NORTHERN LAND COUNCIL

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A word from the Chair

The Australian National Audit Office has presented to the Commonwealth Parliament its report on the "Effectiveness of the Governance of the Northern Land Council" (see story on page 4).

The report took a team from ANAO many months to prepare, and they looked carefully into every aspect of the NLC's operations. As I wrote to the ANAO after they finished their report, the NLC willingly co-operated with the audit, and the audit team dealt with the NLC fairly throughout the exercise.

The report concluded that the NLC is some two years into a wide-ranging reform agenda covering almost all aspects of the governance and administration of the Council. "While tangible improvements have been made to date to raise the standard of administration from a very low base, considerable work remains for the council to be administratively effective," the report said. It also concluded that there was "a notable energy and commitment from staff and managers to achieve the aims of the reforms over the longer term".

We were pleased that the ANAO report acknowledged the extensive reforms that are being implemented across the whole organisation and are still a work in progress. But, as I told the ANAO, we feel proud that the NLC is already a much more efficient and accountable organisation, and much better placed to serve our Aboriginal membership and constituents.

Along with other NLC members, I attended the National Constitutional Convention at Uluru in May. More than 250 Indigenous delegates from around the country were there. I urge you to read the story below about the position on constitutional reform taken by the most recent meeting of the NLC Executive Council, and, on page 3, the "Statement from the Heart" which was published after the Uluru convention.

After the Referendum Council presented its final report to the Prime Minister and the Leader of the Opposition on 30 June, it's now over to the political parties and the Parliament to decide what, if any, question will be put to the Australian people to decide in a referendum.

In the back half of this issue of Land Rights News, we devote several pages to the 10th anniversary of the Northern Territory Emergency Response ("the Intervention"), which so damaged relations between the Commonwealth Government and the NT's Aboriginal population.

Academic Thalia Anthony, on pages 16 and 17 draws a line between the Intervention and the Royal Commission into the Protection and Detention of Children in the Northern Territory. Her contribution was first published in *Arena*, a journal of public affairs.

On following pages, Labor Senator Pat Dodson draws lessons from the Intervention; our regular contributor Jon Altman charts its debilitating aftermath; and Brian Stacey, the Intervention's Deputy Commander offers an apology.

Finally, I want to thank the Indigenous Affairs Minister, Senator Nigel Scullion for his attendance at the NLC Full Council in May, and for his grant to the NLC of $7.5 million to buy fishing licences as a contribution by the Commonwealth towards the settlement of outstanding Blue Mud Bay matters affecting the intertidal zone.

The NLC is still conducting consultations with Traditional Owners to seek their views about the Northern Territory Government's wish to secure open access to the intertidal zone outside of those "high value" fishing areas where agreements are already in place, and about future management of coastal fisheries.

A final and comprehensive settlement of Blue Mud Bay matters is long overdue, but it is important that we continue to consult with Traditional Owners and affected parties.

Kind regards to you all,

Samuel Bush-Blanasi, *Chairman*

NLC Executive Council calls for more substantive Constitutional reform

The NLC's Executive Council, meeting in Katherine on 13 and 14 July, has called for more substantive Constitutional reform than has been recommended by the Referendum Council.

On 17 July, The Prime Minister and Leader of the Opposition released the Referendum Council's final report, which followed a round of 12 First Nations regional dialogues and culminated in the National Constitutional Convention at Uluru in May (read the "Uluru Statement from the Heart" on page 3).

The Referendum Council put forward just one recommendation for constitutional amendment: "that a referendum be held to provide in the Australian Constitution for a body that gives Aboriginal and Torres Strait Islander peoples a Voice to the Commonwealth Parliament".

The Council said its recommendation was "both modest and substantive".

"This preference took account of the objections raised against the alternative substantive constitutional amendment option: the insertion of some form of non-discrimination protection into the Constitution. The objections to a non-discrimination provision which would render parliamentary legislation justiciable under the jurisdiction of the High Court, may be appropriate or inappropriate – but that is not the point. The point is that such a non-discrimination provision has strong objections and objectors, which the Council believes will see it fail at a referendum," The Council concluded.

A non-discrimination provision in the Constitution was recommended by the Expert Panel established in 2010 by Prime Minister Julia Gillard. Co-chaired by (now Senator) Patrick Dodson and Mark Leibler, the Expert Panel reported in 2012. The provision was also recommended by the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples established by Prime Minister Tony Abbott and co-chaired by Senator Ken Wyatt and Senator Nova Peris, which reported in June 2015. Prime Minister Turnbull and Opposition Leader Shorten then established the Referendum Council in December 2015.

The NLC's Executive Council resolution was:

"The Northern Land Council supports and welcomes the Uluru Statement made at the 2017 National Constitutional Convention and the calls for the establishment of a First Nations Voice enshrined in the Constitution and a Makaratta Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.

"The call for substantive constitutional reform must include consideration of the recommendations of the Expert Panel on Constitutional Recognition of Indigenous Australians (2012).

"We call upon all Australians including our political representatives to respectfully and carefully consider the Uluru Statement and the place of Aboriginal and Torres Strait peoples in the Australian Constitution."

Releasing the final report of the Referendum Council, Prime Minister Turnbull noted that it had essentially rejected the recommendations of the Expert Panel and the Parliamentary Select Committee. "We are looking forward to understand how you've reached your conclusions – in particular, to understand why the recommendations of the previous panels and committees that you were asked to consider were set aside in favour of the new proposal."

The Referendum Council's report, he said, was "very short on detail, couldn't be shorter on detail in fact, but it is a very big idea."

Opposition Leader Shorten said he couldn't "shy away from the fact" of the single recommendation for a constitutionally-entrenched Indigenous advisory body.

"It is a fact that for constitutional change to be successful, there can be no doubt that a bipartisan approach is the best path forward," Mr Shorten said.

NLC Executive Council meeting, Katherine July 2017.

2017 National Constitutional Convention, Uluru NT.

Uluru Statement From The Heart

We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart:

Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from 'time immemorial', and according to science more than 60,000 years ago.

This sovereignty is a spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.

How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years?

With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are aliened from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Makarrata is the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.

In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.

Guiding Principles

The following guiding principles have been distilled from the Dialogues. These principles have historically underpinned declarations and calls for reform by First Nations. They are reflected, for example, in the Bark Petitions of 1963, the Barunga Statement of 1988, the Eva Valley Statement of 1993, the report on the Social Justice Package by ATSIC in 1995 and the Kirribilli Statement of 2015. They are supported by international standards pertaining to Indigenous peoples' rights and international human rights law.

These principles governed our assessment of reform proposals:

1. Does not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty.
2. Involves substantive, structural reform.
3. Advances self-determination and the standards established under the United Nations Declaration on the Rights of Indigenous Peoples.
4. Recognises the status and rights of First Nations.
5. Tells the truth of history.
6. Does not foreclose on future advancement.
7. Does not waste the opportunity of reform.
8. Provides a mechanism for First Nations agreement-making.
9. Has the support of First Nations.
10. Does not interfere with current and future legal arrangements.

NLC Welcomes ANAO Report

The Northern Land Council has welcomed a report by the Australian National Audit Office (ANAO) on the "Effectiveness of the Governance of the NLC".

"The (NLC) is pleased that the ANAO report acknowledges the extensive reforms that are being implemented across the whole organisation," Chairman Samuel Bush-Blanasi," wrote to the ANAO after receiving the report, which was tabled in Parliament on 20 June.

"The process of reform began with the arrival of Mr Joe Morrison as Chief Executive Officer in February 2014, and was on foot at the time of the Senate Finance and Public Administration Committee hearing in February 2015," Mr Bush-Blanasi continued.

The ANAO report refers to that Senate Committee hearing: "The committee was highly critical of the NLC's progress in improving its internal management systems and raised concerns about the operation of the NLC's Audit Committee."

The ANAO says troubles in the NLC's administration had been identified two years before the Senate Committee hearing. The report records that in March 2013 "an external review of the NLC's governance framework (undertaken shortly after the resignation of the NLC's CEO) identified a 'fundamental breakdown in the governance framework at the NLC', resulting in serious failing in almost all aspects of the council's administration".

"Prior to 2015," the ANAO has reported, "the management and maintenance of core enabling functions, including information and communications technology systems, human resource management and records management was poor, with serious weaknesses in financial management, fraud control and the management of risk.

"Commencing in 2015, the NLC's Chief Executive Officer commenced a 'complex change management initiative where it is not simply about changing systems and procedures – as large a task as that already is – but also about changing the way we work and aligning our day-to-day corporate culture to our vision and mission'.

"As at March 2017, extensive reforms were underway at the NLC. Almost all aspects of the council's administration and service delivery, including governance functions and corporate services, are subject to review and reform. There is little 'business as usual' activity in the organisation, with new and recent appointments to most of the council's senior management positions and specialist positions."

Here is the ANAO's conclusion:

The Northern Land Council is some two years into a wide-ranging reform agenda covering almost all aspects of the governance and administration of the council. While tangible improvements have been made to date to raise the standard of administration from a very low base, considerable work remains for the council to be administratively effective. Throughout the conduct of this audit, there was a notable energy and commitment from staff and managers to achieve the aims of the reforms over the longer term.

The NLC is improving its processes for representing the interests of Aboriginal people in the region, but more remains to be done to demonstrate that these processes are effective. The NLC has yet to implement measures to assess the performance of the Full Council, Regional Councils and Executive Council and of council members, in engaging with NLC constituents and representing their rights and interests. A review and restructure of the Secretariat branch aims to streamline and improve its support for the operation of the council, with a branch plan and performance indicators recently developed.

Subsequent to substantial criticisms about failed administrative processes, practices and controls, the NLC has commenced a range of initiatives to better support its functions and the delivery of services. These initiatives have included enhanced financial reporting capability and records management, and the establishment of a competent Audit Committee to oversee reforms across key corporate functions and policies. Some progress has been made in modernising the NLC's dysfunctional information and communications technology systems, with further improvements subject to available funding. Improvements in service delivery are supported by management and budget information that was not previously available to managers. The NLC could more effectively manage its reform agenda given the extent of the changes underway.

The NLC is improving its planning in line with requirements under *the Public Governance, Performance and Accountability Act 2013*, but it is still some way from developing a robust set of qualitative and quantitative performance indicators. The NLC's planning and performance reporting cycle could be better supported by an update of the funding process administered by the Department of the Prime Minister and Cabinet, to align it with the Commonwealth Performance framework. In engaging with the department and government, the lack of a shared understanding of the extent of the use of powers, and the roles and responsibilities of the NLC, the department and the responsible Minister has not supported a strong and productive relationship between the various parties.

MINISTER PRAISES NLC, GRANTS $7.5M FOR FISHING LICENCES

The Minister for Indigenous Affairs, Senator Nigel Scullion, has highly praised the work of the Northern Land Council.

Addressing the NLC's Full council meeting at Katherine in May, Senator Scullion reflected on "just how successful" the NLC has been.

"I think that success is now seen as a credit to you all and a high level of confidence that the Federal Parliament can have a view of that organisation, and as individuals and the communities that you represent. So, congratulations and thank you so much for your work.

"So, thank you, Sammy (the Chairman, Sam Bush-Blanasi) for your leadership. It is very much appreciated. And to Joe (CEO Joe Morrison) and the Executive, I think you are doing a remarkable job, and to all of you and all the communities that you represent," Senator Scullion said.

Senator Scullion also announced at the Full Council meeting a grant to the NLC of $7.5 million, "to help traditional owners in the NLC region finalise Aboriginal land claims over sea country".

He told the Full Council that the money was to purchase fishing licences across Aboriginal-owned sea country – "I am entrusting you entirely to do that business yourself, nothing to do with me, and I hope that funding for a trust can be used for fishing licences in a way that the NT Government can match that.

Minister Scullion reiterated the Coalition Government's commitment to finalising unresolved land claims: "It's crucial that claims are finalised so that traditional owners can be recognised for their ownership of country, but also to enable them to realise the economic value of their land rights.

"A comprehensive settlement of claims related to the rights recognised in the Blue Mud Bay decision should involve benefits for traditional owners to participate in commercial fisheries and marine resource management activities. That's why this funding will support claimants to participate in these activities to promote local employment and enterprise.

"The $7.5 million investment will be directed to the Northern Land Council, which will work with traditional owners across its region to allocate funds.

"Even though the Northern Territory Government has not yet offered to settle these land claims, I support the traditional owners of this country and want them to control this fund."

The High Court decision on Blue Mud Bay was handed down nearly a decade ago, but there is still a number of outstanding claims under the Aboriginal Land Rights (Northern Territory) Act 1976, located in the intertidal zone or the beds and banks of rivers.

"I am keen to see the Northern Territory Government match the Commonwealth's commitment and settle these claims as soon as possible," Minister Scullion said.

"Traditional owners have every right to be growing frustrated at the lack of progress by the NT Government.

"The Coalition Government has stepped in with this investment to progress these claims as soon as possible and help promote certainty for all parties through arrangements that can recognise land rights, meet detriment concerns and at the same time support the growth of Indigenous business and employment opportunities from fishing industries across the Top End.

"As with the connection that First Australians have to land, fresh and saltwater country can underpin the social and economic wellbeing of Indigenous communities.

"The Government and the Indigenous Land Corporation are working together to look at expanding the ILC's remit to fresh and saltwater country across Australia and to talk about this possible reform with its stakeholders.

"I am keen for Aboriginal people to benefit from their fresh and saltwater country, and thank the Northern Land Council for its ongoing commitment to achieving this objective."

NLC Chairman, Sam Bush-Blanasi, welcomed Minister Scullion's announcement.

"Nigel Scullion's grant demonstrates a real commitment from the Commonwealth to Aboriginal economic development in northern Australia," Mr Bush-Blanasi said.

"This is a significant development towards final settlement of the Blue Mud Bay decision, and, like Senator Scullion, I hope that the NT Government will match the Commonwealth's commitment."

McArthur River Mine

NLC highly critical of draft Environmental Impact Statement

The Northern Land Council has been highly critical of a draft Environmental Impact Statement (EIS) for the long-term management of waste rock at the McArthur River mine 65km south-west of Borroloola. It's also criticised the NT Government's inadequate regulation of the mine.

The mine has a scandalous history of breaching environmental standards ever since it won final approval in 2009 to divert the McArthur River to allow open cut operations.

In a submission to the NT Environment Protection Authority, the NLC describes the EIS as "*an extraordinary document about a singular development with a remarkable history: the world's largest zinc/lead extraction and processing operation as overseen by Australia's weakest political jurisdiction*".

"*On the one hand, the EIS seeks 'closure' by setting targets for ending mining operations and constructing a new post-mining landscape. On the other, by formally proposing a 1000-year timeline for observing and intervening in that landscape's evolution, this proposal shows that there will be no end to the uncertainty created for the Aboriginal owners and other users of the mid-to lower McArthur River catchment and its adjoining seas*," the NLC's submission says.

McArthur River Mine, owned by the Switzerland-based conglomerate Glencore, proposes to continue mining until 2048, when native title rights to the site will have full effect – rights, for example, to conduct cultural activities, and take and use the natural waters and other resources.

"*The condition of the land and its resources – hence, the on-site and wider effects of the mine – are of critical interest to native title holders and other Aboriginal land owners (all represented by the NLC) and residents in the region*," the NLC's submission says.

The submission concludes that the EIS is "*plainly deficient in its present form*".

"*The proponent's apparent reading of the levels of environmental harm and risk tolerable to the local, regional and other Northern Territory communities do not accord with the NLC's understandings. The project could not be allowed to proceed on the basis set out.*

"*Risks are greatly exacerbated by the weak levels of commitment and capability displayed by Northern Territory regulators.*

"*Despite the embarrassing history of continuous environmental management failings at this site, the EIS presents no evidence of fundamental shifts in quality of commitment or capability to deliver on commitments. This is, in our view, evidence that the system for representing and protecting the environmental interests of Northern Territory residents is not taken seriously. Urgent action is required to restore balance and integrity, and the capacity to achieve equity of access to benefits and fair sharing of costs of development across society*".

Protest march against MRM at Borroloola, October 2014.

What the NLC submission says about Aboriginal interests and environmental objectives

The Northern Land Council says the McArtur River Mine Environmental Impact Statement is unusual in that it sets very long term closure objectives.

***"The form and content of those objectives and the way they were arrived at says a good deal about the proponent's view of Aboriginal landowners, their communities and their place in the Territory,"* the NLC's submission says.**

Dealing with Aboriginal interests and environmental objectives, the submission continues:

The core goals set out by the proponent are to leave the post-mining landscape "safe and secure" in the short term (100 years) and "safe" for the long term (1000 years). In going beyond these vague terms, emphasis is placed on geotechnical, erosional and geochemical stability and on monitoring these features at the mine site.

Stability is an obvious requirement for safe and usable landscapes but it is remarkable that this term should be used to describe a situation that will require active intervention in perpetuity. For example, maintaining geochemical stability on site will require the regular removal of contaminated sediments and water from various sumps, trenches and natural drainage lines for disposal into the pit or directly into the river. Achieving local stability in the ways proposed under the EIS will create risks of destabilising areas outside the mine site and will themselves be unstable because they are dependent on undisclosed governance and financial arrangements.

Security can be defined as freedom from danger or threat. It is an essential pre-requisite for people to maintain customary and other relationships with land and waters. They must be free to use animal and plant resources without fear that they have been adversely changed. From this perspective, priorities for the region's Aboriginal people, including native title holders and sacred site custodians might be expected to place special emphasis on the health of the region's natural resources and the integrity of sites of significance in their cultural and landscape settings. However, there is no way of determining from the EIS what relevant Aboriginal people actually think, because the consultation process and the manner in which it is reported are flawed.

These problems can be summarised as:

- In the NLC's opinion, inappropriate identification of people with the authority and knowledge to speak for relevant country on matters affecting its management and condition;
- many individuals identified as traditional owners who, in the NLC's opinion, are not traditional owners of the area within the mineral leases;
- failure by the proponent to identify, in NLC's opinion, the correct people as traditional owners people of the area covered by the mineral leases, including areas on which the expanded northern overburden emplacement facility is to be sited;
- no information by the proponent on how it identifies "custodians";
- failure to engage with relevant organisations, including the NLC, which has the statutory roles and knowledge, to identify the correct people;
- despite recognition of the risks involved in consulting the wrong people, failure to manage the process to avoid these risks, risks which also include subsequent conflict;
- failure to observe leading practice for consultation and public participation in the assessment, despite readily accessible expertise and industry and other guidance on these issues;
- failure to satisfy the requirements of the EIS' terms of reference relating to objectivity; and
- no evidence that key environmental and other risks from operations and closure objectives and the proposed management of these risks were properly communicated to the correct people in an objective manner and that people had the opportunity to seek independent advice.

