NORTHERN LAND COUNCIL

Northern Edition

LAND RIGHTS NEWS

Our Land, Our Sea, Our Life

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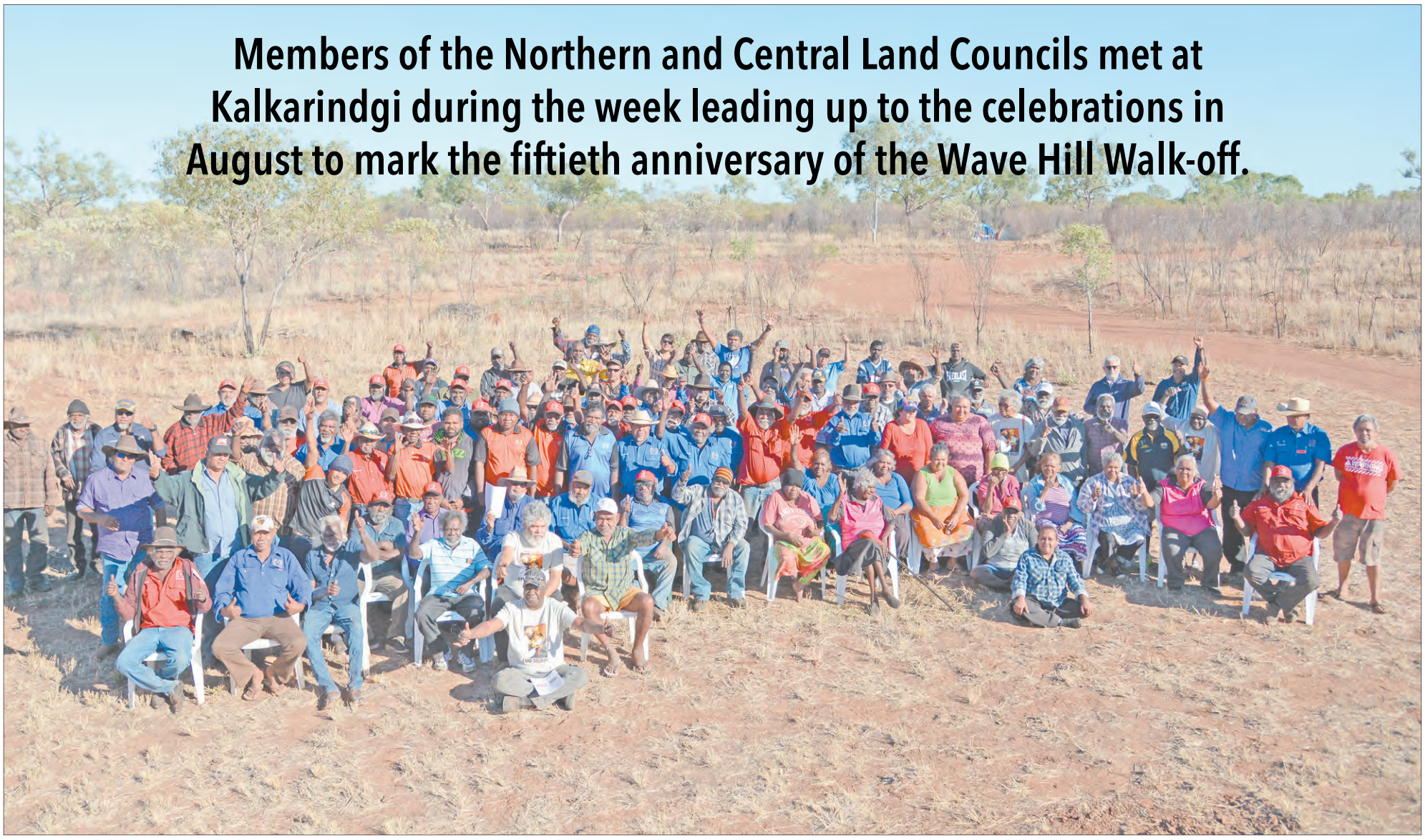
HISTORIC MEETING



Members of the Northern and Central Land Councils met at Kalkarindgi during the week leading up to the celebrations in August to mark the fiftieth anniversary of the Wave Hill Walk-off.

Ord-Kimberley Development Plan: Over-budget and late

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Wave Hill Walk-off Anniversary: Land Councils meet at Kalkarindgi

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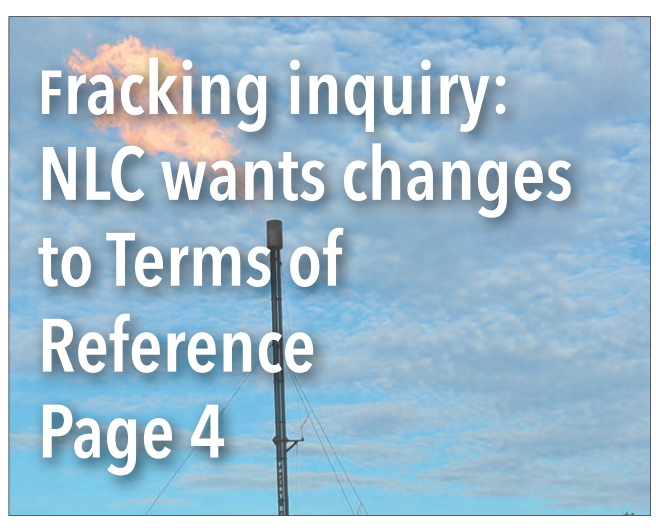

Fracking inquiry: NLC wants changes to Terms of Reference

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A word from the Chair

It's an honour to have been Chairman of the Northern Land Council over the past three years – especially this year, the 40th anniversary of the passing of the Aboriginal Land Rights (Northern Territory) Act 1976.

This year I've attended two major historic ceremonies, the handbacks for the Yarralin and Kenbi land claims. Both claims had hung over the NLC for many decades, and it was most satisfying to witness their final resolution. We've also had two significant native title decisions from the Federal Court this year: the recognition of a compensation claim at Timber Creek, and of the right to trade at Borroloola.

Looming next year is a less joyful anniversary – the 10th anniversary of the Federal Intervention into the Northern Territory. The Intervention has had a dreadful impact on Aboriginal people, who continue to suffer from its consequences.

The NLC has come a long way during my time as Chairman, and the organisation is in much better shape than it was when I was elected three years ago.

I remember how we were hauled over the coals in February last year by the Senate Finance and Public Administration Committee, because the Australian National Audit Office had found weaknesses in governance and audit and delays in financial reporting by the NLC.

Much work has been done to fix things since then, and I am pleased to report that we're now back on track – the ANAO has reported no "A" category (significant) issues in the 2015/16 reporting year. In fact, we've been downgraded to a "C" category.

Our financial performance is now much improved thanks to better controls and planning within the management group.

There's been reform going on across the whole range of the NLC's activities. Everyone in the management group is now working together, and we've broken down the "silo" culture across the various branches. We've got new strategic and corporate plans, and management works to new KPIs.

We've become much more efficient in the way we process and approve agreements for activities on Aboriginal land. The Full Council, meeting at Ngukurr in May last year, delegated to the Executive Council its functions to approve most agreements of any value up to 40 years. The Full Council meets only twice a year and the executive meets six times a year – so there are now eight opportunities a year, rather than two, to get agreements approved.

We are also working on plans to expand the network of regional offices so that we can better service the ever-growing remote townships in our region, and we are in the process of setting up a Community Planning and Development Unit so that Aboriginal people can drive their own development projects and secure benefits from their land, waters and seas.

I've also moved the venues for Full Council meetings away from the big centres, so that we can be closer to our constituents. So far during my term as Chairman, the Full Council has met at Barunga, Gulkula and Ngukurr; and the next meeting, the first of the new 2016-2019 Council, will be held at Timber Creek.

Finally, I congratulate those Councillors who have been reappointed or re-elected for the next three-year term, and I welcome the 22 new Councillors who are about to come on board. We'll all be meeting for the first time at Timber Creek in mid-November.

Samuel Bush-Blanasi

Chairman, NLC

Cherry Wulumirr Daniels awarded an Order of Australia in recognition of dedicating her life to the advancement of her community

Cherry Wulumirr Daniels OAM chose to share her joy of being awarded an Order of Australia in the 2016 Queens Birthday Honours List with her family and community of Ngukurr on 26 October. And so in front of a cheering crowd at the Ngukurr School she was formally handed her Order of Australia medal by the Administrator of the Northern Territory, the Hon. John Hardy OAM

Awarded in recognition of her service to the Indigenous community of the Northern Territory, she has dedicated her life to the advancement of her community.

Among her achievements was the founding of a group of four women rangers under the old CDEP program in the mid 90s, the Yugul Mangi Rangers in 1999 and the Ngukurr Language Centre in 1999 to revitalise, document, teach and promote the traditional languages of the community's seven clans – Marra, Ngandi, Ngalakan, Nunggubuyu, Alawa, Ritharrngu, Wandarrang.

She has co-authored book chapters, academic journal articles, university educational materials and documentaries with non-Indigenous colleagues.

Cherry was also instrumental in pushing for the establishment of the 20,000 sq km South Eastern Arnhem Land Indigenous Protected Area, which was declared in September 2016. She was a presenter at the inaugural World Indigenous Network Conference, hosted by the North Australian Indigenous Land and Sea Management Alliance in 2013.

