclusive vision for Australia that Kevin Rudd articulated in his speech.

For the Aboriginal people I spoke to, it was uplifting to see that so many Australians did not share John Howard's view, a view that had dominated for so long, but instead clearly understood that they could not escape what had happened in the past and should acknowledge that, without guilt, but with a positive view about how we can do better in the future.

13 February 2008 was also significant for Aboriginal people because, not only was it an apology for the members of the stolen generations, the commitment by the new ALP government to deliver it so unequivocally clearly distinguished its position from that of the previous Coalition government, it also indicated to Aboriginal people that, after the problematic policies of the Howard era, there is now an opportunity for things to be different in Aboriginal affairs. It certainly indicated that there is an

opportunity now for a renewed dialogue about the unfinished business of reconciliation.

There was always a clear understanding that while the apology was of fundamental significance to the Aboriginal community, especially members of the stolen generations and their families, its symbolic significance included the fact that once the history including past government wrongs was admitted, it should be followed by more concrete and practical steps forward to deal with the entrenched disadvantage within Aboriginal and Torres Strait Islander communities.

And while the apology will be a hallmark of Rudd's prime ministership, there were already signs of some of the key challenges that lay ahead of him if he wants to leave a legacy that goes beyond the merely symbolic.

Rudd inherits a situation in which socio-economic disadvantage in the Aboriginal community is defined by poorer levels of health (the difference in life expectancy between Aboriginal and non-Aboriginal Australians being 17 years), higher levels of unemployment (about 3 times higher than that of the rest of Australia), lower levels of education and poorer standards of housing.

But the Rudd government also inherits a set of failed policies by the previous government. In the 11 years that Howard was in power, his approach to Aboriginal affairs failed to shift the disparity between black and white Australians in a significant way.

For Kevin Rudd to make a real difference in bridging the gap between the life opportunities of black and white Australians he needs to rethink the failed policies of the past and make the most of the fact that he has a change to do things differently. To do that effectively, he and his government need to reflect more carefully

on why it is that past governments have, despite the money spent on Indigenous affairs and despite their rhetoric of “best intentions”, failed to bridge the gap.

The question many Australians ask quite honestly is this: how is it that we can spend so much money on Indigenous issues and still not be making more of a difference in the socio-economic conditions of Aboriginal people compared to all other Australians?

John Howard’s government used to boast that they spent more money on “Indigenous specific funding” than any previous government and they would point to almost \$3.5 billion. And I am sure when many Australians hear that figure they naturally assume that part of the failure is explained by the images that they have of Aboriginal people labelled as welfare-dependant and of the prevalent misconception that Aboriginal organisations, whether a national body like ATSIC or at a local level, are rife with corruption, misadministration and nepotism.

But if Australians looked beyond these negative stereotypes and ask the same questions of government in the Indigenous Affairs portfolio that would be asked of other areas they would find that the figure includes the expense of running the National Native Title Tribunal and the cost to the Attorney-General's Department spent defending and defeating native title claims, that is, it includes all of the money spent defeating the interests of the Aboriginal community.

It includes spending such as \$100 million in one year on the Shared Responsibility Agreements of which \$75 million went on administration and only \$25 million made its way into Aboriginal communities, that is, it includes spending that is eaten up on administration rather than actually going into Aboriginal communities in need.

And it includes amounts set aside for home ownership schemes that nobody has taken up and the money allocated to domestic violence programs that was not spent.

Once we begin to understand that money tagged as “Indigenous specific funding” often does not make its way into Aboriginal communities in need, it is perhaps less surprising, but no less disturbing, that we discover that it is estimated that spending on basic Indigenous health services is, according to Access Economics, estimated to be under-funded by \$450 million and that data from the COAG trial in Wadeye highlighted that for every dollar spent on the education of a non-Aboriginal student only 47c was spent on the Aboriginal student. When a shared responsibility agreement was signed with the Wadeye community and the children all turned up to school, there were not enough classrooms or teachers to accommodate all of the students highlighting the under-investment in infrastructure.