For these reasons, the NLC is not satisfied that the correct people, particularly custodians, have been identified and consulted or that consultations were conducted properly. In our view, consultations need to be undertaken with the relevant custodians, not just by the representatives of the proponent, where such consultations are unlikely to be on arm's length terms, but rather with custodians being afforded the opportunity to obtain independent advice which is especially important in light of the long-term impact of the proposal.

McARTHUR RIVER MINE

McArthur River Mine Project

FIGURE 1.2

ERIAS GROUP

From about 2037 to 2047, tailings will be reprocessed to extract residual lead/zinc concentrate, and McArthur River Mine is proposing that the waste from that reprocessing will be dumped in the open cut pit, which will then be filled with water.

The NLC's submission to the company's draft Environmental Impact Statement says suggestions that the mine pit lake will, in a reasonable time, achieve water standards that will permit its reconnection to the McArthur River are premature; alternatives to a lake must be more seriously examined.

"*To set up the McArthur River as a permanent receiver of unspecifiable contaminant loads from multiple sources appears to us to be unacceptable. It is irresponsible and potentially misleading to have informed the traditional owners that they may be able to use the pit waters for any purpose in the reasonably foreseeable future,*" the NLC has said.

"*In regard to catastrophic failure, the EIS offers assurances that pit walls will be stable over the very long term so that risks of collapse, and consequent re-mobilisation of sediments and a pulse of highly contaminated water entering the McArthur River are low.*

"*Similar types of risks may arise from failure of levees controlling water entry and outflow from or to the McArthur River. In our view any risk of such an outcome, for which there appears no plausible remediation, is too high.*"

Women in Borroloola paint up in preparation for march against mine, October 2014.

Men at Borroloola protest at the launch of 2014 report of Independent Monitor of MRM.

The proposal by McArthur River Mine (MRM) to construct an even bigger waste rock dump is a major focus of the NLC's submission on the company's draft EIS.

Heavy machinery works at ground level - while behind, smoke rises from the self-combusing waste rock dump at McArthur River Mine. October 2014.

The mine wants to enlarge the existing dump, known as the northern overburden emplacement facility (NOEF), which sits on an active floodplain and was so badly built that parts of it have been self-combusting.

The NLC's submission on the mine's draft EIS says there appears to have been no effort to construct a continuous, uniformly impermeable base using "benign materials" (suitable clays) available on site.

"Although the existing facility appears to be naturally underlain by alluvial clay over much of its area, it is also intersected by stream channels filled with highly permeable alluvium (sands and gravels), creating a number of competent pathways for seepage entry to groundwaters. This problem is exacerbated by construction at or below 2013/14 groundwater levels (the level at which the new NOEF will be built). Modelling suggests that groundwater will be at or higher than these levels at least one year in 12, posing a significant risk to the integrity of the base.

"Compounding these fundamental errors, the emplaced overburden was not well segregated and salinity-generating and acid-forming materials were mixed with benign materials in many parts of the structure. Some highly reactive material was placed outside the cell intended to accommodate potentially-acid forming overburden. Reactions continue at significant rates in a number of locations, evidenced by "hotspots" revealed in drilling programs.

"If the material is not removed to permit construction of a functional low permeability base, then seepage rate targets set for other parts of the (expanded) overburden facility cannot be met and groundwater and surface water pollution will be greater than would otherwise be achievable: and these problems will continue indefinitely.

"MRM has categorically rejected the option to replace or reconfigure the existing NOEF. Indeed the company has implied that a requirement to do so may put at risk the continuation of mining, community benefits and quality of rehabilitation.

"Nonetheless, it is the NLC's considered view that the flaws in the existing NOEF will not be sufficiently ameliorated by incorporation in a larger structure, because problems with the base are not addressed. In our view there could be no clearer obligation than to correct past mistakes. Yet the response presented is to cover it up and require local people to accept the consequences."

Design of the new NOEF

The NLC says McArthur River Mine's design of an enlarged waste rock dump raises a number of additional issues for Aboriginal interests.

"At the request of custodians of the nearby Barramundi Dreaming sacred site, the NOEF height is presently restricted to 80 metres. At 140 metres, the redesigned structure will be 60 metres higher than the previous design. MRM stated that that they have obtained the written consent of relevant traditional owners.

"However, there is a lack of information about the process which MRM adopts to identify the custodians. There is also no information as to the consultation process involved with the custodians and whether the custodians were afforded the opportunity to obtain independent advice about the agreement as any advice provided by MRM about the impact of the agreement would not be independent and objective."

The NLC also has serious concerns about the physical stability of such a structure that is apparently expected to remain in place for at least 1000 years: irrespective of the quality of construction, erosion and slippage would be inevitable.

"The EIS also acknowledges that regular repairs will be essential , which will be especially challenging after cessation of mining given the likely absence of appropriate machinery. Stability may also be compromised if oxidation of reactive components of the core continue, including the risk of spontaneous combustion that would lead to slumping. Risks are increased by the decision to retain the existing NOEF in its present "contaminated" form.

"It therefore appears questionable to apply the minimum Factor of Safety for tailings dams in an environment where: parts of the base will be regularly exposed to groundwater over somewhat heterogeneous natural sediments; extreme rainfall events are common and recurring erosion is therefore inevitable; and exposure of the base to external flooding from the McArthur River, Surprise Creek and Barney Creek is likely during the period covered by the EIS.

"The NLC has serious concerns about risks of catastrophic and/or progressive failure of the proposed structure. Obviously, well-designed facilities for safe handling and storage of reactive overburden will be required throughout mine life and the proposed siting of the bulk of the overburden may be reasonable during operations.

"However, we consider that a decision to leave a large and inherently unstable waste rock dump on an active floodplain transfers too much risk and ongoing liability to local Aboriginal people and the Territory public in general. The manner in which necessary levels of expensive repair and other intervention could be guaranteed indefinitely is unclear and is likely to remain uncertain. Local resources are already stretched in coping with other mining legacies."

Seepage

The NLC's submission says that every plausible measure should be taken to limit the total loads of pollutants entering the McArthur River, and argues that the proposed NOEF design unreasonably increases these loads.

"Much reliance is placed on the capacity of soils to neutralise acid products and bind metals before they reach the river, but information is not presented on how long this capacity can reasonably be expected to be maintained nor the extent to which competent pathways to both shallow and deeper groundwaters will emerge to evade neutralisation and absorption.

"We suggest re-examination of the potential for the levels of oxidation products that ultimately find their way into the McArthur River to be significantly reduced by use of bituminous membranes in life of mine waste rock dumps. The EIS notes that tightening of discharge criteria may compromise the ability to relinquish the site."

The submission says there's considerable uncertainty about the ultimate fate of contaminants and the risks of accumulation in parts of the river and its catchment: "Dumping contaminants in the river during high flow obviously dilutes them, but it also means that they will be delivered to the floodplain where they may accumulate in depressions that lose water primarily by evaporation. Even within streams, slackwater areas tend to accumulate more metals. There appears to be no consideration of this important issue."

Dust

"All overburden placement options, irrespective of levels of rehandling, raise serious issues in management of dust that led to elevated metal levels in sediment and fish in Barney Creek. The Independent Monitor noted failures to report exceedances of soil and sediment criteria at a number of sites during 2015.

"The principle treatment for dust suppression is watering, which is clearly inappropriate when handling non-benign waste rock which is most likely to produce bio-available metals. Problems are likely to be significant in all OEF areas. Ongoing and intensive mitigation measures such as sediment traps will be essential to avoid similar risks in all drainage lines within reach of dust plumes, but will not retrieve all metals deposited, which may accumulate in poorly drained depressions in the landscape.

"The NLC views the entry of lead and other toxic metals to food chains as a most serious threat to the health of Aboriginal people who regularly consume animals at higher trophic levels that may accumulate metals at dangerous levels. These include goannas, turtles, file snakes and birds that consume small fish and that may move from the site of contamination. None of these have been examined for elevated lead or other relevant metals. It is essential that monitoring of lead in tissues extend beyond the obvious species like barramundi or plants that probably pose much lower risks."

Aboriginal Justice Unit Launched

The Northern Territory Government has established an Aboriginal Justice Unit within the Department of the Attorney-General and Justice, to improve justice outcomes in the Territory and secure an Aboriginal Justice Agreement.

The government says the Agreement will:

- set out how the government and Aboriginal people will work together to make justice work in the NT;
- build trust and engagement on justice issues in the NT;
- focus on practical solutions to reduce the levels of Indigenous incarceration and reoffending;
- deliver strategies for the implementation of more local decision-making in the justice system.
- reduce the over-representation of Aboriginal people in the criminal justice system;
- reduce the high levels of disadvantage of Aboriginal people in the Northern Territory; and
- provide Aboriginal people with services that support human rights, improve and build individual and community resilience.

Launching the new unit on 5 July, the Attorney-General and Minister for Justice, Natasha Fyles, said the Territory Labor Government must listen to Aboriginal Territorians and their experiences with the justice system.

"We know that the Territory has unacceptably high rates of Indigenous incarceration and that re-offending rates are too high. Acknowledging that almost 85% of the NT's prison population identify as Aboriginal or Torres Strait Islander is fundamental to designing procedures and programs that align with world's best practice.

"In particular, this means providing meaningful education and employment opportunities for all prisoners so that we end the revolving door of crime and incarceration and getting people on the right path."

"The launch of the Aboriginal Justice Unit meets our election commitment to return local decision making control to Indigenous Territorians." Ms Fyles said.

The Unit has already begun discussions about the Aboriginal Justice Agreement with key Aboriginal peak bodies in the Territory, and will:

- work in partnership with Aboriginal communities to address complex issues and ensure accountability;
- ensure government agencies do not work in isolation in the delivery of projects and programs that impact on Aboriginal people and the justice system;
- develop tailored, targeted responses for early intervention, diversion, best practice rehabilitation programs that work with family units, the offender, the family unit, the community and extended family members to focus on breaking the cycle of offending to ensure clients have the best chance of success not to re-offend when they return to their communities; and
- ensure Aboriginal people have access to all services within the justice portfolio within a culturally competent framework.

The Unit's six-member team will hold consultations across the Northern Territory over the next 12 months.

Consultations are being delivered in a culturally appropriate manner through the use interpreters and using cultural brokers.

"This process will allow several opportunities for Territorians to provide input in various forums into the development of the Aboriginal Justice Agreement. It's important to get this right to ensure Territorians get the outcomes they need for a better justice system." Ms Fyles said

Acting Director of the Aboriginal Justice Unit Leanne Liddle said: "We would love to hear from all Territorians about improvements. It's not just about the negative contact that Aboriginal people have with the criminal justice system that we want to improve.

"We want Aboriginal people to be Justices of the Peace, Commissioners of Oaths and to take up other roles that may flow out of the justice agreement, as well as the other elements that are not well accessed by Aboriginal people.

"These include writing wills by the Public Trustee to ensure your wishes are respected when you die, that your superannuation and other royalties are given to whom you wish, as well as access to the births, deaths and marriages register, information on coronial matters, victims of crimes and much more."

The unit can be contacted on 08 89 357655 or at agd.aju@nt.gov.au

The consultation phase to guide the content of the Aboriginal Justice Agreement will take 12 months with a further 6- month consultation on the draft. The final agreement is expected to be completed in December 2018.

At the launch of the AGD Aboriginal Justice Unit: (from left) Project Officer Douglas Lovegrove, Attorney-General Natasha Fyles, Cultural Broker Calvin Deveraux, Acting Director Aboriginal Justice Unit Leanne Liddle, Cultural Broker Margaret Daiyi, Project Officer Jonathon Avila, AGD Deputy Chief Executive Meredith Day and AGD Chief Executive Greg Shanahan.

DON DALE: How the state bru

The already prolonged and inhumane detention of five youths in the Behaviour Management Unit of the old Don Dale Youth Detention Centre at Berrimah in 2014 would have continued for many more months had not one 14-year-old Aboriginal detainee created the disturbance which ended in prison guards spraying inmates with teargas. And, had prison guards not reacted with such wrath, there would have been no Royal Commission into the Protection and Detention of Children in the Northern Territory.

Surveillance footage of the disturbance was broadcast by the ABC's Four Corners program, "Australia's Shame", on 25 July last year; within hours, a "deeply shocked" Prime Minister, Mr Malcolm Turnbull (with the support of the Northern Territory's then Chief Minister, Mr Adam Giles), established the Royal Commission.

Here's the story of how a 14-year-old child, abandoned by the legal system and the highest levels of Northern Territory bureaucracy, railed against appalling cruelty.

Scene of the crimes: The old Don Dale Dete

At his wit's end, having been confined alone for 16 days in a dark, fetid cell, 2m x 3m, at Darwin's Don Dale Youth Detention Centre, a 14-year old Aboriginal boy hit breaking point on 21 August 2014.

The boy gave evidence in closed session to the Commission about his experience at Don Dale. He was named in the Four Corners story, but at the Commission he appeared as "AD". He also provided the Commission a six-page written statement which traced his upbringing, his rapid decline into a short history of crime and his traumatic imprisonment at Don Dale that culminated with his being teargassed, along with four other juvenile prisoners.

AD records in his statement that he was brought up by his parents till age four or five, when they were no longer able to look after him, and a female relative and her partner assumed his care. He enjoyed living with them, and enjoyed going to school: "I enjoyed the subjects of maths and all sports, especially football." AD liked his relative's partner – "He looked after me and taught me things including what was right and what was wrong about things including school. He passed away from cancer in 2010. I was close to him and was sad when he died. I still miss him."

In 2013, aged 13, he fell out with his carer because she was "too strict" and moved in with another relative, "who was much less strict and I was allowed to do what I liked."

"Inside I was feeling sad for the loss of (his first carer's partner) and I was starting to feel really bad about my Mum and Dad never having been around. When I was in Year 9 (2013) I was selected as one of the leaders in the Clontarf program but I did not feel up to it."

Suspended from school

AD's attendance at school began to fall away and he began to drink alcohol and smoke marijuana. His real criminal life began during his suspension from school for four weeks for having turned up stoned one day in early October 2013.

Suspensions have proliferated in Northern Territory schools, an arbitrary disciplinary tool that in itself does nothing to improve behaviour.

AD's behaviour worsened during his suspension: he was arrested for shoplifting at Casuarina and received a Police warning; he was charged with car thefts and placed on bail with a 7pm to 7am curfew; he breached that bail condition by travelling in a stolen vehicle and breaking into a house at Bayview and stealing property and cash.

Finally, in June 2014, bail was refused and AD was sent on remand to Don Dale. For no good reason, he spent the first night there in one of the five cells that comprised the infamous Behaviour Management Unit (BMU).

"When they took me to Don Dale I felt frightened. I had heard stories you would get raped in there by other detainees and if you did something wrong the other detainees would bash you. I heard that if you get on the guards' bad side they will put you in the back cells."

AD was first on remand in Don Dale for 29 days from 3 June. During that time he went to court "a number of times" and each time bail was refused: "Each time I was remanded I became angry, frustrated and confused. I watched other kids get bail while I remained in Don Dale. I had no idea how long I was going to be in detention. I found being in Don Dale not just scary but very confusing. I didn't know when and what my sentence would be."

Escape and punishment

AD escaped from Don Dale with four other youths on 2 August 2014, using weightlifting poles stuck into gaps in the perimeter fence to climb over the fence.

They would be made to suffer for their short burst of freedom.

AD was captured and returned to Don Dale on 6 August 2014, and immediately placed in the Behaviour Management Unit with the four other youths who'd already been captured: "They put me in a cell by myself. In the cell there was a toilet. There was no air-conditioning. There was no fan in the cell. There was a fan in the area outside the cell that gave a small amount of breeze. I was very hot. The cell was also very dark. I have spent most of my life outdoors and had never been indoors for a period like this before."

The Department of Corrections had no regard for hygiene. There was no running water in the BMU for detainees to wash their hands after using the in-cell toilet, or before their meals which they had to eat inside their cells.

For the first week, AD was not allowed out of his cell at all. In the second week he was allowed out for 30 minutes each day to shower, make phone calls and exercise – the guards "basically just ignored us." He used the intercom in his cell several times each day to ask for how long he would be held alone in the BMU, but nobody had an answer. Neither did his lawyers from the Northern Territory Legal Aid Commission.

NAAJA 'Shocked"

On 11 August 2014, the plight of AD and his fellow escapees was plain to a delegation from the North Australian Aboriginal Justice Agency (NAAJA) which was invited by the Department of Correctional Services to tour the Don Dale Centre, including a walk through the BMU.

In evidence to the Royal Commission, NAAJA's Principal Legal Officer, Jonathon Hunyor, who was on the tour, said: "I can remember it was dark and dank. It smelt bad … and I remember us sort of pausing and looking at each other and saying, 'Hang on a sec, are there kids in there?' Because it was – it was dark, but we could just make out some movement or see something. So we asked the guards and they confirmed that this – that's where kids were being held, and we were, we were frankly shocked."

Mr Hunyor wrote the next day to the boss of Correctional Services, Commissioner Ken Middleton: "We were gravely concerned about the conditions that appear to exist in the BMU and the likely impact on the mental health of the young people being detained there."

Commissioner Middleton replied in writing: "… the BMU is the only option available at Don Dale with sufficient standard security required to accommodate such high risk detainees." To a question about how long the youths would be detained in the BMU, he replied: "The young people will remain in the BMU until such time as alternative appropriate accommodation is identified."

Mr Hunyor to the Royal Commission: "The response from the Commissioner didn't, to me, convey a sense that the situation was regarded by the Commissioner as being unacceptable at all and that he was going to do something urgently at all and I wondered whether or not that is something we should have challenged – what the hell the kids doing in that place at all – but I was mindful of the infrastructure difficulties that the Commissioner had …"

Later, under cross-examination, Mr Hunyor was asked: "Did you consider taking out a writ of habeas corpus to get the Director of Correctional Services before a court to justify to a judge the lawfulness of the detention which you witnessed on 11 August that these children were suffering under?"

Mr Hunyor: "I don't think we did."

It became apparent during the proceedings of the Royal Commission that the Department of Correctional Services was prepared to keep AD and others locked up in the BMU indefinitely – that is, at least until the population of the then adult jail at Berrimah had been moved out to the new jail at Holtze, and the Berrimah jail converted for use by juveniles.

But no one was telling that to the detainees. They were left to fester.

No bail, no lawyer

AD's frustrations about his prolonged and isolated detention in the BMU (which the Department of Correctional Services knew


Having got out of his cell, AD "loses it" in the adjoining exercise yard, still within the Behaviour Management Unit – freeze frame from surveillance video.

talised a 14-year-old boy

ntion Centre.

full well was likely illegal), and about failures to secure his bail, would boil over, 10 days after Mr Hunyor's visit.

