NORTHERN LAND COUNCIL

Northern Edition

LAND RIGHTS NEWS

Our Land, Our Sea, Our Life

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HOUSING IN CRISIS

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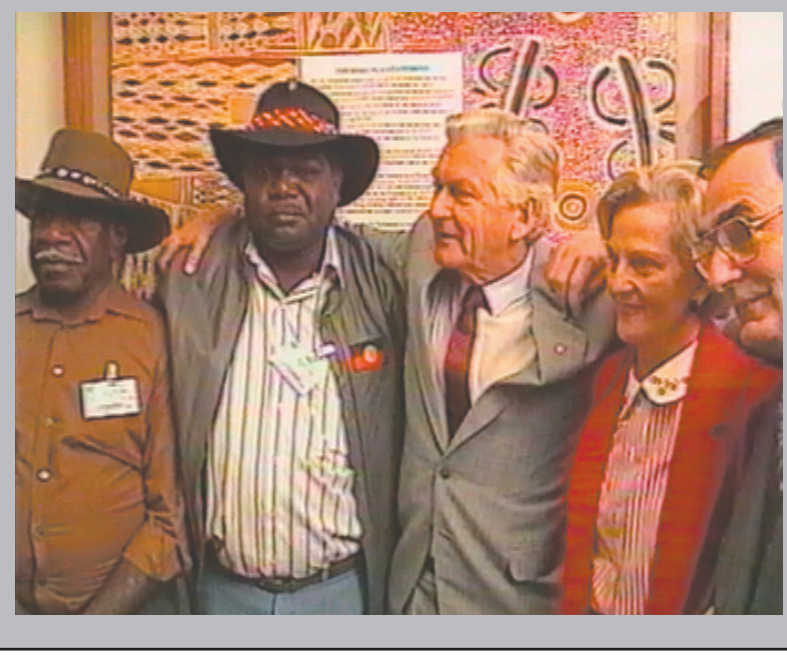


A WORD FROM THE CHAIR

Welcome.

This is shaping up to be another momentous year for the Northern Land Council.

On 23 March in Alice Springs, I gathered with NLC staff and representatives of the other three Northern Territory Land Councils (see photo below) to open discussions with the Northern Territory Government about a treaty between the Government and Aboriginal peoples of the Northern Territory.

The meeting was called by Chief Minister Michael Gunner, in response to moves early this year by the four land councils to advance a Treaty. Mr Gunner himself proposed a treaty soon after his election in August 2016, and he was joined in Alice Springs by Aboriginal MLAs Selena Uibo and Chansey Paech.

The meeting decided to establish a Treaty Working Group to draw up a Memorandum of Understanding covering the principles, consultation process and roadmap leading to a treaty. Selena Uibo and I have taken turns to chair the Treaty Working Group, which has met four times.

The negotiations with the government have been conducted cordially, professionally and in good faith. The result is an MoU which will be signed at Barunga Friday 8 June, the first day of the 2018 Barunga Festival. The four land councils will have been meeting at Barunga separately and together over the preceding four days.

The MoU also provides for the appointment of an independent Treaty Commissioner (an Aboriginal person yet to be selected) who will guide consultations with Aboriginal people across the Territory.

I thank the Chief Minister for his leadership and personal commitment to advancing a treaty. Mr Gunner has written about that commitment on the opposite page.

The signing of the MoU at Barunga will have special significance – this festival will mark the 30th anniversary of the 1988 Barunga Festival when the chairs of the Northern and Central Land Councils presented Prime Minister Bob Hawke with the Barunga Statement, which is now on display at Parliament House in Canberra.

The Barunga Statement is the subject of a special exhibition over the next two months at Parliament House, supported by the Australian Institute for Aboriginal and Torres Strait Islander Studies. In this edition of *Land Rights News*, we devote four pages (15-18) to the Barunga Statement and the exhibition.

Over the past few months I have continued to press for improvements to the sorry state of housing in remote Aboriginal communities, especially at Elliott and Yarralin. Both those communities have been crying out for new houses for far too long, but finally we are seeing some progress by governments. The announcement by the Commonwealth Government that it will provide $550 million for remote housing in the NT over the next five years, beginning next financial year, was most welcome. The money will match a similar commitment by the Northern Territory Government.

Most unwelcome has been the recent decision of the North Australian Aboriginal Justice Agency (NAAJA) to withdraw from the Aboriginal Peak Organisations Northern Territory (APO NT).

APO NT was formed nearly eight years ago, to provide effective responses to issues of joint interest and concern affecting Aboriginal people in the Northern Territory, including providing practical policy solutions to government.

APO NT's original membership comprised the Northern and Central land councils, the Aboriginal Medical Services Alliance Northern Territory (AMSANT), the Central Australian Aboriginal Legal Aid Service (CAALAS) and NAAJA.

Under most unfortunate circumstances, NAAJA this year absorbed CAALAS, reducing the APO NT membership to four.

Now that NAAJA (without any Central Australian representation on its board), has withdrawn, the APO NT membership is now three.

The NAAJA decision is most regrettable. Our common interests are not served by division and independent, uncoordinated action.

Finally, I record my deep sadness at the passing of two outstanding Aboriginal men, each highly accomplished and respected.

Mr Balang TE from the Nugkurr region was a talented and vibrant artist and entertainer who, through many productions and films, celebrated Aboriginal tradition and culture.

Mr Griffiths, born at Victoria River Downs Station, was a law boss of the highest order, a fierce defender of land rights and culture, and a talented artist who was a many-times finalist in the Telstra Art Awards. Mr Griffiths gave evidence in the Timber Creek and Jasper Gorge/Kidman Springs land claims and the Timber Creek Native Title claim.

All of us at the Northern Land Council mourn their passing.

SAMUEL BUSH-BLANASI

Chairman

The four NT land councils meet with the NT Government in Alice Springs to discuss a treaty between the government and Aboriginal people. From left, David Ross (Director, Central Land Council), Josie Douglas (Manager Policy, CLC), Chansey Peach MLA, Sam Bush-Blanasi (Chairman, Northern Land Council), Joe Morrison (CEO, NLC), Murray McLaughlin (Manager Policy & Communications, NLC), Mischa Cartwright (Office of Aboriginal Affairs, NTG), Selena Uibo MLA, Chief Minister Michael Gunner, Alf Leonardi (Chief Minister's Chief of Staff), Edwina Spanos (Office of Aboriginal Affairs, NTG). Representatives of the Tiwi and Anindilyakwa Land Councils joined the meeting by telephone.

Chief Minister backs Treaty

On Friday 8 June, the first day of the annual Barunga Sport and Cultural Festival, the four Northern Territory land councils and the Northern Territory Government will sign a Memorandum of Understanding about how a treaty between the government and the NT's Aboriginal peoples will progress.

This year's Barunga Festival will mark the 30th anniversary of the presentation of the Barunga Statement (see pages 15-18) to Prime Minister Bob Hawke, who then promised a treaty with Australia's Aboriginal peoples. A Treaty never eventuated; the Barunga Statement has been on display at Parliament House, Canberra, since 1991.

Following the NT election in August 2016, the new Chief Minister, Michael Gunner, made a commitment to open discussions about a treaty. He established an Aboriginal Affairs sub-committee of Cabinet, whose priorities included advancing a treaty.

An historic meeting of the land councils and government representatives in Alice Springs on 23 March decided to establish a Treaty Working Group which has met four times since to develop the MoU.

Demonstrating his personal commitment to a treaty, the Chief Minister has written the following essay for *Land Rights News*.

Michael Gunner

By Michael Gunner

Over several months in late 1928 groups of men and police officers on horseback attacked Aboriginal camps on Coniston Station, north-west of Alice Springs.

More than 60 Aboriginal men, women and children were slaughtered in what became known as the Coniston Massacre.

On the 90th anniversary of the massacre – in August – I will travel to Coniston and alongside Traditional Owners pay my respects to the Aboriginal men, women and children who died for their country, for their families and their way of life, and to the victims of other massacres of First Australians.

There has been an undercurrent of injustices against Aboriginal people over generations that are not commemorated, acknowledged or shared.

I have thought a lot about this.

Growing up in the Territory I witnessed close-up the cycles of disadvantage and despair in Aboriginal communities that I believe are directly linked to the trauma of Aboriginal dispossession.

I want injustices that have caused intolerable suffering, such as the Coniston Massacre, to be acknowledged through an unprecedented Treaty with Aboriginal people that tells the truth of history.

Truth-telling must be an important part of a uniquely Territorian Treaty that offers a new way, one that makes all Territorians equal and delivers recognition, reconciliation, respect and reparation, and will empower Aboriginal Territorians.

A Treaty and my Government's Local Decision Making Initiative offer the biggest structural reforms in the Territory's Aboriginal communities since the Territory's self-government in 1978.

My government and the NT's four land councils will sign a Treaty Memorandum of Understanding (MoU) at the Barunga festival in June.

The Treaty will emphasise my Government's commitment to local decision-making and empowerment and help ensure that land and sea ownership delivers the economic and social aspirations of Aboriginal Territorians.

Illustration © Nick Bland

It will be the cornerstone for the Territory's future where everyone reaps the rewards of our economy and lifestyle.

It will serve as an overarching roadmap of how Aboriginal people and the NT Government work together, stipulating rights and responsibilities for all.

I also see it as long lasting – beyond political change – and setting the foundation for real and practical reconciliation, stronger communities and ultimately a stronger Northern Territory.

For far too long Aboriginal people have not been part of our mainstream, our conversations or even the history lessons learnt in our schools, although almost half of our land mass and 80 per cent of our coastline are under Aboriginal control.

Almost one third of our population is Aboriginal.

As I said in the Jabiru Statement of 26 August 2017 the Northern Territory is the cultural heart of Australia, enriched with the oldest living culture where traditional ceremony, lore, language and governance are practised today as they have been done for more than 65,000 years.

The Territory is still – as it always was – Aboriginal.

Developing the Treaty will take time, involving open discussions, initially with Traditional owners who make up the NT's four Aboriginal land councils, then with other Aboriginal organisations and people in Aboriginal communities.

There are many examples of agreements between Indigenous people and governments, both in Australia and overseas, including New Zealand's Treaty of Waitangi, written in 1840.

Listening to people on the ground about what is important to Aboriginal people will be key part of how the Territory's Treaty will evolve.

It will need the support of Aboriginal Territorians.

While the land councils will be integral to the Treaty consultations it will be important for all Aboriginal Territorians to have the opportunity to be heard.

We will also need to bring non-Aboriginal Territorians along with us on this journey.

The Treaty may need to be tailor-made to be relevant to the lives of Aboriginal people from different communities, places and regions.

This may mean more than one treaty – we want to hear from Aboriginal people about what fits their needs and the needs of their communities.

I would like to see the Treaty supporting Aboriginal language and culture in practical ways.

How to do this could be very different from place to place.

At a minimum a Treaty should include an acknowledgement of the Territory's First Nation's people and their deep connection to their ancient lands, as well as the contributions Aboriginal people have made to our society, culture and prosperity.

I also believe the Treaty should be binding on all the signatories, including the NT Government, ensuring it delivers practical outcomes in our Aboriginal communities.

The Anindilyakwa Land Council on the Groote archipelago has indicated it wants the NT Government's Local Decision Making Initiative – part of a 10-year strategy to transfer, where possible, government service delivery to Aboriginal people – to be underpinned by a binding agreement that will survive cycles of government and personnel and policy changes.

Anindilyakwa Traditional Owners want to take control and responsibility for their communities and housing and have detailed their priorities.

I would like to see this happening in other communities under the Treaty.

The Government has the ability to provide reparation for past injustices and for Aboriginal land and resources.

Rather than a one off reparation this could be an ongoing, living Treaty where Government transfers resources and Aboriginal people take responsibility for local decision-making.

I see it as Aboriginal Territorians proudly taking control of their own lives, allowing them to oversee the development of their own vibrant communities in a way that fits their culture, traditions and aspirations.

For example, under the Treaty it could be agreed the Government provides money for education and the community takes responsibility for how it is delivered locally.

Locals could take control of the curriculum – from bilingual education to culture.

Locals could take control of children attending school, for teachers to be employed and seeing even more locals becoming being teachers.

Or if the Government allocates money to build houses I think it should be the community's responsibility they are built by locals, so that the local community reaps the benefits of jobs and skills training, not southern contractors.

The Treaty MoU will be signed at the Barunga festival, on the 30th anniversary of the day Aboriginal leaders presented former Prime Minister Bob Hawke the Barunga Statement, which called, in part, for a treaty that included Aboriginal self-management, an end to discrimination and the granting of full civil, economic, social and cultural rights.

It is disappointing the Commonwealth has failed to act on the aspirations of Traditional Owners espoused in the Barunga statement that hangs on permanent display at Parliament House in Canberra.

I am disappointed Prime Minister Malcolm Turnbull has not embraced the Uluru Statement from the Heart, created last year after Indigenous-only dialogues and a constitutional convention at Uluru, which called for a truth-telling and treaty process, and recommended the establishment of a representative body that gives Aboriginal and Torres Strait Islander First Nations a voice in the Commonwealth Parliament.

But as the Uluru Statement remains in limbo on the national stage the NT Government stands ready to negotiate a Northern Territory Treaty with Aboriginal Territorians without the Commonwealth's involvement.

It won't be easy. There will be much work and many hurdles to overcome.

But everyone sitting at the table will be there as equals.

I would like to finish this article for *Land Rights News* by pointing out that no charges were laid against those responsible for the Coniston Massacre.

The killers claimed they were acting in "self-defence" after the murder of Fred Brooks, a white dingo trapper, on 7 August 1928.

According to the National Museum of Australia, Jack Saxby, a civilian who was among the attackers, told a later Board of Enquiry: "I have had occasion to shoot at blacks before this trouble. I have had to shoot to kill."

I believe it is important the history of the co-existence of First Australians and new Australians – both good and bad – is known.

The Aboriginal victims of Coniston and other massacres and injustices should not be forgotten.

This will help us all move together as equals into a brighter future.

With the signing of the Treaty MoU at Barunga we are taking a significant first step.

HOUSING IN CRISIS

Nearly 200 delegates from 62 organisations across the Northern Territory and Australia, including from many remote areas, attended the Aboriginal Housing Forum from 7-9 March 2018 in Darwin to discuss Aboriginal housing issues.

Three years after the first landmark forum, the forum heard of overcrowding and housing shortages, the need for a return to community owned and controlled Aboriginal housing, the need for a peak Aboriginal housing body, and a call for certainty around federal government funding set to expire on 30 June.

Members of the Aboriginal Housing NT Committee at the housing forum. Back row: Yananymul Mununggurr, Alan Mole, Rick Fletcher, Samuel Bush-Blanasi, Chris Neade and Tony Jack. Front row: Barbara Shaw & Maxine Carlton. Absent: Ross Williams, Matthew Ryan, Brian Pedwell, Annunciata Williams, Tobias Nganbe, Tony Wurramarrba, David Guy and Graham Castine.

Overcrowding and housing shortages

Delivering the keynote address, co-chair of the Aboriginal Housing NT (AHNT) Committee, Barbara Shaw, described Aboriginal housing as "a national emergency".

"We are all here because Aboriginal housing in the Northern Territory is in crisis. Housing shortages in remote NT Aboriginal communities have reached critical levels – homelessness in the Territory is 15 times the national average," she said.

"For our people on the ground, this means children living in houses with 20 other people, elderly men and women camping around billabongs and people with disabilities sleeping on kitchen floors. Tents pitched on verandahs during monsoonal rains."

"If only those people [ministers/public servants] could live in our homes then they would understand," she said.

Associate Professor Lawurrpa Maypilama presented on her research, "Growing up children in two worlds," which followed families in Galiwin'ku over six years from 2013 to 2018. She said housing insufficiency, insecurity and inadequacy presented immense challenges for raising children, leading to lack of food security, shared sickness, disturbed sleep and conflict, where arguments over roles and responsibilities as well as access to scant resources can lead to stress.

Overcrowding also meant children copy the behaviour of those around them such as picking up bad language or not attending school. One mother told her: "Because there is lot of relatives living in one house…like lot of influences from other kids towards my kids…. sometimes I give them bath, breakfast, feed them then…let them catch the bus to school. But the other kids are staying in the house, if their parents don't get them to school, my kids see that and don't want to go…"

"I grew my children up in other people's house. My children have children – still in one house," she said.

Community control

Delegates agreed that good housing starts with community control and said government policy was the greatest barrier to establishing community housing organisations.

With the rolling out of the Northern Territory Emergency Response (the Intervention), the Federal Government compulsorily acquired five-year leases over 73 prescribed communities in the Northern Territory. After a High Court decision, the Government was forced to pay rent for government assets on Aboriginal land.

That compulsory acquisition of leases resulted in reduced control, loss of Aboriginal employment and a shift from community-controlled to public housing.

"Over the last decade, there has been a significant change in the way Aboriginal housing is delivered and managed," said Barbara Shaw. "During the 1970s and 80s, many Aboriginal housing organisations were set up to manage housing in communities as part of the push for self-determination."