Overcoming a ban on speaking her traditional Ngandi language at the Ngukurr Mission School as a child, she taught herself later in life and is now one of the few remaining Ngandi speakers. A natural leader and educator, she has taught for many years in the language centre and school, helping her community regain their knowledge and pride in language and culture.

Cherry has been a particularly strong advocate and role model for the women in her community and many at her investiture ceremony spoke of her influence in their lives. At age 72 she has lost none of her passion and vigour and entertained the crowd with an inspiring speech about the importance of knowing language and culture, protecting country and gaining 'both ways' education to succeed in both worlds.

Cherry Daniels (black shirt, centre) surrounded by well-wishers during the investiture ceremony at Ngukurr. The Administrator of the NT, John Hardy OAM, is on the far right.

SACRED SITES ACT SAVED

A relentless war waged by the former CLP Government against the Aboriginal Areas Protection Authority (AAPA) did not abate until the main protagonist, the Chief of Staff to the Minister for Local Government and Community Services, Bess Price, was charged with corruption in July 2015.

The campaign against AAPA was chronicled during an address in August by AAPA's Chief Executive Officer, Dr Benedict Scambary. It was titled, *'Two Laws Together': The Review of the Northern Territory Aboriginal Sacred Sites Act* – part of the North Australia Research Unit's 2016 Public Seminar Series, hosted by the Australian National University.

The address gave a fascinating insight into behind-the-scenes machinations within the Giles government, and its hostility towards AAPA and its administration of the Northern Territory Aboriginal Sacred Sites Act.

The review of the Sacred Sites Act had been flagged for some months before the NT government announced the terms of reference in July last year, shortly after the Chief of Staff, Paul Mossman, was charged (he was convicted on 25 October of two counts of corruptly receiving benefits). The review was conducted by the Indigenous Consulting unit of Pricewaterhouse Cooper (PwC) and released by the previous government in July this year.

Mossman, by Dr Scambary's account, had embarked on a "campaign of harassment and intimidation that included personal threats, directions … beyond the authority of the (Sacred Sites) Act, negative aspersions against individual (AAPA) board members, and accusations that the Authority was anti-development".

The "anti-development" accusation related particularly to AAPA's consideration of the government's plans to extend the Ord River irrigation scheme into the Northern Territory – Ord 3, as it's known (see Joe Morrison's Nugget Coombs Memorial Lecture, pages 7 and 8).

Dr Scambary took up the story in his NARU address: "The authority's advice in relation to the Ord 3 project was only partially heard by the fifth floor of Parliament House (which accommodates the offices of the Chief Minister and other Cabinet members). The assessment of the Keep River Plain as a sacred site was questioned, with the site being characterised as a dreaming track instead of a sacred site, with the implication that the Authority was acting beyond the (Sacred Sites) Act. The notion that the Board of the Authority could stifle a major development initiative of the Government was met with outrage that permeated, permutated, and swept through NT Government agencies".

It's inferable from Dr Scambary's address that the Government was threatening to use its power under the Sacred Sites Act for the Minister (in this case, Bess Price) to override the Authority and issue a Certificate to approve the Ord 3 development.

The power has been exercised only once, in the early 1990s, when the then CLP Government was wanting to build a dam in Alice Springs which would have damaged and destroyed sacred sites. After much controversy, the then Minister responsible issued his own site clearance certificate, but was finally overruled by the Commonwealth Minister for Aboriginal Affairs, acting under the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

In the face of a possible threat of a Ministerial override, Dr Scambary said that AAPA's advice was that "any such dramatic changes would almost certainly breach s73(1) of the Aboriginal Land Rights Act, and that the first time the Minister decided to exercise her discretion in relation to a sacred site, it would likely be open to a High Court challenge".

The quoted section of the superior Land Rights Act says that Northern Territory sacred sites legislation "… shall provide for the right of Aboriginals to have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aboriginals relating to the extent to which those sites should be protected".

"A clear issue for the Government, and as expressed to me by the then CEO of the Chief Minister's Office, was the extent of power held by the (AAPA) board and the negative implications this had for northern development," Dr Scambary said in his address.

Elsewhere, he noted that the PwC Indigenous Consulting team, during the conduct of its review of the Sacred Sites Act, "reported that misinformation and mistrust of the Act and the Authority was prevalent particularly in the senior ranks of the Northern Territory Government bureaucracy.

"From my experience I concur with this view, and assert that a culture of opposition has traditionally existed to Indigenous land administration frameworks that has its foundations in the earliest conflicts over the Aboriginal Land Rights Act, the Sacred Sites Act and the Native Title Act, and persists in parts of the northern development agenda, where Indigenous land interests and development agendas are often silent except for frequent calls for land reform to facilitate development.

"I assert that the (PwC) Sacred Sites Processes and Outcomes Review is both a product of the oppositional agenda that the Northern Territory Government has pursued in relation to Aboriginal land rights and, also, I hope, marks a point where that agenda is beginning to change".

Dr Scambary would certainly have been hoping for a change to the attitude demonstrated by Chief Minister Adam Giles when he attended an AAPA board meeting in November 2014.

Dr Benedict Scambary, CEO Aboriginal Areas Protection Authority

"The Chief Minister conducted himself in a highly combative fashion," Dr Scambary told his audience at NARU.

"He argued that the Board and the Authority were anti-development and cited their decision in relation to the Ord 3 project as an example.

"He also raised the issue of sacred sites 'appearing' whenever the government sought to develop any kind of project, and suggested that some sacred sites were, in effect, not real, being used by the Authority as a mechanism to delay projects, often in opposition to what the Traditional Owners and custodians wanted.

"In addition, he accused custodians of inventing sacred sites to maximise financial benefit in relation to development. He further suggested to the Board that they were being misled by the staff of the Authority, by people who were not even Indigenous."

Consultants protected AAPA

The choice of a private consulting firm to review of the *Northern Territory Sacred Sites Act* helped to save the future of the Aboriginal Areas Protection Authority (AAPA), the agency which administers the *Northern Territory Sacred Sites Act*, according to its Chief Executive Officer, Dr Ben Scambary.

In his address to the North Australia Research Unit in August, Dr Scambary reflected on the outcome of the review, which was delivered to the Northern Territory Government in April.

The Government had chosen PwC's Indigenous Consulting unit to conduct the review, and Dr Scambary said that, apart from their independence, the review team "necessarily had an interest in maintaining their corporate reputation in the small jurisdiction of the Northern Territory".

"There is perhaps a balancing element in this arrangement as evidenced in the final report where the recommendations are a mix of mechanisms that appear aimed at the breadth of stakeholders.

"Collectively, the outcomes of the review are workable and functional and fair to everybody. In a pragmatic sense, the review report does not recommend fixing things that are not broken, and from the Authority's view there is a certain vindication in the outcomes, given the journey of the last four years," Dr Scambary said.

He did, however, identify certain key elements that gave rise to the review and were not "significantly addressed".

"These include the role and appointment of the Board and the inherent tension between ministerial authority and the authority of the Board. Similarly, the relationship between the Authority and Land Councils, given their responsibility in relation to sacred sites, is not explored. This is surprising given the strong views expressed by land councils in the course of the review".

Looking forward, Dr Scambary said sacred sites and associated cultural knowledge systems would need to be to be accounted for if Indigenous Territorians are to be "meaningfully engaged in any northern development agenda".

"Questions and ideas about how the role of the Sacred Sites Act should develop to meet changing circumstances and challenges on the horizon are vital.

"For example, the changing demography of the Indigenous population of the Northern Territory will present significant challenges for the operation of the Act in the coming decade and beyond. Increases in the Indigenous population in the last decade or so has resulted in the Indigenous population having a younger age structure than the non-Indigenous population. The median age for Indigenous Australians in 21.8 years compared to 37.6 years for the non-Indigenous population