During AD's isolation period he was in fact assessed for bail by a Corrections Officer who went out and visited AD at Don Dale on 11 and 13 August 2014. A Bail Assessment Report was completed and dated 13 August 2014. On 15 August 2014 he was taken before a Youth Justice Magistrate, apparently to apply for bail. In fact, no bail application was made. He was returned to his dungeon.

His old school had been prepared to back AD's applications for bail and to have him back, but to no avail. "(AD) is a capable student who is generally cooperative and polite and usually participates willingly in class learning activities and tasks. He has been a strong role model in his position as a Clontarf Leader … and has developed mutually respectful relationships with his teachers and peers," his former principal wrote on 14 August 2014 in support of the unsuccessful bail application.

But AD's legal representatives seem to have abandoned him – evidenced by an email from his legal aid lawyer on 22 August 2014, the day after he "lost it": "I only found out the other day that the boys were still in the BMU and was a bit puzzled. I've been meaning to look into exactly what's going on …" a lawyer from the NT Legal Aid Commission wrote from a holiday venue in Bali.

Day of wrath

On 21 August, the 16th day of his confinement, having again asked when he would be released from the BMU, AD said he "lost it." He said the trigger was a broken undertaking that day by the second-in-charge at Don Dale, Jimmy Sizeland, to visit him before he finished work.

His account was corroborated by a staff member who said in a sworn statement: "… I asked him (Sizeland) if he was still going to talk to the boys in the BMU and he replied, 'Yes, before I knock off'. Later when the boys asked when he was coming, I checked and found out he had left for the day. I was left to deal with the boys and tell them. The boys also spoke about not getting their one hour exercise out of the BMU." (Mr Sizeland would deny to the Royal Commission that he had given any such undertaking.)

"I just snapped," AD told the Royal Commission in his statement. "All the stuff that had been building up in my head … just exploded. I went off and started shouting and swearing in my cell. I was saying, 'Get me the fuck out of here. I've been in here too fucking long'. The other boys started going off as well. I could hear the guards speaking through the other boys' intercom saying, 'Calm down'.

"The aluminium cover on my cell light had a screw or bolt that stuck out. I used my sheet to lasso the bolt and then pulled the cover down. I then used it to smash against the walls of my cell and smash through the hatch door on my cell door. After about half an hour I then grabbed the handle to my cell. I don't know why I did this as I always saw them lock it. To my surprise it opened. I then had a rush of blood and really let my anger out. The anger was hitting me in waves and I could not stop it. I felt out of control. I have never felt like that before. When I see the footage now I cannot believe I acted like that. But at the time I was out of control and running amok.

"The guards were yelling at me to calm down and talk about it. I said, 'Why didn't you talk to me about it the last couple of weeks?' They said, 'It's right, mate, just calm down'. I couldn't calm myself. I had no plan. I had no intention to hurt anyone. I just wanted to get out of that area. I put my head through a window to see if I could run out but a guard hit me with a broom on the head. It was not that hard and I was not injured, but it did make me angrier. A couple of minutes later I threw the metal through a window, but I was not trying to hit anyone."

Around this time, a Youth Justice Officer is recorded as having said: "Let the little fucker come through, because when he comes through he will be off-balance. I will pulverise the little fucker."

AD's statement continues: "I then heard the dog barking at the door. I broke the glass into the admissions office, jumped through and grabbed the fire extinguisher. I smashed up a computer because I had lost it and was angry. I was intending to use the fire extinguisher if the dogs attacked me. I had seen what dogs do to people, rip them up, and I was now feeling very scared. I told the guards, 'I give up', and asked to speak to (a particular officer)."

Too late! "Nah, you've had your chance," another officer responded."

Apparently unaware of that exchange, the Commissioner of Corrections himself, Mr Ken Middlebrook, who'd left a Rotary Club meeting to attend the disturbance, ordered tear gas to be used on AD and the four other occupants of other cells in the BMU. "Mate, I don't mind how much chemical you use, we gotta get him out," Commissioner Middlebrook told one of his men – one of three prison officers who'd been summoned from the "Immediate Action Group" to deal with the situation. They were equipped with riot shields, gas masks, helmets, knee/shin pads, expandable batons and tear gas.

AD: "… the guards began spraying us with tear gas. They did not give me or anybody else any warning. They then sprayed the tear gas making my eyes sore and teary and making it hard to breathe.

"The guards came in and pulled my hands behind my back and handcuffed me. The handcuffs were really tight. They then dragged me roughly to the basketball courts and washed us all down with a fire hose. The only injury I sustained was from the handcuffs. We were then shackled by the ankles and handcuffed and moved to Berrimah (the then adult jail adjacent to Don Dale)."

Because of AD's age, that transfer to an adult jail was unlawful – although it had been authorised by a Magistrate.

Aftermath

After it was realised AD had been held unlawfully at Berrimah, he was taken back to Don Dale (and to the BMU) the next day, handcuffed and wearing a spit hood – although he had no history of spitting at anyone. The BMU was empty; nevertheless, AD was not let out of his cell for three days before he was taken with other Don Dale detainees to a separate and unoccupied unit at the new Holtze prison.

At Holtze, he was again in a cell by himself, but was able to meet other juveniles and, after about 10 weeks, he got bail – again with a 7pm curfew.

But AD was not yet out of the woods. He was arrested for breaching his curfew, and bailed by police; he was arrested again for a further breach and went back to detention in Holtze for another two weeks before he went to court and got a suspended sentence.

Finally, after 10 years of no contact, he came to be reunited separately with his father and mother, but yet again got into trouble – he breached his suspended sentence for the curious offence of trespass on a truck. That saw him remanded to the Alice Springs Youth Detention Centre – "better than Don Dale. They had air conditioning and the guards were friendlier."

After a month on remand he was sentenced to three months detention at Alice Springs, and served two months.

Out of jail

AD's family remain proud of him. He has stayed out of trouble, and in his statement to the Royal Commission, dated November last year, he said he was at High School, doing well and enjoying it: "I enjoy the subjects, PE, Maths, Music and Cooking. I play football as a centre halfback. I train Monday, Wednesdays and Fridays and play every Saturday. I want to do Year 12 and then become a Ranger, or work on a station. I love being on the land and working on it. I also love playing football."

As to why he decided to speak to *Four Corners* two years after he was brutalised, he told the program: "Just tellin' the truth and what really happened and, yeah, make sure it doesn't happen to any other young people. I was getting treated like an animal, basically, because of all the stuff they did to me."

The Royal Commission into the Protection and Detention of Children in the Northern Territory concluded public hearings on 30 June. Having published an interim report on 31 March, the Commission will publish its final report by 30 September.

Since August 2016, the Commission has held seven sets of public hearings in Darwin and Alice Springs. It has heard from more than 215 witnesses (including 24 "vulnerable" witnesses), conducted 11 case studies with multiple witnesses, heard 16 recorded personal stories and received more than 480 witness statements.

A statement by the Commission on 29 June said its last hearings head first hand experiences from those most affected by the child protection system. It gathered 30 recorded personal stories, in addition to more than 430 written personal stories.

"People have shared stories about the impacts the welfare system has on individuals and the wider community, the role of kinship care and the importance of maintaining cultural connections when children are placed in care.

"During the detention hearings the Commission heard evidence from children and young people who had been detained in the Alice Springs and Darwin youth detention facilities.

"Current and former youth justice officers presented evidence, as did those responsible for overseeing the detention centres, professionals providing services to those in detention such as case workers and lawyers and from former Ministers with responsibility for youth detention.

"Evidence revealed a youth detention system which is likely to leave children and young people more damaged than when they entered", the Royal Commission observed in its Interim Report.

"The Commission heard that detention facilities are not fit for accommodating children and young people, and are also not fit for the purpose of rehabilitation. In addition, they are unsuitable workplaces for youth justice officers and other staff.

"Public hearings of the Royal Commission have heard evidence that the youth justice and child protection systems in the Northern Territory are inextricably linked. Multiple experts provided evidence to the Commission showing children and young people in out-of-home care are more likely to enter the youth detention system.

"In addition to public hearings, the Commission is collecting information from a number of other sources including through submissions, formal and informal statements, community meetings, one-on-one interviews, site visits and talking to stakeholders and groups.

"The information collected will assist the Commission to understand the complex issues and make meaningful recommendations that drive long-lasting change.

"There is still time for people to contribute; people can give information, provide submissions and share their personal stories with the Commission until 31 July."

There are a number of ways people can provide information to the Commission:

Call within Australia: 1800 604 604 between 9am and 5:30pm Monday to Friday.

Write to: GPO Box 3656, Darwin NT 0801.

Email:

ChildDetentionNT@royalcommission.gov.au

Australia's Morality Play 2017

John B Lawrence SC*

In June 2017, the Royal Commission into the Protection and Detention of Children in the NT was in full swing. Called by the Prime Minister of Australia on 26 July 2016 following the *ABC Four Corners* screening of '*Australia's Shame*', it had completed the evidence in relation to Youth Detention and was moving into its second component, namely Child Protection.

Much had been discovered, most of it bad, and worse than what *Four Corners* had revealed. When publishing the Royal Commission's Interim Report dated 31 March 2017, Commissioner Margaret White said:

> *"What the Commission has heard over the last 8 months, and particularly over the last 3 weeks in this Courtroom and in Alice Springs, is that the system of youth detention in the Northern Territory has failed and,* ***we think, is still failing*** *[writer's emphasis]. At every level, we have seen that a detention system that focuses on punitive, not rehabilitative, measures, fails our young people".*

The Interim Report made several other telling observations:

1. the Youth Detention System is likely to leave many children and young people more damaged than when they entered;
2. the Youth Detention facilities are harsh, bleak and not in keeping with modern standards. They are punitive, not rehabilitative; and
3. 94% of children in detention in the Northern Territory are Aboriginal, and therefore specific consideration must apply to Aboriginal children.

Amidst this, while the Royal Commission was sitting in Darwin in June 2017, the conduct of an NT Judge sitting in the Youth Justice Court in Tennant Creek dealing with a 13 year old Aboriginal boy received severe public criticism. That coincidence revealed a Youth Justice System riddled with systemic problems and needing radical repair, if not replacement.

Royal Commission

As you would expect with a Royal Commission tasked to investigate systemic problems, the whole Youth Justice System and its players have been placed under thorough scrutiny and few have emerged looking good. The evidence has revealed a crisis-ridden, dysfunctional "system". The evidence points not just to the obvious suspects – the untrained, casual Youth Justice Officers (YJO) and Corrections generally – but more, much more. It has revealed a Youth Detention System that was and still is operating in a deliberately punitive and at times grossly inhumane way.

The essence of the Inquiry is to now find out how this can happen in 21st century Australia, a developed country which, in competition with Spain, is presently applying for a seat on the United Nations Human Rights Council. That question is largely answered by the systemic nature of the inadequacies. Responsibility for the system's shame can be traced all the way to the top. Everyone, including Corrections Minister John Elferink, Commissioner for Corrections Ken Middlebrook, Executive Director of Youth Justice Salli Cohen and the staff at Don Dale knew of the atrocious conditions that the children were being indefinitely detained in, and the inadequacy of staff training for those tasked with looking after them. It was during Ms Cohen's reign that the Behaviour Management Unit (BMU) at Don Dale was used to hold children in isolation, in cruel and medieval conditions for extensive periods.

Between 4 and 21 August 2014, six children were kept in the BMU which ultimately lead to their gassing on 21 August. It was that incident which led to the NT Children's Commissioner's report published in August 2015. That report clearly details the unbelievable conditions that Aboriginal children were being kept in at Don Dale during that time.

Ms Cohen gave evidence that the plan was to hold the children at Don Dale until the Berrimah Adult Jail was ready, namely another six months. Further, no alternative "high security" section had been identified for the interim. The BMU was the only option, and they were there indefinitely.

When Minister Elferink was questioned by the media in 2014 about the conditions in the BMU (their full extent unknown to the media at the time) he proudly defended them by saying that the children in question were "*The worst of the worst*". Just desserts for them.

The conditions suffered by these young Aboriginal boys were way beyond what any serial killer, rapist or paedophile would experience in an adult prison anywhere in Australia. This situation occurring in August 2014 in Don Dale graphically illustrates that the Department of Corrections, and others who knew all about it, had descended to a moral depth that you would not have thought possible even 10 years ago. In many ways that is the essence of what this Royal Commission has discovered as regards how this could occur.

Australia has lost its way, the Northern Territory has lost its way. The individuals who make these decisions, knowingly and deliberately, have lost their way as far as being responsible, moral, decent human beings.

It is the writer's view that if they were non-Indigenous, such inhumanity would not be allowed to occur. In other words, it's racism. Pat Anderson, presently Co-chair of the Referendum Council, Chair of the Lowitja Institute and former President of the North Australian Aboriginal Legal Aid Service (NAALAS) gave this evidence to the Royal Commission:

> *"There's this psychological barrier to any kind of acceptance that Aboriginal people are not… subhuman; we are, in fact, human beings and this is our place and this is our country".*

Detention Don Dale style: the image that shocked the nation.

And, when asked to suggest an explanation for the children being treated like this in 2014, she said:

> *"You know, 10 years ago when we did the 'Little Children are Sacred' (report) it was inconceivable that that might happen here, even here in the Northern Territory. I watched [the Four Corners program], like most of Australia that night, and… that was my thought, you know, 10 years ago this would not have happened. So I think it is part of this general moral decay. Australia's… in a really bad way here, and I don't know how you return it to a mature, sophisticated, civil society"*

Although we've just celebrated the 25th anniversary of Mabo and the extinguishment of terra nullius as a legal concept, the psychological and human reality of Aboriginal people being of less worth still clearly exists.

The evidence has clearly established that not only was this happening to Aboriginal children in the NT at the hands of Don Dale staff, it was all being done knowingly – by the Superintendent of Don Dale Russell Caldwell, the Executive Director of Youth Justice Salli Cohen, the Commissioner for Corrections Mr Middlebrook, and the Minister responsible Mr Elferink. They all gave evidence admitting this, and these people were the legal guardians of the children, responsible for their welfare and owing them a duty of care. They all knew that, and yet they did this to these children.

But more. All those children had lawyers, either from the Northern Territory Legal Aid Commission (NTLAC) or the North Australian Aboriginal Justice Agency (NAAJA). Not only the jailors and their masters knew: so did the defence lawyers who represented these children. Further, much of the detail of the conditions at Don Dale was conveyed by these lawyers to Magistrates sitting in the Youth Justice Court who were making decisions about bail and sentencing.

The legal system's awareness is illustrated by the evidence of Mr Jonathon Hunyor, principal lawyer at NAAJA in 2014, that he and other NAAJA staff were actually shown the BMU at full capacity on 11 August 2014.

The reason for the visit in itself speaks volumes. It was the idea of Executive Director Ms Cohen. Her rationale appears logical, but reveals itself as

startling on analysis. By that time, the Government had announced its decision to close Don Dale and reopen the derelict adult male jail in Berrimah to accommodate the boys and girls from Don Dale.

Berrimah jail was over 30 years old and had housed some of the Territory's most notorious criminals: killers, rapists, paedophiles, including Martin Leach, Andy Albury, Bradley Murdoch and the like – men who had slept in the cells that were now proposed to be occupied by Aboriginal children, most of them from the bush. The Commissioner for Corrections, Mr Middlebrook, had given sworn evidence at a Coronial Inquest in 2011 that in his opinion Berrimah jail was fit only for a bulldozer.

But, during this policy of punity and hostility waged against Aboriginal children, the adult jail was to be reopened. There was to be no more Don Dale. Now the children, both boys and girls, were going to be kept in the former adult jail. In fact, the girls were now earmarked for the old B Block, the former Maximum Security Unit that truly used to hold "the worst of the worst".

Needless to say, the decision had come under criticism, particularly from Aboriginal groups, including NAAJA. So, Ms Cohen's rationale for the visit to Don Dale was this: in order to persuade NAAJA to agree with the Berrimah proposal, its senior members were to be shown the scandalous conditions in which these children were being indefinitely held in the BMU. So much for two wrongs not making a right! This type of thinking and, dare I say it, "logic", graphically illustrates the ethical sewer which the legal system had descended into.

The arranged meeting between Corrections officials and NAAJA staff was held at Don Dale on 11 August 2014, after which Mr Hunyor and others were shown the now infamous BMU. Mr Hunyor gave evidence that once taken to the BMU, he was shocked. He said it felt like a dungeon. It was dark, dank, smelt of urine and the group looked at each other and said, 'Hang on a sec, are there kids in there?'. Although it was dark they had seen some movement through the bars. The following day Mr Hunyor wrote an email asking questions and expressing his concerns to Commissioner Middlebrook, who confirmed that kids were in fact detained there, and would be for the foreseeable future. On 12 August, NAAJA also raised concerns with the NT Children's Commissioner, and, after receiving the response from Mr Middlebrook on 14 August, lodged an official complaint with the NT Children's Commissioner on 20 August.

As it happens, the children's incarceration in this dungeon ended on 21 August, thanks to the liberating actions taken by 14 year old "AD" (see previous story on pages 10-11), who was able to get out of his cell after a Youth Justice Officer left it unlocked. I represented AD at the Royal Commission. He ran free in the small adjacent courtyard area, taking out his pent-up frustrations and rage against "the machine". He and the other kids were eventually gassed by the Immediate Action Unit, a specialised unit brought down from the adult jail and trained to quell riots in adult jails. That decision to deploy gas was approved on the night by the attending Commissioner of Corrections Mr Middlebrook. Ms Cohen was also in attendance watching this. That action, brought on by AD fighting back, was effectively the end of the BMU. A 14 year old's protest brought to an end an infamy that no one else had seemed able to end. That says it all really.

On all the evidence, including that of Ms Cohen about there having been no alternative to the BMU at Don Dale, it is clear that, but for AD's actions, the detainees in the BMU would have remained there indefinitely – six Aboriginal children, all legally represented but effectively abandoned in conditions in which you wouldn't place an animal. Again, how could this happen in 21st century Australia?

The legal system's knowledge of what was being done to these Aboriginal children was further evidenced by the President of the Criminal Lawyers Association of the Northern Territory CLANT), Mr Russell Goldflam. He is the Principal Lawyer for the NTLAC's Alice Springs Office where he has worked for 19 years.

Mr Goldflam gave evidence in the main as an expert to critique Government policies in the youth justice field, particularly those of the CLP Government from 2012-2014. Amidst his critique he revealed that the horrific practices were well and truly known to the legal profession:

> *"We all knew that there [were] terrible things going on in the youth detention facilities. Although Four Corners hadn't been aired, it wasn't a secret that spit hoods and chairs and all the rest of it were being used".*

Further, as a leader of the lobby group CLANT who enjoyed a reputation for championing civil rights and being a stone in the shoe of the State, it emerged that he had not opposed the legislation which tried to legitimise the use of the Restraint Chair. His evidence on this was that he believed the Bill was a "*significant improvement on the pre-existing law*".