"However, following the Intervention, in 2007 the Australian Government began to roll out its secure tenure policy and community-controlled housing was replaced with a public housing model. These changes brought about little improvement to housing conditions, and resulted in a loss of jobs, access to training and much needed economic income for Aboriginal organisations and communities."

As it stands, there is just one registered Aboriginal Community Housing Provider in the entire Northern Territory, Central Australian Aboriginal Housing Corporation (CAAHC).

Walter Shaw is the CEO of Tangentyere Council, a founding member of CAAHC. He told the Forum when CAAHC took over housing delivery last June from private non-Aboriginal for-profit company, Zodiac Business Services, rent arrears were at 80 per cent. Since being returned to CAAHC, only four households are in arrears.

Mr Shaw stressed the need to revisit a community-housing model saying, "we can move beyond public housing. We can deliver improvements in health outcomes.

"Housing, self-determination and community control are fundamental rights. Bureaucracy needs to step aside and allow us to take control of issues in housing."

The housing forum called on the NT Government to work collaboratively with AHNT and APO NT to develop regional and local housing models, and to return control of all housing functions in a staged approach, to Aboriginal community-controlled organisations.

Presentations reaffirmed the strong evidence that quality housing underpins good health, education, employment, child development and social justice and that improving housing is essential in achieving the national Closing the Gap targets.

Federal Government Funding

While delegates welcomed the long-term commitment of the Northern Territory Government to set aside $1.1billion over the next 10 years for Aboriginal housing in the NT, it called on the Australian Government to shoulder its responsibility to fund remote Aboriginal housing on a needs basis.

The forum called on the Australian Government, as a matter of urgency, to make clear its commitment to Aboriginal housing from 1 July 1 2018, when the funding committed under the National Partnership Agreement on Remote Indigenous 2 Housing (NPARIH) ceases.

Indigenous Affair Minister Nigel Scullion has since confirmed it will match $550 million in funding for remote housing in the Northern Territory over the next five years.

Next steps: A peak Aboriginal Housing Body

High on the agenda was the establishment of a peak Aboriginal housing body, and it came one step closer when Chief Minister Michael Gunner expressed his support while addressing the forum on its second day.

With appropriate funding and support, Aboriginal Housing NT will now work with Aboriginal Peak Organisations NT to devise a process and strategy for the development of a peak body with membership to include Aboriginal housing service providers.

Membership of the peak housing body will be modelled on the Aboriginal health sector with organisational members, associate members and individual members. And will work on policy development, advocacy, and commission research and development as required.

"Our health will improve with better housing"

Wadeye in the 1970s

In the Aboriginal community of Wadeye, 400km south west of Darwin, an average of 16 people live in one house. While this is a slight reduction from five to six years ago, overcrowding and housing shortages affects affect all aspects of life.

"I feel the pain. Reality is about me and my grandkids. The agenda of this meeting is about me and my grandkids," Tobias Nganbe, managing director of Thamarrurr Development Corporation (TDC) told the NT Aboriginal Housing Forum. "When people have good houses, kids will go to school and become healthy, Aboriginal people that can do things for our mob. Our health will improve with better housing."

TDC is a not-for-profit corporate entity owned by members of the Wangka, Lirrga and Tjanpa peoples of the Thamarrurr region providing housing to the Wadeye.

Sharing photos with delegates in the 1960s and 70s of local fellas building houses with local timber, Tobias Nganbe said: "Those were the days where our people worked and really enjoyed doing work. They were proud of building those houses," he said.

"And seeing that tells the story that old people, who build those houses, have got kids now back home who have got the genes of working and we've got to use that. We've got to encourage the young people, tell them your father did that, your grandfather did that. That's what we're doing now today."

Today, local Aboriginal people make up 75 per cent of the TDC workforce on refurbishments and 46 per cent on new builds. They work with local people, with government and with other contractors like Sitzler to build and maintain good housing in Wadeye.

Scott McIntyre, general manager of TDC says when you add up everything that TDC is doing, what it really boils down to is that TDC cares.

"The benefit of having a local business doing the work is that we care," he said. "Outside businesses come in and they don't care and that's why it's important to have local people."

Yet the challenges to remain competitive with private enterprise are immense, including running to the NPARIH (National Partnership Agreement on Remote Indigenous Housing) schedule to get repairs done by 30 June, or risk getting fined.

"You've got to go so fast. We lose a lot of fellas because it's hard for qualified tradies to train the local fellas and do a decent job with them [in the short timeframe].

As at December 2017, TDC had fixed 49 houses in the previous 9 months, averaging round 11 houses every month. Since April 2018, they have been working on another 49 houses. "Think about that for a minute; 11 houses in a month getting fixed, month after month after month. And in doing that we have over 50 per cent local fellas on the job."

"Although there are still a lot of locals working on the jobs it is harder to retain them when we are running to these short timelines."

"Some of the realities of it meant we had to go flat out to fix these houses. We couldn't just take our time and do it steady."

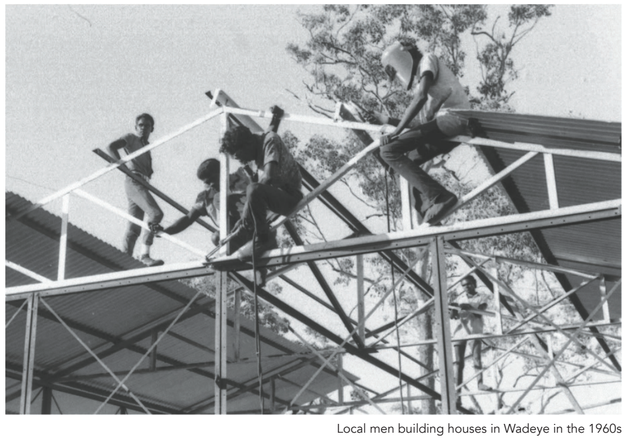
"Those were the days where our people worked and really enjoyed doing work. they were proud of building those houses."

Tobias Nganbe, managing director of Thamarurr Development Corpoation

In future, TDC wants to be able to build houses outside of Wadeye to help people move people back to country, and invest in alternative technology like solar and drones.

"As a business for the future, we've got to be a smart business. Yes we're an Indigenous business in Wadeye but we're still business. And business has to be smart, business has to innovate and think ahead," says Mr McIntyre.

"We're talking about local decision making to ensure Aboriginal people are in front making the decisions."



Local men building houses in Wadeye in the 1960s

Government Considers Change to Pastoral Land Bill

The Northern Territory Parliament's Economic Policy Scrutiny Committee has recommended that the Government consider options for better protecting the rights of native title holders – such as through a right to negotiate – when consideration is being given to granting permits for non-pastoral uses to leaseholders, under the Pastoral Land Act.

The Government introduced the Pastoral Land Legislation Amendment Bill into the Legislative Assembly on 18 October 2017. Among other measures, the Bill allows for sub-leases to be registered as security on the title of a pastoral lease.

The NLC has argued that the sub-lease provisions would offend the rights of native title holders because they would give lasting financial benefits to pastoralists, and native title holders would not have a right to negotiate.

The rights of native title holders are already diminished, as a result of amendments to the Pastoral Land Act by the CLP government in 2014. Those amendments had three purposes:

- To extend the term of a grant for a non-pastoral use permit from five years to 30 years.
- To issue that permit to the property rather than the lessee, so it was able to be registered with the title.
- To amend the allowable uses for a non-pastoral use permit to align with those in the Native Title Act changes of 1988 (forestry, aquaculture, horticulture and agriculture).

The Pastoral Land Board has since granted 17 non-pastoral use permits (see table below).

When the 2014 amendments were made, the allowable uses for sub-leases in the Pastoral Land Act were not also changed, which means that subleases in regulations are still limited to the uses described in the original Act (infrastructure activities and pastoral use).

The NLC did not challenge the 2014 amendments when they were introduced. CEO Joe Morrison told the Economic Policy Scrutiny Committee, when it sat in February to consider the new Bill, that he was not in the job when the CLP government introduced the amendments, and that it was "a matter of personal regret that the Northern Land Council did not rise up to oppose the legislation".

Mr Morrison told the committee that the Bill was "a step too far".

"The rights enjoyed by native title holders are already fragile enough, especially because of the Howard government's 1998 amendments to the Native Title Act, otherwise known as the '10 Point Plan'," Mr Morrison said.

"The bill entrenches the Howard amendments because native title holders will not have a right to negotiate or a say if a pastoralist wants to create a sublease that will have a lasting effect on native title holders' rights, whose ancestors have lived on those lands for tens of thousands of years.

"What we are seeking is for native title holders and pastoral leasees to have a say in the development at subsequent grant of any non-pastoral use permits or subleases."

"What we are seeking is for native title holders and pastoral lessees to have a say in the development at subsequent grant of any non-pastoral use permits or subleases."

The Department of Environment and Natural Resources, which is sponsoring the Bill, told the Economic Policy Scrutiny Committee that the sublease provisions in the Bill are intended to encourage diversification of the pastoral estate.

"This can occur now if the lessee seeks a non-pastoral use permit, but that lessee cannot then enter into a corresponding sublease agreement that is registered on the title," the Department's CEO Jo Townsend told the Committee.

"The effect of that is you may want to enter into a sublease for a certain type of activity—whether it is an agricultural development—but pastoralists may say they want someone with some expertise to take that on as a sublease. The person taking that on would ideally like that to be part of registration on the title, recognised on the title so they can use it for financing purposes," Ms Townsend said.

The Economic Policy Scrutiny Committee delivered its report in March.

In concluding comments relating to native title rights, the committee noted that permitting forestry, agriculture, horticulture and aquaculture under a sublease has the potential to increase non-pastoral use of pastoral use of pastoral land, which may affect the rights of native title holders.

"The Committee further notes the Northern Land Council's view that the minimum procedural requirements under the NTA that apply to the granting of permits for non-pastoral primary production purposes on pastoral land do not allow for sufficient consideration of the rights of native title holders before such permits may be granted.

"The Committee considers that the processes for effectively managing co-existing rights and interests of native title owners and leaseholders when considering permitting non-pastoral uses should be given further consideration."

The Government has accepted the Committee's recommendation. It's proposing to proceed to legislate those elements of the Bill which don't affect native title matters, such as changing the methodology for rental fees across the estate and allowing for the appointment of additional members to the Pastoral Land Board.

The Government is now seeking input from the Northern Territory Cattlemen's Association and Land Councils about how to implement the recommendation of the Economic Policy Scrutiny Committee to better protect the rights of native title holders.

Table: Non-pastoral use permits

Station	Purpose	Area applied for / approved	Lease size	% of lease
Tipperary	Irrigated Agriculture - Poppies	8km² (8000 ha) / 8 km	2070 km²	.39%
Curtin Springs	Tourism - walking tracks and papermaking Helicopter tours	Not specified		
Narwietooma	Tourism - campground, bush camping, bird watching, 4wd tours and access to climb Mt Zeil	4207 ha (42.07 km²)	1407 km²	1.61%
Banka Banka West	Tourism - campground & kiosk	7.8 ha (0.78 km²)	1407 km²	.01%
Bullo River	Tourism - guesthouse accommodation and station tours	1627 km²	1627 km²	100%
Undoolya	Horticultural - rotating onion and cover crop	3.4 km² (345 ha) / 3.45km² (345 ha)	1444 km²	.24%
Flying Fox	Tourism - accommodation	1ha (0.1km)	895 km²	<0.00%
Neutral Junction	Agriculture or Horticulture	90 ha (0.9 km²)	4609km²	.02%
MacDonald Downs	Station Store - Redgum Station Store	17.4 ha (0.174 km²)	2069km²	.01%
Mount Keppler	Agriculture - Rice production	280 ha (2.8 km²)	225km²	1.24%
Tipperary	Agriculture - Commercial Hay production	148.34km²	2100km²	7.06%
Tipperary	Agriculture - Mango Orchard	.80km²	2100km²	.04%
Ambalindum	Tourism - homestead stay, campground, nature experiences, cafe and events	5km²	3317km²	.15%
Mary River East	Tourism - safari hunting, game viewing and photography guided tours	50,000 ha (500 km²)	1342km²	37.26%
Scott Creek	Agriculture - hay, silage and grain	8000 ha (8km²)	1070 km²	37.26%
Legune	Aquaculture - prawn farm	3820 ha (38.2km²)	1788km²	2.14%
Mainoru	Tourism	0.5 ha (.005km²)	1315km²	<0.00%

CATTLEMEN ATTACK ABORIGINAL RIGHTS

The Northern Territory Cattlemen's Association has attacked the recommendation of the Economic Policy Scrutiny Committee that the NT Government should legislate to give native title holders a right to negotiate when pastoralists are seeking permits for non-pastoral use of the land which they lease from the Crown.

The NTCA has also attacked the proposal by the NT Government to negotiate a treaty with Aboriginal people, and attacked the Northern Land Council's CEO, Joe Morrison, for a speech he gave last year at a northern Australia development conference; further, the former president of the NTCA has accused the NLC of having adopted a "bullying approach".

The NLC told the Economic Policy Scrutiny Committee in February that it wanted a legal right to be recognised in the *Pastoral Land Act* which would give native title holders "a substantive say and involvement in the grant of any non-pastoral use permit or sub-lease so that they could also benefit from new economic activities on their lands".

In his evidence to the Committee, NTCA Chief Executive Paul Burke said it would be "misplaced" to "complicate the Pastoral Land Amendment Bill with native title law".

On the eve of the NTCA's annual conference in Alice Springs in late March, just after the Committee had handed down its report, Mr Burke wrote in the *NT News*: "With the Pastoral Land Act Amendment Bill limping out of the Economic Scrutiny Committee, the amendments appear heavily weighted to appease the Northern Land Council.

"The Northern Territory Government has continually committed to encouraging economic development, yet administrative changes to the *Pastoral Lands Act* to enable the same to the benefit of all Territorians is at risk of coming with further impediments to diversification and investment," Mr Burke wrote.

At the NTCA's annual conference, outgoing President Tom Stockwell went much further in his farewell speech.

"I'm concerned for all Territorians at the continued concentration on rights and acquisitions and power, rather than quality of life as evidenced by the public announcements by the NLC recently, calling for such things as the decolonisation of Northern Australia, native title holders becoming landlords of the pastoral estate, wanting seats on the pastoral land board and the like," he said.

Mr Stockwell was referring largely to a speech by NLC CEO Joe Morrison in June last year at the annual Developing Northern Australia Conference.

"Since the passing of the Northern Territory *Land Rights Act* in 1976, the North has been engulfed in political conflict about the rights and capacity of Indigenous people to own, manage and live on their traditional country," Mr Morrison told the conference.

"It has been a grim history of opposition to Indigenous rights by the mining and pastoral industries and southern Australian political power committed to continuing the structures of northern Australian settler colonialism.

"It has been an ideological war waged against Indigenous society to maintain the power structures of colonial subjugation so that wealth can be extracted from the North in a manner blindly entrenched since the nineteenth century. The simple truth is, 'you reap what you sow'.

"Whilst Indigenous people have consistently won court battles concerning the recognition of our common law rights and determinations through statutory land claim processes, those victories have not translated into public policy and institutional reform required to decolonise northern Australia and to ensure that development is inclusive of the majority permanent population.

"For the sake of sustainable development and reliable prosperity for those who live in the North there comes a time when this ideological war must end. I hope that time is now."

Mr Morrison also floated the idea for governments to transfer the ownership of pastoral leases from the Crown to native title holders – "who can then lease them with clear conditions for use."

"This would be a major transformational change which could guarantee income for many traditional owner groups as well as structurally embed Aboriginal people into the economic and political institutional fabric of the North," Mr Morrison said.

To the NTCA conference, Mr Stockwell said, "More worrying is the NTG response to this apparently bullying approach."

He then went on to criticise the government's proposal to negotiate a treaty with Aboriginal people in the Northern Territory.

"Aboriginal rights and land ownership have been recognised and legislated and compensated for through the *Aboriginal Land Rights Act*, which originally had an aim of acquiring 25 per cent of the Northern Territory, has now acquired 48 per cent of the Northern Territory and 80 per cent of the coastline. If the banks and streams and intertidal zone claims go through, it'll be 92 per cent or so," Mr Stockwell said.

"The *Native Title Act* which has appropriate mechanisms in place to address future acts and opportunities, the *Sacred Sites Act*, the *Aboriginal Reconciliation Act*, and we could go on.

"So, I just wonder what a treaty would mean. Why would the Northern Territory Government go there, and what further arrangements for pastoral property rights would be sold off with it, how much investment is it going to scare away, and why isn't this a discussion we're having for all Territorians?

"Importantly, given our recent history, what chance is it of making any substantive difference to the lives of all Aboriginal people?

"Surely this incipient era of separatism and division should be consigned to the bin of history, and some optimistic common goal for all the NT be envisioned by our democratically elected parliament where they can put a vision and a way forward for all Territorians.