This underspending on the basic areas of health, housing and education can be explained by two factors:

- Firstly, since the 1967 referendum gave the federal government the power to make laws in relation to Aboriginal people, it effectively split the responsibility for key areas of the Indigenous portfolio – health, housing, education and employment – between federal and state/territory governments. Instead of creating an era where both levels of government worked collaboratively on alleviating the pressing needs of the Aboriginal community, the post-1967 environment has been characterised by a relationship that seeks to shift the blame, cost and responsibility for key areas onto the other level of government with the result that the Aboriginal community is under-resourced.
- Secondly, when decisions are made about where to spend the dollars allocated to Aboriginal affairs, those decisions are

often directed not by looking at what the research shows works to improve socio-economic disadvantage, but are shaped by the ideologies embraced by government. Under the Howard government these ideologies were:

- Assimilation and mainstreaming;
- Mutual obligation and shared responsibility;
- Unlocking control of Indigenous controlled land so that it could be accessed by non-Indigenous interests; and
- That the “real Aborigines” live in the north

If there is an example that we can use that can highlight the way in which the ideological drivers shaped approaches to Indigenous policy, it is the Northern Territory intervention.

At the outset we need to remember two things:

- That aboriginal communities and the women and men who live in them had been pleading for more resources for housing, health services and police services in their

communities *for decades* to assist them with dealing with levels of violence within their community and in the interim, many successful programs had been developed by community members often without government assistance such as night patrols, dry out areas and safe houses.

- That the interventions characterisation as “an emergency” by the government and their concern for this issue cannot be distanced from the election that was looming at the time, Coalition consultant Mark Textor’s advice that the Howard government should shift their attack to Labor State and Territory governments or risk electoral annihilation and Foreign Minister Alexander Downer’s subsequent admission on 25 November 2007 on *The Insiders* that the intervention had not produced the boost in the polls that had been anticipated and that it had been designed to wedge the ALP. This had failed when the ALP had, despite the concerns of a

few people within the party, agreed to the legislation without amendment.

When originally announced, the federal government intervention, unveiled by then Indigenous Affairs Minister Mal Brough on 21 June 2007, it included the following measures:

- widespread alcohol restrictions,
- quarantining welfare payments and linking them to school attendance,
- compulsory health checks to identify health problems and signs of abuse,
- forced acquisition of townships through compulsory leases with just compensation,
- increased policing,
- introduction of market based rents and normal tenancy arrangements,
- banning of pornography and auditing publicly funded computers,

- scrapping the permit system, and
- appointing managers to all prescribed communities.

As the details of the intervention plan emerged, one of the first things that became apparent was that the intervention strategy had no reference to the Anderson Wilde report, *Little Children are Sacred*, that the government claimed it was relying on, following none of its recommendations. That report specifically noted that it was a crucial part of the response to child sexual abuse was to work in conjunction with the community, especially on measures such as establishing dry areas and dealing with substance abuse. In these types of approaches, experience and research all pointed to the crucial need to involve communities intricately to ensure their success.

Apart from the much needed additional resourcing of policing and health services, the key aspects of the intervention ignored what the evidence showed worked and instead embraced the ideologies of assimilation and mainstreaming (hence the failure to fund

under-resourced Aboriginal health services on the ground), mutual obligation and shared responsibility (hence the quarantining of welfare payments), unlocking control of Indigenous controlled land so that it could be accessed by non-Indigenous interests (hence the repeal of the permit system and changes to land tenure) and that the “real Aborigines” live in the north (hence the extraction of resources from Indigenous programs in other states to fund the Northern Territory intervention).

And it is clear that those aspects of the intervention that were most driven by ideology had nothing to do with the protection of children.

Yet, in the face of the myriad of growing concerns and questions about certain aspects of the intervention, the rhetoric of the government and their supporters was powerful: “it’s all about the children”. And with this mantra, anyone, no matter what colour or what their on-the-ground experience, who dared to ask questions

about either the motivation or the mechanisms employed were deemed to be part of the problem and accused of “protecting paedophiles”.

This insulting and disempowering tactic was designed to silence those who were going to be most affected by the interventions.

Aboriginal people had every right to ask questions of a government who had over a decade to deal with issues of disadvantage within Aboriginal communities but did nothing despite the requests of the Aboriginal community and the reports they commissioned. They had every right to be sceptical of a government who had given them failed policies like “practical reconciliation” and “shared responsibility agreements” and then said “trust us, we have the answers”.