Mr Goldflam also told the Royal Commission that throughout his tenure as President since 2011 he deliberately pursued a policy of "cordial relations", "cooperation" and "collaboration" with the Department of Corrections – a "productive relationship". Well, the end product of this "productive relationship" was a Youth Detention System that treated Aboriginal children worse than animals, including gassing, restraint chairs and being cooped up in the BMU for 16 days at a time. Aboriginal children were abandoned by a legal system, which seemingly included their legal representatives.

All of this evidence was bad enough, but there was worse to come. In my opinion, the most dispiriting, negative and chilling evidence in the whole of the Royal Commission was that of Mr Goldflam on relative population projections, and what conclusions he chose to draw from the figures. His conclusions were what is often referred to as "The Malthusian Spectre". I set this out in full. On 13 December 2016, he was asked:

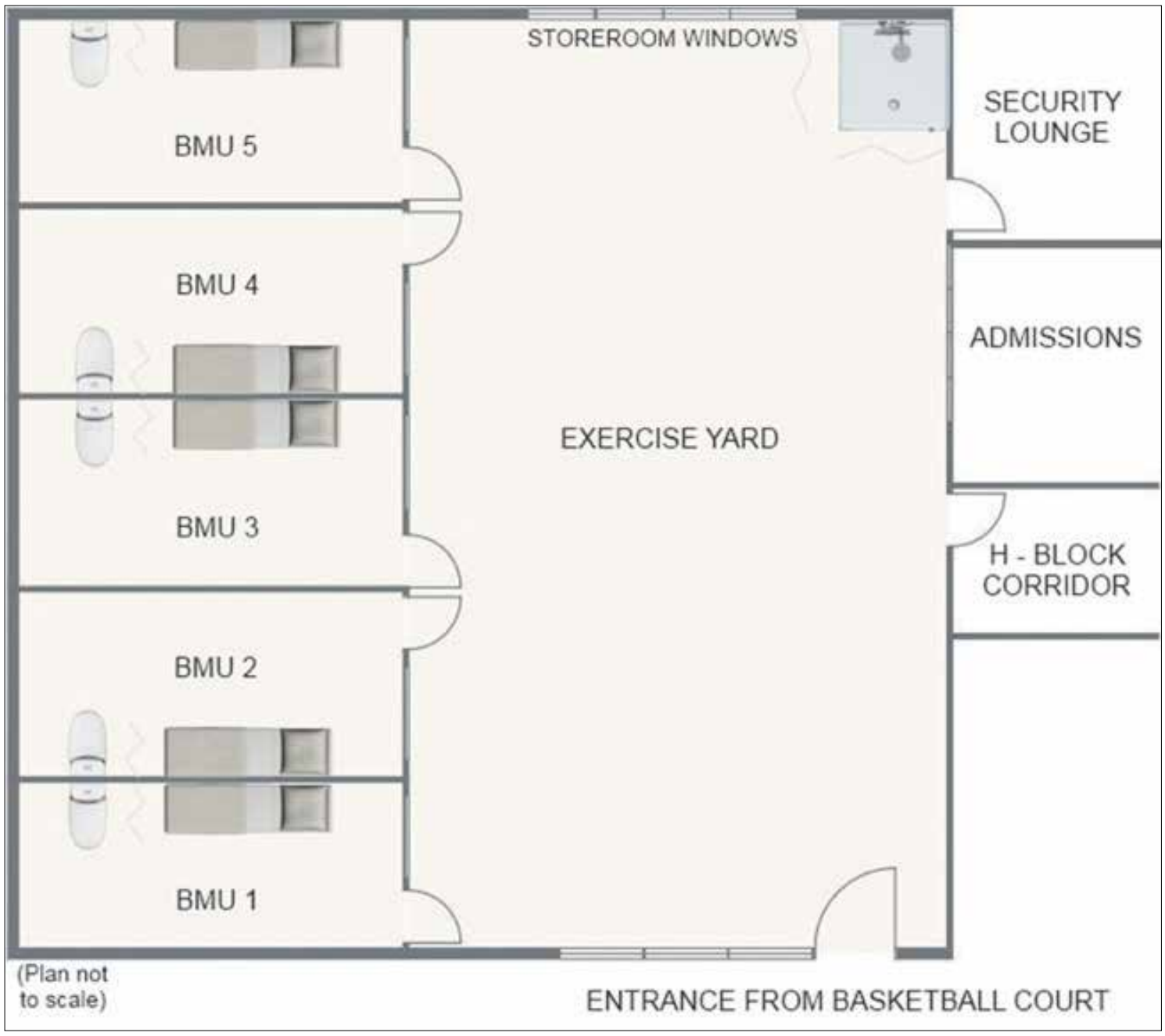
> *"So is it correct to say that part of – in your opinion, part of the reason for the increase in numbers of children in detention is because of the increase of children as a proportion of the population of the Northern Territory?"*

Relying on a graph created by former NT Police Superintendent and now CEO of Territory Families Jeannette Kerr he gave this answer:

> *"Well specifically Indigenous children… The biggest single cohort of Aboriginal people is in the age group zero to four, whereas in the general population it's in the age group 25 to 29. And the effect of that is that we know that over the next 15 years there will be a very large number of Aboriginal people attaining the age at which they have the capacity to commit criminal offences. And we also know, tragically, that a very high proportion of those children grow up in families, households, communities with criminogenic circumstances. So it's obvious that we're going to see – whatever else we do, an increase in youth offending. We are going to see an increase in adult offending, and that demographic fact is a driver which we must not ignore. And – and it's important for a number of reasons, but one of the reasons it's important is we mustn't set ourselves aspirational targets which are impossible to achieve and set ourselves up to fail yet again. We have to recognise that, to an extent, the problems of offending, of violence, of property damage, of stealing and of incarceration and punishment are problems that are beyond the reach of governments or criminal lawyers, or any of us, and we have to cut our cloth accordingly. So I'm not trying to say that we should all just give up in despair and go away, I'm just trying to emphasise the point that there are these demographic facts which, to some extent, to a significant extent, drive the future of our society".*

Such evidence is not only fatalistic and dispiriting, but it reveals a justice system that is in desperate need of a revamp, if for no other reason than it is in the hands of people who are now part cause of the malaise.

The good news is that during the Royal Commission that type of evidence was contradicted by witnesses such as Ms Olga Havnen, the CEO of Danila



Floor plan of the Dan Dale cell block where juveniles were held.

Dilba. Ms Havnen is an Aboriginal woman from Tennant Creek who has spent most of her life working on behalf of Aboriginal people, wrestling against systemic racism and non-Indigenous institutional policies. She has been the Coordinator-General for Remote Services, Head of Indigenous Strategy for the Australian Red Cross and Executive Officer in the Human Rights branch of the Department of Foreign Affairs. Her evidence showed that by the success of Danila Dilba and other Aboriginal health organisations, the future is in fact bright. Her evidence was positive, aspirational and compelling, contrasting greatly with the negative, resigned and bleak evidence of Mr Goldflam.

The evidence before the Royal Commission has clearly vindicated and confirmed Prime Minister Turnbull's reasons for calling it: "There are clearly systemic problems with the justice system in the Northern Territory". The evidence has comprehensively confirmed this. For further confirmation, look at observations in the Interim Report, which state that the system of detention in the Northern Territory "*is failing our young people, it is failing those who work in the system and it is also failing the people of the Northern Territory who are entitled to live in safer communities*".

Judge Borchers Rails at Teenage Criminal

While the Royal Commission was discovering, if not confirming, this shameful state of affairs, the whole country then learnt about the conduct of Youth Justice Judge Greg Borchers in the Youth Justice Court in Tennant Creek on 6 June.

It happened during a sentencing proceeding – i.e., the child had pleaded guilty to offences and his lawyer was presenting relevant considerations for sentence. The child was a 13 year old Aboriginal boy from Tennant Creek, whose mother earlier in the year had been brutally beaten to death in the family home. Her husband, the boy's father, had been charged with her murder and is now in the Alice Springs jail.

At the time of the homicide, the boy was in Alice Springs at boarding school. His two younger sisters were in the house and are now Crown witnesses in the prosecution of their father. The 13 year old boy and his sisters are left with no mother, and their father is in jail for the foreseeable future. Understandably, the boy's attendance at boarding school deteriorated and he returned to Tennant Creek, falling into the company of older youths, drinking alcohol, sniffing petrol, wandering the streets and committing offences of breaking in, stealing and others. He was dealt with in March in the Youth Justice Court and placed on a bond. He reoffended in May and was brought from six days in custody into the Tennant Creek Youth Justice Court on 6 June to plead guilty to a number of other unlawful entry and stealings. He was dealt with by Judge Borchers.

In the court and for the boy were his CAALAS lawyer, his grandmother, a senior social worker and two volatile substance abuse nurses from Tennant Creek. At the beginning of the plea the defence lawyer, Mr Bhutani, made the point that there was some good fortune because the financial loss suffered by the victims of the boy's offending wasn't too great. The boy and others in the court then watched and listened to the Judge's response:

His Honour: *Client coming up with the money, is he Mr Bhutani?*

Mr Bhutani: *No, Your Honour.*

His Honour: *Family going to pay the money, are they, Mr Bhutani?*

Mr Bhutani: *Not that I know of.*

His Honour: *Who is going to pay the money, Mr Bhutani?*

Mr Bhutani: *Your Honour, it's a difficult situation. Unfortunately ...*

His Honour: *No. No. Tell me, who do you think might pay the money, Mr Bhutani?*

Service providers had indicated that the death of his mother had "obviously taken a significant toll" on the boy, including his decline in school attendance, alcohol abuse and failure to attend mental health services. His lawyer further said he:

> *"hadn't reached the point of last resort, taking into account his personal circumstances, the presumable grief and trauma he is going through". Mr Borchers' response to that was, "I'd like to know how they relate to breaking into people's property. Call one of them, anyone you like and get that person to tell me how grief results into breaking into banks".*

Undeterred, the CAALAS lawyer again put to Borchers J the tragic circumstances of his parents and the fact it was relevant to his increasing absenteeism at school (79% attendance to 26% after the killing), drifting into bad company, drinking and committing offences. The Judge had this to say:

> *"There has been a bit of a breakdown in your family; a significant breakdown. But, you've duchessed it. That means you've taken advantage of it. You're out and about on the streets with your mates, because no one is really in a position to look after you".*

Mr Bhutani sought release on bail so the boy could engage in a number of support services, allowing him to remain and work there, and have the support of his remaining family. Mr Borchers told him this:

> *"You're not going back into the community. They can't afford you. It's quite clear that you and your family are not going to pick up the damages for what you've caused. And, presumably, and I infer this, you've got no understanding of that. You don't know what a first-world economy is… you don't know where money comes from, other than that the government gives it out".*

Having given the lawyer and the boy sitting behind him that sustained tirade, he then remanded him in custody. A successful bail hearing was held one week later.

The whole performance by the Judge representing the NT Judiciary was one of sustained bullying, at times nasty. Such behaviour from a judge shames and undermines the authority, integrity and honour of the judiciary. Courts are called "This Honourable Court". There's no honour here, none. What trust can the community hold in a legal system where a judge speaks to children like this? This situation again reveals a legal system that has lost its way.

And so, amidst a Royal Commission into the Youth Justice System, how does that legal system react to the Judge's conduct?

That sort of conduct by a judicial officer

anywhere, anytime beggars belief. To behave like that while the NT justice system is under a Royal Commission's scrutiny is staggering. The matter has been referred by the Central Australian Aboriginal Legal Aid Service, (CAALAS) to the Commission for consideration, and goodness knows what the Commission will make of it.

When interviewed as President of CLANT, Mr Goldflam, described Borchers J's conduct as "*unfortunate… unacceptable… inappropriate*" and that what he had said should not have been said. He said the "*apparent lack of empathy*" in Borchers J's accusations of duchessing was "*sad*" but that they and his "*first world economy*" comments needed to be seen in a broader context! Further in the interview, Mr Goldflam revealed that the same Judge has been carrying on in such a manner before this incident. In 2012 he had told an Aboriginal juvenile that following his release from sentence, he would not be allowed to return to Alice Springs because he was "*not fit to live in a civil society*" and would instead be returned to the "*unregulated lands of Anangu Pitjantjatjaraku*".

What the Judge said and did to the boy was disgraceful. It was not "inappropriate", not "unfortunate"; it was disgraceful. It is symptomatic of a legal system which has lost its way. The treatment of this 13 year old boy by a non-Aboriginal man who has more than 10 years experience as a judge and 30 years experience as a Northern Territory lawyer is akin to the treatment of the Aboriginal child detainees with restraint chairs, or putting them into those isolation conditions of the BMU and then gassing them when they protest.

We all know from Woodward and Bernstein that it wasn't the break in of the Watergate Complex that ended Nixon, it was the cover up. Well, what is going to happen here? It appears that this same Judge has been carrying on like this before and the legal profession, including the Law Society, the Bar Association and whoever else is supposed to regulate the legal profession, seem to have been incapable of doing anything appropriate to address it. For too long, we have been agreeing with too much that was wrong.

To CAALAS' credit, as well as informing the Royal Commission of this conduct, they have made various complaints to the Chief Judge of the Local Court. In the writer's view, there is no dubiety about the way in which the Judge behaved towards the boy that day: in the writer's view, Judge Borchers is clearly unfit for office. Further, in the writer's view, he seems to mirror many of the personnel and "systems" which this Royal Commission have discovered that make up the now completely discredited NT Youth Justice System.

As to what happens to Judge Borchers, one can only wait and see. But every minute an Aboriginal juvenile is exposed to him is a minute too long. Whether this can be viewed as a cover up or just instinctive, classic institutional, defensive stalling, doesn't really matter. What the community can see graphically is a system that is not up to the task, and is not capable or willing to acknowledge the same. The whole thing is beginning to smell like some kind of Freemasons Society.

John Lawrence addressing the NAIDOC march gathering, Darwin July 2017.

Some of the profession want these matters to be dealt with "discretely", out of the public domain. Their argument is not without some merit: if these things are discussed in the public domain, it will undermine the integrity of the Judiciary and will deny the individual involved "natural justice". Well, that has a logical ring to it, but the sad reality is that the NT legal system in 2017 has now gone past its tipping points; way past. Respect needs to be earned and maintained, not just individually, but also with the institution of the Judiciary within the separation of powers and the rule of law.

Situation Normal: "It's All Good"

As this was going on, the Royal Commission was sitting in the Darwin Supreme Court in the week beginning Monday 26 June. While the Commissioners were hearing evidence that day, having been alerted to the transcript of Mr Borchers' performance, the rest of the Supreme Court building was empty. CLANT was holding its 16th biennial conference in Bali. Ironies abound and the symmetry was surreal.

So while the Royal Commission, appointed by the Prime Minister of Australia, was comprehensively investigating the systemic problems within the criminal legal system of the NT, much of the body of that legal system was over in Bali, attending the criminal law conference as if everything was "situation normal". While papers were being delivered on DNA evidence, motorcycle gangs in Queensland and Crown disclosure etc., there was very little, if any, acknowledgement that there was a Royal Commission looking into the NT Youth Justice System. There was little mention of "the war" or that herd of elephants grazing on the lawns outside. At this point in history, the NT legal system seems to be in a state of "hypernormalisation" – or, should I say, the catch-cry of contemporary Australia, "It's all good".

The concept of hypernormalisation comes from the book *Everything Was Forever, Until It Was No More; The Last Soviet Generation* by Alexeis Yurchak (2006). Dealing with the period before the end of the Berlin Wall in 1989, the book argued that everyone knew the system was failing, but as no one could imagine any other alternative to the status quo, politicians and citizens were resigned to maintaining a pretence of a functioning society. Over time this delusion became a self-fulfilling prophecy and the "fakeness" was accepted by everyone as real, an effect that Yurchak termed *hypernormalisation*.

By the 1980s, it was clear to the Soviet Union that the dream had failed. No one believed in anything. No one had any vision. Technocrats pretended everything was going well. No one could imagine anything else. People became so much a part of the system that they could not see beyond it. Fakeness became hypernormal. The whole ambience was pessimism. There was no optimism for the future.

Conclusion

The Royal Commission has exposed unequivocally a justice system that is unjust. The extent of the inhumanity and racism that ran through the Youth Justice System; the participation and complicity of large parts of the legal system and the recent confirmation and continuation of that by Judge Borchers; and the pretence maintained by the legal system as evidenced by the CLANT Criminal Law Conference – all of that now demands wholesale change. This can and must happen, otherwise Aboriginal children will be facing no future.

The system has incrementally slidden into disrepair and dysfunction. Cooperation, complacency, compromise, collaboration and resignation all contributed to the further disempowerment of Australia's most valuable citizens, its Aboriginal children. "Australia's Shame" indeed.

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NTER took the children away: detention, state protection and torture since the Intervention*

Thalia Anthony**

Almost ten years after the Northern Territory Intervention was rolled out, the Federal Government was made aware of Aboriginal child abuse. It's not the kind that ostensibly precipitated the Intervention. It is more a symptom of the Intervention. The abuse is broadcast on ABC's *Four Corners* in July 2006 and includes images of large, stocky white men beating Aboriginal children, spraying tear gas in their faces and all over their bodies; caging them in isolated cells, trapping their heads in hoods and their wrists and ankles in shackles. It is the abuse in youth detention.

The *Four Corners* screening triggered a Royal Commission into the Protection and Detention of Children in the Northern Territory. The Commission's focus on youth justice and child protection demonstrates the intimate relationship between the two systems that take predominantly Aboriginal children away from families and off country. However, the terms of reference do not address the colonial dynamic of this violence or the Intervention as part of this dynamic.

The Royal Commission has questioned a stream of expert witnesses from across Australia. Most witnesses have been non-Aboriginal people (e.g. youth justice officers, youth detention managers, government ministers, case workers and educators) – which include substantial proportion from outside of the Northern Territory (e.g. health specialists and academics) – relative to the number of Northern Territory Aboriginal people. Aboriginal families have not been called to give evidence on what was and is needed for their affected children. A powerful source of evidence has been presented by abused children who have spoken in open hearings and closed sessions and have provided written statements. For some of these vulnerable witnesses, the Northern Territory Government Counsel has sought to undermine their credibility in adversarial attacks.