"So whilst the 48 per cent of Aboriginal land is still exempt from billions of dollars in tax and royalty dollars annually, the pastoral estate creates nearly one billion dollars a year from the 47 per cent. "Private farmers have to pay handsomely to buy a pastoral lease with individuals and companies investing four to five million dollars in capital to enable production to occur.

"Only one of these models is sustainable."

Mr Morrison said these comments are mischevious and don't represent the average cattleman in the NT

Closing the gap 'refresh': the NLC's submission

The Northern and Central land councils have made a joint submission to the Federal Government's "Closing the Gap Refresh" program.

The Council of Australian Governments (COAG) launched its Closing the Gap program in December 2007, soon after the election of Prime Minister Kevin Rudd. Agreeing to a partnership between all levels of government to work with Indigenous communities to achieve the target of closing the gap on Indigenous disadvantage, COAG committed to:

- closing the life expectancy gap within a generation;
- halving the mortality gap for children under five within a decade; and
- halving the gap in reading, writing and numeracy within a decade.

A communique at the time said COAG recognised the pathway to closing the gap is inextricably linked to economic development and improved education outcomes.

Seven targets are now set, and only three are on track; four of the targets will expire this year.

The Department of the Prime Minister and Cabinet (DPMC) is leading the "Refresh" program, which has the theme of "Prosperity".

"Prosperity is about moving beyond wellbeing to flourishing and thriving," DPMC'S promotional material says. "It refers to Aboriginal and Torres Strait Islander Peoples having the economic empowerment to be the decision-makers over issues that impact their lives, and to seize opportunities for themselves, their families and communities.

"Prosperity can be structured around four key parts – Individual, Community, Economic and Environment. These are underpinned by a recognition that Aboriginal and Torres Strait Islander culture is integral for thriving communities."

The submission of the NT's two largest land councils criticises the new policy development process, especially the absence of any reference to COAG's National Indigenous Reform Agreement (NIRA) – "the historic platform for the Closing the Gap framework which addresses how Australian governments intend to achieve the Closing the Gap targets".

"(NIRA) was the agreed platform used by COAG in 2008 to identify the Closing the Gap targets, a national co-ordinated strategy to achieve them, new resources to invest in building blocks such as health and housing, and a framework for robust transparency and accountability. However, we are not aware of any decision made by COAG to discontinue the NIRA and accordingly have assumed that it remains current. Moreover, Closing the Gap is a matter of national interest, and requires co-ordinated action by Australian Governments in partnership with Indigenous peoples. The land councils believe that a COAG agreement is essential for that to be achieved," the submission by NLC and CLC says.

The bulk of the submission responds to questions set by DPMC.

What is needed to change the relationship between government and community?

At a national end, and at the highest level, the land councils support the constitutional reforms advocated in the Uluru Statement from the Heart as a way to significantly improve the relationship between the government and community on a sustainable basis. Without an opportunity to have a voice in the Parliament and for treaties to be negotiated, there is little prospect of building a lasting reconciliation that can foster mature and positive relationships at any level.

In the context of the Closing the Gap framework, members of the land councils frequently complain at Council meetings about the high frequency of changes in policy, programs and staff within the Federal Government, which make it difficult for community leaders to sustain a positive relationship with ministers and public servants at the federal level. Above all else, our members are seeking stability, which will not be possible while the federal Government undermines development by making constant changes that are not understood or agreed to. The Northern Territory Emergency Response continues to weigh heavily in the minds of our members.

The land councils have observed deterioration in the relationship and participation between communities in their areas and the Federal Government, which is of great concern as the latter has always taken the lead in remote Northern Territory. This has become more pronounced since the transfer of the Indigenous Affairs portfolio into the Department of the Prime Minister and Cabinet. It is not evident that this Department appreciates the need to have strong regional offices, including in Tennant Creek and Katherine, with managers who have authority working with dedicated and experienced staff who have long term relationships with the communities. The land councils appreciate that there are significant barriers, including infrastructure costs, to sustaining regional offices in remote locations. However, the Federal Government has been able to do it in the past.

There is little chance of improving the relationship between the Federal Government and community members until the former shows more stability in relation to its administration of Indigenous Affairs, and that it matches its commitment to work in partnership with communities with actions and structures for that purpose, and makes an investment by re-establishing an effective network on the ground. These measures should be confirmed in a revised COAG National Agreement.

To help close the gap, what is needed to support Indigenous community leadership and decision-making?

Strengthening Indigenous governance and leadership is one of the seven 'building blocks' or strategic platforms endorsed by COAG which are aimed at Closing the Gap. Strengthening Indigenous Governance and leadership is addressed in the National Integrated Strategy for Closing the Gap, which is annexed to the NIRA, and there is a schedule to the NIRA on service delivery principles in respect of programs and services for Indigenous Australians. Initiatives for strengthening governance and leadership include training support for Indigenous organisations and leadership development courses for individuals. The key principle is that engagement with Indigenous men, women and children and communities should be central to the design and delivery of programs and services. A strategy governed by clearly-stated principles is needed for the next ten years. However, significant revisions and robust monitoring arrangements are required to be put in place to ensure these principles are implemented.

From the land councils' perspective, many programs and projects funded by the Federal and Northern Territory Governments designed to improve the wellbeing of Indigenous people in remote communities are failing or are static. Meanwhile, gaps in many socio-economic indicators, when placed in comparison with those of mainstream Australia, are increasing. Our view is that this would not be the case if community development, which has local participation at its core, was used as the engagement strategy in Indigenous development.

Community Development involves a set of principles and processes that build self-reliance, strengthen communities and promote good governance through the participation of local people in designing and implementing their own development projects.

The CLC in particular has used this community development approach since 2005 to work in partnership with its constituents to direct their own resources to initiatives that both maintain their Indigenous identity, language, culture and connection to country and strengthen their capacity to participate in mainstream Australia through improving health, education and employment outcomes.

The four objectives of the land councils' Community Development Program are:

1. To maximise opportunities for Aboriginal engagement, ownership and control, particularly in relation to the management of resources that belong to them;
2. To generate service outcomes which benefit Aboriginal people and are valued by them, including social, cultural and economic outcomes;
3. To build an evidence base for the CLC's community development approach and the value it has for contributing to Aboriginal capabilities; and
4. To share lessons learned with other government and non-government agencies.

An independent evaluation of the CLC's community development and governance program in 2014 was positive. The NLC has now adopted a similar community development and governance program. Meanwhile, whilst accepting that government programs do not constitute community-owned initiatives, a community development approach built on a partnership with Indigenous people ought to be adopted by Australian governments. We are certain this will sustain Indigenous community leadership and decision making, thereby producing better outcomes. Accordingly, a new schedule to a revised COAG National Agreement needs to be developed which implements a community development model to sustain Indigenous leadership and decision making.

How could the Closing the Gap targets better measure what is working and what is not?

The land councils support the use of targets. We also support the proposal that targets be set for states and territories if that has not already been done. However, we think that the targets, and the information provided on progress against them, is misleading to the extent that they are not measuring and comparing progress in remote and very remote areas.

Our assessment is that progress is stalling in remote and very remote areas of the Northern Territory, despite these areas receiving significantly more investment by the Federal Government over the past 10 years in housing and other services, compared with urban locations. In particular we are concerned about signs of worsening poverty caused by:

- the application of financial penalties in the discriminatory and 'top-down' Community Development Program; and
- the Australia-wide reductions in social security payments having a disproportionate impact in remote areas.

During the next phase of Closing the Gap, it is vital that the framework clearly distinguishes between the distinct circumstances of remote and non-remote Australia, including in respect of the collection of data, reporting and the setting of targets.

The Closing the Gap targets could also more effectively measure what is working if, in the next phase, the framework included data and reporting in relation to the empowerment of communities and regions. It is clear that Australian Governments are responding in the Refresh to widespread concern that Indigenous communities and organisations are not sufficiently involved in decision making around their programs and services. The Prime Minister's Closing the Gap report for 2018 identifies what has been learnt over the past 10 years including that:

> "a productive working relationship must have Aboriginal and Torres Strait Islander people at its core, with First Australians involved in decision-making processes"; and
>
> "for Indigenous engagement to be most effective, it needs to be based on the aspirations and priorities of Aboriginal and Torres Strait Islander people, and conducted within an Indigenous-driven process".

The land councils agree with this sentiment (although we are concerned these lessons are not being implemented in relation to the Refresh itself) and it should be possible, for example, to have an NPA, based on a new building block that is specifically focussed on establishing joint decision making structures and the rollout of a community development approach.

What has worked well under Closing the Gap?

The land councils believe that COAG should have facilitated an independent review in the lead-up to the Refresh that included input from Indigenous experts, given the fact that Indigenous disadvantage is a matter of national interest and is the source of considerable funding outlays by Australian Governments. Such a review could have been tasked with answering the above question, in addition to the following question as to what has not worked well.

Even in the absence of an independent review, the Land Councils are still prepared to accept that there has been progress against some of the targets and the Prime Minister's 2018 Closing the Gap report shows improvements in several areas, including an increase in the number of Indigenous students completing year 12, and the number of Indigenous businesses operating.

However, the Refresh needs to focus on the Closing the Gap framework itself and how it has contributed to realising better outcomes. Our view is that the national commitment, for the first time articulated in a COAG National Agreement with a national strategy, targets, building blocks to focus investment, and a robust accountability framework worked well, at least in the first five years.

What has not worked well under Closing the Gap?

Illustration © Nick Bland

The observation of the land councils is that the architecture that was put in place to support Closing the Gap and described above failed after the first five years and particularly when an incoming government in 2013 identified its three highest priorities (getting kids to school, jobs and community safety) which did not appear to cover all of the targets or building blocks in the NIRA, nor have the support of state and territory governments.

The creation of the Indigenous Advancement Strategy (IAS) by the Federal Government, to fund the three priorities, without any engagement with Indigenous communities and organisations added to a perception that the Coalition Government was no longer committed to the Closing the Gap framework. This is further exacerbated by the Aboriginal Benefits Account being rolled into this strategy.

Subsequently the Coalition added a new target on school attendance which, if agreed by COAG in 2016, has never been formally inserted into the NIRA. The COAG Reform Council was disbanded and much of the public reporting around the progress of the Indigenous national partnership agreements fell away. The ten year NPA on Stronger Futures in the Northern Territory, originally built on strong consultation with communities and their organisations, was renegotiated with the Northern Territory Government without any involvement of Aboriginal interests. Perhaps the best illustration of the situation we have now is that the NPA on Remote Indigenous Housing ends on 30 June 2018 (one month from now) without Indigenous communities or organisations, at least beyond the Northern Territory, having any understanding of what will happen next despite the need for much more housing. There is much confusion and doubt about the commitment to the Closing the Gap framework, and it appears to have unravelled in the past five years.

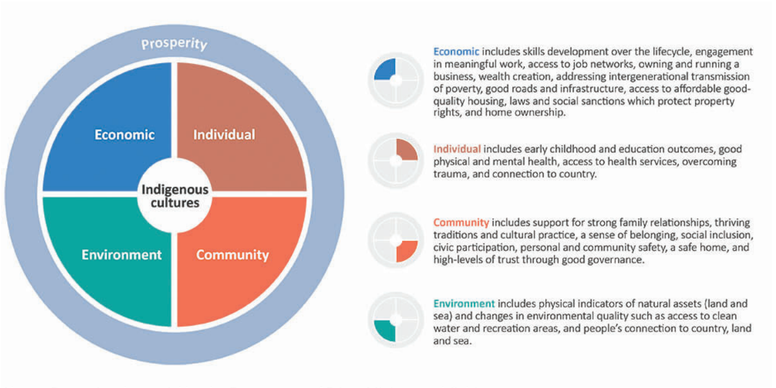
What indicators should governments focus on to best support the needs and aspirations of Aboriginal and Torres Strait Islander peoples?

This is difficult to answer properly because the Discussion Paper does not really provide an explanation of what indicators are and whether they are different from targets. However, we assume that COAG is distinguishing indicators from targets in this question and are interested to know what markers should be used to measure progress against achieving the targets. Our broad response is that the indicators should be part of the refreshed Closing the Gap framework that is agreed to with Indigenous interests and that the performance indicators that were used for the current targets appear to be satisfactory.

Should governments focus on indicators such as prosperity, wellbeing or other areas?

Prosperity usually has a narrower connotation than wellbeing and normally means a situation in which people are successful in life and have a lot of money in their bank accounts. Wellbeing on the other hand, particularly for Indigenous peoples, normally means a situation in which people have health, happiness and a strong connection to culture and family. Wellbeing seems to resonate better with an Indigenous world view.

However, the land councils do not think that any case has been made to change from 'closing the gap' as the headline policy which means achieving equality in social, economic and health outcomes. Moreover, the indicators should go to helping us decide whether or not this is being achieved. The discussion about wellbeing versus prosperity is confusing and neither should be used as the overarching policy frame.



Above: Promotional material by the Department of Prime Minister and Cabinet

What do you think are the most important issues for Aboriginal and Torres Strait Islander Australians, families and communities? Why?

The land councils have existed since 1974, longer than possibly any other Indigenous organisation in Australia. While land councils are statutory bodies under the *Land Rights Act*, they remain independent of government with only their annual budgets controlled by the Minister. They have been stable and endured through much upheaval in the policy and administration of Indigenous Affairs by the Commonwealth, which has become a burden to them. This puts the land councils in a very strong position to comment with authority on the important issues for communities and traditional owners having worked with them for decades (with the exception of the Tiwi and Anindilyakwa people who have their own land councils). The issues that we think are most important to our constituents, particularly in the context of Closing the Gap are:

- Achieving the return of their traditional lands, like other Indigenous peoples across the world, particularly given the fact that their culture and identity is built around their land and because so much of it was initially lost to them;
- Finding a way to ensure that the gains they have made over the past 40 years in respect to land rights can endure forever. This is a high priority and is why the agenda for a treaty is of great importance;
- Being able to live on their traditional lands, especially on homelands, so that they can care for country and maintain their language and identity, with the aim of producing economic, social and cultural benefits through these assets;
- Being able to decide what happens on their land, including mainstream economic development, is vital because they are very alert to both the costs and benefits of mining and other land based industries;
- Being able to decide for themselves their own development priorities and to be able to realise these aims in a way that allows them to make decisions, instead of programs and services being imposed from the outside which often leave community leaders powerless to manage negative consequences;
- Having a government which is prepared to work with them in partnership, using a community development approach to solve their unique problems brought about by having to adjust to mainstream Australia. The partnership should operate in a way that is informed, respectful, builds long term relationships and allows agreements to be reached which respond to different regional circumstances;
- More than any other building block in the current Closing the Gap framework, achieving economic participation that they can lead and benefit from which produces jobs and businesses for the communities and families. It is this which is considered to be fundamental to their survival, wellbeing and prosperity and which they want to be given the highest priority in the next phase of Closing the Gap;
- Resolving their ongoing housing crisis in the Northern Territory including developing an Aboriginal community controlled housing model in the next phase of Closing the Gap;
- Ensuring that Aboriginal community controlled organisations are properly supported to deliver front-line services and advocate on their behalf;
- Enabling the use of the property rights granted under law to traditional owners;
- Reforming the National Water Initiative to provide for property rights in law to enable economic development of the lands gained;
- Expanding successful employment models such as the ranger program that is tailored to suit remote employment in regions where there are no formal labour markets; and
- Developing and implementing procurement policies to grow the capacity of Indigenous groups such as Prescribed Bodies Corporate (PBCs).

Should Aboriginal and Torres Strait Islander culture be incorporated in the Closing the Gap framework? How?

Indigenous culture is already incorporated into the Closing the Gap framework. he National Integrated Strategy for Closing the Gap in Indigenous Disadvantage is the key schedule to the NIRA and its foundation is the identification of and commitment to targets addressing Indigenous disadvantage, and associated building blocks – areas for action. However, the Strategy also acknowledges the importance of culture in a way that is not dissimilar to the language used in the Discussion Paper for the Refresh. At the start of the Strategy it states:

THE IMPORTANCE OF CULTURE: Connection to culture is critical for emotional, physical and spiritual wellbeing. Culture pervades the lives of Indigenous people and is a key factor in their wellbeing – culture must be recognised in actions intended to overcome Indigenous disadvantage.

The NIRA, however, does not make Indigenous culture a building block to encourage focussed and co-ordinated investment by Australian governments. That was a weakness in the Closing the Gap framework. However, it is not clear whether it will be an area for co-ordinated action in the proposed Prosperity framework either. The land councils certainly believe that Indigenous languages need much more support in the next phase of Closing the Gap, including legislative and funding support outlined in a new ten year national strategy.