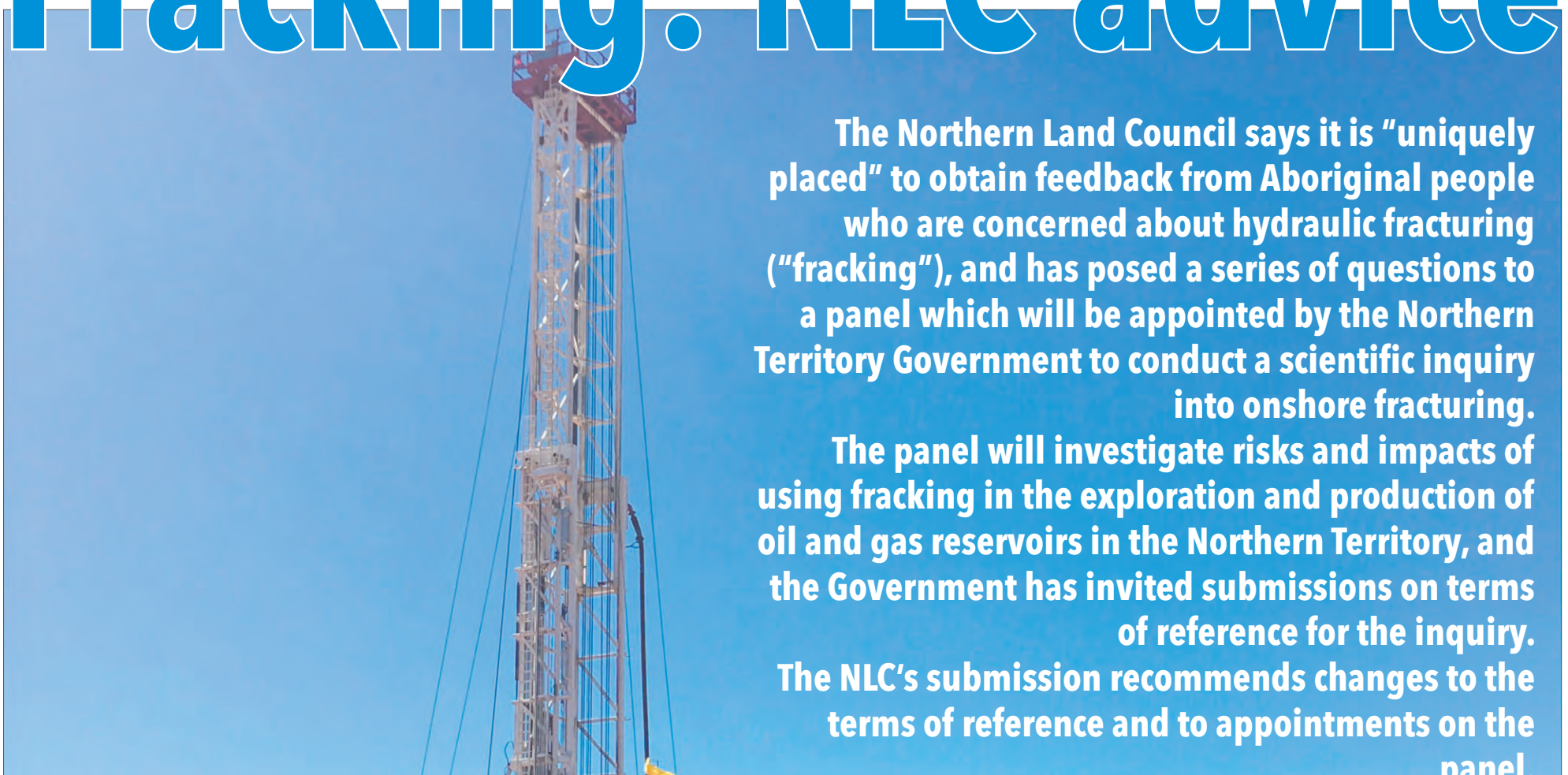
"Typically, the type of knowledge that the Act and AAPA deal with is the domain of senior custodians of sacred sites. It is likely that the notion of seniority will change in the coming decade, and that values and the nature of information relating to land and culture will be redefined. It is more than likely that custodians will seek to utilise the repository of information held by the Authority in new and innovative ways".

Fracking: NLC advice

The Northern Land Council says it is "uniquely placed" to obtain feedback from Aboriginal people who are concerned about hydraulic fracturing ("fracking"), and has posed a series of questions to a panel which will be appointed by the Northern Territory Government to conduct a scientific inquiry into onshore fracturing.

The panel will investigate risks and impacts of using fracking in the exploration and production of oil and gas reservoirs in the Northern Territory, and the Government has invited submissions on terms of reference for the inquiry.

The NLC's submission recommends changes to the terms of reference and to appointments on the panel.



Three generations of traditional Aboriginal owners participate in a Welcome to Country event for origin Energy's drill crew at the Beetaloo drill site, Beetaloo Statuon July 2016

The NLC says fracking has triggered substantial public concern, nationally and internationally, about its potential to cause serious environmental damage and hazards to human health.

The new Northern Territory Government has invited submissions on its proposed terms of reference for a scientific inquiry to investigate the risks and impacts of hydraulic fracturing. In response, the NLC says it is "constantly updating, revising and communicating information to Traditional Owners and other Aboriginal people to ensure that decisions relating to land access are made in a way that complies with the Land Rights Act and the broader international principle of free, prior and informed consent".

"As guidance to the Panel, it is important to realise that there is no single Aboriginal position in respect of hydraulic fracturing. The NLC therefore seeks a balanced approach to and a balanced outcome from the Inquiry."

The NLC wants changes to the panel's first two terms of reference, a new term of reference of reference to be considered, and the panel's membership enlarged.

The first term of reference says the panel will "provide advice on whether hydraulic fracturing of unconventional reservoirs can be safely and effectively undertaken under best-practice conditions, without adverse impacts on environmental, social and economic values of the Northern Territory".

The NLC's submission: In the absence of a common, Territory-wide set of 'values', it may be more appropriate to frame the term of reference to refer to potential adverse impacts on the Northern Territory's environment, society and economy. It is also difficult to perceive how hydraulic fracturing, treated in isolation from the industry it supports, can have adverse impacts on the Northern Territory's society and economy.

Consequently, the NLC views the term of reference as only the first step in a three-part question that must be addressed to provide a meaningful analysis. The term of reference may be more appropriately framed as follows:

1. Can hydraulic fracturing of unconventional reservoirs be safely and effectively performed under best-practice conditions, without adverse direct or indirect impacts on the Northern Territory's environment, society and economy?
2. If not, can the identified adverse impacts be managed to an acceptable level of risk?

What is an acceptable risk level?

The second term of reference says the panel will assess the scientific evidence to determine the potential effects of hydraulic fracturing of unconventional reservoirs on: aquifers

(groundwater); surface water; geology, land and terrestrial ecosystems; ecotoxicology; human health, particularly with respect to the use and regulation of chemicals used in the hydraulic fracturing of unconventional reservoirs processes; current and future land uses (e.g., pastoral production); emissions (e.g., fugitive emissions).

The NLC's submission: This may be better expressed as a request or direction to assess any perceived gaps in scientific evidence as it relates to hydraulic fracturing in the Northern Territory. The outcomes would then be used to direct the scientific research required under term of reference 5 (Advise on research priorities to improve on the current base of scientific understanding and assist government's need for further evidence to inform decision-making).

New term of reference: The NLC also wants an additional term of reference which explicitly addresses potential direct and indirect impacts of fracturing on Aboriginal culture and society.

The NLC submission argues: "Development of the onshore oil and gas industry will impact on the natural environment and the cultural and utilitarian values attributed to it.

"It is reasonable to assume that the vast majority of development activities, especially petroleum exploration and production will occur on land that is subject to the Aboriginal Land Rights or Native Title Acts, making Traditional Owners and other Aboriginal people who live on this land, key and direct stakeholders in any social impact assessment".

Panel Appointments

The Government is proposing to appoint five or six members to its panel of inquiry. Ideally, the Government says, they would have experience in hydrogeology, hydrology, ecology/natural resource management, geology, geochemistry, ecotoxicology, environmental regulation and the oil and gas industry.

The NLC wants the panel membership also to have specific expertise related to: the socio-economic impacts of the development of an oil and gas industry on Aboriginal people; the impacts of oil and gas infrastructure on the environment and Aboriginal culture and society; and, civil and road engineering in order to address impacts of oil and gas infrastructure on surface hydrological flows, fauna safety and habitat fragmentation.

Impact assessments

The NLC's submission reports concerns about the current manner in which the environmental impact assessment process is applied to oil and/or gas wells. It also poses a list of questions which it says have been consistently raised by Traditional Owners over the past six years of consultations to do with fracking.

Under the current process, impacts are usually assessed as Environmental Management Plans (EMPs), on a per well basis. The NLC does not believe that this provides an acceptable level of focus on cumulative and/or regional assessments. Consequently, we ask the Panel to consider the following:

- What are the anticipated cumulative impacts and risks to the environment of developing the oil and gas industry, given thousands of wells will be required to make the industry viable?
- What level of study will be undertaken to determine the risks to potable aquifers in the areas currently targeted for production (e.g., the Beetaloo Basin)? Will these assessments be made at local or bioregional level?
- Will strategic and bioregional assessments that consider both spatial and temporal assessment be undertaken? If not, why not?
- Will strategic and bioregional assessments and associated baseline monitoring be made mandatory? If so, how will they be regulated?
- Will the outcome of all levels of impact assessments (including EMPs), audits and inspections be made available to the public (i.e., what level of transparency will be applied)?
- If cumulative, strategic and bioregional assessments are not undertaken, will EMPs be subjected to public review prior to their approval?

Water

Many Aboriginal people hold serious concerns about the potential for contamination of, or loss of potable water sources (both above and below ground) resulting from the uncontrolled use, disposal or mismanagement of water associated with the hydraulic fracturing process.

- How much water will be required for the shale oil and gas industry to be viable and from where will this water be extracted?
- Will extraction of water for use in hydraulically fractured wells be included into water allocation planning, and if so, what restrictions will be placed on the quantity of water that is permitted for extraction? If not, why not?
- Will a water trigger, similar to that applied to CSG in the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) be applied to the shale gas industry in the Northern Territory? If not, why not?

Gas flare during testing phase at Origin Energy's test well at Beetaloo Station.

Disposal of waste water

- What methods are to be applied to management of produced water, waste water and flowback of hydraulic fracturing fluids?
- What are the risks associated with direct injection of waste water into underground aquifers?
- Is direct injection of waste water into underground aquifers permitted, or will it be permitted? If so, what mechanisms are in place to control the risks?