The Commission has not sought to draw a connection between the Intervention and the treatment of Aboriginal children in institutions. On the opening day, Counsel for the Commission stated that some connection would be made between the Intervention and youth detention but stated that it is "just one example" to diagnose a tension "between efforts being made by different parties … striving towards the same end". This facile reference did not appreciate the contribution of the Intervention, which was subsequently given in witness evidence, to the dramatic spike in youth detention and the violence practices in detention centres. The cat, nonetheless, could not be kept in the bag. References to the contribution of the Intervention's punitive and disempowering strategies in relation to Aboriginal communities emerges in the over three-thousand pages of the (ongoing) Royal Commission transcripts from October 2016 to April 2017.

The Elephant in the Royal Commission Room: the Intervention

With the Intervention, came an influx of Federal and Northern Territory police in Aboriginal communities and greater law enforcement that was racially focused. Eighteen new police stations were established in Aboriginal communities under Operation Themis. There were offences exclusively applied to Aboriginal communities and town camps, which are referred to as "alcohol protected areas" under the legislation, including the consumption, possession and supply of alcohol and the downloading of pornography and other content that exceeds "the standards generally accepted by reasonable adults". There was an extension of police powers in Aboriginal communities, including to search vehicles, houses, property and persons. Children have been caught in these policing and carceral webs, including from remote Aboriginal communities, which has resulted in many children being transported to detention centres that are hundreds of kilometers away from their family, community and country.

The Intervention policies and related measures fueled the growth in youth detention and child protection rates, which has been acknowledged in hearings by Corrections management, including the former Commissioner. Over the ten years since the Intervention, youth detention rates have more than doubled and, they have increased almost ten-fold for female youth. The increase in Aboriginal children in the criminal justice system has surpassed all other Australian jurisdictions and they constitute 97 per cent of the youth detention population. This has been matched with unparalleled growth rates in child protection interventions in Aboriginal families.

Despite it not being a focus of the Royal Commission, the Intervention elephant in the room was rapidly unleashed. On the second day of hearings, Alyawarre woman and Chair of the Lowitja Institute, Pat Anderson, told the Commission that when the Federal Government "sent in the Army" to impose the Intervention, respectful relations between government and Indigenous people were jeopardised. Aboriginal women grabbed their children and ran because it brought back memories of police and government people descending on communities to take Aboriginal children. Their instinct that their children would be taken proved to be correct. Aboriginal children have been removed to residential care, foster and group homes and youth detention at unprecedented rates since the Intervention.

The surveillance of school attendance and government health checks have been a mechanism for child removals from Aboriginal families and the policing of young people (for under-age sex with other young people). The Northern Territory has also become the only jurisdiction where it is mandatory for everyone in the community to report suspected child mistreatment. Many notifications to child welfare are unsubstantiated, but it nonetheless triggers a government encroachment on Aboriginal families and children. Most substantiations are based on perceptions of neglect, including the child's "failure to thrive" (gain weight) due to poverty. Aboriginal children taken from their immediate family are often placed outside of their community. Over one-fifth are placed in residential care rather than with a family.

Evidence was adduced of increasing policing and prosecuting of young people for low order offences, such as minor property offences, traffic offences and breach of bail conditions since 2007. Witnesses pointed to the dramatic increase in the criminalisation of youth for violating traffic regulations since 2007, such as driving unlicensed and unregistered vehicles, to demonstrate the impact of the Intervention. Seventy-five per cent of locked up children are on remand, awaiting trial or sentencing. Courts are unable to hear the matters quickly due to a clogged up system in which young people can wait longer than their punishment would require.

Given the surge in young people being criminalised, this has led to long delays for a court to hear the matter, while children are made to wait in their cells. If the child is convicted, their sentence is often backdated to the date when the child was in custody, implying that they are getting sentenced longer than their punishment requires.

Evidence was given of over-policing of children under state care in residential and group homes. Police would be notified of an incident where the child was merely "mucking up". Police have been called for squirting sauce at the "kitchen table". The chair of Aboriginal Health Agency Daniba Dilba, Olga Havnen, told the Commission that the police are contacted when a child in out-of home-care does something such as breaks a glass, which results in them being charged and ending up in the justice system. She stated, "I have known of cases where children who have not been in contact with the justice system until such time that they were removed from families and put into care and protection of the department."

The Royal Commission's Interim Report, handed down in April 2017, described Child protection as a "pathway" to youth detention. The role of Territory Families, the department responsible for Child Welfare, has been focused on child removals (rather than family support) which breaks their connection to home and community and puts them on the radar of the criminal justice system. One witness, Keith Hamburger, referred to the increase in child protection as a "ticking time bomb" that will lead to an explosion in detention rates due to the trauma caused by removal from family. Havnen explained that "the primary desire" of children is to "go back to family and to establish those connections and relationships".

Territory Families has become a one-stop-shop for children in state care and youth detention. It enables the government to seamlessly transfer case work in foster and residential care to the same children who enter youth justice system. The conveyor belt often progresses from juvenile justice to adult imprisonment. Physically, youth detention centres in Darwin and Alice Springs have been placed adjacent to adult prisons so that they appear as an "adjunct" to one another. More recently, youth detention centres have been relocated to "derelict" adult prisons, such as Berrimah in Darwin, which was described by the CEO for Corrections as "only fit for a bulldozer". Prisons consultant, Hamburger, attributed the relocation to the "deluge" in youth imprisonment since the Intervention. This has created a control and discipline approach to managing youth in detention that has failed to give dignity to their humanity and childhood.

Torture of Aboriginal children in Northern Territory detention

The Intervention has not only increased the quantity of young people in detention, it has also led to the "moral decay" in the treatment of children in institutions. Although the detail from the Royal Commission to date has focused on the cruelty in child youth, there has been emerging evidence of such violence in child protection. In youth detention, the Commission heard that young

people were punished through denial of food and water, phone calls from family, hearing aids, toilet paper, clothes, mattresses, education; transfers to adult prisons, and segregation for indefinite periods. This could be combined with the direct use of force, including beating children, stomping on their heads, the use of hoods and shackles, including on mechanical restraint chairs, and spraying tear gas.

The punishment went beyond the prison placement ordered by the court. Dylan Voller said in the hearings:

> *One of the biggest problems we face is the fact that we are being further punished while in prison. Being sentenced by the judge to do the time for our crime is our punishment, not the continued mental and physical abuse that we continue to cop while here.*

The punishment was characterised by its arbitrary nature. This is not only clear from the testimony of countless witnesses, but also in the official booklet given to children when they enter detention. It states:

> *Different officers have different approaches and as a detainee you will need to learn the different ways that officers deal with situations. This will help you predict what will happen to you if you behave poorly.*

The treatment of children is illustrated in the evidence of Aboriginal boys, AD and Dylan Voller, and Aboriginal girl AN. The common themes of their stories were: violence and humiliation endured at the hands of officers, segregation for extensive periods of time, and an absence of support through programs or trauma-informed strategies.

The treatment that AD experienced was likened to "caged animal" or a "dog". He was first sent to Don Dale at 14 years of age. Even before arriving he feared this centre because he had heard stories of Aboriginal children being bashed and raped. Don Dale lived up to these terrifying expectations. He was indefinitely placed in an isolation cell, which is part of the Behavioural Management Unit (BMU), for 23 hours per day, which lasted for 17 days until he escaped. The cells were dark, dirty and smelling of sewage. There was no running water, air conditioning, fans or air flow for children to cope with the tropical temperatures.

When AD attempted to escape he was shocked to discover that his door was unlocked and walked straight out of his cell. Soon after, the riot squad descended on the detention centre. They were wearing gas masks, carrying shields and batons and were accompanied by an Alsatian dog. Despite AD offering to talk "things out", and saying "I give up", he was told "it was too late". At this time, an officer shouted, "I'll pulverise the little fucker". The riot squad sprayed tear gas on AD and five other children in segregation. AD told the Commission the gas was "burning my eyes and throat". Dylan Voller, who had separately been tear gassed, described its effect:

> *I thought I was going to die. My heart was racing because of the tear gas. My eyes were burning. I couldn't hardly see properly. ... my heart was racing because I didn't know what was going to happen next.*

After the tear gassing, the riot squad shackled the children's ankles and wrists and placed spit hoods on them. They were taken to the maximum security unit of the adult prison. AD gave evidence that, "The guards told me if I do anything, they will slam me to the ground." When AD was eventually released from detention, he went on to reconnect with his parents, whom he was removed from at a young age, spend time on country, continue his high school education (currently in Year 11) and play as halfback on a football team. But he remains saddened by the fact no one has ever apologised for how he was treated in detention, including since the Royal Commission begun.

The experience of Dylan Voller, who was sent to youth detention in Alice Springs at the age of 11 for breaking a window at home, was characterised by being arbitrarily hit by officers (leading to their criminal prosecution but not conviction), forcibly stripped naked and pushed to the ground, refused access to the toilet, toilet paper, food and water. He explained the vindictive response of officers to his requests for water: they would throw the water at Dylan's feet and say, "There you go". There were "plenty of times", Dylan said, when children were refused the bathroom and made to defacate in their pillow slip or urinate out the window. Some nights Dylan was denied his clothes, sheets and mattress while the guards turned the air conditioning on full blast and left him freezing and crying for help. He said, "My skin was all going wrinkly and I was shivering".

Dylan gave a detailed account of his torturous experience in the mechanical restraint chair where he was covered with a spit hood for over two hours. For Dylan, along with the tear gassing, this was the "most scariest" thing that has happened to him. Dylan experienced panic attacks and explained, "My body just shut down". He was telling the officers that the shackles are too tight "around my wrist", the hood strap was hurting his neck, and that he needed to go to the toilet, which resulted in him urinating on the chair. The officers did not alleviate his pain but instead tormented him. He said that there was "no responsible person there" to draw the line when his pain became too great: "I was defenceless at that time. Felt like there was nothing I could do … I was telling them the whole time that it was hurting. … They didn't care".

The shame Dylan endured was not only in highly violent episodes, but also in everyday activities such as taking a shower and going to the toilet. He told the Commission it was "scary" having an officer "watching you going to the toilet or when you are having a shower". He was strip searched every time he had visitors, went to court or to the medical centre, sent to an isolation cell or was at risk of self-harming. He found it humiliating that he was not allowed to cover his "private parts". At one stage, the officers would conduct a strip and pat search every time he came from the toilet.

Young girls were also strip searched, sometimes forcibly by up to six male officers. Stripping girls included cutting off their clothes. This was used as a behaviour management tactic or, allegedly, to protect them from self-harming. AN, an Aboriginal girl who gave evidence to the Commission, said that she was grabbed and picked up by her shorts and bra straps. She stated that this "wedgies method" was 'the guards, including male guards, preferred way of grabbing me. For AN, "this hurt and was shame job". On one occasion,

> *A large group of guards picked me up … and threw me face down … They then used the Hoffman Knife to cut off all my clothes including my bra and underwear. I was fully naked and I felt real shame with all those men in the room. … That was one of my worst experiences in detention. I still think about this and it upsets me.*

For these reasons, AN described her experience in detention as contributing to a lost youth in which she wished she could do it again. Nonetheless, her vision for the future is shaped by her love of horses and children and building on her work experience in childcare. She is hopeful the Commission and her contribution to it may help avoid detainees.

Torture: an extension of treatment under the Intervention

The punitive racism pervading the Intervention has seeped into the treatment of Aboriginal children in detention. Pat Anderson, who co-authored the *Little Children are Sacred* report (with Rex Wild) on strategies for addressing child abuse in the Northern Territory, was aghast that the report, which recommended Aboriginal community-owned solutions, had been used to justify the Intervention's top-down policy of disempowerment. During examination by the Commission, she referred to the Intervention as a "huge betrayal". The Intervention legitimated an attitude that Aboriginal people can only be dealt with as problematic. Anderson said, the cruelty of children in detention was "an extension" of the abuse of Indigenous people under the Intervention. It produced a "general moral decay" that "has allowed children being put in hoods and restraint chairs". This is due to the culture among officers and the Northern Territory government's passage of legislation to allow restraints. For Anderson, there is "no doubt in my mind" that the "disempowerment" and "appalling" treatment of Aboriginal people living under the Intervention culminated in the torture of Aboriginal children at Don Dale.

Following the Intervention, the Royal Commission was told, ad hoc violence against Aboriginal children was amplified. Groups of thugs were employed in youth detention. The Commission heard that a "boys club" emerged, such as "Jimmy's boys", under manager James Sizeland. These officers included professional prize fighters and steroid-taking body builders. Experienced officers who refrained from using the brutal tactics of the young and inexperienced "muscle men", did not get promoted. Officers used their roles as a "power trip" by randomly bashing children, swearing at them (e.g. "stupid black cunt" and "fucking slut"), telling them to eat bird's poo and filming them in the shower and toilet. The evidence of Corrections managers, ministers and staff in the Corrections complaints unit revealed that these brutal acts were condoned.

The assimilationist approaches of the Intervention and its related policies were replicated in youth detention. The Intervention measures and services, acquiring Aboriginal land, and making it more difficult to foster cultural strengths on country, such as by restricting cultural practices and access to bilingual education, removing self-governing community Aboriginal councils, diluting the powers of Night Patrol, and removing Aboriginal children to state care. These policies were implemented with punitive force: if Aboriginal children missed school then their parents' income would be completely state-managed; if alcohol was found in a car then the car would be dispossessed, and if communities refused to lease their land their housing needs would not be met.

Like on the outside, Aboriginal children experienced assimilationist treatment in detention. Teachers and a school principal told the Commission that the school would prohibit children from speaking in their Aboriginal language in classrooms. Dylan Voller said he also saw "putting [Aboriginal children] down because they can't speak English properly". The children inside also lost visits from families when they were taken from a remote community to detention, or transferred from Alice Springs to the Don Dale centre in Darwin, which was 1,500 kilometers away. They were then tormented by officers by telling them that their "family did not really care" and refusing them phone contact. They were also not allowed to attend funerals and sorry business when family passed on. This resulted in dislocation from family, community and country. The effect of moving far away community was that the children "ended up getting more dislocated from their family groups".

What can be expected from the Commission?

The focus of the Royal Commission thus far has been on reform: making the youth justice system more therapeutic and rehabilitative, providing residential care institutions more positive and "home-like" for children; and creating better training and operational procedures. This is not transformative but sanitising the status quo in youth detention and child protection. For instance, the CEO of Territory Families stated that children need a better induction process by providing a "plain English version of the restraint policy".

What is lost is a discussion about the abolition of youth detention, the cessation of Aboriginal children being taken away from Aboriginal families and communities and a repealing the Intervention's current legislative guise in *Stronger Futures* that has impoverished, alienated and disengaged Aboriginal families. Muriel Bamblett who is from the Yorta Yorta and Dja Dja Wurrung explained to the Commission that the greatest resource in the Northern Territory comes from the strengths of Aboriginal communities and their strong cultural base and laws, which need to be fostered. These discussions require a greater engagement with Aboriginal families, which has been lost since the Intervention and is missing from the Royal Commission hearings.

*This story was first published in *Arena* magazine (No 148)

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A Decade of Lessons:

Ten Years Since the Intervention

Senator Patrick Dodson

A decade on from its dramatic and sudden imposition on Aboriginal communities in the Northern Territory, the Intervention still has much to teach us.

For many, the most visible sign of the Intervention was the sudden appearance of large iridescent reflective blue signs that warned, on any public road, that you were about to cross into the lands of Aboriginal people.

The signs depicted a large warning message, indicating you were entering a Prescribed Area, allowing No Liquor and No Pornography.

A twenty-four hour, seven-day hotline number pointed you to the Northern Territory Emergency Response Hotline for further information.

The signs warned those Aboriginal people living there that those lands, their homes for countless generations, were now restricted areas where different laws applied, that they were communities in crisis, subject to emergency laws and conditions.

For the backpacker tourists, on their way to, say, Palm Valley, dozens of the signs warned they were passing the homes of drunks, of drug takers, of pornographers.

Having previously lived and worked in the Northern Territory, I know well many of these communities. I know the people who live there. I know their families. I have worked closely with their leaders for decades.

The Intervention came to our people as a shock, as a bolt out of the blue from the Federal Government under the direction of Prime Minister John Howard and his Minister Mal Brough.

Despite my total commitment to the need for concerted action on the issues, I opposed the Intervention at the time and I continue to question its foundations in principle and its effectiveness. There was a dishonesty to it that that related to getting votes in the Queensland State election for the Coalition. It tried to hide the fact that it was taking property rights away from property owners, the traditional owners.

The Intervention was built upon a set of assumptions and attitudes that shaped the nature of the Intervention, its ongoing operations and its consequences.

In May of 2006 the ABC program *Lateline* broke a story of child abuse, based on an interview with Nanette Rogers, a Central Australian Crown prosecutor.

Earlier reports of neglect and abuse of children had been in the public domain, but did not create much in the way of political or media attention. The issues were revealed in two earlier reports: The Royal Commission into Aboriginal Deaths in Custody 1996 in which I was involved; and the Australian Human Rights Commission report *Bringing Them Home* in 1997. It was also flagged in the ongoing reports of the Social Justice Commissioner.

These reports set out a challenging and disturbing set of truths. They showed that problems of child safety and domestic violence were national problems, requiring a systematic and coordinated professional response from agencies working in genuine partnership with communities in poverty across Australia.

Such findings were echoed by the *Little Children are Sacred* Report in June 2007 from the Northern Territory Government's *Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, chaired by Pat Anderson and Rex Wild QC.

This report evidenced widespread abuse and neglect of Aboriginal children in the Northern Territory. The findings were based on considerable consultation with indigenous Australians and the wider community. The primary recommendation was for:

Commonwealth and NT governments to establish immediately a collaborative partnership with an MOU to address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

Unlike the earlier reports, the *Little Children are Sacred* Report was featured on ABC *Lateline* and became the focus of intense media and political response.

But the primary recommendation of the report that it was '*critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities'* was entirely rejected.

Over the following days, and without any form of consultation with the Aboriginal communities of the Northern Territory, a new regime was legislated into existence.

It became an intervention of military scale, military style and authoritarian intent.

It used the powers of the Commonwealth to legislate on behalf of the territories to create a new regime that went beyond intervening to protect children from child abuse into domains of land tenure, compulsory town leasing, local government, school attendance and alcohol management.

It is a fact of history that the Labor Opposition ten years ago cooperated with the Government of the day to pass the rushed and complex legislation. There were voices within the Opposition – then, now – that understood the issue but took a different view on the right response.

In my own view, there are learnings from the experience of the Intervention that would point now to a different, more nuanced, less one-size-fits-all, top-down approach, including when we consider issues such as the Cashless Debit Card.

Firstly, we recognise the great importance of international laws and obligations that should have guided the design, implementation and carriage of the Intervention.

As Indigenous peoples, we are recognised in a range of international agreements to which Australia, as a State Party, is a signatory. The international community can judge the integrity and quality of Australia's responses as a sovereign State Party member of these conventions.