In the meantime, the key concern that the land councils have is that Indigenous culture is being referred to by Australian Governments as if it is another program to be funded for the wider community to appreciate rather than as a way of life that produces the languages, ceremonies, and art that is constantly celebrated. That way of life, built around Aboriginal people being able to remain living on their traditional lands, in large and small communities such as homelands, is not supported in the existing Closing the Gap framework and we are concerned that the next phase will also not support it. In fact, we are observing increasing poverty for those who wish to remain on their traditional lands, linked to a discriminatory, top-down and punitive Community Development Program, and a withdrawal of key services such as education and health for those who desire to remain 'on country'. Ironically, it is these traditional owners who sustain the culture that is so celebrated in the Closing the Gap framework by Australian governments but their way of life is under threat. It is culture as a way of life that needs to be incorporated into the Closing the Gap framework.

What do you think are the key targets or commitments that should be measured in a refreshed Closing the Gap agenda?

In relation to the determination of final targets or commitments, the land councils strongly believe that COAG needs to build on the existing targets rather than establish a new framework.

Currently, there are three targets that continue beyond 2018: early childhood, year 12 attainment and life expectancy. The other four targets expire in 2018. At this stage it is our view that all of the existing targets should continue. As far as we know, they are supported by Indigenous interests even if they did not formally participate in negotiations for the NIRA or agree to the target in relation to improving school attendance. We believe that it would be confusing, and cause a loss of credibility for the Closing the Gap framework if these targets were not continued.

Having regard to the appallingly high imprisonment rate of Aboriginal people in the Northern Territory, the land councils also strongly support the recommendations of the Australian Law Reform Commission's Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133). Consistent with the overall approach of the Land Council to the 'Refresh', the report (Pathways to Justice) states that:

"Reducing Aboriginal and Torres Strait Islander incarceration requires a coordinated governmental response, and effective collaboration with Aboriginal and Torres Strait Islander peoples."

Chapter 16 makes two recommendations that aim to improve both of these and specifically that there should be national targets to reduce both the rate of incarceration of Aboriginal and Torres Strait Islander people, and the rate of violence against Aboriginal and Torres Strait Islander people.

The question of a so called 'Justice target' has been politically contentious. However, the Commission's independent and expert report should put the matter beyond doubt.

What resources, including data or information, are needed to help communities develop and drive local action?

The land councils believe a regional approach is required. This will drive local action using a regional governance structure, comprising representatives of Indigenous communities and organisations, and federal, state and territory governments. This approach should allow for the circumstances of remote and very remote regions to be adequately distinguished, and also for the development of regional targets. These targets should be based on census data to be published by the Federal Government in a status report after each census in respect of each agreed region, and used to develop a regional strategy for closing the gap. This will facilitate appropriate involvement of Indigenous interests in a partnership, joint decision making and also facilitate a community development approach.

Animal Welfare Protection Bill: NLC 's submission

The Northern Land Council has had its say on the new Northern Territory legislation proposed to govern animal welfare in the Northern Territory. The need to protect traditional hunting rights from possible criminal sanctions under the Animal Protection Bill 2018 formed the basis of the NLC's 19 March 2018 submission to the Social Policy Scrutiny Committee.

The NT's current animal protection legislation, the *Animal Welfare Act* (NT), is to be replaced by the Animal Protection Bill 2018, if passed by the NT Legislative Assembly. The aim the new legislation is to "strengthen existing polices and make the governance of animal welfare more effective," according to the Bill's Explanatory Statement.

Of concern to the NLC is the potential impact on people carrying out traditional hunting: under the bill as it stands, the penalty for killing an animal is up to 5 years imprisonment or a 500 penalty units, and there is no exception for traditional hunters.

Although there is a penalty under the existing *Animal Welfare Act*, and no traditional hunters have been prosecuted under that existing Act for the killing or wounding of an animal, the scrutiny process presented a timely opportunity for the NLC to petition for the removal of these penalties.

The NLC argued for a defence to be added to the legislation, to allow for hunting carried out in accordance with traditional hunting practices. The NLC cited the critical role that hunting plays in the lives of many of those living in the NLC's region. Specifically, many constituents living remotely supplement their diet with meat from hunts, particularly where the high cost and unpredictable quality of food is a reality.

The NLC's submission also described the importance of hunting as an expression of culture, informed by the spiritual relationship between human and the natural environment, and the basis for a strong and continuing connection to country.

In its submission to the Social Policy Scrutiny Committee, the NLC cited Queensland's animal protection legislation, the *Animal Care and Protection Act 2001* (QLD), as an example of legislation which strikes a balance between the recognition of traditional hunting rights and the animal welfare concerns of the broader community. Under the Queensland law, an Indigenous person who has hunted in accordance with traditional practices is exempt from prosecution if they have dealt with the animal in such a way that causes the animal as little pain as possible.

The NLC also argued that the proposed legislation was inconsistent with provisions of current Territory and Commonwealth legislation which recognise traditional rights and interests, including the *Native Title Act 1993* (Cth), the *Aboriginal Land Rights (Northern Territory) Act* 1976 (Cth), the *Fisheries Act* (NT), and the *Territory Parks and Wildlife Conservation Act* (NT), to the extent that they protect native title or traditional rights and interests.

Also cited was the United Nations Declaration on the Rights of Indigenous People which Australian has supported in the United Nations, and which declares that Indigenous people have the right to be secure in their means of subsistence and development, and to engage freely in all their traditional and other economic activities.

In a written response to the issues raised by the NLC in its submission, Department of Primary Industry and Resources undertook to seek an opinion from the NT Solicitor General to provide guidance on how to re-draft the legislation "to ensure there are no unintended impacts on tradition hunting and fishing practices".

On 1 May 2018 the Committee released their Report into the Animal Protection Bill 2018. The NLC was pleased that its recommendations have been endorsed by the Committee, which recommended the Bill be amended to provide for the exercise of traditional hunting rights, similar to the Queensland example. The Committee also recommended that the legislation be amended to ensure it is consistent with existing Territory and Commonwealth legislation.

The Northern Territory Government is currently considering the Social Policy Scrutiny Committee's Report, and will report back to the Legislative Assembly prior to parliamentary debate on the bill.

Preparing an antilopine Kangaroo for baking in Midjadukkdorr 1980.

THE BATTLE FOR SEA COUNTRY LEGAL RIGHTS

Nearly 10 years ago, on 30 July 2008, the High Court handed down the Blue Mud Bay decision, which granted ownership of the intertidal zone to Traditional Aboriginal Owners out to the mean low water mark adjoining Aboriginal land in the Northern Territory.

As a result, Aboriginal people now control access to more than 85 per cent of the NT coastline.

The decision will be commemorated on 30 July this year at a ceremony at Baniyala, an outstation in east Arnhem Land.

This important legal fight, writes Lauren Butterly*, is just one part of a much richer Indigenous history and relationship to the sea.

Let's step back to the 1970s in the Northern Territory. The strong fight by Indigenous peoples for land rights most definitely included the sea. The Northern Territory was the first jurisdiction in Australia to consider legal sea rights.

The precursor to the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) was the Woodward Royal Commission into Aboriginal Land Rights. In Justice Woodward's initial report in 1973, he noted that the questions raised by communities included "whether their land rights will extend out to sea and, if so, how far". He further noted that: "It seems clear that Aboriginal clans generally regard estuaries, bays and waters immediately adjacent to the shore line as being part of their land. So also are the waters between the coastline and offshore islands belonging to the same clan."

In his final report, Justice Woodward recommended that a buffer zone of up to two kilometres (from low tide) out to sea should be closed to non-Indigenous people to protect Aboriginal land. The Northern Land Council had submitted that this be extended to 12 miles out to sea (approximately 19 kilometres].

Justice Woodward noted that this two-kilometre distance was somewhat "arbitrary", but he thought it would be enough to protect traditional fishing rights from non-Indigenous commercial fishers or tourists. However, Justice Woodward noted his commitment to such sea country rights, as he stated that: "The lesson of history is that any privileges which [Indigenous peoples] have should not lightly be put aside or reduced".

The High Court of Australia heard the Blue Mud Bay case in December 2007, and many Yolngu travelled to Canberra to witness the hearing.

This recommendation was initially taken up by the Whitlam government when it drafted the original Aboriginal Land Rights (Northern Territory) Bill. There was then a sudden change of government on 11 November 1975 and, as a result, the bill lapsed. A new bill was introduced in 1976, but it did not contain the sea rights buffer zone. The Member for Hughes, the Hon Leslie Johnson, raised the issue of sea country rights in the House of Representatives on 17 November 1976. He said: "This omission has upset a large number of Aboriginal communities as it offers them no protection of their fishing …". He referenced a number of letters sent by communities, such as Yirrkala, fighting to keep these sea rights. However, all attempts to amend the 1976 bill to reintroduce the two-kilometre sea country rights buffer zone were unsuccessful.

Instead, a provision was inserted into the bill that became the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) allowing the Legislative Assembly for the Northern Territory to make ordinances regulating or prohibiting the entry of non-Indigenous persons to seas within two kilometres of Aboriginal land. The Northern Territory did this by providing for sea closures in the Aboriginal Land Act (NT), yet any non-Indigenous person who held a current commercial fishing licence was exempted from this and therefore could continue fishing in these closed seas. Further, applications for sea closures were a long and expensive process, involving lawyers and a multiple-day hearing before a Land Rights Commissioner. Only two sea closures were ever granted, and that was back in the 1980s, although the law still exists on the books.

The fight then shifted towards native title. Mabo (No 1) did, in fact, contain a claim that the Meriam people had inhabited and possessed the islands and "their surrounding seas, sea-beds and fringing reefs" and claimed native title to these areas. However, a technical legal issue saw this aspect of the claim not go to the High Court in Mabo (No 2). Yet, at a symposium in 1993, just one year after the Mabo (No 2) decision, the eminent Professor of native title law, Richard Bartlett, stated: "Mabo extends to the sea. There may be problems of proof, but they will be no more onerous than on land".

The first legal fight for native title to sea country also occurred in the Northern Territory: the people of Croker Island went to the High Court and had native title recognised to their seas surrounding their island in 2001. We have now seen a number of successful native title claims to sea country – including around Blue Mud Bay, as well as the largest-ever native title claim to the sea in the Torres Strait. That determination stretches for 44,000 square kilometres and includes a historic right to fish commercially.

All native title determinations to the sea are non-exclusive, which means that the native title holders cannot control who accesses their sea country. This non-exclusivity is due to the international law right of innocent passage and the public rights to fish and navigate which came from English legal traditions. A now-retired High Court judge, the Hon Michael Kirby AC CMG, expressed frustration at this reasoning. He said the view that native title rights to the sea could only ever be non-exclusive was "unduly narrow", and "the situation of this group of indigenous Australians [in the Yarmirr/Croker Island case] appears to be precisely that for which Mabo (No 2) was decided and the [Native Title] Act enacted".

Then came the fight for Blue Mud Bay. The Blue Mud Bay case was about the Yolngu peoples' fight for the intertidal zone – the piece of country that is sometimes wet and sometimes dry. To the Yolngu peoples, there was and is no distinction between wet and dry, it is all their country. The legal question was whether the intertidal zone was "Aboriginal land" under the *Aboriginal Land Rights* (Northern Territory) *Act*. But really, this case was about controlling access – who could access those waters, and did they need permission from the traditional owners of the sea country. The practical outcome of the Blue Mud Bay case was that entry onto waters over Aboriginal land, for a purpose such as fishing, requires permission from the relevant Aboriginal Land Trust. This was exclusive ownership. Further, this case applies to approximately 85 per cent of the coastline of the Northern Territory. This case is one of the most important cases in the history of Aboriginal land rights.

Negotiations are ongoing with the Northern Territory government about the outcome of the Blue Mud Bay case. What must be at the forefront of these negotiations is that the Blue Mud Bay case was a powerful affirmation of the existing legal rights of Traditional Owners on the Northern Territory coastline.

In each of these examples – sea closures, native title and the intertidal zone – strong Indigenous sea country communities have fought tirelessly, even in the face of legal setbacks along the way.

The Blue Mud Bay case was about the Yolngu peoples' fight for the intertidal zone – the piece of country that is sometimes wet and sometimes dry. To the Yolngu peoples, there is no distinction between wet and dry, it is all their country.

The High Court's judgement in the Blue Mud Bay case was delivered in Canberra on 30 July 2008, and was immediately available from the registry of the Supreme Court at Darwin. NLC members celebrated the result outside the Supreme Court: (from left) Bobby Wunungmurra, Samuel Bush-Blanasi, Wäka Mununggurr (obscured), the late Chairman Wali Wunungmurra and Djambawa Marawili.

*This article is an edited transcript of a presentation given by Lauren Butterly at the Nawi: Travelling our Waters symposium held at the Australian National Maritime Museum in November 2017. It was originally published in the museum's journal *Signals*, No 123 (June–August 2018).

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ASBESTOS HALTS HOUSING CONSTRUCTION IN GALIWIN'KU

The construction of several news houses at Galiwin'ku has been suspended after asbestos was discovered in soil on the housing blocks. The asbestos was identified late last year by a contractor working on the post-Cyclone Liam rebuild.

A subsequent inspection of 45 housing lots in the town found 25 were contaminated by asbestos. The contamination was widespread and was apparently found also in public areas such as road verges and reserves.

The NLC has written to the Indigenous Affairs Minister, Senator Nigel Scullion, urging the Commonwealth Government to fund the comprehensive removal of asbestos-contaminated soils.

The Commonwealth conducted an asbestos survey at Galiwin'ku 10 years ago, part of a program across 73 communities subject to the Northern Territory Emergency Response (the "Intervention"). The survey at Galiwin'ku found two sites requiring immediate remediation, 12 requiring remediation within 12 months, and more than 50 requiring remediation within 36 months.

In 2012, the Commonwealth gave $49.329 million to the NT Government for asbestos removal from public housing and community buildings in remote communities over four years from 2012/13 to 2015/16. Of the total package, $2.33 million was committed to Galiwin'ku and Milingimbi.

In his letter to Senator Scullion, NLC CEO Joe Morrison said he had received reports that the removal and remediation works at Galiwin'ku were sub-standard. Asbestos hazards were further exacerbated by Category 4 Cyclone Liam which hit Elcho Island on 19 February 2015.

The NLC met Traditional Owners and community members in Galiwin'ku in April. Malarra Traditional Owners subsequently issued a statement: "Malarra Traditional Owners ask the Commonwealth and Northern Territory Governments to work together to fund the identification and full removal of asbestos contaminated soil from Galiwin'ku. We want the Government to communicate with Traditional Owners and the community about the asbestos problem and how we can stay safe."

Liyagalawumirr Traditional Owners also issued a statement: "Liyagalawumirr Traditional Owners support the NLC to ask the Federal Government and the Northern Territory Government to remove asbestos and fix the problem in Galiwin'ku as soon as possible because it is very dangerous for our community. We ask the Government to communicate with us about the problem clearly."

An abandoned construction site in Galiwin'ku.

BARUNGA STATEMENT 1988

An exhibition at Parliament House in Canberra marking the 30th anniversary of the presentation of the Barunga Statement to then Prime Minister Bob Hawke was opened on 29 May and will continue until 29 July.

Also, the Australian Institute of Aboriginal and Torres Strait Islander Studies has launched a website to mark the anniversary: https://aiatsis.gov.au/barunga-statement

At the 1988 Barunga Sport and Culture Festival, the then NLC Chairman Mr Galarrwuy Yunupingu AM and the late CLC Chairman Wenten Rubuntja AM presented the statement to Mr Hawke as a historic declaration of self-determination and the celebration of Aboriginal culture. The statement concluded with a request to the Commonwealth Parliament to negotiate a treaty, "recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedoms".

In response, Mr Hawke promised a treaty with Australia's Aboriginal people, but never delivered.

Most of the material on this and the following three pages (text and photographs) is drawn from the AIATSIS online exhibition site.


Last rites: Wenten Rubuntja, Galarrwuy Yunupingu and Bob Hawke shaking hands at the unveiling of The Barunga Statement, Australian Parliament House, 20 December 1991, from Unveiling of The Barunga Statement, Council for Aboriginal Reconciliation Collection, AIATSIS Collection

In his last minutes in office as Prime Minister, Mr Hawke unveiled the Barunga Statement in Parliament House on 20 December 1991; he was joined by the two land council chairmen who had presented the Statement in 1988 – (the late) Wenten Rubuntja (CLC) and Galarrwuy Yunupingu (NLC).

Mr Hawke said he promised in 1988 to hang the Barunga Statement in Parliament House "for whoever is Prime Minister of this country, not only to see, but to understand and also to honour."

Thus, it was "very fitting indeed that my last official act as Prime Minister is to hang the statement in Parliament House".

"This is no ordinary ceremony, because it is about symbolising the commitment of my Government — and I've got 10 minutes in which I can use that phrase — it symbolises the commitment of the Hawke Government to the Indigenous people of Australia," he said. "Its presence here calls on those who follow me, it demands of them that they continue efforts that they find solutions to the abundant problems that still face the Aboriginal people of this country."

Symbolically, on 8 June, the first day of the 2018 Barunga Festival, the four Northern Territory land councils will sign a Memorandum of Understanding with the Northern Territory Government to progress a treaty between the government and the Territory's Aboriginal peoples.