Impacts of infrastructure development

The NLC has concerns about the potential for environmental fragmentation and large cumulative impacts resulting from construction of additional infrastructure (i.e., roads, power lines, gas pipelines and cleared production/drill pads) required for industry to be viable. The poorly coordinated approach often seen in oil/gas fields of the USA and parts of Queensland would not be acceptable.

- What are the cumulative risks and impacts of a shale oil industry, similar to that of the USA, and how will they be assessed over a landscape scale?
- How will planning and development of infrastructure associated with the development of oil/gas fields be managed to minimise the potential for fragmentation of the environment? Will this be legislated, addressed by policy or under the control of industry?

Abandonment of wells

Many Aboriginal people have serious concerns about the ongoing integrity of wells, both new and abandoned. Their concerns are related to the continuing risk to their cultural relationships to the land and and to the environment that may result from degradation of well cements and casing over time. Particular concerns have been expressed about the potential for leakage of oil/gas into aquifers and the atmosphere.

- How long will it take before an abandoned or shut-in well begins to leak?
- What proportion of wells, both abandoned and new, is likely to leak?
- How will abandoned wells, and especially those that show indications of leaking, be managed in the future?
- Who will have the responsibility for the addressing the liability posed by leaking wells?
- Does the Northern Territory Government have sufficient resources to regularly audit and inspect both new wells and abandoned wells to ensure that well integrity is first established and then maintained after abandonment?
- Where will the money come from for the management of abandoned wells? Will there be a legacy unit developed similar to that in place for legacy mines?

Social and cultural impacts

The NLC holds concerns about how the development of large-scale onshore oil/gas fields will impact on the social structures, living standards and cultural activities of Aboriginal people. Many Traditional Owners and other Aboriginal people have a strong commitment to continued cultural and environmental protection of land, but also a strong desire to materially benefit from and participate in the industry. This opens up a complex interplay of factors, which should be addressed by the inquiry if there is to be a balanced outcome. Some of these factors are highlighted in the questions below:

- Will the existing steps taken to prevent hydraulic fracturing in towns and areas zoned as 'rural residential' also be extended to include Aboriginal community living areas, including family homelands? If not, why not?
- How will industry and the Government act to protect Aboriginal culture and heritage from becoming fragmented and lost should large areas of land be blocked-off or disturbed for oil/gas production?
- Has a cost-benefit analysis of the value of hydraulic fracturing (in comparison with environmental values lost) been undertaken and if not, is one to be undertaken?
- What will be the negative social and environmental impacts in not permitting development of shale oil/gas fields? Revenues generated that could be used to address other environmental issues or social issues such as health care and low standards of living in remote communities would potentially be lost.

WA Auditor General Report:
Ord-Kimberley development plan 'not realised'

Western Australia's Auditor General has reported that the sustained social and economic benefits underpinning the Ord-East Kimberley Development Plan have not been realised – nor is there a plan to track and assess them.

And what was meant to be a $475 million dollar project over two years ended up costing $529 million, and took seven years to complete.

The Auditor General, Colin Murphy, submitted a performance audit of the plan to the WA Parliament on 7 September. Particularly, the audit identified a huge budget blow-out and delays in finishing the extension (Ord Stage 2) to the first stage of the Ord River Irrigation Area.

The first stage of the Ord scheme, based on the main dam at Lake Argyle, was finished in 1971 and services 14,000ha of farming land.

The WA Government in December 2008 approved $220 million for Ord 2, which was meant to be completed in 2011. Ord 2 involved:

- Water and road infrastructure to service about 8000ha at Goomig – this included 40km of irrigation channel connecting the previously existing system to Goomig, 86km of supporting supply and drainage channels and flood protection levees, 41km of roads and a 250-person workers camp
- Subdivision and sale of the 8000ha in up to 25 lots
- Scoping for land at Mantinea (4000ha), Ord West Bank (1300ha) and Packsaddle (1380ha), and work to consider land at Knox (8000ha), Victoria Highway, Carlton Hill, Bonaparte Plain and Keep River Plain in the Northern Territory.

Plans to subdivide the Goomig irrigation area into 25 freehold blocks were never realised, because not enough proponents met the State's criteria. Then in November 2012, the WA Government selected a single developer, Kimberley Agricultural Investment (KAI).

The Auditor General estimated that the original 2008 State budget of $220 million for Ord 2 would blow out to $334 million – an increase of 52 per cent.

Costs increased across the board: construction went up by $59.2 million, management and administration rose by $22.5 million and the cost to build and operate a workers camp increased by $14.1 million. As well, legal costs rose by at least $3.7 million and environmental costs by $7.9 million.

Work on Ord 2 started on time in 2010 and was meant to finish by the end of 2011. However, the new irrigation was not fully operational until three years after the initial deadline.

The Auditor General said the early estimate of the time and cost to expand the irrigation system was unrealistic. While the project had to deal with a long wet season in 2010/11 and "the normal difficulties of working in the Kimberley", these were not the main causes of the delay or budget increase.

He identified the main factor behind the unrealistic estimate as the lack of detailed costing or planning.

The Auditor General said his office expected to find "comprehensive supporting evidence" for the estimates behind Ord 32 – "instead, we found little to support them".

The lack of planning meant that Government did not have a good understanding of the work required and a capacity to provide sufficiently explicit project specifications, and this failure ultimately led to the increased in the cost of the project.

"Further," the Auditor General reported, "when the project began in 2010 the budget significantly underestimated or missed out some of the costs. For instance, it allocated only $200,000 for environmental activity. This was clearly unrealistic given that the entire project involved relatively pristine land in the East Kimberley. By June 2016, environmental costs reached $8.1 million.

"We were also surprised to see no budget for legal costs in developing Goomig, especially after the approach shifted to a single (in this case international developer KAI). Legal costs to date are $3.7 million," the Auditor General said.

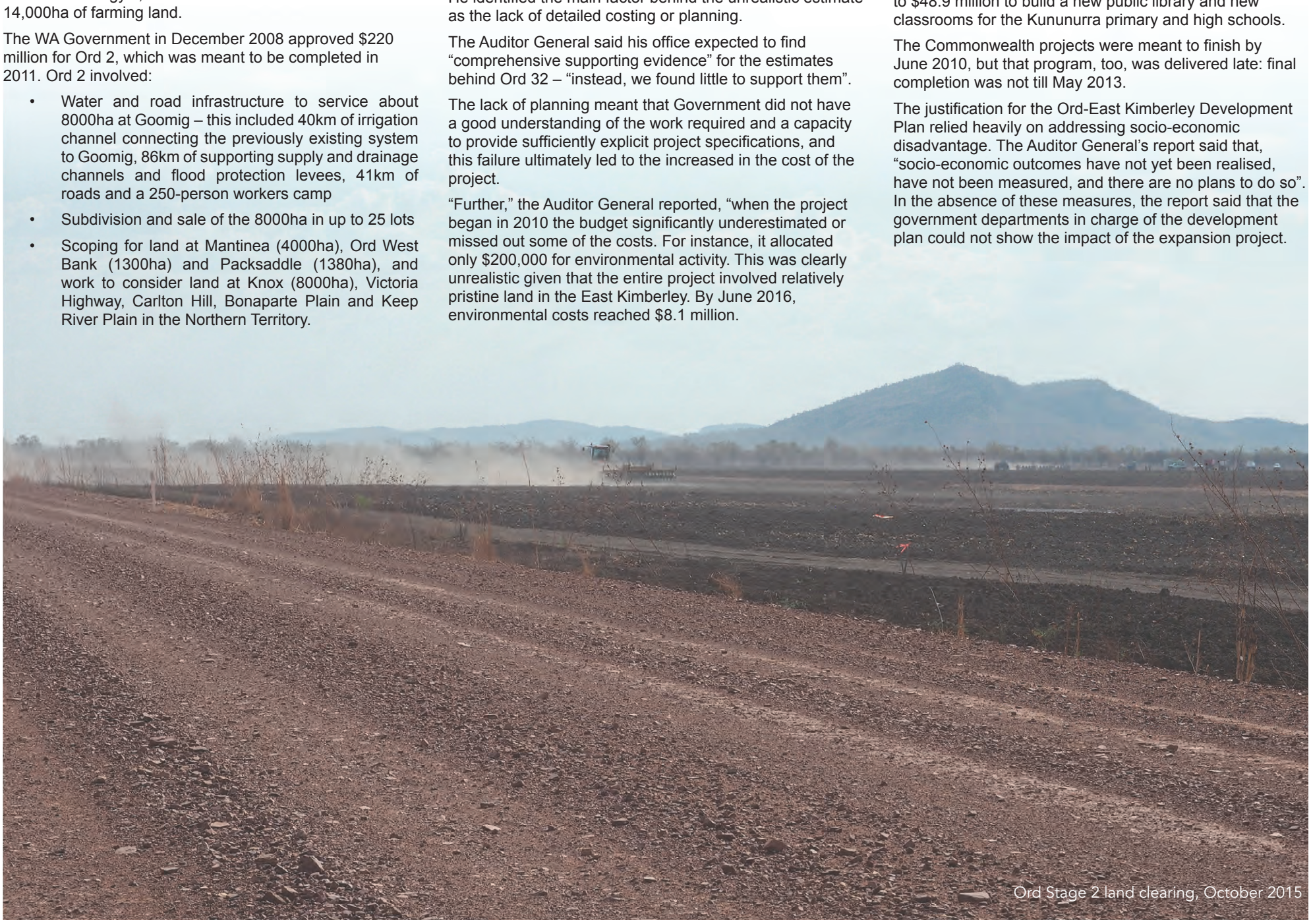
Aware that costs were blowing out, the WA Cabinet in November 2011 approved $91 million extra funding – although that, too would eventually fall short of the final cost. The Auditor General said the $91 million top-up request also lacked a clear budget: "The funding request explained that construction costs were going to be $40 million higher than originally anticipated, and that increased water deliver would cost $30 million more, but we were unable to sight any supporting analysis that itemised where or what costs had increased."