First amongst these is the United Nations Declaration on the Rights of Indigenous Peoples. Australia voted against the Declaration when it was adopted by the UN General Assembly in 2007. In 2009, the Australian Government, under Prime Minister Gillard, formally endorsed the Declaration. This international obligation requires the Australian Government to seek the free, informed and prior consent of the Indigenous communities involved.

> *The Declaration on the Rights of Indigenous Peoples requires States to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (article 19).*

This did not happen a decade ago, and Governments of all persuasions have struggled to implement effective processes of meaningful consultation in line with the Convention.

Instead of building on local cultural strengths and cultural values, the Intervention denuded and disempowered local leadership and frustrated any attempt to exercise self-determination.

I argued at the time for:

> *"... investing in the reconstruction of Indigenous society through traditionally based governance structures,*

Protestors against the Intervention march from the Aboriginal tent embassy in Canberra, February 2008.

customary land ownership and internal reconciliation and healing are critical to ensuring social cohesion through the interconnected obligations and responsibilities on which Indigenous societies are based."

Instead, at the local level the Government Business Manager (often known locally as the Ginger Bread Man) was parachuted in and stepped into the role of the olden days Mission Superintendent, or Welfare Manager on the settlements of the 1960s.

He (rarely she) was able to evict any person from the community, a power the traditional owners did not have under the previous legislation.

There was no attempt to engage with local community leaders and build their capacity to deal with the issues confronting their community. Instead they were bypassed, disempowered and disenfranchised.

Even today, I hear reports that the Minister, the Hon Nigel Scullion, says:

"I think it would have been far better to do some of the same things with the full compliance of the community rather than the community having the sense that it was imposed on us, so yes of course we could have done it better."

It is a long way between "free, prior and informed consent" and "full compliance", but the understanding that what was done was ill-judged by the benchmark of today is now accepted as self-evident, even to the Minister.

I have argued further that the forced social and cultural changes imposed on communities living on their ancestral lands, to which they held (usually) full, inalienable freehold title, was tantamount to a return in full force to a committed ideological approach of assimilation, dispossession and disempowerment.

The Intervention was also plainly a breach of Australia's commitments under the Convention on Racial Discrimination. By suspending the *Racial Discrimination Act* for the purposes of the Intervention, as a nation we floated the fiction that the ends, saving the children, justified the racist means.

Make no mistake, this was a throwback to the forms of ideology that gave rise to the notion of terra nullius. It is to some credit of the Labor Party that when they took office they reinstated the *Racial Discrimination Act*, even though they maintained the Intervention's methodology and processes.

The lessons of the Intervention resonate with Aboriginal and Torres Straits Islander peoples across Australia in the current time as Constitutional Recognition debates are taking place.

We still today have a problematic, deeply ingrained stain in our constitutional fabric that allows Governments, of any persuasion, to persist with legislative interventions on the basis of race.

It remains my view that we can be a truly reconciled nation – if, having learned from the Mabo decision, having been inspired by the 1967 referendum, we act together to remove the last vestiges of the racism inherent in our founding documents.

In 2012, the Expert Panel (Expert Panel on Constitutional Recognition of Indigenous Australians) which I co-chaired with Mark Leibler made a series of recommendations including:

- a statement of acknowledgment;
- a modification to the wording of the Commonwealth's law-making power in Indigenous affairs;
- a constitutional prohibition on racial discrimination; and
- the removal of a provision that contemplates states disqualifying people from voting based on their race.

These recommendations recognise that the Government has the power to make laws about Aboriginal and Torres Strait Islander people, but that such a power must be used in a way to ensures the laws made are beneficial and give the Parliament clear, positive guidance.

If this had been in an amended constitution a decade ago, the Government could never have ventured down the path of the Intervention, including suspending the Racial Discrimination Act.

The ABC recently also reported on the views of someone who initially supported the Intervention:

A member of the Commonwealth's "emergency response taskforce", a resident of the Naiyu community, Miriam Rose-Baumann, said at first, she thought the intervention was an opportunity for change but then lost hope. "It felt like it was more top-down rather than grass roots level ... and there was no suggestion that they were going to take the community with them in trying to sort out what was needed in the community," she said.

In my view this is a necessary pre-condition to efforts by Governments to correct what is wrong in our communities. It cannot be forced, against our will, imposed from Canberra.

It must be grounded in our community, bringing the community along in the process of change. This did not happen a decade ago. As a direct consequence, with the possible exception of increased investment in housing, there has been little to show in terms of positive results from the Intervention.

In recent evidence to the Royal Commission into the Protection and Detention of Children it was revealed that the rates of child protection cases and notifications have more than doubled in the 10 years since the intervention.

Separately, NT budget estimates revealed the number of children in out of home care had tripled, while the proportion in Aboriginal kinship care had dropped 20%.

Olga Havnen, a former Coordinator General for remote services in the NT, said:

"It's not enough to pay us the cursory privilege of being consulted, where our voices are not listened to and where we have no role in decision-making. We couldn't do any worse than what's being done today, surely."

But this was not the only issue of governance confronting our remote NT communities at the time.

In 2008, I was commissioned by the NT Government to organise a consultative process that set out to reform local councils and associations. It ran parallel to the Intervention. At the time it added to the confusion and disquiet of Aboriginal peoples.

The Northern Territory government reduced the number of councils, community government councils and community associations from 61 to 16 bodies. In terms of reduction in council numbers, this was "easily the largest scale, forced local government amalgamation in Australia".

While the local community councils had suffered for some time as under-resourced, poorly managed, badly staffed, they were still a voice for the local community, a vehicle for governance that could guide decision-making and community development.

Small, remote communities had nothing in the way of community control and direction but a distant and disconnected Shire Government, with responsibility for essential services for an area the size of some European countries.

As the Chairman of the Northern Territory Local Government Advisory body at the time, working closely with the Northern Territory Local Government Minister, I saw the tensions and challenges of this structural reform at first hand. For remote communities, the Advisory Committees they had to rely on were not empowered to manage and direct resources, nor make decisions on behalf of their community. They certainly did not have the power or authority to be a local buffer for the kinship-based networks of the community to withstand the surging force of the Intervention.

It was a double whammy of disempowerment. Many communities were left with their sporting teams as the only identifiable community controlled organisation left intact.

In the decade since the Intervention, thinking has shifted. There have been lessons learned from the Intervention. But no one should deny the damage that was done.

It is apparent that both political parties, in hindsight, see that the Brough-Howard military intervention was "over the top", and indeed harmful. More importantly, there is a general and widespread recognition that, without consent, without genuine deep level engagement, directly involving community leaders and elders, the only expectation can be failure and further harm.

This recognition needs to be applied to all dealings by Governments with our Aboriginal communities. However, the thinking and the policy around the Cashless Debit Card and its impact gives caution to any sense of optimism that the lessons of the Intervention have been truly learned.

The debilitating aftermath of 10 years of NT Intervention

Jon Altman*

In the April issue of *Land Rights News* I celebrated the 30th anniversary of the progressive and supportive Blanchard report *Return to Country: the Aboriginal Homelands Movement in Australia.* And I wondered what celebration or reproach the 10th anniversary of the Northern Territory National Emergency Response, the Intervention that was militaristically launched with extraordinary media fanfare on 21 June 2007 might elicit.

The answers to this question are threefold.

First, the mainstream media provided almost zero coverage of the 10th anniversary or of the many events in the Northern Territory and in southern capital cities where people demanded an immediate end to the discriminatory Stronger Futures in the NT laws that continue key aspects of the Intervention till 2022.

This lack of attention is paradoxical because there was so much media attention focused on the Intervention in its early days; and one stated government rationale for abolishing the permit system at prescribed communities was to enhance transparency and scrutiny by the media. Once again remote Australia has become out of sight out of mind.

Second, the Indigenous leadership and intelligentsia and powerful political, bureaucratic and corporate actors have moved on from reflecting on the outcomes of the Intervention about which I will say more later, focusing instead on the issue of constitutional recognition.

This too is paradoxical and a little disturbing.

An enduring memory for me from June 2007 was of conveys of vehicles as the initial 'national emergency' militaristic frontline that rolled into Mutitjulu, the Aboriginal community next to Uluru seeking out alleged paedophile rings that never materialised.

Uluru was also the site of the constitutional recognition summit in May this year that delivered the 'Statement from the Heart' that looks to eliminate possibility for any future brutal episodes in Indigenous policy making like the hastily and ill-conceived national emergency intervention.

As I draft this piece the final report of the Referendum Council has just been publicly released. Its main recommendation is for the establishment of a representative First Nations body that will serve as a voice to the Australian parliament.

The Intervention is only mentioned twice in this report in relation to the removal of 'race' powers in the Constitution and in an aspirational plea for a Bill of Rights to provide a guarantee against future acts of racism that the Intervention's disempowering measures represented. But neither of these proposals are endorsed and so it remains unclear how an Indigenous advisory body might be empowered to override a bipartisan parliamentary revisiting of some future Intervention.

This is of special concern to Indigenous people in the Northern Territory if the Commonwealth's constitutional territory powers remain in place and if, as in 2007, racial discrimination laws can be suspended at the whim of the government of the day.

Third are the views expressed by Indigenous community leaders who are also subjects of the Intervention, several whom I heard present views in two events held in Melbourne recently; others recorded and transmitted from Alice Springs and Sydney; and those expressed to me directly in numerous visits I have made to the Northern Territory since the Intervention, most recently in April and July this year.

There is a deep hurt and distress expressed at the sheer brutality of the Intervention process that revived bitter memories for older people of being treated as legal minors by the colonial authorities during the assimilation era, a sense of deep hopelessness and disempowerment, and a sense of injustice that the belief that western norms are superior and need to be adopted by Indigenous people can prevail.

People recognise their vulnerability to unilateral state intervention due to historical and deeply structural factors including a high dependence on the state, the fundamental change of welfare to emphasise 'mutual obligation', and the fact that they are black and so susceptible to explicit or implicit personal vilification and institutional racism.

These people are proud, not ashamed, of the fact that they possess different and diverse cultural values from those of mainstream Australians; but they are also aware that such difference and diversity means that universalistic policies devised in Canberra will inevitably be poorly designed for their circumstances.

The people I interact with are angry that such difference and diversity cannot be recognised, acknowledged, accepted and accommodated in the everyday workings of the Australian settler state.

The people I talk to and the places I visit also demonstrate an absence of any developmental progress since the Intervention, indeed there is growing evidence that Indigenous people living in remote communities in the NT have become more deeply impoverished since the Intervention, a perverse and very tragic outcome that attracts little media attention; and little acknowledgment or lament by those who have implemented Intervention and Stronger Futures measures or those outspoken white and black advocates for this paternalistic top down approach who have become strangely silent and conveniently forgetful at this 10th anniversary juncture.

Anniversaries are not the time for selective amnesia but for taking a bigger picture perspective on what has transpired. I want to do this in relation to the issue of poverty alleviation that rightly dominates the international development landscape.

I do this because the Intervention was heavily promoted as a major project of improvement and modernisation. Who can forget Malcolm Brough's heroic call to 'Stabilise, Normalise and Exit' remote NT communities, the delivery of what can be thought of as a domestic 'Marshall Plan' to demonstrate the developmental powers of the Australian government in a jurisdiction where owing to a quirk of the Australian Constitution it can intervene directly with no checks and balances.

In the 1950s and 1960s, the Commonwealth government deployed its colonial might in a quest to deliver development to remote Aboriginal communities on gazetted reserved lands.

In the 21st century it looks to deploy neoliberal might to deliver liberal democracy and the free market to remote communities on Aboriginal-owned land, but with greatly enhanced and hugely expensive ministerial and bureaucratic surveillance and control.

Just after the 10th anniversary of the Intervention, the Australian Bureau of Statistics released the second tranche of data from the 2016 Census, the most important source of information about the socioeconomic situation of Indigenous people over time and compared to non-Indigenous Australians.

Unfortunately for my analysis labour market information will not be processed and available till late October this year. But we already know from a recent OECD Report *Connecting People with Jobs* (2017) that there is a gap of nearly 50% between the overall employment rate of Indigenous and non-Indigenous people in the NT, with this divergence being even greater in remote communities.

While I have reservations about the utility of such quantitative information to capture many aspects of life that are meaningful to remote living Aboriginal people, it is the main form of statistical picturing deployed by the Australian state and its agents to measure performance.

Since the release of census information on 27 June there has been much mainstream media coverage of many aspects of Australia's general population; but almost none on what this information tells us about the Indigenous situation in general and in remote Aboriginal communities.

What I want to do here is focus on just two communities Papunya in Central Australia and Maningrida in the Top End to demonstrate what sort of basic analysis is possible to monitor key transformations in the last decade.

I select these two communities for personal and historical reasons.

Papunya was the first Aboriginal community in the NT that I visited in 1977; Maningrida is a community that I have visited on 56 occasions since 1979 most recently this month.

Both communities were established by the Commonwealth in 1959 and 1957 respectively and were colloquially referred to as 'the Jewel of the Centre' and 'the Jewel of the North': these were to be the two demonstration communities where the Welfare Branch was going to show to all how modernisation and development could and should be delivered.

In 1972 when policy shifted to self-determination there was overwhelming political acceptance that the colonial development project at these iconic government settlements had failed. (But coincidentally both became important hubs for Western Desert and bark painting artistic movements.)

From 2004 when ATSIC was abolished and Indigenous Australians lost political voice, the self-determination that had dominated Indigenous affairs from 1972 was proclaimed a failure by the Howard government. It was to be replaced by neo-colonial rule from Canberra, a new social experiment with frightening similarities to the previous failed and highly destructive assimilation experiment also run from Canberra.

In Tables 1 and 2 I provide some publicly available census information on these two places and the outstations in their immediate hinterlands focusing on two things: people's wellbeing as measured by income and employment (bearing in mind 2016 employment data are not yet available); and people's physical environment as measured by overcrowding.

These are two key areas where the Intervention set out to make a difference through the provision of 1756 'real' jobs in government service delivery through the Northern Territory Jobs Package and through the $2 billion National Partnership Agreement for Remote Indigenous Housing in the NT, 2008 to 2018.

The two tables tell a similar dismal story.

First, Indigenous adults are in receipt of just over $200 a week in communities where basic foods can cost 50% more than in capital cities, they are living in deep poverty.

But what is worse is that when adjustment is made for inflation of 24% since 2006, over the past decade adult median income has dropped significantly, people who survived with income under the poverty line in 2006 are now deeper in poverty after 10 years of Intervention.

This situation can in turn be explained by extremely high unemployment rates and extremely low employment rates.

By the time of the 2016 Census most the unemployed were participating in the new Community Employment Program (work for the dole 5 hours a day 5 days a week) that was proving very effective at reducing people's welfare income with 'no show no pay' penalties: about 15,000 jobless in the NT attracted nearly 75,000 penalties in census year 2015/16, with 26-week

employment outcomes totalling just 843.

The development architecture of the Intervention and subsequent Stronger Futures was not just impoverishing people but also seeing their relative income, the economic disparity between Indigenous and non-Indigenous community members, increase: from 4.8 to 5.9 times at Papunya and 3.1 to 6.9 times at Maningrida. At the same time, the census indicates that poor Indigenous community members are paying more rent than relatively well-off non-Indigenous people.

On housing, and as the National Partnership Agreement that aimed to deliver about 1500 new homes ends, reducing overcrowding from 10.7 per house to 9.3 according to the Australian National Audit Office, the situation remains bleak.

In Papunya overcrowded houses needing one or more bedrooms increased from 50% to 68% according to the census while at Maningrida the rate decreased from 82% to 79% of households. Again, the situation for non-Indigenous residents of these places is markedly different because the employment rate is extraordinarily high and jobs come with housing.

This pattern is repeated in community after community with depressing similarity, be it Yirrkala, Gunbalanya or Wadeye in the Top End or Yuendumu or Mutitjulu in the Centre.

Readers of *Land Rights News* who might have access to the Internet, another area of extreme disadvantage and disparity, can visit the ABS Community Profiles website www.abs.gov.au/websitedbs/D3310114.nsf/Home/2016%20Census%20Community%20Profiles to get a sense of what has happened in their home community since the Intervention in 2007.

Most that I interact with are all too aware of their deepening poverty and in many cases periodic episodes of household food shortage, hunger and poor health; and the lack of improvement in their over-crowded housing situations.

This is despite the plethora of expensive Stronger Futures, Intervention Mark 2 measures that are supposed to assist, like the BasicsCard instrument to regulate expenditures and the Community Stores Licencing Scheme that aims to deliver 'food security'.

The Community Development Program is very effectively killing local initiative, enterprise and entrepreneurship owing to its disincentive to earn beyond Newstart and its effective penalty regime. At the same time a combination of enhanced poverty and excessive policing of vehicles and guns is limiting access to the means of production and opportunity to exercise the right to access bush foods for livelihood.

This is not to say that it is all doom and gloom, there is success at remote communities and jobs for rangers, in the arts, in tourism, in pastoralism, in carbon farming and in community service delivery.

But having a waged job is the exception, income inequality between Indigenous people is growing and this in turn creates a new set of distributional pressures in domestic situations that remain very kin focused.

The decline in median personal income everywhere provides hard evidence that the abolition of the Community Development Employment Projects scheme has been an unmitigated disaster redirecting people from part-time community-managed waged work to below award, externally monitored work-for-the-dole that more deeply impoverishes the jobless.

The Intervention legislation of 2007, that continued as Stronger Futures laws from 2012, are a complex set of oppressive and racist laws. The laws were designed to discipline Aboriginal men demeaned by parliamentarians, including by David Tollner and Nigel Scullion from the NT, as violent and dangerous and in need of radical cultural and behavioural modification.

In a highly influential book *Lands of Shame: Aboriginal and Torres Strait Islander 'Homelands' in Transition* (2007) the late neo-conservative economist Helen Hughes looked to influence Minister Brough and senior bureaucrats with neoliberal solutions to deeply entrenched and structural development challenges.

Then the Noel Pearson-inspired and Helen Hughes-advised report *From Hand Out to Hand Up* (2007) provided design recommendations for the Cape York Reform Project while also delivering guidance and moral authority to the Intervention's architects.

And in another influential book, *The Politics of Suffering: Indigenous Australia and the end of the liberal consensus* (2009) anthropologist Peter Sutton (whose main expertise is in Cape York) argued that the progressiveness of the self-determination era was responsible in large measure for the hyper-marginality of remote communities, culturally maladapted to late modernity.

But the current 'reality of suffering' that is the result of a decade of continuing punitive and unproductive 'neoliberal consensus' is fast entrenching a disaster, the result of the continual application of suites of measures that constituted the Intervention and now its aftermath that are largely unadapted and unabated despite poor results.