BARUNGA STATEMENT 1988

Saltwater Country

The left-hand side of The Barunga Statement was completed by Yolngu men from northern Australia. The delicate cross-hatching lines are distinctive to the artists of this part of Australia and were created using fine hair brushes and earth pigments.

The panel has three sections depicting Dreaming stories from different parts of north east Arnhem Land: at the top, the Crocodile Fire Dreaming of the Madarrpa people of the Blue Mud Bay area; in the middle, the Crocodile Fire Dreaming of the Gumatj people of the Caledon Bay area; and at the bottom, the Whale Dreaming of the Trial Bay area.

Yolngu people have a long history of presenting painted petitions to the Australian Government. In 1963, the Yirrkala Bark Petitions were sent to the Australian Parliament in protest at a proposed bauxite mine on Yolngu land. The Yirrkala Bark Petitions are now on permanent display in Members Hall at the centre of at Australian Parliament House.

Artist of The Barunga Statement, Djambawa Marawili, also instigated the Saltwater Collection of bark paintings. In 2008 these paintings were recognised as legal documents by the High Court of Australia as part of a sea rights decision for the Blue Mud Bay region in North-East Arnhem Land.

Saltwater Artists

Galarrwuy Yunupingu AM
born 1948
Gumatj people

Marrirra Marawili
c. 1937-2018
Madarrpa people

Bakulangay Marawili
1944-2002
Madarrpa people

Djambawa Marawili AM
born 1953
Madarrpa people

Dula Ngurruwuthun
1936-2001
Munyuku people

Djewiny Ngurruwuthun
c. 1940-2001
Munyuku people

Desert Country

The right-hand side of The Barunga Statement was completed by Arrernte and Warlpiri men from central Australia. Dot-style painting is one of the major forms of expression for artists from this region.

The painting depicts the Two Women Dreaming, a story that crosses the continent and links the major language groups of central Australia. Women gathering at Ulpanyali and Ilpilli, sites in the south-west of the Northern Territory, are depicted in the top and lower sections of the painting. The central design shows the women coming together to exchange gifts and carry the story on through their country. This same design has been used as the logo for the Central Land Council since the 1970s.

People from central Australia have used painting to share their culture and knowledge of country with the world. Wenten Rubuntja, along with his leadership roles was also an acclaimed artist. In his support for land rights and reconciliation, Rubuntja believed in the importance of maintaining his Arrernte culture alongside the European. This co-existence was reflected in his painting in two distinct styles: the dot-style of The Barunga Statement and the naturalistic watercolour popularised by his father's cousin, Albert Namatjira.

Desert Artists

Wenten Rubuntja AM
c. 1926-2005
Arrernte people

Lindsay Turner Jampijinpa
1951-2009
Warlpiri people

Mr D Williams Japanangka
1948-2013
Warlpiri people

BARUNGA STATEMENT 1988

Installation at Parliament House of a Poster for the 1988 Barunga Sport and Cultural Festival created by artist Chips Mackinolty, held by the Australian Institute of Aboriginal and Torres Strait Islander Studies Collection and first published in *Land Rights News*. © Department of Parliamentary Services/David Hempenstall.

Galarrwuy Yunupingu, Wenten Rubuntja and Geoff Shaw preparing The Barunga Statement for presentation to Bob Hawke, Barunga, 12 June 1988 from Make it Right! 1988, Australian Institute of Aboriginal Studies with Northern and Central land councils, AIATSIS Collection, courtesy of Ronin Films.

The then NLC Chairman Galarrwuy Yunupingu at the 1988 Barunga Festival.

Mr Yunupingu wrote in the NLC's 1987/88 Annual Report about the presentation of the Barunga Statement to Prime Minister Hawke:

"At the Barunga Sports and Cultural Festival, we … celebrated the unity of our diverse cultures. Again, we took the initiative to make a statement about the way we would like to see the nation develop. The Barunga Statement offered the Australian people a set of principles of recognition of our rights – the issues which must be resolved if we are to be reconciled as one nation. To his credit, the Prime Minister repeated his offer of a treaty between us and the Australian Government. Recognising the diversity of our cultures and conditions today, he proposed that this would be a matter for Aboriginal people to decide together before we sat down to negotiate with the Government.

"This is a profound recognition of our way of doing things and a clear sign that the messages we have been offering are starting to be understood. Our voices are being heard at last, after 200 years of deafness on the part of officialdom.

"This year, then, has seen the beginnings of the reality of Aboriginal self determination. We chose the way we would behave in 1988 and we put it into practice. We made our stand and we established the principles of what we would talk about and the way we would talk about it."

Threatened Aboriginal country and the right to proper redress

By Jon Altman*

In this article I raise the complex question of what legal recourse to redress Aboriginal land owners might have when they get their ancestral land back but then find that these lands are subject to multiple threatening processes.

One might argue that this is just a 21st century version of the contract law principle of caveat emptor or 'let the claimant beware'. But in the case of Indigenous Australians who have been forcibly dispossessed by colonisation, land is returned for social justice reasons after illegal alienation.

What is the value of native title rights to hunt, fish and forage on the land if threatening processes have impaired, or continue to impair, the availability of resources? Having proven continuity of connection and customary practice and been guaranteed rights to natural resources for domestic use, what recourse do land owners have if these resources that are important for sustaining their lives and livelihoods have disappeared?

In Australia today, land repossession always comes with a colonial environmental legacy. So, I ask why is it that the environmental justice question of redress is absent in public discourse? What form might such redress take to enhance post-colonial possibilities for those Aboriginal people trying to live on their land and off its natural resources and seeking to restore their land's environmental and cultural values?

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Two recent events rekindled my long-term interest in these questions.

The first occurred in October 2014 when I was visiting a senior ranger and friend Terrah Guymala living in the Warddeken Indigenous Protected Area in Western Arnhem Land.

Terrah and I were chatting about species loss and the devastating impact of the invasion of the poisonous cane toads on wildlife, especially reptiles. Terrah bemoaned the absence of goannas which were an important and highly desired foodstuff, especially in the early dry season when goannas are fat. He also reminded me how in the early dry season goannas could be seen standing up on their tail and hind legs, peering over high grass facing the east wind and how this action has a role in ceremony. Now, he lamented, young men who may be related totemically to goanna do not have the experience of seeing this seasonal behaviour, they are losing important ecological and ritual knowledge. And to add another dimension to the loss, artists used to paint goannas on bark and sell them for cash. This is rare today because the current generation are unfamiliar with the detailed anatomical features of several goanna species.

In 2002, I was in Arnhem Land when I saw first-hand what local Kuninjku people referred to as the invasion of djati nawarreh, "the rubbish frog", the cane toad. There was little information provided, certainly none in local language, about whether the toad was dangerous. As people living on country, Kuninjku quickly learnt that the toad was deadly for native species, especially goannas.

In 1979 and 1980 when I lived with these same people I documented the hunting and consumption of goannas on a regular basis. By early 2003 when I undertook more fieldwork quantifying wildlife use I recorded only one water monitor hunted and eaten. In the 15 years since, I have not seen a single monitor or goanna on Kuninjku country despite numerous visits.

The absence of this resource represents a livelihood loss to people who are cash poor and reliant on hunting for survival when living at homelands. To this economic loss can be added the spiritual dimension as described by Terrah. There has been no consideration in Australian law of providing any redress, in cash or nutritional equivalent, for this loss. Nor for the loss inter-generationally of ecological and religious knowledge important for ceremony, artistic production and as a key seasonal and biodiversity indicator species.

The second event occurred in June 2015 when I was engaged to provide expert evidence as an economic anthropologist in the Timber Creek Native Title Compensation case *Griffiths and Jones v the Northern Territory*. This was a government-funded test case before Justice Mansfield in the Federal Court seeking to calculate just terms compensation for the loss of native title rights and interests over land in the township of Timber Creek.

In my report I used the hybrid economy framework that I had developed over many years to try to mediate between the views of the economics experts who sought to equate just terms with something less than the freehold value of the land in question; and the anthropology experts who reported

Benny Barndawungu and Jimmy Djarrbbarali with fat goannas, Mimanjar, May 1980.

the feelings of deep hurt and loss experienced by traditional owners who has lost access to important sacred sites in the cultural landscape, had seen some desecrated and felt a degree of responsibility for these losses.

My approach argued to the court that just terms compensation should be calculated inclusive of the usually unrecognised market replacement value of bush foods. I referred to the customary right to hunt, fish and gather that in my view gives native title land a higher value than freehold because it is inclusive of Indigenous rights to resources unlike standard freehold title. I also suggested that compensation recognise the loss of access to economic resources owing to an influx of competing non-Indigenous recreational fishers reducing wildlife stocks.

I tried to give a sense of the scale of such values with reference to quantitative work undertaken in a similar environment to Timber Creek and the Victoria River at nearby Daly River by CSIRO researchers. This evidence was disallowed because Timber Creek is not Daly River. This was despite key traditional owners demonstrating extensive knowledge of wildlife in the Timber Creek environment. My interlocutors were adamant that they had lost access to very specific locations where resources could be exploited; and from the competition for resources they experienced from visitors to, and residents of, Timber Creek.

Justice Mansfield was not swayed by my line of argument. While His Honour found my evidence consistent with other anthropological evidence, he chose to overlook it, preferring to deploy a binary approach in his reasoning: economic losses would be calculated with reference to the real estate value of the land and less tangible "cultural" losses as an additional payment legally termed "solatium".

In calculating solatium at $1.3 million, over twice the real estate value of the land, Justice Mansfield found a means to compensate for the pain and suffering in relation to traditional owners' spiritual detachment from the land and the impact of loss of a relationship with country on a person's sense of self. But the loss of customary rights to gain a non-market customary livelihood was deemed embedded in real estate value. Justice Mansfield's broad approach was upheld by the full bench of the Federal Court and is now heading to the High Court for final consideration.

My key point here is that when a legal mechanism to calculate just terms compensation is available, loss of access to natural resources for livelihood is not considered compensable owing to the absence of location-specific facts. This contrasts with West Arnhem Land where quantitative and qualitative data on loss are available, but there is no legal mechanism to claim redress.

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I want to scale up now from these two illustrative vignettes to the continental scale.

Since the early 1970s land rights and native title laws have seen more and more territory legally repossessed by Indigenous peoples. With land rights, a homelands movement emerged in the 1970s, as ancestral land was re-occupied. Today there are about 1000 small homeland communities on the 43 per cent of the continent that is under some form of Indigenous title, although the exact number of homelands occupied, and an accurate estimate of their population is difficult to make owing to the mobility of residents and absence of official enumeration effort.

What we do know from the 2016 census is that there are about 150,000 Indigenous people living in remote and very remote Australia covering 86 per cent of Australia—about half this number living on Aboriginal titled land, with maybe 20,000 living at homelands. We also know that people living on the land have deep spiritual and relational connection to it, as at Timber Creek, and seek to use the land's resources for sustenance, as in West Arnhem Land.

According to the *Native Title Act*, rights and interests include unrestricted access to the land's resources for non-commercial (domestic) purposes. However, as I have noted elsewhere, it is difficult to differentiate commercial from non-commercial use rights, especially in relation to an identical resource, be it fresh water or a barramundi both of which must be licensed for commercial purposes but are unlicensed, unregulated and unlimited for native title domestic purposes.

Let me now make just three brief observations from past research on the environmental significance of Indigenous lands.

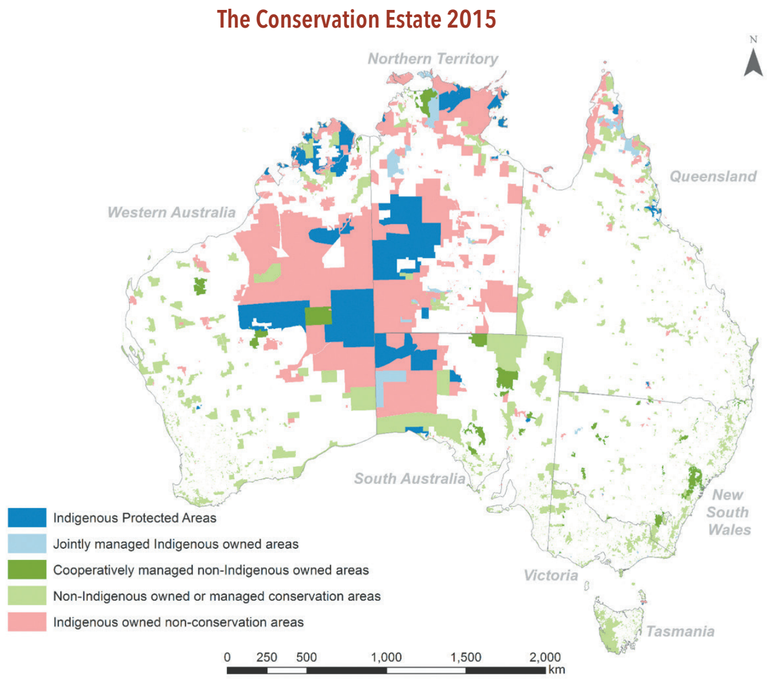
First, when a template of the spatial extent of Indigenous lands is laid over a series of resource atlas maps much of it is shown to be environmentally intact. This has allowed the survival of many species that have declined or become extinct in other parts of Australia.

Second, despite being relatively intact, Indigenous lands are increasingly subject to threatening processes including changed fire regimes, the introduction and spread of feral animals and invasive weeds, land disturbance including vegetation clearing, marine debris and pollution—not to mention the likely impacts of global climate change on species abundance.

Third, historically and today there is underinvestment on environmental management of Indigenous lands, in part because of extreme remoteness, in part because of low populations, in part because they are viewed as "unproductive". More recently funding has slowly increased, but it is still inadequate: there is no systematic assessment of restoration need and no long-term funding commitment.

In the last 20 years, 75 dedicated Indigenous Protected Areas (IPAs) have been declared over Aboriginal lands with high biodiversity value. These IPAs now constitute nearly half the conservation estate encompassing some of Australia's most biodiverse regions. And they fulfil a significant element of the nation's international obligations under the Convention on Biological Diversity.

Yet, as with everything in Indigenous policy, the approach to funding is ad hoc and often conflicted—the flagship IPA and Working on Country Programs sit in the Department of Prime Minister and Cabinet and not in the Department of Environment. And funding is provided on a short-term contractual basis with much bureaucratic accountability owing to the rationale that funding is provided for the public good rather than as environmental justice redress.



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Let me return now to West Arnhem Land and where I have worked since 1979, witnessing considerable transformations over four decades.

When I first worked in this region, I was interested in how people made a living and I found that hunting, fishing and wild food gathering was the dominant component of domestic economies when people lived on country. I collected evidence about this using several techniques. This form of economy, that I subsequently called "hybrid", was very dependent on local agency: when people got land rights in the 1970s they moved back onto their land and began to live on its wildlife, goannas inclusive.

Over time it became apparent to traditional owners that even in remote parts of Arnhem Land without a commercial footprint, colonisation had left a toxic environmental legacy: exotic weeds, feral animals and uncontrollable wild fires in uninhabited places. Over time people found that the land that they had repossessed faced escalating environmental challenges, including from hunted and highly valued species like feral water buffalo of which there are an estimated 100,000 in Arnhem Land today.

In the 1990s, people whom I had previously described as "hunter-gatherers today" also became community-based wildlife managers, setting up first the Djelk ranger group in Maningrida in 1991 and then the Manwurrk rangers on the Arnhem Land escarpment from 2002. Much of their work involved collaboration with biologists from Darwin and petitioning the Australian government for support to address environmental threats.

In September 2009, the Warddeken and Djelk areas of environmental management were formally declared as Indigenous Protected Areas recognised as significant elements of the National Reserve System managed in accord with International Union for the Conservation of Nature criteria. The two IPAs cover a massive area of 20,000 sq kms.

Ranger groups are required to produce management plans to ensure compliance with IPA program requirements. Let me focus on the management plan produced by Warddeken Land Management Ltd because I work closely with this group.

The Warddeken Plan of Management 2016–2020 has a clear aim: "Our vision is to have healthy people living on healthy country in the Kuwarddewardde [stone country]. We want the management of our country to be in our hands now and into the future".

The plan lists the assets of the IPA and the threats it faces. Assets include Indigenous ecological knowledge and language, rock art sites, sacred places, the use of fire in the landscape, wildlife, food and medicinal plants, freshwater places and endemic escarpment forests of Anbinik (*Allosyncarpia ternata*). Threats include empty country, loss of Indigenous ecological knowledge and language, lack of support for homelands, feral animals—cats, cane toads, buffalo and pig—wildfires and weeds.

The WLML annual report for 2016–17 shows it expended $3.7 million on addressing these threats, employing 120 Aboriginal people (mainly part-time) in land management work. Income came from a wide range of sources including from the Australian Government's IPA and Working on Country programs and from other sources including as a key member of Arnhem Land Fire Abatement (NT) Ltd; and from environmental philanthropy. Such diversity of support is sensible risk management especially as crucial core support from the Australian government is always uncertain—funding has only recently been committed for the next triennium, but there is no longer-term commitment beyond 2021.