On top of all that, less land will be farmed under Ord 2 than was originally planned for. In 2009, the land release was expected to be about 8000ha. The real area now will be 70128ha. The Auditor General identified two reasons for the shortfall: 787ha has had to be set aside for manage ground water issues, and 323ha is unavailable because of a mining tenement.

As part of the Ord-East Kimberley Development Plan, the Commonwealth Government funded a $195 million program for 27 social infrastructure projects. They ranged in cost from $600,000 to refurbish two sobering-up centres to $48.9 million to build a new public library and new classrooms for the Kununurra primary and high schools.

The Commonwealth projects were meant to finish by June 2010, but that program, too, was delivered late: final completion was not till May 2013.

The justification for the Ord-East Kimberley Development Plan relied heavily on addressing socio-economic disadvantage. The Auditor General's report said that, "socio-economic outcomes have not yet been realised, have not been measured, and there are no plans to do so". In the absence of these measures, the report said that the government departments in charge of the development plan could not show the impact of the expansion project.



Ord Stage 2 land clearing, October 2015

Unhappy Anniversaries: What is there to Celebrate?

Joe Morrison delivers the 8th Nugget Coombs Memorial Lecture

NLC Chief Executive Joe Morrison delivered the 8th Nugget Coombs Memorial Lecture at Charles Darwin University on 5 October.

The lectures honour the legacy of Dr Nugget Coombs, an esteemed public servant who championed the rights of Australia's Indigenous peoples, and are co-hosted by the Australian National University and Charles Darwin University.

Joe Morrison's lecture was titled, *Unhappy Anniversaries: What is there to Celebrate?*

Here is an edited extract :

Doctor Ben Scambary is Chief Executive of the Aboriginal Areas Protection Authority – AAPA – which administers the Sacred Sites Act. Ben gave an illuminating address at the North Australia Research Unit a couple of months ago, where he described the political context in which the Act came to be reviewed by a team of external consultants.

I'll come later to his revelations, but first I need to paint some background to the review.

Hanging over it – indeed a major catalyst for it – was the proposed development of Ord Stage 3, the pie-in-the-sky plan to extend the Ord River Irrigation Area into the Northern Territory.

Ord 3 was one of the projects identified in the 'White Paper on Developing Northern Australia' which would enhance the regional economy. It would develop 14,500 hectares of irrigated farmland in the Keep River Plain, the Knox Plan and Milligan's lagoon, in the Northern Territory. It stands today as a monument to failure: a failure of planning and a failure of the Northern Territory government to engage in good faith with Aboriginal people.

Today, I can tell you, Ord 3 is going nowhere.

The CLP government in the Northern Territory was too cute by half in the way it proceeded with headstrong intent to get Ord 3 moving. The scheme was first punted in the late 1990s and caused great consternation among traditional Aboriginal owners.

The proponent walked away in late 2001, after anthropological research by the Northern Land Council established the entire Keep River Plain (Balangarri) was a sacred site.

Ord 3 was revived in 2012 when a Chinese investment company took it over.

Again the Traditional Owners rose up, and in 2013 a delegation travelled to Darwin to inform the CLP government of their total opposition.

The government was undeterred: it applied to AAPA for a Certificate, which the Authority issues when it's satisfied that work won't risk damage to sacred sites, or if a proponent has reached agreement with Aboriginal custodians. But, on the day in 2013 the Authority's board met to register the Keep River Plain, the Northern Territory government withdrew its application.

Now we come to the tricky part: the government then broke up the Ord 3 project into three blocks and proposed first to develop a parcel to the south, which it called Ord 3A.

It would have required the extinguishment of native title over more than 4000 hectares, of which 1800 hectares were earmarked for irrigated agriculture.

Plainly, the Government's intent was to soften up the native title holders, even though the government's monetary compensation package was inadequate in the eyes of the native title holders who were being asked to have their native title rights extinguished forever.

> **Ord 3... stands today as a monument to failure: a failure of planning and a failure of the Northern Territory government to engage in good faith with Aboriginal people.**

Nonetheless, the NLC had the responsibility as the Native Title Representative Body under the Native Title Act to consult with the native title holders, and we proceeded to do our job. We actually secured their consent to negotiate an agreement for Ord 3A, although everyone knew that as a stand-alone project, the economics would never stand up.

Then, out of the blue, the Government, without explanation, announced in April this year that Ord 3A was off the table, and that it would be inviting bids from the private sector to develop the whole of Ord 3. It would be left to a successful proponent to negotiate a Land Use Agreement and AAPA clearances. The timetable was unrealistic: the CLP government said it would execute an agreement by the end of July.

That CLP government, as you know, was spectacularly ousted in the general election on August the 27th, and I understand Ord 3 went out the back door with them.

As a postscript to all that, let me refer you to a damning report last month by the West Australian Auditor General about Ord Stage 2.

The State originally budgeted $220 million for the Stage 2 expansion. The Auditor General estimates it will end up costing $334 million, an increase of 52 per cent, and it was delivered three years late. And although the 27 social infrastructure projects worth an extra $195 million came in on budget, their delivery, too, was three years late.

So where is the accountability here?

The W. A. Auditor General reports that the sustained social and economic benefits underpinning the decision to proceed with this extraordinary investment – $529 million in total – have not been realised. The justification for the whole Ord-East Kimberley Development, as it's known, relied heavily on addressing socio-economic disadvantage – for that, read Aboriginal disadvantage.

But the Auditor General says there's no plan to track and assess any improvement of that disadvantage, and I can understand why: that would be a source of continuing embarrassment. Sure, there were jobs and plenty of training during the construction of Ord Stage 2. But, as the Auditor General reports, this has not been sustained.

Nugget Coombs' biographer, Professor Tim Rowse, records in his book, *Obliged to be Difficult*, that in August 1967, nearly 50 years ago, Coombs toured northern Australia to inspect the sites of mining, pastoral and agricultural investment.

> **Coombs told his colleagues he could not rejoice in northern development until he knew how Aboriginal people would find an honourable place within the coming prosperity.**

At that time, he was about to resign as Governor of the Reserve Bank, and construction was well under way to create the first stage of the Ord River Irrigation Area. Aboriginal people were being displaced everywhere and their sacred sites not directly destroyed by construction works would later be submerged by the waters of the newly created Lake Argyle.

Rowse records that Coombs returned from his survey wondering how Aboriginal people would survive the incipient boom in the north. Coombs told his colleagues he could not rejoice in northern development until he knew how Aboriginal people would find an honourable place within the coming prosperity.

His misgiving was well held.

I travel to Kununurra often in my job, and I can tell you it's the same sad old story for Aboriginal people: abject poverty and misery. This is what Coombs was deeply concerned with.

God knows how Coombs, an economist by training, would have received that bleak assessment of Ord Stage 2 by the WA Auditor General. This is why he established the North Australian Research Unit – to provide the research capability so that informed public policy decisions could be made, based on the economic, social, cultural and political realities of the region.

> **The sort of prejudice demonstrated by the attacks on the integrity of AAPA does not belong just to the elected arm of the CLP and its former army of party hack advisors. It lies also in the heart of the bureaucracy here in the Northern Territory.**

If Ord Stage 2 has been a scandalous investment of government monies, Ord 3 has been a cruel curse. It has caused much distress for native title holders who have been treated as mere pawns. And its promotion by the Territory's CLP government almost destroyed the Aboriginal Areas Protection Authority.

The sort of prejudice demonstrated by the attacks on the integrity of AAPA does not belong just to the elected arm of the CLP and its former army of party hack advisors. It lies also in the heart of the bureaucracy here in the Northern Territory.

Scambary identified a traditional culture of bureaucratic opposition to Indigenous land administration frameworks that has its foundations in the earliest conflicts over the Aboriginal Land Rights Act, the Sacred Sites Act and the Native Title Act.

Nugget Coombs in 1976 reflected on the persistence of such attitudes, when he reviewed his work during the previous decade as chair of the Council for Aboriginal Affairs. He questioned whether the dominant white society might lack the spiritual qualities to recognise the reality and virtue of Aboriginal identity, and the right of Aboriginal people to assert it.

Until the arrogance, the prejudice, the fear that still largely determines our attitude towards Aborigines gives way to humility, generosity and human warmth, there can be little grounds for hope of a quick resolution, Coombs said in a lecture forty years ago.

He continued: "If there is a taste of ashes on the lips of white Australian civilisation, it is because while we have mastered a continent and subordinated a proud people, we have remained in spirit aliens and strangers to it and them."

Ben Scambary's withstanding the barbarians who wanted to undo the Sacred Sites Act revealed an entrenched culture of opposition by politicians and bureaucrats to Aboriginal rights and interests. And that opposition continues to colour the northern development agenda.