These failures have been documented in independent reviews of measures like income management; in parliamentary inquiries; and in numerous reports from the Productivity Commission, the Australian National Audit Office and the Commonwealth Ombudsman.

We debate as a nation the need for reform 50 years after the 1967 referendum eliminated any exclusionary references to Aboriginal and Torres Strait Islander peoples that were purportedly made full citizens and yet were rendered constitutionally invisible.

Ten years ago, Aboriginal people in prescribed communities in the Northern Territory were made all too highly visible as 'others' whose behaviour was unacceptable and who needed to be treated with racially discriminatory impunity as non-citizens.

And still Intervention and Stronger Futures measures persist, a sunken investment of billions in an institutional architecture that is impoverishing and causing harm. Who wants to own up to the errors and the waste? When will the major parties, both now with Indigenous members, abandon the quixotic quest to normalise with sameness Indigenous peoples who are proud of their heritage and their difference; and who will resist with vigour imposed incorporation into the mainstream?

Where to now? How can the emerging governance for destructive dependence be radically shifted so that communities regain control and govern for forms of development that accord with local aspirations in all their diversity? How can the Australian state ever be trusted to deal with its remote-living Indigenous citizens with appropriate poverty alleviating duty of care?

I have a recurring vision of tanks as symbols of destructive military might that Aboriginal people have experienced since 1788 and of settler state power rolling into remote communities.

The tanks flatten all existing institutional arrangements in their way, arrangements that have been slowly and collaboratively built over decades, some working well, some still far from perfect.

What happens when these tanks eventually reverse, will flattened people and institutions magically bounce back as is nothing has happened? Will the community organisations that delivered positive outcomes, demeaned as worthless by the Australian state and its compliant supporters, somehow automatically reconstitute? Unfortunately, I do not think so; it will take years for diminished local organisational capacity to be re-established.

Australian governments and much of the Australian public seem unaware, uncaring, immune to what is happening out there right now, the growing impoverishment and associated destruction of livelihood, social fabric and cultural and linguistic assets.

Maybe there is not just compassion fatigue born of the failure of the Intervention to deliver, but a growing lack of empathy as the injustice in the NT slips in overall ranking among the many competing uncertainties, injustices and inequalities that abound in the present.

Perhaps after sending in the Army we need to send in the peace makers from civil society or from development agencies from outside Australia or from the United Nations to re-establish trust. Only then might a new community-controlled institutional framework become a possibility to ensure the fundamental human rights imperatives of immediate poverty alleviation and livelihood restoration.

	Indigenous	Non-Indigenous
2016		
Population	426	32
Median personal income	$215	$1271
Persons per bedroom	1.9	0.6
Weekly rent	$30	$0
Overcrowded households	67.7%	0.0%
2011		
Population	456	37
Median personal income	$223	$1263
Persons per bedroom	2.4	1.0
Weekly rent	$50	$0
Overcrowded households	50.0%	0.0%
Employment rate	15.1%	100.0%
Unemployment rate	46.8%	0.0%
2006		
Population	347	24
Median personal income	$196	$949
Persons per bedroom	2.3	1.1
Weekly rent	$30	$5
Employment rate	18.7%	75.0%
Unemployment rate	16.7%	0.0%

Table 1. Papunya and outstations 2006, 2011 and 2016

	Indigenous	Non-Indigenous
2016		
Population	2369	171
Median personal income	$219	$1506
Persons per bedroom	2.4	1.0
Weekly rent	$63	$0
Overcrowded households	79.1%	0.0%
2011		
Population	2304	240
Median personal income	$268	$1167
Persons per bedroom	2.7	1.3
Weekly rent	$60	$0
Overcrowded households	82.1	1.7
Employment rate	34.0%	91.5%
Unemployment rate	23.9%	0.0%
2006		
Population	1904	157
Median personal income	$209	$952
Persons per bedroom	3.9	1.1
Weekly rent	$45	$0
Employment rate	26.0%	95.5%
Unemployment rate	17.2%	0.0%

Table 2. Maningrida and outstations 2006, 2011 and 2016

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AN "INSIDER'S" ACCOUNT OF THE NT EMERGENCY RESPONSE AND AN OVERDUE APOLOGY

Brian Stacey*

When the Northern Land Council's Murray McLaughlin, asked me to make a contribution to *Land Rights News* on the 10th anniversary of the rollout of the Northern Territory Emergency Response (NTER), without thinking about it I readily agreed. For Murray, it was a rare opportunity to get an "insider's" account of the hatching of the NTER including how I was co-opted, how I felt about it, and how the Public Service accommodated a senior Army officer being in charge. For me, having left the Australian Public Service in 2014, and no longer being employed by anyone, I saw no reason not to agree.

When I started to think about the contribution, however, I became nervous and wondered if I should have been so willing. I might not be a public servant anymore, but old fears long held to protect a senior public servant's career die hard! Would I accidently reveal secrets about the Northern Territory Emergency Response that were Cabinet-in-Confidence and get a nasty phone call from the Department of Prime Minister and Cabinet reminding me of my obligations? Would I cause offence to former senior colleagues in and out of the public service? What would my respected former boss and friend, Major General Dave Chalmers AO CSC, have to say? Maybe he will do more than unfriend me on Facebook! Could I write anything that was interesting and more importantly would I leave myself open to ridicule?

In the end, I decided to make this contribution despite knowing that I will not be able to answer many of the questions that I know people have about working on the NTER. Ultimately, I thought I had a moral responsibility to comment. The NTER was a very important event in the Northern Territory's history and in the Commonwealth's relationship with Australia's Indigenous peoples and I had played a significant role in it. Appointed to be the Deputy Commander of the NTER Operations Centre, reporting to General Chalmers, I agreed to surrender my role as the Northern Territory Manager of the Department of Families, Housing Community Services and Indigenous Affairs to lead the initial foray into the 73 remote communities with the support of the Army's NORFORCE. I also led the team that rolled out blanket income management or welfare quarantining on the 73 communities and town camps which was one of the most controversial measures of the Emergency Response.

I also thought it unlikely on balance that I would reveal any secrets as I was never involved in the process of advising Cabinet and nor have I ever seen the submission that preceded the NTER's commencement. It is not necessary to be critical or judge ill of anyone in the Government or Opposition at the time. I expect my former colleagues in the Emergency Response Operations Centre will be untroubled by my contribution. Unlike most, I had worked in the administration of Indigenous Affairs for many years, since 1983 after completing a degree in Anthropology at the Australian National University. That had included many years working in the Northern Territory with remote communities and they were all aware that I was troubled about how the Emergency Response had been instigated and the hurt it could cause to Aboriginal people.

Whether the measures in the Emergency Response were the right ones or not (and many were needed such as licencing community stores and expanding night patrol services), I think it was very wrong morally, in a policy sense and in every other way not to have properly engaged with Aboriginal people across the Territory and their representative organisations to secure their understanding and advice as the measures were being designed and before they were implemented. The situation in the remote communities of the Northern Territory was desperate, particularly in relation to housing, education and community safety. This had become apparent to me from when I returned to the Northern Territory in 2004 to become the Territory's Manager of the Office of Indigenous Policy Co-ordination. Moreover, the Territory Government had made some mistakes in responding to this crisis including being too slow in responding to communal violence in Wadeye. In addition, the excellent report it commissioned into the Protection of Aboriginal Children from Sexual Abuse (*Little Children are Sacred*) concluded that neglect (not sexual abuse) of children in Aboriginal communities had reached crisis levels and demanded that it be designated as an issue of urgent national significance by both the Australian and Northern Territory governments.

Undoubtedly, decisive action was needed by the Commonwealth and Northern Territory Governments, but it was needed in concert with Aboriginal people and their representative organisations. It was not for the Commonwealth on its own to start an Emergency Response in such a dramatic manner using the Army to support its rollout. It was not true, as the Commonwealth claimed at the time when it announced the Emergency Response, that the Northern Territory Government was not prepared to act. It developed a sensible set of measures in response to the *Little Children are Sacred* report after consultation. The Territory Government, with the benefit of hindsight, probably should have engaged the Prime Minister much sooner about the *Little Children are Sacred* report. But much of the Territory Government's seeming inaction in Indigenous Affairs stems from a lack of resources and capacity to support a comprehensive development agenda in remote communities. It is not a state and its revenue base is tragically small.

If the Territory Government was not asked, the consequences for Aboriginal people of not being engaged early, however, were much more serious. They were left frightened, angry and confused, including being prey to those who exaggerated the implications of the Emergency Response. Placing everyone receiving a Centrelink benefit on income management was not justified and they were entitled to be asked first. Likewise, CDEP workers did not deserve to suffer the indignity of losing the benefits of part-time wages and instead put on work for the dole overnight. Not understanding what was happening or any opportunity to have a say, many affected Aboriginal people were not able to prepare for the changes which caused hardship and hurt to many individuals and families despite the best efforts of Government Business Managers, the Emergency Response Operations Centre and agencies like Centrelink. Their leaders in their own representative organisations were powerless to deal with the situation and this left them angry and alienated.

The lives of Aboriginal people living in remote communities in the Northern Territory were turned upside down in a way that I believe was discriminatory. I saw this for myself after visiting every one of the 73 remote communities to support the rollout of Income Management. I do not believe other Australians would be treated like this and suspending the Racial Discrimination Act was unconscionable. It has led to a serious breakdown in the relationship between communities, their organisations and the Australian Government which remains unhealed. The lack of engagement, as the Productivity Commission has already indicated, impacted on the success of the Emergency Response.

The Northern Territory Emergency Response was replaced by the Commonwealth's 10-year initiative, Stronger Futures in the Northern Territory. Significant aspects of it weren't supported either by Aboriginal people in the Northern Territory and its development including the legislation was as controversial across Australia as the Emergency Response. However, Stronger Futures was preceded by a very extensive consultation process with Aboriginal communities, their representative organisations and the Northern Territory Government. That consultation process was independently monitored and evaluated and the outcomes were published. Suspending the operation of the Racial Discrimination Act was never even contemplated.

Five years on from the development of the Stronger Futures package, put together by a Taskforce that I led and which worked to the Minister, Jenny Macklin MP, I can appreciate much better why it was not supported in the way it could have been. It was done without drawing a clear line between it and the Emergency Response and the media decided that the Labor Government was continuing "the Intervention". Stronger Futures was framed by the Emergency Response and the Government couldn't shake it off. To the great credit of the Northern and Central Land Councils, and Aboriginal service and advocacy organisations like the North Australian Aboriginal Justice Agency and the Aboriginal Medical Services Alliance Northern Territory, they engaged with Stronger Futures in an open and constructive way despite what had preceded it.

While I had been the senior officer responsible for the administration of Indigenous Affairs in the Northern Territory since 2004, first in the Office of Indigenous Policy and then the Department of Families, Housing, Community Services and Indigenous Affairs, I was not involved in the decision to start the Northern Territory Emergency Response. For whatever reason that was, neither I nor any anyone else in the Department of Families, Housing, Community Services and Indigenous Affairs based in the Northern Territory was alert to the Emergency Response coming or involved in its development. I am certain that was the case for any other public servants in the Northern Territory whether in the Australian or Northern Territory Public Services (in fact I am not sure that anyone living in the Northern Territory at that time was alert to it coming).

That is not to say that I wasn't alert to the increasing frustration being felt by the Federal Minister for Indigenous Affairs or senior officers in the Department about the difficulty of achieving reforms that they believed were necessary to respond to the crisis in the Territory. Those reforms included leasing large remote communities and town camps back to the government for 99 years to facilitate government investment, home ownership and economic

The Intervention rolls out: Federal and NT Police officers talk to members of the Mutitjulu community, 27 June 2007.

development which had not secured the necessary support of land councils or traditional owners. Moreover, not without justification, there was an increasing level of concern about the extraordinarily damaging consequences of alcohol abuse in remote communities and the poor policing which the Commonwealth thought was due in part to the Territory Government not doing enough. Political relations between the Commonwealth and Northern Territory governments in relation to Indigenous Affairs were at the lowest point I had ever seen and the Federal response to the Territory's handling of the *Little Children are Sacred* report was predictable. It was clear that the Commonwealth wasn't likely to support the Labor Government in Darwin for much longer nor the community development approach that I had been trained in over many years, starting in the former Department of Aboriginal Affairs, which seemed woefully inadequate to respond to the scale of the crisis in remote Northern Territory.

Nevertheless, the announcement of the Emergency Response was still a big shock. That day, 21 June 2007, I was representing the Commonwealth at a meeting of the NT Local Government Advisory Board being chaired by now Senator Patrick Dodson at Parliament House in Darwin. My mobile rang noisily during an important discussion on the Territory Government's proposed rollout of reforms to move from community councils to shires and I asked to be excused to take a call from a senior officer in Canberra. I was told that the Emergency Response would be announced later that day and provided with a summary of the measures, told that the Prime Minister was seeking to contact the Chief Minister and could this be known to my senior contacts in the Department of Chief Minister. I did so and then returned to the meeting and informed the Board that I just had been advised that the Federal Government would be announcing an emergency response following the release of the *Little Children are Sacred* report by the Territory Government and that it was going to include comprehensive measures designed to promote law and order, facilitate land and housing reforms, and welfare and employment reforms. I had known Patrick Dodson since the so called Wik amendments were made to the *Native Title Act* in 1997 and he knew immediately I wasn't joking. Pale and worried, I left the meeting early and returned to my office in the Department to participate in the internal telephone conferences to make sure I understood the measures and next steps.

By nightfall, it was clear that a significant number of public servants would need to be diverted from their normal duties to manage the initial rollout of the Emergency Response which included visiting all the communities to explain the measures and conducting community surveys with the support of NORFORCE. Major General Chalmers was yet to be appointed and I was asked by senior officers in Canberra if I wanted to support this initial phase with senior public servants from my own Department and others and I agreed. I think that this was a surprise to some of my colleagues in National office in Canberra as they were aware of my commitment to working with Aboriginal communities to secure joint solutions as much as possible and the Emergency Response was a long way from that. Why I agreed I am never sure, and it may have been a mistake. I thought at the time, however, that I should take a leadership role because I was the senior public servant in the Northern Territory responsible for the administration of Indigenous Affairs, because it was going to happen whether I agreed or not and because I was worried about the impact on communities.

The next day, I met with as many of my staff as I could in Darwin and by teleconference with the Indigenous Co-ordination Centres across the Territory to discuss the Emergency Response and to announce that I intended to help with its rollout. They were as shocked and as surprised as I was about the Emergency Response. I was also told that a decision had been taken to start the rollout in Central Australia because NORFORCE had the capacity to do it there immediately. That afternoon, I was on a flight to Alice Springs where I lived for many months. I left behind a bewildered and worried wife, Lita, who was astonished at what was happening and didn't want me to go. Immediately we established ourselves in the Indigenous Co-ordination Centre (ICC) in Alice Springs which had been renovated the year before and had the capacity to accommodate more staff. A new office was not built or leased in Alice Springs for what became known as the Northern Territory Emergency Response Operations Centre. For the next six months, I stayed, with some other staff of the Operations Centre, in the Desert Rose Inn, budget accommodation on Railway Terrace which was due for a major refit.

How the Public Service responded is noteworthy. My recollection is that there wasn't any resistance, at least at a formal level. To the contrary, it responded immediately to the Government's decision and organised substantial resources to commence implementation within a week of the announcement, and in a very robust, organised and professional manner. Staff from the Indigenous Co-ordination Centres across the Territory deserve to be commended. They, like me, had been concerned about the crisis engulfing remote communities for a long time and even though they had been sidelined in the development of the Emergency Response, they still committed themselves fully to the task of implementing it and often at significant emotional cost. I was chairing a daily meeting at 6pm of senior public servants from Commonwealth agencies in the ICC conference room and most participants were joining by teleconference but we still managed to get the community surveys underway. I was impressed by the commitment and capability of these public servants also and we were working every day of the week and extremely long hours. Despite many, including myself, not agreeing with how the Emergency Response was developed, we were very sensitive to the reaction of communities and were fortunate for the support of very experienced staff in the Alice Springs ICC who had worked with remote communities for many years who assisted in the initial rollout. They cared about these communities and the families very much and it was not some militaristic undertaking developed behind closed doors without any regard for them or usual protocols. Communities, for example, were contacted before we arrived and there was agreement about times and dates for meetings to discuss the measures in the Emergency Response and many meetings were constructive.

It was clear from the outset that the Government did not want the Emergency Response to be led by a senior public servant. There was a view conveyed to me more than once from within the Government that it was a time for change, that many politicians thought public servants like me had got us into the crisis in the first place, that the public would not be persuaded to support the Emergency Response if it were

led by public servants and that we needed someone from the Army who had the organisational and planning skills that had been so effective in Australia's responses to the crises in Timor Leste, the Solomon Islands and Aceh. Air Chief Marshall Angus Houston AC, the Chief of the Defence Force, was asked to come up with a senior person to lead the Emergency Response and that is how I came to meet General Chalmers.

Why successful relationships can form very quickly between very different people is often difficult to explain, and particularly when a senior public servant from Indigenous Affairs meets a senior and decorated Army figure for the first time. However, I respected General Chalmers from our first meeting and I think this was mutual and was one of the reasons why the Emergency Response did get rolled out. After a short conversation in Lovett Tower in Woden, we agreed to work together to do what the Government wanted and on the basis I would be his Deputy and fill in the gaps in his experience working with Aboriginal communities which he had not done before.

Whether it was right to appoint a general from the Army who had led the response of Australia so well to the Aceh tsunami in 2004 is debateable. After all the crisis in remote communities of the Territory was not caused by a natural disaster or a war and a senior Army officer visiting remote communities caused them great anxiety and it was an easy target for the media and others who opposed the Emergency Response. However, there can be no doubt that General Chalmers did well what the Government asked him to do. He was disciplined and displayed great logistical and planning skills and these helped him to lead a massive and complicated rollout.

Whether there were other senior public servants who could have done what General Chalmers did is also debateable but I know of some who also have great discipline and planning skills. In the meantime, having a General lead a team of public servants to carry out an exercise which was not in the Army's domain did create some problems. There was a clash of work cultures in the Operations Centre but I don't want to overstate it. Public servants didn't have to wear uniforms or salute. But General Chalmers always did and his support staff from the Army were in uniforms. Inadvertently, I suspect, General Chalmers did impose certain army disciplines and language onto public servants – we now had "sit reps" and needed "visibility of operations". I always struggled with how to respond to this. I knew many Aboriginal people were offended by the role of the Army in the Emergency Response. On the other hand, if I decided to be part of the Emergency Response, I had to respect the decision of the Government to appoint a General. The compromise I reached was to try to call out some of the Army practices that I thought were unnecessary but in a light-hearted way to avoid any serious conflict.