In many ways, the intervention in the Northern Territory is a textbook example of why government policies continue to fail Aboriginal people:

- the policy approach was ideologically led rather than making any reference to the research or understandings about what actually works on the ground;
- in fact, the policy approach contained in the intervention actually lies in direct contradiction of what the research shows us works and what experts recommend as appropriate action;
- the rhetoric of doing what is in the best interests of Aboriginal people, or children, masks a list of other policy agendas that are unrelated to dealing with systemic problems of violence and abuse and seek to undermine community control over their own resources; and
- the approach is paternalistic and top-down rather than a collaborative approach that seeks to include Aboriginal people in the outcomes.

The Rudd government has continued to support the intervention in government and has continued to roll out the quarantining of welfare payments.

The only clear evaluation of the linking of welfare payments to school attendance was undertaken with the Halls Creek Truancy Trial. At the time the trial was announced, the then Shadow Minister for Indigenous Affairs, Senator Chris Evans, supported the evaluation process by saying that government must ensure that “there is proper evaluation of the trial and the lessons learned are passed on to other communities facing similar difficulties.”

The Halls Creek school trailed a program that linked welfare payments to school attendance in 2005 but it was never independently evaluated and the scheme was stopped when concerns were raised about the illegality of the process. From February to July 2008 a further scheme, the Halls Creek *Engaging*

Families trial was introduced on a voluntary basis. The evaluation of the trial, undertaken by Professor Robyn Penman, found that:

- school attendance of the children did not improve over the course of the trial noting three factors:
 - lack of parental insistence that children get to school in the morning;
 - teacher quality (one teacher showed a 20% greater attendance rate than some of the other teachers), and
 - bullying and teasing.

- the voluntary method used in the Halls Creek trial worked some of the time when very high levels of support were provided;

- it became apparent that the parents of Aboriginal children were only one of the factors that affected school attendance. The evidence pointed to the pivotal role that teachers and the

school culture itself plays in a community where children decide their own time use patterns at a very early age; and

- the housing situation in Halls Creek is unlikely to provide an environment where families can be “school ready”.

The data also showed that poor or good attendance did not necessarily run in families. In one family of five children, attendance ranged from 14% to 88%.

There is no evidence that shows that linking welfare to behaviour reforms is effective. In fact, there is evidence to suggest that the imposition of such punitive measures in an already dysfunctional situation will exacerbate the stress in a household.

And what the evidence does show works in getting Aboriginal children into schools are the following:

- breakfast and lunch programs;

- programs that bring the Aboriginal community, especially Elders, into the schools;
- Aboriginal teachers aides and Aboriginal teachers;
- Curriculum that engages Aboriginal children; and
- Programs such as that developed by Aboriginal educationalist Chris Sarra that marry programs that promote self-esteem and confidence through engaging with culture with programs that focus on academic excellence.

This shows that there is much that the schools can also do to engage children with schooling. It suggests that, rather than simply punishing parents for their children's non-attendance, the government should be providing schools and teachers that meet the needs of the Aboriginal community.

It should be noted that it cost the taxpayer \$88 million to make the initial administrative changes in Centrelink to facilitate the welfare quarantining but not one dollar was spent in the intervention on

any of the types of programs that have been proven to engage Aboriginal children in schools. All this in communities where only 47c is spent to the \$1 spent on non-Aboriginal student; in communities where there are not enough teachers and classrooms. A punitive measure placed on families to ensure their children come to school is hypocritical from any government that neglects the same children by failing to provide adequate funding for a teacher and a classroom.

I would also make this observation. I think it is deplorable that the government has made too many Aboriginal people who have been long deprived of basic funding for health, housing, education and policing in their communities receive these resources at the expense of their basic rights. They have finally seen long needed resources coming into their community but they have been made to surrender their rights under the Racial Discrimination Act, the Trade Practices Act and the Northern Territory Land Rights Act. The provision of basic services should never, NEVER, have been

intertwined with the stripping away of fundamental rights in this way. Nor should the provision of funding for basic services and infrastructure be given in circumstances that includes the clawing back of their human rights.

As Australian citizens, Aboriginal people are entitled to adequate housing, adequate funding of teachers and provision of enough classrooms and an adequately funded and appropriate police service. They are entitled to these things without having to give up hard won rights to land and to forgo the protection against racial discrimination and unfair trading practices.