In many speeches over the past few years I have lamented the exclusion of Indigenous interests in the public policy discussions about developing the north. We continue to not have a proper place at the planning table, even though we all know how critical planning is. We have been mere bystanders as the likes of Andrew Forrest argue that Aboriginal land tenure is an impediment to advancement.

Forrest was recruited by an adoring Prime Minister to report on Indigenous training and employment programs. He managed to turn that exercise into an opportunity to tackle Aboriginal land rights in the Northern Territory and criticise land councils, the Northern Land Council in particular.

It galls me that a West Australian billionaire miner, who's brought trouble on himself by the way his company has negotiated native title agreements with the Yindjibarndi people in the Pilbara, gets the imprimatur of the Commonwealth government to lecture the country about land tenure being an impediment to home ownership on Aboriginal land.

Anyway, where's the interest in home ownership in remote Aboriginal communities? Where's the market in communities, which are home to some of the most impoverished people in the land?

For the record, let me tell you this: the Northern Land Council has received and processed only one application for a private housing lease across its whole jurisdiction. That was for a 99-year lease at an outstation called Baniyala in north-east Arnhem Land.

And, you know what? The lease can't be executed, and not because of any fault on the part of the NLC. The NLC's Full Council readily agreed to the grant of the lease in May 2014. The hold up lies with the Northern Territory government because of the dictates of its Planning Act.

Under that law, a lease with a term of more than 12 years is considered to be a subdivision, which in turn requires a plan of survey to be completed, and approval of the Development Consent Authority.

In remote areas of the Northern Territory, these requirements add considerable administrative burden, cost and uncertainty.

That's the regime bequeathed by the former Chief Minister who managed to convince Prime Minister Tony Abbott back in October 2014 to have an urgent investigation under the umbrella of COAG into Indigenous land administration and land use.

The investigation was born behind closed doors without any prior consultation with Indigenous people, who would have no input into the terms of reference.

Indigenous people and organisations feared the worst – that the investigation would result in further erosion of land rights and native title legislation through more efficient "processing" of land use proposals for third party interests.

Finally, swayed by those apprehensions, the Commonwealth appointed an Expert Indigenous Working Group to work with the bureaucrats assigned to the COAG investigation.

The Chief Minister's attempt to go through the backdoor of COAG to attack the land councils was checked by the safe input of the Indigenous Working Group. Their statement attached to the final investigation is still worth quoting.

They argued that any approach on Indigenous land and waters that does not properly recognise and respect traditional ownership of that land will only lead to ill feeling, project uncertainty and delays.

Such an approach, they said, has the effect of diminishing hard fought gains and well-established principles around the human rights of Traditional Owners. Such an approach, they continued, also has the effect of entrenching the current cycle of welfare dependency and poverty by creating a culture of dependency on government.

I could not have put it better myself.

The incessant impost of reviews, inquiries and investigations saps the very essence of Aboriginal identity because bureaucrats and politicians refuse to reconcile their relationship with Australia's first people – just what Dr Coombs was attempting to settle in the wake of the 1967 referendum.

Most importantly though, and it's a refrain from some of our council members: in the four decades since the Land Rights Act was enacted, we Aboriginal people in the Northern Territory have spent so much time gaining and then defending our rights that we have not secured our future.

NLC participation in economic summits

The Northern Land Council will be a leading participant in the Northern Territory Government's Economic Summit Series, which will provide an opportunity to inform the development of an Economic Development Framework.

The Government says it recognises the substantial contribution and potential for Aboriginal people in the economy and is working closely with the land councils and other groups to ensure that Aboriginal people have equal opportunity to participate in the discussions that will shape the future of the Territory.

The summits will focus on creating jobs in the economy; the right place to invest in infrastructure spending; stemming the population outflow; innovation in the Territory economy; and importantly regional growth and Aboriginal economic engagement.

Through a series of consultations and summits, business, industry groups, Aboriginal representative groups, the non-government sector, unions and the public sector will come together to provide input to government on actions that could be undertaken to address issues face the Territory.

The purpose of the summit is to shape the next ten years of development for the Territory and establish the planning that will form Territory budgets and growth plans, including next year's Territory budget.

The summit series will be delivered in three phases, beginning in November with regional forums where Territory-wide and regional priorities and opportunities will be developed. The public consultation process in phase two will begin in December with the consolidated feedback to culminate in an NT Economic Summit in March 2017.

"We are looking forward to the land councils and key organisations driving and participating in the summits and discussing what the economy of the Northern Territory looks like in the future" said Luke Bowen, General Manager of the Northern Australia Development Office.

By measure of population, land and coastline Aboriginal people have the largest stake in the NT and Northern Australia.

"Aboriginal people have the longest history of trade in the Territory and we want to ensure they feel empowered in the process" Mr Bowen said.

For information on the economic series, go to www.economicsummit.nt.gov.au or email territoryeconomicsummits@nt.gov.au.

NLC establishes Community Planning and Development Program

The Northern Land Council has established a Community Planning and Development (CPD) Program to help Aboriginal people to drive their own development projects and secure benefits from their land, waters and seas.

The program is based on the Central Land Council's model which has been a success since 2005. Supporting Aboriginal groups to plan and achieve their own development objectives through a community development approach will have the following benefits:

- **Effective and sustainable projects** Aboriginal groups plan and decide on projects based on their priorities, knowledge and experience so these projects are more likely to be locally appropriate, effective and sustainable.
- **Capacity building** Because Aboriginal people are involved at every step of the way they build individual and group skills in governance, planning and development.
- **Empowerment** The skills individuals and groups develop mean they can be more self-reliant. They have more power and control over their lives and communities and can tackle other issues that come up.
- **Increased group cohesion** Working together can make Aboriginal groups stronger and more united as members see they are facing the same issues and work together to address them, including negotiating different views and working through group conflict.

PROCESS

The NLC's community planning and development process set out below supports Aboriginal groups to work together to set and achieve their own development outcomes, using their income from land use agreements.

1. **Getting Started** Traditional Owners/ group members consider NLC community development option and decide how much money to set aside for community benefit.
2. **Set up governance** Group decides how plans and decisions will be made, whether to set up a Working Group and who will be involved.
3. **Decide on priorities** Group talks about aspirations and issues and chooses the most important areas to plan projects for.
4. **Plan Project** The NLC supports the group to make a project plan with a partner organisation which shows: how the project will create lasting community benefit; which capable organisation will do the project (not the NLC, unless it is already delivering that kind of project and has existing staff/ capability to deliver more); and, a clear project budget.
5. **Decide on Project** The Aboriginal group looks at the project plan and budget and decides whether to approve funding for the project.
6. **Enter Funding Agreement** The NLC checks that the right Aboriginal people were consulted, the process has been followed, that the project will deliver lasting community benefit and does not include purchasing vehicles or the repayment of debt. The NLC signs a legal agreement with the partner organisation which promises to deliver the project as planned and budgeted.
7. **Project Happens** Partner organisation delivers project and the NLC/group checks along the way to make sure it's on track and to sort out any problems that come up.
8. **Looking Back** The group and NLC ask: Did the project benefit Aboriginal people in the way they planned? Was the money used in the right way? Did the partner give us a report? What could be done better next time?

This process will be supported by skilled staff who have experience in project management and working inter-culturally.

OBJECTIVES AND STRATEGIES

The NLC will work closely with Aboriginal groups and communities choosing to participate in the CPD Program to achieve the following objectives through the strategies listed.

Objective 1 Strengthen Aboriginal capacity, control and group cohesion, particularly through the management of resources that belong to them.

Strategies:

- Set up and support locally appropriate Aboriginal governance arrangements that are culturally legitimate and effective in contemporary circumstances.
- Support effective governance by Aboriginal groups in all aspects of the NLC CPD process, with an emphasis on inclusive and informed decision-making.
- Build the governance capacity of Aboriginal groups involved in the CPD Program in planning, financial and project management, and monitoring and evaluation.
- Support groups to reflect on governance arrangements and improve them.

Objective 2 Generate social, cultural, environmental and economic outcomes prioritised and valued by Aboriginal people and which benefit them.

Strategies:

- Promote the use of payments from land use agreements for lasting community benefit.
- Apply the NLC's CPD approach where Aboriginal groups resolve to direct payments to lasting community benefit.
- Ensure the effective project management of all approved initiatives, including monitoring implementation by project partners in line with funding agreements.

Objective 3 Monitor and evaluate to support continuous improvement and build an evidence base for the NLC's Community Planning and Development approach.

Strategies:

- Engage an external provider to design a CPD Program Monitoring and Evaluation Strategy.
- Undertake annual independent monitoring and periodic evaluation of the CPD Program to assess Aboriginal capacity and empowerment outcomes from the process, as well as social, cultural, environmental and economic outcomes from the specific initiatives.
- Report back to Council and Program participants on key findings.
- With input from the NLC CPD Program Reference Group, ensure monitoring and evaluation informs ongoing improvement of the CPD Program.

Objective 4 Share lessons learned on effective CPD in the NLC region with Government and non-government agencies to promote support for Aboriginal-led planning and development.

Strategies:

- Disseminate monitoring and evaluation reports and report on findings to key stakeholders including government ministers and departments, Aboriginal organisations and development agencies.
- Present on CPD Program at relevant conferences and forums.
- Prepare and publish papers on findings and lessons learned.