Ultimately, General Chalmers and I considered that the measure that was most likely to be the most difficult logistically to implement, and with the most risk was moving people receiving Centrelink income support to income management. It was new for Australia and not well understood. The technology to support it was under-developed and Centrelink's capacity to service it was likely to be costly and problematic. Its critics were passionate and angry about this new policy, not just in the context of Aboriginal people in the Northern Territory but because of the prospect it would ultimately be implemented in mainstream Australia. They thought that people ought to be able to make decisions for themselves about how to use their income support payments and if they were being wrongly used, it was a result of poverty and the lack of individual capacity.

Whether that is right or not, General Chalmers and I were more concerned about implementing the Government's policy in a way that achieved its original purpose of ensuring that half of all income support payments would be used for essential needs and that it would be rolled out in a way that did not leave families cut off from money or anxious about what would happen to them. Income management was the responsibility of my Department and it was dependent on a number of other parts of the Emergency Response being implemented including the very mistaken measure of moving working age people from CDEP to work for the dole. We agreed, therefore, that I would lead the rollout of income management with the support of Alice Kemble, an Alice Springs born nurse who had worked in remote communities and had been recently recruited by the Department of Prime Minister and Cabinet in their Indigenous Policy area. The decision was then made early to develop a plan to rollout income management starting in Central Australia. As part of this, I decided that I wanted to personally visit every community beforehand to consult about its implementation and ensure that community members were prepared as much as they could be and had the supports around them to reduce the risk of people being hurt. I believed that I owed this to Aboriginal people: to at least give them an opportunity to raise their concerns with a senior public servant who many knew, and was prepared to engage them about something that would have a significant impact on their lives before it started. I couldn't have done this without Alice Kemble who did a remarkable job.

For me, this was the most challenging task I had ever had to do in the Australian Public Service. Day after day, I was meeting Aboriginal communities including traditional owners, local community councils and local staff working for health and education services who were committed to the people they supported as much as anyone. Day after day, we were confronted with hostility or suspicion. Many community members whom I had worked with before refused to engage with me or became upset with me personally in meetings. Some communities refused to co-operate at all. Others brought the media, ignored the visit or made speeches opposing what the government was doing. That said, as we returned to communities which had started income management, we also saw a growing support for it, particularly from older women. We made sure we had Government Business Managers on the ground in individual communities before we started income management and they were required to report in daily about problems, and as time went by, there was more success with income management. The best Government Business Managers for the rollout of the Emergency Response were existing and former public servants, many of whom had worked in Indigenous Affairs or with Defence and had the necessary resilience and maturity to build respectful relationships with the communities.

I finally cracked, however, on the day the Prime Minister gave Australia's Apology to Australia's Indigenous people on 13 February 2008. The Apology itself was a very important step and like most other Australians, I was greatly moved by Mr Rudd's speech. I was in Tennant Creek watching the Apology on a big screen at the Indigenous Co-ordination Centre with Aboriginal leaders including the grandchildren of Lorna Fejo whom the Prime Minister named in his speech, and everyone was in tears. I sat next to one of those grandchildren, a young woman who grew up on Rockhampton Downs in poverty and discrimination, the first Aboriginal community I ever visited in 1983 when I started with the former Department of Aboriginal Affairs. However, as the TV broadcast continued, I started to become angry and jealous that senior public servants who had not worked with Aboriginal people in the way and had been directly involved in developing the Emergency Response measures were also in Parliament House. In the meantime, I was in Tennant Creek meeting Aboriginal people who were very hurt and angry about the blanket application of income management.

The meetings had been on the day before the Apology. They were all day with people who lived in town camps or on small communities on the Barkly. They were the next group due to be put on income management and these people were traumatised by it. Speaker after speaker asked about how it could work and how Centrelink would reach their remote communities. Many thought they would have to move into Tennant Creek or Alice Springs. People complained about aged pensioners being income managed. There was great anger towards the Government and to me and other public servants there that day. Everyone thought that income management was racially discriminatory and that affected Aboriginal people should have been asked first. Some of the questions I couldn't answer and this made people angrier. Much of it was sheer frustration at the thought of having to reorganise their lives to fit in with income management and the unfairness, as they saw things, of it only applying to those who lived in a remote community or town camp. It was a very emotional and tiring day for the public servants but I can only imagine how Aboriginal people were feeling at the end of it. Many left still angry and refusing to discuss it further.

Now I was watching politicians and senior public servants handshaking and hugging Indigenous leaders on TV, as if all was forgiven and the mistreatment of Indigenous people was a thing of the past. So distraught about this, I did something very uncharacteristic of me and sent an email to the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs, Jeff Harmer AO, who had been at the Apology and to tell him how I felt. I admitted to being angry at watching him and others at Parliament House on TV celebrating the Apology while I was in Tennant Creek trying to calm angry Aboriginal people about a life changing policy being imposed on them without them having any say beforehand. I even conveyed to Jeff that I thought that eventually the Australian Government would need to apologise to Aboriginal people in the Northern Territory for the Emergency Response.

Jeff Harmer's response was characteristically swift, professional and caring. I don't want to reveal specifically what he said in response out of respect for him but he was sympathetic to the concern I had for the adverse consequences to Aboriginal people in the Territory of a set of measures being developed and imposed without involving them at all. Nonetheless, the experience at the time of the Apology was a turning point for me. Having worked in the public service for over 20 years, and at a senior level responding to instructions from Ministers, their advisers and Secretaries, I realised I had lost a sense of myself and doing what I believed was right. The Apology brought me back to my senses and to regain that sense of self and hopefully have a chance to do what I thought was right. I remained in the Emergency Response Centre when it moved to Darwin but mentally I was already preparing to leave from 13 February and returning to be the State Manager. When I did, the opportunity to do something right did come about when I was able to continue negotiations with the Anindilyakwa people to reach agreement about reforms to improve their own lives which they identified and took responsibility for. That was known as the Groote Eylandt Regional Partnership Agreement, and I am grateful to the Anindilyakwa Land Council and its supporters for giving me the opportunity to work with them on this ground-breaking initiative which did empower Anindilyakwa people, possibly for the first time since they achieved land rights and their own land council.

Finally, I want to say sorry to Aboriginal people of the Northern Territory. I am sorry not so much because of the role I played in it, but mainly because I remained in a system that made the Emergency Response permissible for such a long time. I know that it disrupted Aboriginal people's lives and they were disempowered. They were treated badly in the Emergency Response. I didn't have to do it and I could have said no. I would also like to let Aboriginal people in the Northern Territory know that I have never regretted for a second the decision I took to work with them starting in 1983, that I have regarded it always as a privilege and that I have been very lucky in my life and wish to thank them for their patience and kindness to me.

* Brian Stacey is a former senior public servant who worked in Indigenous Affairs in the Australian Government for over 30 years. For many of those years, he worked in the Northern Territory, starting as a graduate trainee in 1983, and then a field officer in Katherine and Darwin until 1989. He returned to Canberra and became the manager of the branch in the Aboriginal and Torres Strait Islander Commission responsible for helping Aboriginal people to make native title claims and looking after the Northern Territory Land Rights Act. He worked in the Northern Territory again from 2004 to 2009 as the Commonwealth's senior officer responsible for Indigenous Affairs. He left the Public Service in 2014 and no longer has any association with any government. He works on his own as a low cost consultant doing policy work for Aboriginal organisations and is on the boards of the Centre for Appropriate Technology Ltd and the Aboriginal Carbon Fund.

CSIRO moves into Indigenous territory

Photo acknowledgement NAILSMA Ltd.

The CSIRO wants to develop "investment-ready" prospectuses that can establish and sustain land-and-water-based Indigenous enterprise on Indigenous lands in northern Australia. The aim is to have one case study in each of the jurisdictions across the north (Western Australia, Northern Territory and Queensland).

But the studies and their funding, by the Indigenous Advancement Strategy (IAS), have been criticised by Aboriginal groups.

The CSIRO says it will work with communities to:

- Identify community development aspirations;
- identify and map value chains linking enterprises and markets in accordance with aspirations;
- conduct land suitability and water availability assessments in support of selected enterprises (such as agriculture, conservation, horticulture, aquaculture, carbon farming);
- map the physical (e.g. land and water development) and social (e.g. skills, other capability) transitions required to establish enterprises and best management practices to sustain them;
- identify development options based on productivity estimates and operating requirements;
- work with commercial sector experts to develop investment prospectuses; and
- draw on Austrade and other commercial networks to approach investors.

At a Northern Australia Development Conference at Cairns in mid-June, NLC Chief Executive Officer Joe Morrison questioned the role of CSIRO, and the Government's decision to fund the study ($750,000) out of the Indigenous Advancement Strategy, which is administered by the Department of the Prime Minister and Cabinet.

"Indigenous agencies have got to be in the planning wheelhouse; they've got to be able to plot the course of their own development, rather than having to negotiate with third parties which want access to Indigenous land," Mr Morrison said.

"Why, I ask, should the CSIRO be given money from the Indigenous budget to work up prospectuses for enterprises on Indigenous lands?

"Right now, the CSIRO is planning three case studies in the north – one each in Queensland, the Northern Territory and Western Australia.

"And the Department of the Prime Minister and Cabinet which administers Indigenous Affairs is bankrolling the exercise.

Why couldn't that project have gone to an Indigenous agency like NAILSMA (the North Australia Land and Sea Management Alliance), which has already accumulated a wealth of research which could underpin an exercise like that?"

Mr Morrison was the founding CEO of NAILSMA, and the current CEO, Melissa George, expressed "dismay" about the CSIRO exercise, because it covers the same ground that NAILSMA has been working on for some years.

"The fundamental difference is that our approach is ground up and driven by the aspirations of Traditional Owners. The CSIRO's project is very close to the business that NAILSMA has been progressing for some time now."

Mr Morrison told the Cairns conference that the Northern Land Council is already developing a prospectus for development on Aboriginal lands in its region.

"Further, in partnership with the Central Land Council we've established an agency called the Aboriginal Land and Sea Economic Development Agency to develop horticulture ventures on Aboriginal land in the NT.

"Then there's the NLC's new Community Planning and Development unit, which is supporting Aboriginal groups to plan and achieve their own development objectives, using their own royalty incomes.

"Indigenous people can and are doing it for themselves, but to develop their lands more broadly, they must also have access to concessional finance."

MALAK MALAK RANGERS PATROL DALY RIVER

Left to right: Travis Maloney, Aaron Green, Andrew Wellings (Fisheries), Amos Shields, Ashley Perez (Fisheries), Theresa Lemon, Matthew Shields and Reece Fuller (kneeling) at the ranger base at Wooliana (Daly River)

The Malak Malak rangers operate within the Malak Malak land trust in the Daly River area. The land trust includes the middle reaches of the Daly River.

Since 1999 with the start of the ranger group under the leadership of senior traditional owner, Albert Myoung, the main focus of their work has been the control of Weeds of National Significance, particularly mimosa.

In 2013 the Fisheries Department began training the rangers in Fisheries compliance, in readiness for some rangers gaining Fisheries Inspector powers. A vessel was lent to the rangers to be able to get out on the river and continue their training.

Over the last few years all the Malak Malak rangers have completed their coxswains training and now hold Inshore Coxswain tickets. Additionally, all the rangers have also completed Certificate II Fisheries Compliance training and one ranger is undertaking the Certificate III Fisheries Compliance training.

In 2015 the rangers purchased two boats and were able to hand the Fisheries Department boat back. These new vessels have greatly increased the capacity of the group to be able to conduct further joint patrols with the Water Police and Fisheries as well as involvement in studies and research on the river.

Wet season mimosa control on the river banks is also now possible. It is also hoped that in the future the rangers could also be involved in crocodile management on the river.

Skills Master Video Project, Malak Malak Rangers

Getting chased by buffalo, flying in helicopters, getting enough sleep, and having clean uniforms you can take pride in were just some of the topics covered by Malak Malak Rangers Rob Lindsay, Aaron Green, and Theresa Lemon in their recent interviews for the NT Department of Education's 'Conservation Land Management' video project.

The rangers took part in the Skills Mastery Video Project, a series of eight industry films aimed at helping Indigenous school leavers and VET students to get 'work ready' and understand the expectations of entering the workforce. The rangers were interviewed at the Darwin NLC office about their work: what keeps them motivated, their everyday routines and activities, and what goals they would like to pursue in their future careers.

This footage, along with some action footage to be taken at the Ranger base at Daly River, will be cut together to make a fifteen minute short film which will be available through the NT Department of Education and on the internet towards the end of the year. This is just one of the projects the Caring for Country branch are taking part in this year to help encourage Indigenous youth to get involved in ranger work.

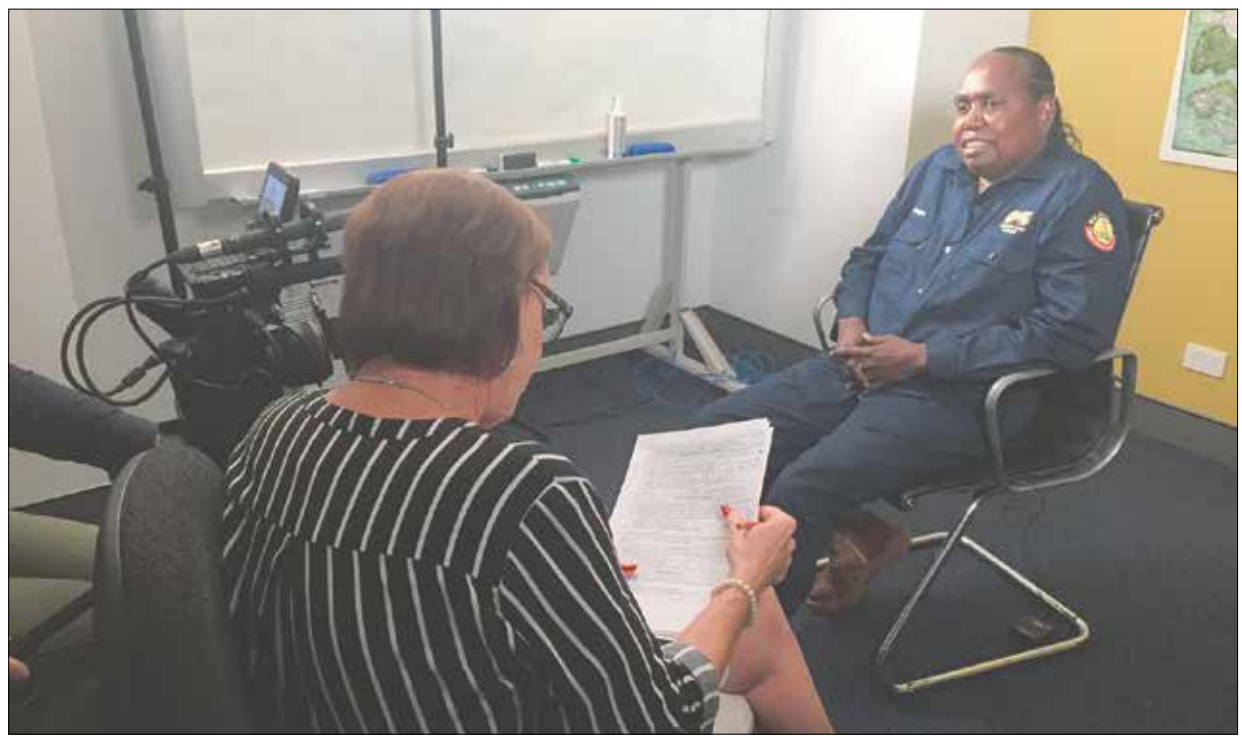

Photo: Malak Malak Ranger Theresa Lemon being interviewed by Bindi Other-Gee for the NT Department of Education Conservation Land Management Skills Mastery Video.

Judbarra/Gregory National Park Joint Management Annual Camp

Holding an annual country camp is a founding principle of the Joint Management Partners of the Judbarra/Gregory National Park. This year's camp was held at Paperbark Yard in the south of the park. This part of the park is within the Central Land Council region, and provides a great opportunity for Traditional Owners from both NLC and the CLC region to get together.

Camp highlights include Joint Management meetings and workshops, as well as time spent on country with family members both young and old. A tourism workshop allowed Traditional Owners to discuss ideas for tourism related enterprises. Conversations were also held regarding proposals to muster and sell feral animals from within the park, which TOs hope will generate jobs and economic opportunities. Parks & Wildlife service rangers updated the Traditional Owners on park management programs for 2017/18, and undertook a planning session to review and prioritise the implementation of the Plan of Management for the final half of its 10 year time-frame.

Lorraine Jones presents to group

A planning session for the women

Wilemena Johnson presents to group

THREE NEW COMMUNITY DEVELOPMENT PROJECTS UNDERWAY

It has been a busy and exciting time for the NLC's Community Planning and Development Program, with the first three community development projects approved by Traditional owner groups. These projects have initiated strategic partnerships with locally recognised and trusted organisations.

The Malak Malak Traditional Owners on the Daly River over recent years decided to allocate more than $170,000 to community projects. This comes from income they receive from their intertidal fishing zone agreement with the Northern Territory Government. The group has been working with the Northern Land Council through the eight step community planning process, and in June approved their first two projects. The first project involves support for funerals. They will also partner with the NLC Malak Malak Ranger group to hold two culture camps on country for families, where elders can share their traditional knowledge with younger people.

"I am looking forward to going to the culture camp, to maintain connection to our country, language and culture, sharing with our Elders and family. This is our university and our library. Education is knowledge, and knowledge is power" said Sheila White, Malak Malak Traditional Owner.

Further up in NE Arnhem Land, the Gupapuyngu-Liyalanmirri group has also approved its first project, after allocating more than $400,000 to community projects from income it receives from Section 19 leases in Gapuwiyak township. The first project will be to set up and manage a benevolent trust with assistance from Arnhem Land Progress Association. This is part of a longer term plan that will allow this group to engage in business opportunities, with the aim of providing training and jobs for local young people.

The NLC's new Community Planning and Development Program now supports five pilot projects across the Top End, working with Traditional owners in the Daly River area, Ngukurr, Gapuwiyak, Galiwin'ku and the South East Arnhem Land Indigenous Protected Area. Endorsed by NLC Full Council in November 2016, the program aims to help Aboriginal people to drive their own development and secure benefits from their land, waters and seas, using income they receive from land use agreements. Traditional owners are showing strong interest in the program, seeing it as a way they can achieve their own development objectives, based on their priorities, knowledge and experience.

Clancy Guthijpuy and Edna Gawudu discuss the joint venture idea, with Jimmy Marrkula looking on, Gapuwiyak 2017.

Gordon Marrkula explains the benefits of partnerships, Gapuwiyak 2017.

Malak Malak Traditional Owners discuss their ideas for community projects, March 2017.

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