Significantly, there is no link between the amount of support that is needed and what is available. I am acutely aware of this as a foundation director of the Karrkad-Kanjdji Trust, a company set up to support conservation work in West Arnhem. Our fund-raising efforts in collaboration with WLML have already resulted in generous philanthropic responses that help to finance several important gaps—a school (The Nawarrdeken Academy), a women's ranger coordinator, regular delivery of supplies by air and biodiversity monitoring. Working jointly with WLML and other groups there is a need to continually expand our efforts to match pressing regional needs.


A buffalo exclusion fence protected a significant Warddeken rock art site at Kamerrhdjabdi.

Let me link this case to my argument for proper redress. Why should ranger groups like Warddeken regularly petition for funds via complex bureaucratic processes to address environmental threats that are not of their making? Furthermore, given that much of the fire management work undertaken by the Warddeken rangers is helping to address global warming, why is such important work funded on an ad hoc basis by governments? And even as WLML moves to sophisticated monitoring of its efforts, what likelihood is there that they will be entirely effective in addressing the deep colonial legacy of environmental damages and threats?

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I want to end by asking how do Indigenous land owners and their conservation allies and supporters challenge the settler state disposition to ignore issues of environmental justice? How can Indigenous land owners challenge a dominant state that allows unalienated land to be claimed but without any guarantee of redress for environmental damage? How might imposed forms of neoliberal environmentalism, based on market logic, be challenged?

Let me flag three possibilities to grapple with these hard questions.

First, the UN Declaration on the Rights of Indigenous Peoples now supported by the Australian Government refers to redress and compensation on several occasions in relation to natural resources. Three articles are of relevance:

Article 11(2). States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 20 (2). Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 28 (1). Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

This all sounds very promising—it could even cover the goannas eliminated by cane toads. But finding effective domestic mechanisms to mobilise such international standards for proper redress remains a great challenge.

Second, in Aotearoa/New Zealand the Parliament passed the Te Awa Tupua Act in 2017. By this Act, the entity Te Awa Tupua was granted legal personhood of the Whanganui River system. In the settlement, the Crown recognised its acts and omissions in relation to the Whanganui River and its failure to protect the interests of the Whanganui Iwi (tribe). The Crown gave a form of personhood to the river, formally apologised for Treaty of Waitangi breaches in relation to the river and set about to atone for past wrongs. A settlement including financial redress of $NZ80 million has been committed to Whanganui Iwi to help them advance the inter-twined health and wellbeing of both the Whanganui River and its people. The settlement acknowledges that the exercise of customary activities by Whanganui Iwi is an integral part of their relationship with the river.

The spiritual and physical connection of the Whanganui Iwi to the river is encompassed in the tribal proverb: "Ko au te awa. Ko te awa ko au", which means "I am the river, the river is me". This mirrors the Warddeken notion of relationality between healthy country and healthy people. This raises the prospect that IPAs could be granted legal status as persons and be paid redress for environmental damages. At a time when Australian governments increasingly treat Aboriginal people who want to live on their ancestral lands with some disdain as second-class citizens, a strong case for proper duty of care redress by the state might be mounted if both people and environment were given personhood. What is emerging in Aotearoa/New Zealand in a practical sense is that the Crown recognises the relationship between Maori wellbeing and environmental wellbeing; and is guaranteeing financial resources over long timeframes as compensation for both social and environmental injustices.

Finally, in his recent book *Treaty and Statehood*, Aboriginal activist and lawyer Michael Mansell raises the prospect for the parliamentary creation of a new state under s121 of the Constitution. Using my maps spatially delineating the massive Indigenous estate of over three million sq kms, Mansell asks if a First Peoples State might be established in Australia. While Mansell does not specifically mention Canada's Nunavut that separated from the North-West Territories in Canada in 1999, there are some potent similarities. More than 80 per cent of the population of the land rights and native title exclusive possession estate in Australia is Indigenous. A reconfiguring of the national geography, as Mansell proposes, could give majoritarian political authority to Indigenous peoples and deliver a form of self-determination never experienced before in settler-colonial Australia.

With national revenue sharing as currently occurs via the Commonwealth Grants Commission and the division of GST, a First Peoples State (or Territory) might be very differently financially positioned to pay proper redress for environmental injustices. It might also pay a guaranteed minimum income to Aboriginal land owners who wish to live on their land and engage in the grand project of environmental repair. This would be a lot more productive than the punitive and damaging Community Development Program currently preferred by the Turnbull government.

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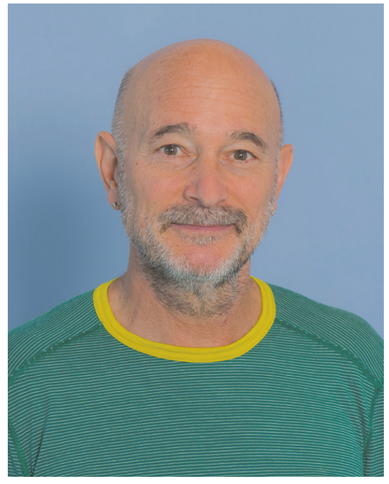
I started by referring to a case where there is considerable evidence of species loss owing to the invasion of poisonous cane toads, but where no mechanisms for proper redress exist. I then looked at another case where a legal mechanism for just terms compensation does exist, but where all native title rights and interests have not been included in calculating redress. I examine three possibilities that might be deployed for environmental justice. The matter is urgent for people looking to live on their country, for endangered places and for endangered natural species.



* Jon Altman is a research professor at Deakin University and an emeritus professor of the Australian National University.

"There have to be consequences for your actions"

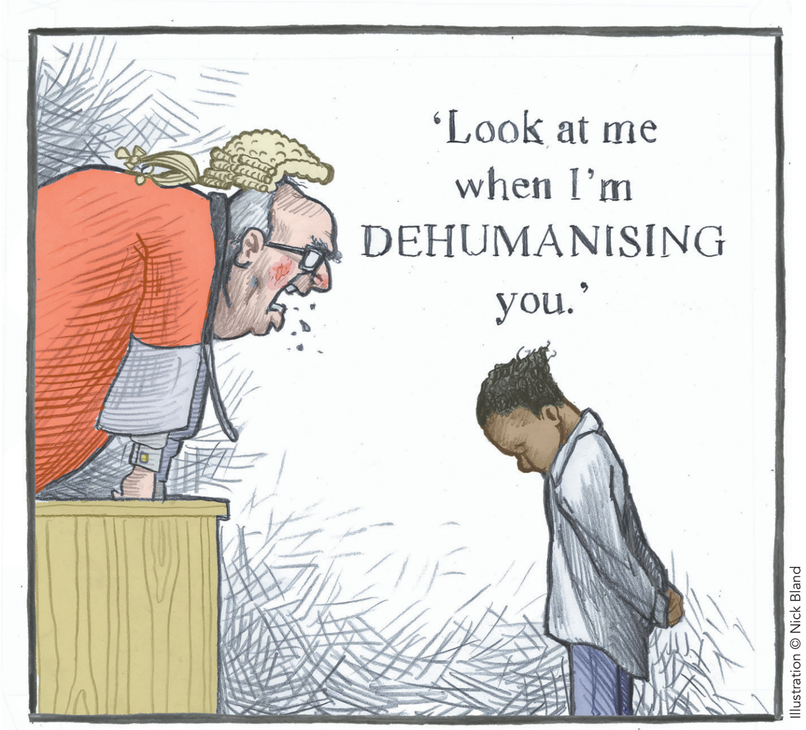


Illustration © Nick Bland

By John B. Lawrence SC.*

Only last week we were told by the Northern Territory Police, without reasons based on confidentiality, that no person is going to be charged with any offences as a consequence of the horror, cruelty and abuse inflicted upon Aboriginal children held within the NT youth detention systems, as exposed by the recent Royal Commission into the Protection and Detention of Children in the NT.

In recent years I have sat too often in Territory courts listening to judges and magistrates stating, in various degrees of conviction, that Aboriginal defendants, men, women, boys and girls "have to take responsibility for their actions". This is invariably followed by, "there have to be consequences for your actions", followed by the sentence, being jail or detention. "Take him/her down." Next, the reality of contemporary Australia is that those reasonable admonishments have application to some people, but far from all.

In 2008 the Western world went through the Great Financial Crisis. Millions were affected, jobs, homes, marriages were lost and smashed as a "consequence". All that was brought about by the gross greed and corrupt conduct of the major banks and financial institutions – Lehmann Brothers, Washington Mutual, etc; and not just by the institutions, but by individual brokers, bankers, directors, CEOs and Board Members. What "consequences" did they endure through their destructive actions? The American, European and Australian governments, using taxpayers monies, bailed them all out and we have just carried on as before, awaiting the inevitable next disaster. History informs us that from the 2008 disaster only one man went to prison. That's how it works.

As a consequence of evidence seen and heard in the recent Royal Commission, we know with precision the individuals who were responsible for the cruel and abusive practices upon young Aboriginal children held in detention, but virtually nothing has flowed from it - not only no charges, but many of those "responsible" are still retained in employment by the present Labor government. My client in the NT Royal Commission, Jake Roper, and his family are unimpressed. They are dissatisfied and they want more. They want what they describe as "Justice". The whole Australian community, especially the Aboriginal community, should expect nothing less. The question that screams from these injustices of recent history is: how come people ensconced within the Establishment avoid responsibility, and even less, consequences for their actions?

For logistical reasons, an article I wrote several months ago outlining the debacle known as the "Borchers Affair" illustrates just one example of this iniquity. That article was entitled:

'Manners Maketh the Man'

The furore over the conduct of Judge Borchers in the Tennant Creek Youth Justice Court in June last year highlights another impediment to Aboriginal people obtaining justice from the NT criminal justice system. The people who "wear it" most as a consequence of this growing disease of judicial bullying are Aboriginal men, women and children whose representation is compromised. This can flow on to their receiving more severe sentences, which can convert at times into more jail time.

Judicial bullying, like all bullying, is a horrible aspect of human behaviour. It is low and cowardly and in recent times it has grown within the Northern Territory criminal justice system.

For the advocate who's bullied, the experience is stressful, humiliating and can be career-changing. For the clients sitting behind the advocate who observe, or are at times subjected to, the bullying, the experience is likewise frightening, belittling and stressful; and, for children who are often already damaged by trauma, it can re-traumatise them.

It also compromises the proper level of representation that a bullied advocate can provide and therefore leads to injustice. Flowing from the uneven power relationship between Judge and advocate is the fear that if the advocate were to argue back and resist the bullying, the Judge might take it out on their client. Similarly, advocates are only too aware that the next day they will have other clients, and a hostile relationship with the judicial officer may jeopardise the future of those clients.

Judicial bullying damages the reputation and integrity of the court and reduces the public's respect and trust in the entire legal system. The Australasian Institute of Judicial Administration's Guide to Judicial Conduct 2nd Edition states:

> "It is important for Judges to maintain a standard of behaviour in court that is consistent with the status of judicial office and does not diminish the confidence of litigants in particular, and the public in general… it is therefore desirable to display such personal attributes as punctuality, courtesy, patience, tolerance and good humour."

In the writer's view, a proper justice system cannot exist with judicial bullying. It must end now.

Having said that, ending it is not without difficulty. The independence of judicial officers is founded on security of tenure, and terminating a Judicial Officer who behaves in a manner that is seriously inappropriate for the proper administration of justice can be extremely difficult.

The recent case of Borchers J has revealed a judicial officer who in the writer's opinion is clearly unfit for office, and illustrates the difficulties in dealing with bad behaviour. The way in which the Borchers matter has been handled is another blow to the reputation and the integrity of the judicial establishment. The affair is a symptom of a seriously ailing legal system.

Tennant Creek Youth Justice Court, 6 June 2017:

This case happened in the middle of the Royal Commission into the Protection and Detention of Children in the Northern Territory. At the time it provoked national uproar when a transcript of the proceeding and the Judge's remarks were reported.

The case was a sentencing matter involving a 13-year-old Aboriginal boy from Tennant Creek. He had pleaded guilty to several unlawful entries and stealings from commercial premises in Tennant Creek. He was also in breach of a good behaviour bond for similar offences committed earlier in the year.

Central to this boy's story was that in January of that year his mother was brutally killed in the family home, witnessed by his two younger sisters. His father has been charged with the murder.

The boy was at boarding school in Alice Springs, and following the death of his mother he predictably went off the rails. He went absent from school, falling into older and poor company back in Tennant Creek and committing the offences for which he was now being dealt with by Judge Borchers.

The remarks made by Borchers J were, in the writer's view, totally inappropriate for any Judge. In fact, they were totally inappropriate for any adult to any 13-year-old child.

In the court for the boy were his lawyer from the (then) Central Australian Aboriginal Legal Aid Service (CAALAS), 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 his failure to attend mental health services.

His lawyer said the boy "hadn't reached the point of last resort, taking into account his personal circumstances, the presumable grief and trauma he is going through". Judge 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 Judge Borchers the tragic circumstances of the boy's parents and the fact it was relevant to his increasing absenteeism at school (79 per cent attendance rate dropping to 26 per cent after the killing), drifting into bad company, drinking and committing offences.

The Judge had this to say to the child: "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".

His lawyer 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. Judge 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.

The whole performance by the Judge representing the NT judiciary was one of sustained bullying, belittling and nasty.

The Royal Commission was given the transcript of this proceeding at the time, but it appears nothing further was done by them. To its credit, CAALAS (now defunct and taken over by the North Australian Aboriginal Justice Agency), made a complaint to Chief Judge Dr Lowndes and the NT Attorney General later in June 2017. CAALAS called for the immediate removal of Judge Borchers from the Youth Justice Court.

In July 2017 the Criminal Lawyers Association of the Northern Territory (CLANT), headed by Mr Russell Goldflam, also laid a complaint. Both CAALAS and CLANT supplemented the Tennant Creek matter with several other complaints, all involving similar conduct by Judge Borchers.

The matters were dealt with by Dr Lowndes. Judge Borchers was given the particulars of the complaints and responded to them. In December 2017, Dr Lowndes made a finding largely dismissing the complaint relating to the Tennant Creek matter, but upholding some of the other complaints. Judge Borchers was removed from the Alice Springs Youth Justice Court, but not the Tennant Creek Youth Justice Court. In relation to the Tennant Creek performance, Dr Lowndes held that '**some** of his remarks appeared harsh and misguided. They fell **well** short of judicial misconduct, although they did amount to inappropriate judicial conduct' (writer's emphasis).

Significantly what has emerged is that Judge Borchers had been behaving like this for many years. What's more, a large number of similar complaints, deliberately kept secret from the public, had been upheld prior to the Tennant Creek complaint – a process of secrecy and ineptitude.

Where it Really Began:

In December 2016, seven months before the Tennant Creek incident, both CAALAS and CLANT had made formal complaints against the Judge concerning no fewer than 24 different matters dating back as far as 2008. Those complaints, again by Mr Goldflam, informed Chief Judge Lowndes that:

> "In court, Judge Borchers is often bullying, aggressive, hostile, sarcastic and disrespectful. The effect on young people who appear before him, together with their families and legal counsel, is distressing and demoralising. I have received several credible reports of young people in custody exhibiting acute distress following admonishment by Judge Borchers. I have on several occasions been required to console and counsel NTLAC (Northern Territory Legal Aid) colleagues who have been reduced to tears by Judge Borchers' abusive conduct towards them. I have witnessed what appears to be systematic belittling by Judge Borchers of generally young and relatively inexperienced CAALAS lawyers over a period of years, and I believe that this has been a substantial cause of the high level of turnover of youth justice lawyers at CAALAS."

Included in those complaints was a fairly typical incident in 2012 in which Judge Borchers 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".

The complaints were investigated and 17 were upheld by Dr Lowndes. His finding of 13 January 2017 stated that Judge Borchers' behaviour was "improper, inappropriate and disrespectful, and fell short of the high standards expected of a judicial officer. It was evident from a pattern of conduct which covered a significant period of time".

Dr Lowndes also pointed out that Judge Borchers accepted he had failed to conform to the standards expected of a judicial officer, and concluded that, "the complaint having been substantiated, I have counselled and will continue to counsel Judge Borchers so as to ensure no recurrence of the relevant conduct, **stressing that any repetition of the conduct would amount to serious misconduct**" (writer's emphasis).

In other words, Judge Borchers was being put on notice. We now know it didn't work. His behaviour, or rather misbehaviour, continued similarly; indeed, three months later, in April 2017, he was directly approached by a senior lawyer from CAALAS who told him of more distress he had caused to two younger colleagues. Again, apparently, Judge Borchers acknowledged his conduct and apologised to one of the young practitioners.

Yet again the Judge's inappropriate conduct continued, which takes us to June 2017 in the Tennant Creek Youth Justice Court, where the matter already highlighted caused a furore. That means, of course, that when Dr Lowndes investigated those complaints from CAALAS and CLANT about the Tennant Creek incident on 6 June 2017 and their supplementary complaints, Mr Borchers was already on notice – or, as they say in criminal justice argot, he had "priors", in fact, "significant priors".