INDIGENOUS RANGERS "A HIT" AT ANU

Students at the Australian National University (ANU) in Canberra have been learning about caring for country, Indigenous languages, cultures and histories from visiting Indigenous experts.

Over the past three years Mr Mungurrapin Maymuru, Laynhapuy Indigenous Protected Area Cultural Manager, Mr Jacky Green, Senior Cultural Advisor Garawa and Waanyi/Garawa, Ms Karen Noble and Mr Donald Shadforth, both Garawa Rangers, have been visiting the ANU to talk with students about country and culture.

The rangers have been a hit with students undertaking Indigenous Studies and Environmental Science courses at the ANU.

Many of the students have been amazed at the variety of activities involved in looking after country: managing fire across vast regions; monitoring turtle and dugong populations; protecting cultural sites; managing huge Indigenous Protected Areas; and passing vital ecological knowledge across generations.

Some students expressed a desire to work with Indigenous rangers on country so that they could share their scientific and resource management skills while at the same time learning from Indigenous people.

Indigenous students taking the courses expressed delight at seeing their own people in a university setting that are often seen as "whitefella places".

One Indigenous student from NSW said, "It's mean a lot to me to see our own people as teachers at universities demonstrating their knowledge and expertise across a huge variety of fields."

Another said, "At last we get meet Indigenous people who can bring us real world experiences to our studies. They show us other ways of seeing and experiencing the world. They show us how important their knowledge is to the future management of Australia. This is vital to help us understand the country we live in."

The majority of students were of the view that having Indigenous experts teach at universities was long overdue.

Professor Brian Schmidt, the new Vice-Chancellor of the ANU, in outlining a new vision for the ANU, identified Indigenous affairs as a priority under the new strategic plan. Many hope that this will bring about more collaborations between the ANU and Australia's Indigenous peoples.

Karen Noble, Garaw ranger, and Jacky Green, cultural adviser Garawa and Waanyi/Garawa, with an environmental studies class at ANU

The Gurindji People's Epic Struggle

Fifty years after Vincent Lingiari led about 200 Aboriginal workers and their families off Wave Hill Station, a Darwin-based historian, Charlie Ward, has published a book, *A Handful of Sand*, which tells the story of the Gurindji people's epic struggle to secure a new future, which laid the foundation for land rights in the Northern Territory.

The book was launched during the celebration of the 50th anniversary of the walk off, at Kalkaringi in August.

Nicolas Rothwell, reviewing the book for The Weekend Australian newspaper, asked: "What were the true aims and aspirations of the Gurindji stockmen when they walked their way into white consciousness on that cool morning so long ago? Have their intentions been fulfilled? Can their hopes for a new kind of working, self-reliant bush community still serve today as a blueprint for traditional indigenous peoples living in remote settlements and outstations north of Capricorn?"

These questions, writes Rothwell, lie at the heart of Charlie Ward's book – "a history that looks beyond the event and its immediate aftermath and serves as a clear-eyed record of successive indigenous policy initiatives and failures in our time",

Ward himself writes in the preface to *A Handful of Sand*: "My decision to explore beyond the Gurindji's reputation as celebrated land rights pioneers is not one I have made lightly. Regardless of their visionary leadership in the 1960s and 70s, the residents of Kalkaringi and Dagaragu that emerge in these pages (of the book) struggle like the rest of us.

"The problems that have assailed the Gurindji's countrymen have affected the 'Birthplace of Land Rights' as well. How could it be otherwise? No society has proved itself immune to the economic, political and cultural impact of the 'West', and the generation of Gurindji that came of age after the Walk-off – the first to exercise much individual choice about their social responsibilities – proved no different. This is the cost of the freedom their elders sought. In the Gurindji's foibles, we see our own. What sets them apart is the enormity of the challenges they faced – often presented under the guise of Aboriginal self-determination."

Charlie Ward author of *A Handful of Sand*

A Handful of Sand is published by Monash University Publishing, 322pp, $29.95

Historian Charlie Ward asks in his book, *A Handful of Sand*, what lessons there are today from the successes and failures which flowed from the decision of Vincent Lingiari and Gurindji elders to risk their people's security and wellbeing for their vision to reclaim their land, run their own cattle operation (the Murumulla Company) and create an autonomous community.

Ward answers his question in an Afterword to the book, reproduced (slightly edited), below:

Firstly, what of Gurindji land rights, the elders' signature success? The old Gurindji men's concepts of land ownership varied vastly from Europeans' standard beliefs, but in the late 1960s they convinced a large section of the Australian public and the Australian Labor Party to help them remedy the moral wrong of Aboriginal dispossession. As a result, the Whitlam and Fraser Governments' *Aboriginal Land Rights (Northern Territory) Act 1976* refashioned Northern Territory law so that traditional forms of Aboriginal land ownership could be held within it, ostensibly unchanged. After the Gurindji's land was returned to them under the Act in 1986, they were free to enact their traditional ceremonial responsibilities to their country as they saw fit. The years since have confirmed that land ownership is that rare beast in Indigenous Affairs: an issue apparently responsive to legislation.

Second after land in Lingiari's scheme was his aim of establishing a Gurindji-run cattle operation. A legal 'fix', this time of incorporation, was used to legitimate this goal as well, with different results. Lingiari and his group managed to operate their small business for fifteen years in a remote area without capital of their own, though the elders' ultimate goals for the Muramulla company were never realised. The reasons why the elders and their advisers were unable to make Muramulla financially self-supporting, or to transfer its management to the next generation of Gurindji are many.

From its beginning, the Gurindji's cattle operation was an unstable mix of lndigenous practical know-how, taxpayer funding, and financial and management advice provided by an ever-changing array of European staff, accounting firms and government agencies. Even when Muramulla was functioning at its best in the late 1970s, the goals and assumptions of its Gurindji board members were never aligned with or understood by their governmental backers – and equally those of the government were never absorbed by the Gurindji. The elders had little financial grasp of the pastoral economy they had worked in earlier or the modernised industry they were forced to compete with. Naturally, they failed to anticipate the amount of funding and other resources they would require to make their operation self-supporting.

Muramulla's financial dependence on the state compounded its other difficulties. The conditions attached to the company's funding were heavily prescriptive, but the amounts and timing of that funding were based not on pastoral but bureaucratic imperatives, and largely unpredictable. The situation was exacerbated by the industry's rapid move towards larger holdings and helicopter mustering, which made the elders' goal of creating a small enterprise with a large number of stockmen untenable.

Cattle nonetheless comprised the Wave Hill region's only viable industry (albeit a subsidised one) and the same business had provided the elders with a rare sense of purpose and value vis-a-vis the wider world. There were few other avenues for young Gurindji men to glean these things, and the elders were therefore determined to hand Muramulla over to the next generation, despite the company's struggles. The only way they could have conceivably achieved this was via significant and ongoing government subsidies, which authorities in the 1980s were increasingly unwilling to provide. Eventually, the cost-cutting emphasis of the NT and federal governments, the growing recalcitrance of their potential workforce, and their own waning abilities put paid to the elders' cattle dream.

In hindsight, the third element of the elders' plan was the most ambitious: creating an independent Gurindji community. Few industries, businesses or communities in remote Australia have ever achieved long-term economic independence from the state, and in a financial sense, Lingiari's dream may have been an impossibility. Merely being 'left alone' – social independence – was foremost in the old men's minds though, and to achieve this they recognised that their children would need to manage the facilities in their community themselves. The elders also saw that to do so, their young people would need to acquire knowledge which they themselves lacked.

Without a bicultural school under the elders' management, Lingiari saw little prospect for either the continuation of traditional knowledge among the next generation, or Daguragu's future self-management. Nonetheless, the old peoples' ideal of a school at Daguragu was at odds with the priorities of federal and NTG education bureaucrats, and the elders' requests for such a school were ignored. It will never be known how much the perpetuation of traditional Gurindji knowledge, the educational achievement of Gurindji children, and the elders' aim of realising their independence at Daguragu were set back as a result.

The autonomy of Daguragu community was undermined in other ways by the allocation of government support. Prior to the mid-1970s, the Gurindji people survived in a largely cashless economy, and were clearly committed to using their own skills to build up Daguragu. When unprecedented amounts of funding for infrastructure, wages and welfare payments were suddenly introduced as a result of Whitlam and Fraser's self-determination and self-management policies, the Gurindji's autonomy was compromised in two ways. Firstly, like the invasion of their land in the 1880s, it divorced them from the scale, speed and direction of change in their environment. Secondly, it dramatically hastened the economic transition of their traditionally stratified, hierarchical society into a more homogenous consumer group. This in turn significantly exacerbated existing tensions and conflict that had arisen due to their radically novel circumstances.

State-assisted development eclipsed the elders' vision for their community and increased the complexity and regulation of that community's facilities. To manage those facilities and their problems, non-Indigenous staff were employed in increasing numbers at Kalkaringi and Daguragu. Simultaneously, the mainstream schooling of Gurindji children in Kalkaringi, Alice Springs and Darwin rarely delivered new community leaders, and Gurindji management of local facilities shifted out of reach as a result. By these means, a society that had masterfully

Artwork by Nick Bland

sustained itself by hard work and self-motivation largely lost control of its environment. It is ironic in the extreme that this occurred as a result of government assistance given under policies of Aboriginal self-management.