That governments are finally putting resources into basic health checks and providing police into communities who have had to weather the absence of any law and order infrastructure does not justify or give them the right to, at the same time, take away the protection from racial discrimination, the protections of the trade practices act, prise control from Aboriginal hands over their land

and infantilise Aboriginal people by quarantining welfare payments whether they are good parents or bad, or parents or not, making them beggars in their own land.

No government would dare offer basic assistance to other sectors of the community on the condition that they give up basic human rights. We would not offer a baby bonus or a first home-owners scheme or other support that we give to Australians to ensure their standard of living in exchange for the abandonment of basic human rights such as freedom from racial discrimination.

Just as we can identify the causes of failure of government policy and the structural barriers to achieving social justice for Aboriginal people, we also have plenty of research that shows what works.

Prime Minister Rudd has said that he wants to follow a research-based policy approach on all matters and this would be an especially welcome, fresh approach to the Indigenous affairs

portfolio. If he is to do this, he can start with the following recurring themes that we see in the research:

- Firstly, the research in Australia and in Indigenous communities in North America shows consistently that the best way to lessen the disparity between Indigenous and non-Indigenous people is to include Indigenous people in the development of policy and the design and delivery of programs into their communities. Apart from sounding like common sense, the research shows that this engagement assists with ensuring the appropriateness and effectiveness of those policies and programs and ensures community engagement with them therefore better ensuring their success.
- Secondly, addressing disadvantage requires long term solutions, not just interventions. Rather than always reacting to a crisis, a long-term sustained approach

requires addressing the underlying causes of disadvantage. This means resourcing:

- adequate standards of essential services;
- adequate provision of infrastructure; and
- investment in human capital so that communities are developing the capacity to deal with their own issues and problems and have the skill sets necessary to ensure their own well-being.

In practical terms, this will require:

- examination and redirection of “Indigenous specific funding” so that it targets disadvantage rather than being directed by ideological approaches. Whatever the perceptions of the electorate, the fact is that there is not enough money spent on Aboriginal housing, education and health. The pot is too small and no government will fix the problems while all they do is

engage in trying to redirect the scarce resources to one pressing need at the expense of others.

- Thirdly, there needs to be a rebuilding of an interface between the government and the Aboriginal community through representative structures so that governments can more effectively consult with and work with Aboriginal people.
- Fourthly, there needs to be a focus on the provision of training and education in ways that improve the capacity of Aboriginal communities. This means moving away from simple solutions of simply removing children into boarding schools but looks at a range of strategies that build the skill sets and capacities of adults as well as younger people who need to retain contact with their families if they do leave for better schooling opportunities;
- Fifthly, the need to increase the number of Aboriginal people in the public service and who are engaged with

developing and delivering Aboriginal policies and programs

- Sixthly, looking at flexible employment arrangements such as work-for-the-dole schemes that understand that in many Indigenous communities there is no viable workforce or there are barriers to entering the workforce. Such schemes can assist with the provision of services and infrastructure in the community at the same time as they build capacity and skills within the community itself.
- And it requires moving away from only concentrating on the communities that are in crisis to looking at where the successes are. In the face of government neglect and failed policy, many Indigenous communities continue to flourish, creating successful and viable institutions and continuing to keep their cultural values strong and their children safe. We could learn much from what it is that successful

organisations and communities do to ensure their effectiveness and viability in this climate and use that information as a basis for developing similar conditions in the communities that fail.

Professor Jon Altman from the Centre of Aboriginal Economic and Policy Research at the Australian National University has also articulated, based on his extensive knowledge of the research of what works and what doesn't, the following conclusions about the most appropriate and effective government approaches. He cites the need for governments to:

- partner with communities to develop and establish effective channels to hear Indigenous aspirations in all their diversity and warns against making the mistake of relying on appointed Government Business Managers, *The Australian* newspaper or self selected Indigenous voices to articulate such aspirations;

- Commit to realistic, locked-in, multi-year investments and commitment to new resources to support the reproduction of past success and innovation to enable local opportunity.
- Plan, community-by-community, region-by-region, for sustainable outcomes based on rigorous analysis and cogent argument. One size, be it quarantining or anything else, will not suit all.
- Allow ongoing and transparent evaluation and resource such evaluation appropriately to ensure accurate analysis of what is working and what is not. Altman argues that such evaluation should be undertaken by “brave and independent experts.”