Having investigated the June 2017 matters, Dr Lowndes issued two findings on 8 December 2017. The first finding, which was detailed, was for the parties and complainants only. The other finding, just over one page, was for the media and the general public. The public finding, as earlier outlined, was that the complaints in relation to the June incident were largely dismissed but some of the other complaints were upheld, and that Judge Borchers would no longer sit in the Youth Justice Court in Alice Springs until it was deemed appropriate to re-assign such duties to him.

Further, it was announced that "the Chief Judge has discussed with the Judge the option of professional counselling and will arrange counselling should the Judge wish to avail himself of such assistance". There was no mention in that media release to the community that the same Judge had been on notice for 17 other upheld complaints relating to the earlier similar matters.

It has also come to light that one of the December 2016 complainants, CLANT President Russell Goldflam, wanted these matters kept discreetly within house so as to avoid the glare of the media. Further, in his first complaint of 18 December 2016, Mr Goldflam told Dr Lowndes: "I was yesterday informed that I am to be summonsed as a witness to give evidence to the Royal Commission into the Protection and Detention of Children in the Northern Territory. I will not refer to the matters raised above in my witness statement. I consider that the appropriate means to address this complaint is within the court. My hope and request is that this complaint be discretely and expeditiously dealt with, that Judge Borchers desist from engaging in the conduct the subject of this complaint, and that he continue to sit as a Local Court and Youth Justice Judge".

The manner in which all of this has been handled has been, to put it mildly, inappropriate. Further, the finding of Dr Lowndes in relation to the complaint about Judge Borchers' behaviour in the Tennant Creek Youth Justice Court on 6 June 2017 is, in the context of his "significant priors", nothing short of ludicrous.

Conclusion

The publicity generated by this sorry tale has led to a proposal in February 2018 by Chief Justice Grant, put together by the Supreme Court Justices of the Northern Territory, to legislate a complaint mechanism which would fit into the NSW Judicial Commission. The proposal has a lot of merit. However, there is little merit in the way this problem has been allowed to exist and fester and the inappropriate way in which it has been dealt with. The handling of the matter has resulted in a depreciation of the honour and prestige of the Local Court.

Judge Borchers is not alone as a bullying judicial officer in this jurisdiction – there are others in both the Local Court and the Supreme Court. When I first started practising in 1987, there were six Magistrates and five Supreme Court Judges, only one of whom presented as a judicial bully.

Like so many aspects of contemporary society, things have degenerated. Professional standards have dropped within a general moral collapse. The NT legal system is inferior to what it once was. I've used this quote before and I'll use it again: "We have agreed with too much that was wrong for too long" (Richard Flanagan in his Alan Missen Oration in 2011).

*John B. Lawrence SC is a Darwin barrister and former president of the NT Bar Association and of the Criminal Lawyers Association of the Northern Territory.

Economic development on Aboriginal land: How the NLC does business

The *Land Rights Act*, and the Creation of the Northern Land Council and Land Trusts

In 1976, the Parliament of Australia passed the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

The *Land Rights Act* set up the first system in Australia where Aboriginal people could make land claims based on their traditional connections to the land. Aboriginal land granted under this system was handed back by the creation of Land Trusts.

Since the passing of the *Land Rights Act*, approximately 50 per cent of the land in the Northern Territory has become Aboriginal land, as well as 85 per cent of the coastline.

The *Land Rights Act* also created land councils to help administer the land claims process and to manage leasing and land use on Aboriginal land.

The *Land Rights Act* provides the legal framework for progressing economic development activities on Aboriginal land on behalf of Traditional Owners.

Here's how it works.

Role of the Northern Land Council

The Northern Land Council (NLC) is responsible for assisting Aboriginal people in the Top End of the Northern Territory to claim and manage their traditional land and seas.

- The functions of the land council are contained in section 23 of the *Land Rights Act* and include:
- To find out and express the wishes of Traditional Aboriginal Owners in the management of Aboriginal land;
- To assist in the protection of sacred sites;
- To negotiate on behalf of Traditional Aboriginal Owners and other affected Aboriginal people with people who want to use Aboriginal land;
- To consult with Traditional Owners and other interested and affected Aboriginal people, with respect to any proposal relating to the use of the land; and
- To assist Aboriginal people to carry out commercial activities in a manner that will not cause the NLC to incur financial liability or enable it to receive financial benefit (i.e. the NLC is not allowed to run commercial businesses itself which might make a profit or loss).

Role of the Aboriginal Land Trust

Land Trusts hold Aboriginal land under the *Land Rights Act* for the benefit of Traditional Aboriginal Owners. Members of a land trust are Aboriginal people living in the area of land on which the land trust is situated. Members of a land trust are appointed by the Minister for Indigenous Affairs following a nomination received from the NLC.

Land trusts can act only on the direction of the NLC. A Land trust cannot grant land use agreements without the direction of the NLC or its Delegate. Further, a land trust cannot receive lease or rent money. Money must be paid to NLC and then the NLC must pay this money in full (including interest) to or for the benefit of Traditional Aboriginal Owners.

Granting leases on Aboriginal land: section 19 of the *Land Rights Act*

The NLC helps Traditional Owners negotiate land use agreements under Part 3 (section 19 leases and licences) and Part 4 (exploration and mining agreements) of the *Land Rights Act*.

Under section 19 of the *Land Rights Act*, the NLC may direct a land trust to grant an 'interest in land' (e.g., a lease or a licence) to an outside person or company, known as a third party or a proponent (who may be a Traditional Aboriginal Owner of the land).

The land use agreement that grants this interest in land may be in the form of either a "lease" which includes the right to exclusively use that land for a term of years, or a "licence" which gives the proponent permission to use Aboriginal land for a particular purpose but not necessarily the right to exclude others, or a combination of both. The land use agreement also details the specific rights and duties of each of the parties.

Section 19 land use agreements have been approved in the NLC region for the following purposes:

- Residential Housing / Home Ownership / Indigenous Public Housing;
- Pastoral, Grazing and Mustering;
- Horticulture, Forestry and Irrigated Agriculture;
- Tourism, Sports Fishing and Safari Hunting;
- Fisheries and Aquaculture;
- Pet Meat and Wildlife Harvesting;
- Extractive Minerals and Renewable Energy;
- Retail, Community and Commercial Services;
- Environmental Services;
- Barge Landings and Airstrips;
- Telecommunication Infrastructure;
- Transport and Construction;
- Manufacturing and Processing; and
- Housing and Property Development.
- Consultation

The NLC must first consult with Traditional Aboriginal Owners of the land in question on the terms of the proposal. The Traditional Aboriginal Owners will consider the proposal and might refuse it, consent to it or ask for changes (negotiate). Before any agreement can be made, Traditional Aboriginal Owners must first give their consent as a group.

The NLC must also give other interested and affected Aboriginal groups and people an opportunity to provide feedback or to give their opinion about the proposal.

Making the decision

Once the consultations are complete, the NLC will direct the appropriate Aboriginal land trust to enter into a lease or licence agreement, but only after it is satisfied that certain requirements have been met.

This includes anthropological advice in writing:

- that Traditional Aboriginal Owners understand the terms of the proposed land use agreement and have consented to it;
- advising what the decision-making process was (traditional, or an agreed process); and
- that affected Aboriginal groups or communities have been consulted and had an opportunity to put forward their views and what those views are.

And it includes legal advice that the terms and conditions are reasonable. This is assessed by:

- comparing the proposal with similar agreements in the NLC region;
- looking at whether it will create social or economic benefits for the community;
- obtaining expert advice; and
- understanding the wishes and views of the Traditional Aboriginal Owners.

Once there is anthropological and legal advice that requirements have been met, the NLC (at a Full Council, Executive Council or Regional Council meeting) will decide whether to pass a resolution that the land trust grant the lease or licence. The Executive Council mostly makes these decisions.

If granted, the land trust members and the NLC members will sign the lease contract with the people who asked for the lease contract. The NLC must then manage these agreements on behalf of Traditional Aboriginal Owners.

Under the *Land Rights Act*, agreements for more than 40 years or worth more than $1 million must be approved by the Federal Minister for Indigenous Affairs. NLC lawyers are responsible for obtaining this consent after the NLC has approved the land use agreement.

Because the *Land Rights Act* requires both the assessment of reasonable terms and consultation with Traditional Aboriginal Owners and interested and affected Aboriginal communities and groups, it usually takes 5-6 months to conduct consultations and to then present an agreement to the NLC's Full or Executive councils for consideration before an agreement can be signed/executed.

Case study: Bula Bula, Ramingining

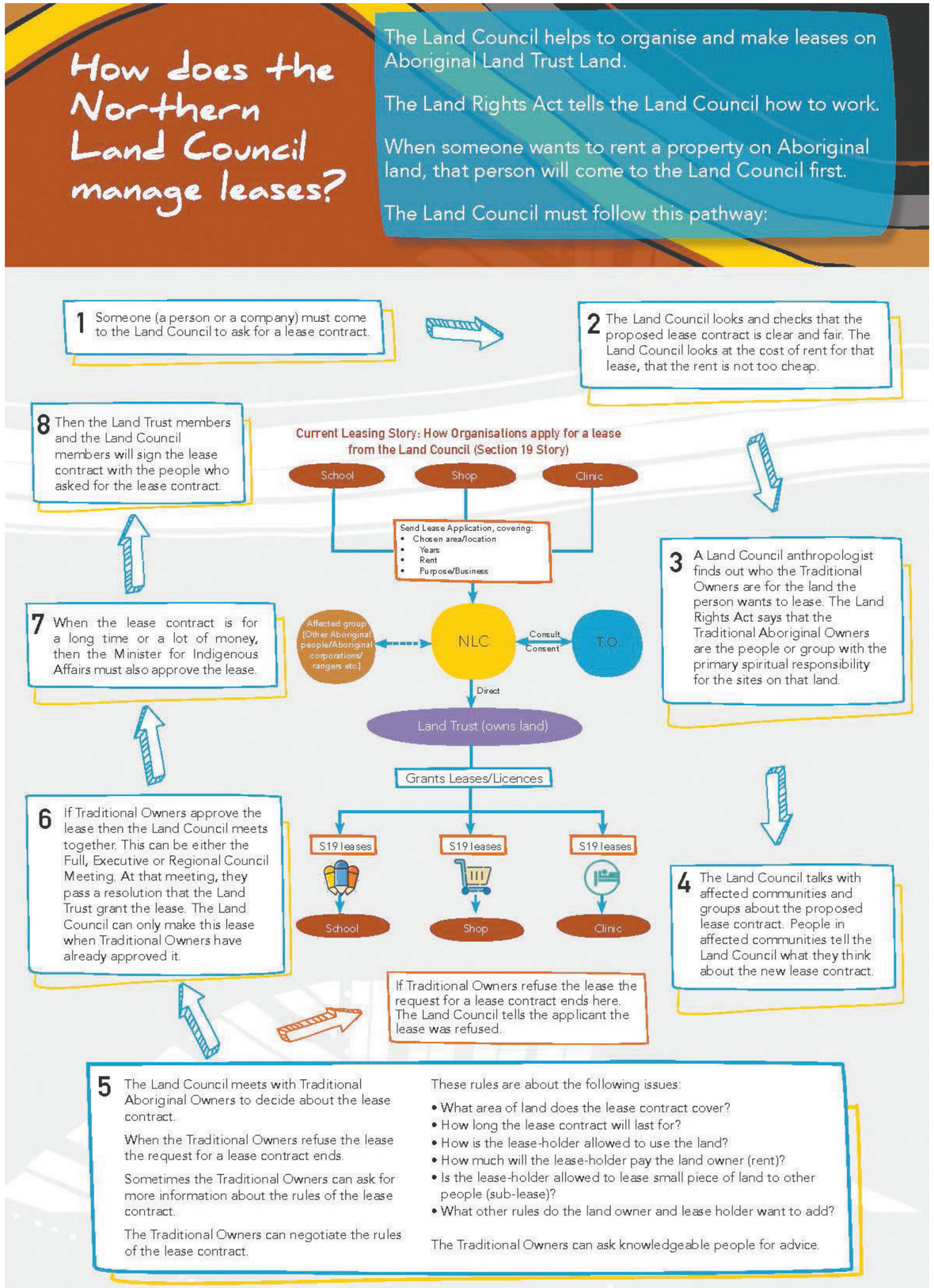
In 2017 Bula Bula Arts Centre (Bula Bula) requested leases in Ramingining following the expiry of its earlier lease.

First the NLC liaised with Bula Bula about which of the lots it sought leases over and what reasonable rent it was prepared to offer. Bula Bula confirmed it wanted new leases over the lots it had already occupied but also wanted an additional vacant lot that it could use to sublease to contractors.

In March 2017, the NLC consulted on these lease proposals with Traditional Owners. Traditional Owners were supportive of Bula Bula and its work and consented as a group to the grant of leases to Bula Bula for the lots it already occupied, but rejected Bula Bula's request for the lease over the vacant lot.

In July 2017, the NLC's Executive Council received legal and anthropological advice confirming that the Traditional Owners consented to the grant of new leases to Bula Bula, but not over the new vacant lot. The Executive Council then directed the Land Trust to grant a lease to Bula Bula over the existing lots but not the new vacant lot. The leases were then executed (signed) by Bula Bula, the NLC and the Land Trust.

This example shows Traditional Owners' right to refuse certain lease requests and consent to others.



REGIONAL DEVELOPMENT

NLC staff consult with Traditional Owners about Section 19 leases in Galiwin'ku.

The NLC's Regional Development team plays a lead role in coordinating and managing s19 Land Use Agreements which includes the expression of interest process, coordinating a multi-disciplinary team to undertake a rigorous assessment of each proposal, organising the logistics for consultations, facilitate meetings with Traditional Owners to make an informed decision about proposals and consulting affected peoples to seek their views.

The Regional Development Branch comprises the NLC's Regional Office network and a regional operation supported by 42 positions in 11 locations that include Darwin, Katherine, Timber Creek, Ngukurr, Borroloola, Tennant Creek, Jabiru, Maningrida, Wadeye, Nhulunbuy and Galiwin'ku. About 65 per cent of staff are Indigenous, most of them recruited locally with close ties to the regions that they work in.

Once a land use agreement is in place the Regional Development team manages the compliance and monitoring of those agreements; which can vary considerably in complexity and resource requirements based on the industry.

After the Commonwealth's compulsory five-year leases over Aboriginal land expired in August 2012, all property not underpinned by a lease arrangement reverted back to the Aboriginal Land Trust. It is the policy of both Commonwealth and Northern Territory governments that assets on Aboriginal land be underpinned by secure tenure arrangements. Government policy on appropriate tenure arrangements has effectively paved the way for the approval of a large number of s19 *Land Rights Act* agreements in Aboriginal communities across the NLC region.

It's estimated that across the 28 discrete medium-to-large Aboriginal communities on Aboriginal land in the NLC region there are just over 4,000 lots or parcels of land, and those lots alone present a large lease management portfolio. The three largest Aboriginal communities, Galiwin'ku, Maningrida and Wadeye, each has more than 400 lots.

The NLC's s19 land use agreement portfolio currently sits at 646 leases and licences across 3,478 parcels of land.

Managing the demand for leases on Aboriginal land

Over the 11 months from 1 July 2017, NLC received land use expressions of interest for 207 parcels of land across a range of industries; nearly 70 per cent of those applications were to secure a parcel of land in an Aboriginal community. Over the past three years, the NLC has received an average of 190-200 expressions of interest per annum. So, on average, we receive an expression of interest every work day.

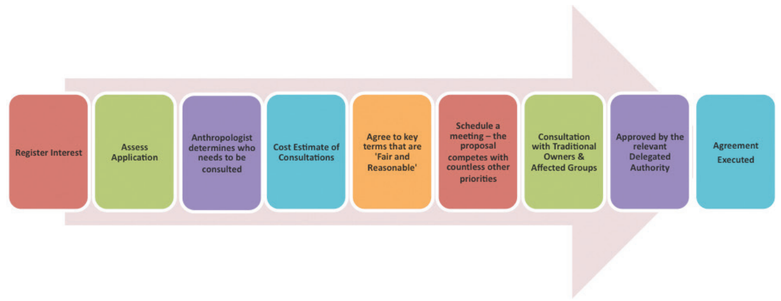
Over the same period the NLC approved 81 s19 land use agreements. The Executive Council met five times and approved 70 agreements, and the CEO approved 11 short-term agreements. The income that will be generated through approving these lease agreements stimulates local economies in Top End communities and produces a range of economic, cultural and social benefits for Traditional Owners.

Proponent Expectations

Progressing an expression of interest up to the agreement stage takes resources and time. Consideration must be given to the large number of existing applications and competing priorities.

The s19 land use assessment process can take up to six months to reach an agreement. Proponents need to factor these timeframes into their planning to avoid disappointment.

Steps followed from registering an expression of interest to establishing an agreement



the progress of s19 land use expressions of interests up to the agreement and compliance stage.

LIMS manages whole-of-life activities associated with negotiated land use agreements, capturing and collating critical information. This assists planning to predict future workloads and to manage resources, and enhances the quality and quantity of information presented to Traditional Owners about activities occurring on their land. The NLC is planning a more robust land use and integrated financial management system to transact business more efficiently and effectively.

Addressing a backlog of s19 land use proposals

The NLC is working through a large number of expressions of interest and as of 18 May 2018, had outstanding interests for 320 parcels of land, with some of these interests competing for the same land parcel.

Dedicated s19 land use project teams continue to work through outstanding expressions of interest. The reasons for delays in progressing s19 Land Use Agreements include:

- Proponents failing to provide relevant information in a timely manner
- Difficulties finalising negotiations with proponents
- Traditional Owner groups unable to make decisions
- Funding limitations for meetings and resource issues
- Delays in obtaining signatures of Land Trust members to complete agreements
- Ministerial consent
- Funerals and sorry business.

Much of the backlog of work has been due to Traditional Owner disputes and their not being able to make a decision. The NLC continues to work with Traditional Owners and mediate disputes.

Cost of Consulting Traditional Owners

Progressing s19 land use applications with Traditional Owners has significant cost implications. Our user-pay policy under the Australian Government cost-recovery guidelines improved the NLC's business efficiency, productivity and responsiveness.

This financial year we expect to spend up to $600,000 to bring Traditional Owners and affected peoples together on country to transact this part of our business. Much of these costs are still subsidised out of the NLC's operating budget.

Agreement Compliance

Land use agreements have a compliance requirement which needs to be monitored to ensure the interests of Traditional Owners are protected. Agreements covering activities such as tourism, crocodile egg collecting, safari hunting, mustering, and pet meat require the NLC to analyse data so that annual fees and royalties can be calculated and proponents are invoiced correctly, to ensure funds are received and distributed to Traditional Owners.

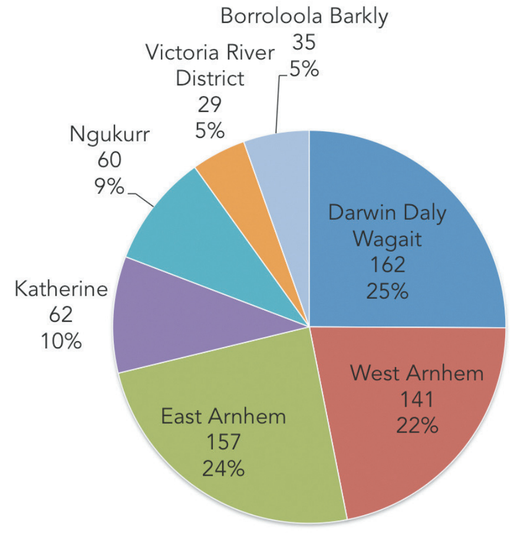
The NLC's land use agreement portfolio includes 646 leases and licences across 3,478 parcels of land. As a result, the lease compliance workload has also grown because of the need for regular reviews.

Continuous Improvement

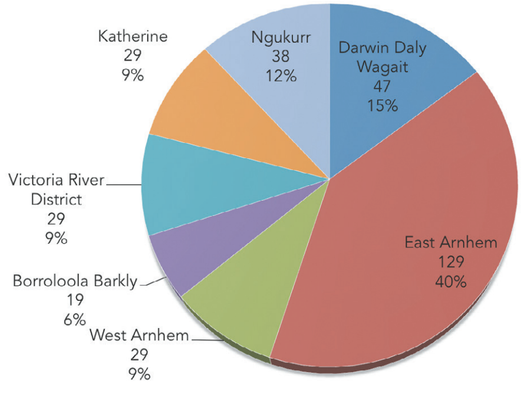
The NLC continuously works to improve its process and systems to manage leases on Aboriginal land.

The NLC has established a custom-built electronic database called the Land Information Management System (LIMS) that registers and tracks

s19 Land Use Agreements by NLC region
As of 23 May 2018 – 646 registered in LIMS



Outstanding s19 Land Use expression of interest
As at 18 May 2018



Because of Her, We Can: NAIDOC WOMEN'S CONFERENCE

When the National NAIDOC Committee announced the 2018 Theme: "Because of Her, We Can" in November 2017 there was a huge round of applause around Australia particularly from Aboriginal and Torres Strait Islander Women.

Among those women was local Arrernte/Eastern Arrernte/Kaytetye woman Christine Ross who was born in Alice Springs and grew up in Darwin and who currently lives in Perth.

Through her consultancy, Christine organises Aboriginal events, conferences and forums. This NAIDOC week she's teamed up with two other Aboriginal women to organise a National NAIDOC Aboriginal and Torres Strait Islander Women's Conference to be held from 11 to 12 July 2018 at the University of New South Wales in Sydney.

Around 700 people are expected to attend, celebrating the invaluable contributions that Aboriginal and Torres Strait Islander women have made – and continue to make – to our communities, families, history and nation.

It comes nearly 30 years after the last big gathering of Aboriginal and Torres Strait Islander Women in Australia.

"As pillars of our society, Aboriginal and Torres Strait Islander women have played – and continue to play – active and significant roles at the community, local, state and national levels," says Christine Ross.

All of the speakers and workshop presenters are Aboriginal or Torres Strait Islander women who are leaders, trailblazers, politicians, activists and social change advocates.

They are women who fought - and continue to fight - for justice, equal rights, rights to country, law and justice, access to education and employment and maintaining and celebrating our culture, language, music and art. They are our mothers, our elders, our grandmothers, our aunties, our sisters and our daughters.

Among the speakers is an impressive line up from the NT including Pat Anderson AO, Tanyah Nasir, Kylie Stothers, Magnolia Maymuru and Leila Gurruwiwi. Christine Ross will be MC.

"Our speakers have amazing personal stories to tell. Whether she has overcome obstacles, taken on great challenges, made a difference in people's lives or worked tirelessly to benefit the Aboriginal and Torres Strait Islander community, she has something unique to share with other women. The NAIDOC Week theme, 'Because of her, we can', certainly fits them," says Ms Ross.

"We will also be honouring quite a few of our NT women who have passed away who made a difference to us today as well as our strong women today."

The conference will be hosted by Chris Figg and Sharon Kinchela, directors of Ngiyani Pty Ltd, with Christine Ross Consultancy as Project Manager.

Registrations

Day 1 is open to Aboriginal and Torres Strait Islander Woman

Day 2 is open to all women to attend and celebrate our theme.

The Conference venue is UNSW Kensington Campus near Randwick Racecourse - 20 mins by bus and taxi out of Sydney CBD

The cost to Register is $350 for 2 days or $175 for 1 day UPFRONT to secure your attendance otherwise it is not a valid Registration. Payment is only by EFT as we do not accept credit cards. Registration is non-refundable and non- transferable.

Register at www.ngiyani.com/because-of-her-we-can

As delegates, it is your responsibility to organise your own travel and accommodation and transfer from the airport to accommodation.

Sponsorship

The National NAIDOC Aboriginal and Torres Strait Islander Women's Conference si seeking sponsorship from around Australia iof $5000.

Please contact christine.ross@live.com.au or call 1300 807 374 for a Sponsorship Package.

Above: Ikwere iperre anwerne kele iterlareme (Because of her we have the ability to carry on and or the knowledge to survive.)

This painting tells the story of women paving the way, from all walks of life: women within families, community, workforce, sporting club, politics.

No dot stands out alone but each has its place, to create the whole painting/picture, creating the fabric of society. From a big sister being a good role model to a grandmother teaching her ways – because of her, we can!

The artist is Amunda Gorey an Eastern Arrernte woman from Santa Teresa in Central Australia.

First Shipment from Gulkula Mine

The first shipment of bauxite from the Gumatj-owned Gulkula Mine in north east Arnhem Land has been loaded in Gove.

Gumatj Corporation Deputy Chairman Djawa Yunupingu and Chief Executive Officer Klaus Helms joined Rio Tinto Gove Operations general manager Linda Murry as the bauxite shipment was loaded onto the MV Bottiglieri Sophie Green at Gove's export wharf on 13 May 2018. The shipment of 20,000 tonnes of bauxite was sent to China for refining.

It was the culmination of many years of dedication and hard work from the Gumatj Corporation board and management who have worked tirelessly to establish the Gulkula Mine, the first Indigenous owned and managed bauxite mine in Australia.

Following the approval by the Northern Land Council, the mine received relevant government and environmental approvals in 2017, and operations began in September 2017. Before the mine opened, a sales term sheet was agreed with Rio Tinto for them to purchase bauxite from the mine. It is then transported to Rio Tinto's stockpiles for export to domestic and international markets.

Rio Tinto Gove Operations General Manager Linda Murry said: "We are pleased to see our local partnerships evolve and remain committed to support initiatives to ensure the sustainability of the north east Arnhem Land community now and into the future."

Rio Tinto Gove Operations general manager Linda Murry with Gumatj Corporation Chief Executive Officer Klaus Helms and Deputy Chairman Djawa Yunupingu.

The Gulkula Mining Company, a wholly owned subsidiary of Gumatj Corporation Ltd, has 14 staff, 10 of whom are Yolŋu. Of these, four gained employment after completing the Gulkula Regional Training Centre's 17-week training program which aims to get young Yolŋu work-ready for employment in the region. The Training Centre is also owned and operated by Gumatj Corporation Ltd.

Both facilities and the Yolŋu employment figures at the mine are a testament to Gumatj's ongoing commitment to sustainable Yolŋu employment that accommodates traditional customs and lifestyle and supports moving away from welfare dependency. This is in addition to 70 Yolŋu employees of Gumatj Corporation's other operations in Gunyangara and across the Gove Peninsula.

Deputy Chairman Djawa Yunupingu said: "This was a very exciting day for us. As a board, we have been working hard for many years to create more opportunities for our people. I am very proud of what we have achieved. I would like to acknowledge our Chairman, Dr Galarrwuy Yunupingu AM for his long term vision on this project. I also thank our CEO Klaus Helms for this hard work in making this happen."

Chief Executive Officer Klaus Helms said: "As CEO, I am proud of Gumatj Corporation's ability to deliver on what we set out to achieve. This is a big day for us, but also only the start for the Gulkula Mine."

VERNON ISLANDS HANDED BACK

The Vernon Islands have been officially returned to the Mantiyupwi Tiwi people, 40 years after the land claim was lodged. The three islands, located between the Tiwi Islands and Darwin, north of Gunn Point, were handed back in a ceremony on Bathurst Island on 12 March 2018.

Indigenous Affairs Minister Nigel Scullion delivered the deed of grant to traditional owners, recognising the enduring connection of the Mantiyupwi Tiwi people to the Vernon Islands.

It brings to a close Australia's second longest-running land claim.

"Today we mark an end of a long journey of recognition for the Vernon Islands land claim and celebrate a start of an exciting new chapter in the lives of the Mantiyupwi Tiwi people," Minister Scullion said.

"We're giving back land that was always yours in any event."

Andrew Tipungwuti, Acting CEO of the Tiwi Land Council, said: "It's a long wait but it's a great achievement. Sadly all our past leaders who fought for this are no longer with us, but I think for the newer generation, it is achievable to get that acknowledgment."

NLC Chairman Samuel Bush-Blanasi attended the ceremony on behalf of the Northern Land Council.

The claim was lodged by the Northern Land Council on 31 March 1978 on behalf of the Larrakia people. At the land claim hearing in 2008, it was the Mantiyupwi Tiwi people who were able to prove they were the Traditional Owners under the Land Rights Act. Larrakia people can exercise their rights pursuant to section 71 of the Act, which allows those with traditional rights to use or occupy that land in accordance with Aboriginal tradition.

Permit-free access to intertidal waters around the Vernon Islands has been maintained under a settlement between the Tiwi Land Council, the Tiwi Aboriginal Land Trust and the Northern Territory Government.

Photos clockwise from top: Community members hold the deed of grant, officially acknolwedging the Vernon Islands as Aboriginal land; scenes from the handback ceremony at Wurrumiyanga; a map showing the location of the Vernon Islands.

NLC RANGERS AMONG FIRST NT FISHERIES INSPECTORS

Two NLC rangers are among the first six Indigenous Rangers in the Northern Territory to become Fisheries Inspectors.

Rob Lindsay and Aaron Green from NLC's Malak Malak Rangers were appointed Fisheries Inspectors in May, giving them powers to monitor recreational and commercial fishing activity along the Daly River and ensure fishers are complying with the NT Fisheries Act.

Malak Malak ranger Aaron Green said he was proud to be one of the first six to receive the accreditation.

"Proud moment to actually become fishers inspector. We understand we've got bigger responsibility not only for ourselves but to keep it going for the future too," said Malak Malak Ranger Aaron Green.

"We've got limited powers but we can actually check on bag limits, size limits, and also check the fishing gear and ask for names and addresses."

Mr Green said while they were already monitoring prawn traps on the Daly River, this certification means he now has the power to better look after his country.

"There are some illegal ones, some fishermen doing the wrong thing. Now we can actually take their details and send it back to the Water Police."

The change should come as no surprise to recreational and commercial fishers on the Daly River as Malak Malak rangers have been heading out with Fisheries and Water Police over the last few years to educate tourists about the change.

"Some of them are really happy for Indigenous rangers to be doing this," said Mr Green. "Some are probably not, but we've got to look after the place and Water Police can't always be out there."

"Being locals in our area, we know the river a fair bit, so we can actually get information out at a certain time on what time they're fishing."

Minister for Primary Industry and Resources Ken Vowles presented the rangers with their certificates at a ceremony in Darwin on 18 May.

He said at the ceremony: "I want to see this program grow. I want to be standing here welcoming others. You should feel proud."

"These roles protect our fish stocks, help Aboriginal Territorians manage their country and provide career progression opportunities for rangers in remote regions."

"To become the first six fisheries inspectors in the Territory, makes me proud."

A total of 160 rangers across the NT have completed their Certificate I and II in Fisheries Compliance and will continue their training in order to join these rangers.

"We're actually looking forward to putting our only female ranger through the next Cert III," said Mr Green.

He plans to continue training to become a Fisheries Officer. Mr Green said being a ranger was a great job that brought variety to everyday work.

"You're always doing something different, you're always doing something new. Sometimes some of the stuff we do is actually the first of its kind. To become the first six fisheries inspectors in the Territory, makes me proud."

NLC Caring for Country manager Matt Salmon, Malak Malak ranger and fisheries inspector Aaron Green, NLC Chairman Samuel Bush-Blanasi and Malak Malak ranger coordinator and fisheries inspector Rob Lindsay.

Galiwin'ku young fellas get their bounce back

Community Planning and Development: Youth Activities in Galiwin'ku

It's 6pm and young Yolngu are racing up and down the basketball courts in Galiwin'ku. Youth program coordinator Josie Wright organises a group of girls into teams for a game, while others watch from the sidelines.

This is part of the youth sport and recreation program delivered by East Arnhem Regional Council (EARC). In December 2017 the program got a major boost when Traditional Owners partnered with EARC to invest more than $400,000 to provide extra support to their young people. The money was used to hire a new coordinator and youth worker, and run extra youth activities. There's now a disco on every Friday night and more sports competitions. The program has also expanded in to Buthan, where activities such as a cooking program, a movie night and a volleyball program run three times a week.

"It is really good for us to be able to choose from different programs and also hang out together," says one of the young men in the basketball comp Sheppy vs Jets.

The Youth Leadership groups are now involving more young men, and with an extra day of youth diversion, young people are being taught raypirri (cultural discipline) and safety.

Traditional Owner Helen Nyomba says: "It is really good we can support our kids with this program. They can do activities like camping, getting stories about Yolngu culture and learning new skills. They will be our young leaders in the future. My vision is for this project to be long term."

"We can now reach all areas of community that we couldn't reach before and we have more capacity to deliver a wider range of programs throughout the week both with larger community and with smaller groups of young people and children," says Youth Coordinator Rowan Busuttil.

As well as Galiwin'ku, the NLC's new Community Planning and Development Program is supporting six other Traditional Owner groups across the Top End. Pilot projects are underway in the Daly River, Ngukurr, Gapuwiyak, South East Arnhem Land Indigenous Protected Area, Legune and Wadeye areas. The program supports Aboriginal people to drive their own development using their income from land use agreements. Traditional Owners see it as a way to achieve development objectives based on their priorities, knowledge and experience.

With $5.3 million so far set aside for community development through the program, Aboriginal people are making a serious financial investment in their own lives and futures. However, to meet the many needs in Aboriginal communities and set up sustainable solutions, Aboriginal people know they need government to get on board to provide co-funding. The Galiwin'ku traditional owners have already taken steps to make sure that the extended youth program they are funding keeps going in two years. They have told the NT and Australian government of their funding decision and asked them to match it. They hope that by demonstrating the positive impact of an extended youth service both levels of government will come to the table with much needed extra funding.

Circle of power: Galiwin'ku girls plan to win