Kevin Rudd has a unique opportunity to make a significant difference in the way that he approaches Indigenous policy and that opportunity does not rely on the concept of “bipartisanship” as he proclaims. There has been bipartisanship in Aboriginal affairs before, most recently on the intervention into the Northern

Territory. That unique opportunity lied in the fact that Rudd enjoys an historic arrangement where there are Labor governments in power in all State and Territories. He is therefore in a unique position to move beyond the “cost-shifting” between the two levels of government that has crippled the Indigenous affairs portfolio since 1967.

What the past failures in the Aboriginal affairs portfolio highlights is just how vulnerable some sectors of the community are in the absence of a strong rights framework that provides some protection against the excessive use of government power.

The framers of our Constitution believed that the decision-making about rights protections – which ones we recognise and the extent to which we protect them – were matters for the Parliament. They discussed the inclusion of rights within the Constitution itself and rejected this option, preferring instead to leave our founding document silent on these matters. A non-discrimination clause was

discussed but was rejected because it was believed that entrenched rights provisions were unnecessary, and it was considered desirable to ensure that the Australian states would have the power to continue to enact laws that discriminated against people on the basis of their race, particularly Aboriginal people. And it is a telling legacy that the first legislation passed by the new Australian parliament were laws that entrenched the White Australia policy.

This legacy remains despite the attempt to change the place of Aboriginal people in Australia in the 1967 referendum. Perhaps because of the focus on “citizenship rights” in the decades leading up to it, and because the rhetoric of equality for Aboriginal people that was used in “yes” campaigns, it was inevitable that there would be a mistaken perception that the constitutional change allowed Aboriginal people to become citizens or attained the right to vote. The referendum did neither. Instead, it allowed for Indigenous people to be included in the census and it allowed the

federal parliament the power to make laws in relation to
Indigenous people.

Those who advocated a “yes” vote thought that the changes to section 51(xxvi) (the “races power”) of the Constitution to allow the Federal Government to make laws for Indigenous people was going to herald in an era of non-discrimination for Indigenous people. There was an expectation that the granting of additional powers to the Federal Government to make laws for Indigenous people would see that power be used benevolently. As aspects of the Northern Territory intervention attests to, this has not been the case.

Every other Commonwealth country, even the United Kingdom whom we inherited our legal system from, has modernised their laws by incorporating a bill of rights that entrenches the contemporary understanding we have that all people have inherent human rights. Every other Commonwealth country now draws a

line in the sand that tells the government that this is the point at which you cannot cross; this is the point at which your power ends. In this era where every Commonwealth country has enacted anti-terrorism legislation that infringes on the human rights of their citizens, only Australian has no such line to monitor the exercise of power by our government.

The general strengthening of rights protections within the Australian legal system will benefit Aboriginal people. More specifically, the Rudd government has made a commitment to sign the Declaration on the Rights of Indigenous People but they are yet to explain to what extent they intend to entrench the rights contained in that human rights instrument into Australian law.

And Rudd has to alter the environment with the same statesmanship that he showed with his speech on the occasion of the apology to change the levels to which overt racism became acceptable is the Howard era. The derisive term “political

correctness” became a label attached to any claim that someone’s racist opinion was being criticised. Hugh Mackay in his social research has charted how, during the Howard era, especially during the rise of Hansonism, Australians became increasingly resentful of being labelled as racist.

At the same time, we notice in the work we undertake at Jumbunna that when we interview Aboriginal people about their aspirations, often the first issue they will raise will be the impact of racism on their lives. That racism still is a defining part of their experience stands in stark contrast to the fact that many Australians do not want to acknowledge that it exists and this seems to highlight how much the non-Indigenous community still has to learn about what life is like for many Aboriginal people.

Gough Whitlam once said that the rest of the world will judge Australia by the way it treats its Indigenous people. This will be true of Kevin Rudd. He has given the apology but he has not

settled the question of reparations. He has said he wants a national representative body but we have yet to see how he will achieve this. He has said he will sign the Declaration on the Rights of Indigenous People but we do not know how or if he will enact it into domestic law. He has said he wants a research-based policy approach but he is still following some of the ideologically driven policies of the previous government.

Rudd will always be remembered for the unequivocal apology he delivered the 13 February 2008 but it is what he does next that will define his legacy. As the aunties in my community said to me after I graduated with my doctorate, “That’s great, Bub, but what are you going to do next?”