While unprecedented government support – and in some instances the lack of it – undermined the elder's vision of an autonomous community, their plans for Daguragu were also challenged by dynamics within their own society. From as early as the 1940s, young Gurindji men had resisted the constraints of traditional life and sought to avoid the physical suffering which resulted from advancing within or from breaking traditional Gurindji law. When their entry to the cash economy and their protection from traditional punishments under kartiya law allowed them to in the 1970s, many young people challenged their elders' authority and values – not to mention their plans for an independent community. In the Gurindji's rapidly changing circumstances after their walk-off, young men and women were freer to leave their community, or not participate in the developmental work encouraged by their elders or the Department of Aboriginal Affairs.

Through travel, schooling, training programs, the local advent of television, and (for some) time in jail, the non-Indigenous world impacted on the next generation of Gurindji far more than it had affected their parents, and offered them a few more choices. In the world the Gurindji increasingly inhabited though, traditional Aboriginal culture was merely a curio. The elders were forced to accept that, increasingly, the rights of an 18 year-old Gurindji youth were the same as those of the most advanced law-man.

The concentrated effects of social, economic and technological change in the remote NT during the 1970s brought Lingiari's group other bitter truths. When the time came for their youth to take over the Gurindji's affairs, the old cattle industry, primitive facilities, and isolation that had informed the elders' vision no longer existed. The kartiya world had moved on, and it would fall to the next generation of Gurindji leaders to adapt and regain control.

Since the Gurindji elders' horses ran wild and their cattle operation folded, new generation leaders have carried forward Lingiari's 'community' – type values, and redefined his vision. Ros Frith, Susan Cebu, Maurie Japarta Ryan, the late Victor Vincent, Michael Paddy and many others have adapted Gurindji political power to a new, post-cattle-industry millennium.

Traditions practised by previous generations of elders have been modified, but whether they have been lost is another story. Visitors to Kalkaringi or Daguragu today realise that Gurindji culture remains strong, vibrant and adaptive. Today, Daguragu resembles other remote communities, but remains a 'ngumpit place' where whites are unwelcome to live. In 2007 though, the appearance of Gurindji control over their home, the 'birthplace of land rights', was radically challenged. Under the Howard Government's 'Emergency Intervention', federal bureaucrats placed a demountable complex in Daguragu and appointed a Government Business Manager (GEM) to occupy it. This greatly offended the track mob, and Canberra's incumbent 'Ginger Bread Men' maintained such a low profile that the reason for their presence remained a mystery to most locals. Tragically for the people of Wave Hill though, the 'Intervention' – which alongside its racist shock and awe tactics, included increased funding – was a minor prelude to what came next.

When the new Gurindji leaders that I know came of age in the 1980s, they had, like Lingiari's coterie, pinned their political hopes on Daguragu Council. Even then though, 'statism' had triumphed over the type of home-grown independence originally envisaged by Lingiari. The Council was never an adequate vessel for Gurindji cultural power, but as the local service provider, employer and political decision-maker, it involved scores of residents in their communities' affairs. Kartiya had always held its 'manager' jobs, but the Gurindji believed – and had been officially encouraged to believe – that the council belonged to them. In 2008, Daguragu Council was dismantled by the NT Labor government.

The NTG's enormous Victoria Daly Regional Council (also known as 'the Shire') took over, and institutional government support for Aboriginal self-determination at Wave Hill was obliterated. The fortnightly meetings of a dozen Gurindji leaders discussing the intricacies of local affairs that I witnessed in 2004-06 ceased immediately. Bitterness lingers about the takeover, in which Daguragu Council's assets – including a successful business and a bus partly purchased by locals using their own wages – were forcibly possessed. Now, services are centralised and 'Vic Daly' administers diverse Aboriginal communities scattered over an area larger than the country of Greece. Under this economic rationalist edifice, Kalkaringi and Daguragu's 600 Gurindji, Warlpiri and kartiya residents have one representative. This unlucky person advocates for the two communities' factions, families and language groups at six meetings a year in faraway Katherine.

This situation is repeated Territory-wide. In the new shire system, dedicated staff do their best in trying conditions, but the problems the shires were meant to fix – inept and unethical clerks, poor financial management, and high staff turnover – remain. For the Gurindji, it has been a disaster. Support previously provided by Daguragu Council for community projects and engagement evaporated, and thirteen Shire Service Managers warmed the seat at Kalkaringi in three years. With 'shire-isation', Territory politicians proved that after three decades of relative stability and a semblance of community control, Gurindji political power was ultimately a plaything of the state.

The Gurindji retain a reputation for feistiness, however. After engineering the removal of the Intervention outpost at Daguragu and refusing a controversial government leasing plan, the track mob's descendants are on the front foot again. Kalkaringi and Daguragu's residents have initiated their own art centre, and formed a corporation designed to re-assert control of their organisations. The community is engaging with the Vic-Daly Regional Council for the first time. Fifty years after the Gurindji's Walk-off, it is a 'new day' again at Wave Hill. Against all odds, Lingiari's legacy lives.

Land Councils mark 50th Anniv

2016 marks the 40th anniversary of the *Aboriginal Land Rights (Northern Territory) Act 1976*, and the 50th anniversary of the Wave Hill Walk-off. The Territory's two largest land councils celebrated these significant milestones with a historic joint meeting near Kalkaringi on 17 and 18 August.

The meeting of the Central Land Council and the Northern Land Council honoured Vincent Lingiari and the families who walked off Wave Hill Station and kicked off the national campaign for Aboriginal land rights in 1966. The meeting set the scene for the Freedom Day celebrations of 19 August at Daguragu and Kalkaringi.

Council members considered issues of importance to Aboriginal people across the NT, developed shared positions and questioned Federal and Territory politicians ahead of the Country Liberal Party's landslide election loss on 27 August. They also held discussions with the Royal Commission into the Protection and Detention of Children in the Northern Territory.

The delegates' highest priority in relation to land rights was to achieve greater Aboriginal control the Aboriginals Benefit Account (ABA) by improving the operations, transparency and outcomes of the fund.

ABA funds are generated by mining activity on Aboriginal owned land and the meeting stressed that decisions about the management and allocation of funds from the ABA must be made by Aboriginal people in the Northern Territory with no role by the Minister for Indigenous Affairs.

The joint council meeting instructed staff to urgently undertake work on a model to achieve control of the ABA, and rejected changes proposed by the Minister for Indigenous Affairs. It also called for resources for Aboriginal people out bush to help them prepare applications for ABA funds.

The meeting also expressed strong support for an expansion of Aboriginal ranger programs, and passed the following resolution: The combined meeting of the Northern and Central Land Councils strongly supports all ranger programs in looking after country and providing opportunities for young and old people to share cultural knowledge. Ranger jobs are 'real jobs' and are just as important as teachers, nurses and parks and wildlife rangers.

The meeting called on both the NT and Federal Ministers (1) to recognise the success of the program and respect the role of the land councils in managing the program; (2) to immediately commit to substantially increase funding for the ranger program to secure positions beyond 2018 and allow for the expansion into new areas; (3) to recognise and establish monitoring, compliance and enforcement powers for Rangers; (4) to explore options for providing resources to allow greater linkages with youth diversion programs. Further, the meeting called on the Northern Territory Government to contribute funds to the program.

On the controversial issue of fracking, the meeting supported the rights of traditional Aboriginal owners to make their own decisions about the use of their land and waters free from outside influence, and noted the importance of Traditional Owners having all relevant information. Delegates recognised that some Aboriginal people have concerns about hydraulic fracturing and do not want it to occur on their lands and waters, and that the job of land councils is to support and respect the decisions of traditional Aboriginal owners.

Members raised concerns about the former NT Government's review of the Northern Territory Sacred Sites Act and called on all political parties to commit to strengthening the legislation and protecting the independence of the Aboriginal Areas Protection Authority (AAPA). The Sacred Sites Act must not be amended without consent of the four NT land councils and the AAPA board.

On constitutional recognition, the joint meeting passed the following resolution: (1) The Central and Northern Land Councils reaffirm their commitment to the principles set out in the Barunga and Kalkaringi statements; (2) Constitutional reform must deliver meaningful and enduring benefit for our people; (3) We are prepared to examine models for constitutional recognition that deliver such benefits; (4) Indigenous constitutional forums must be held in the Northern Territory, involving people from the bush; and, (5) Progress towards constitutional recognition must not put in danger our rights to negotiate treaties to finally achieve self-determination.

ersary of the Wave Hill Walk-off

That was Then, This is Now

"It is basic that persons in custody should be treated with courtesy and patience."

John B. Lawrence SC

The quote is the very last sentence in the noted decision of *R v Anunga and Others*, the judgment of the Full Court of the Northern Territory Supreme Court which brought into existence the famous *Anunga Guidelines*. Try reading it to Dylan Voeller and the scores of other Aboriginal teenagers who have been detained in recent times in the NT Youth Detention Centre, Don Dale.

Anunga was decided in 1975. The recent exposé on the NT juvenile detention regime revealed that the use of restraint chairs, extensive periods of solitary confinement, spit-hoods and shackles has been happening to Aboriginal child detainees here in Darwin and Alice Springs in far more recent times.

2016 marks the 40th anniversary of the *Anunga* case, a decision of Chief Justice Forster and Justices Muirhead and Ward. It laid out a series of guidelines for police officers seeking to question Aboriginal suspects in their custody. Although the guidelines were not statutory laws whose breach would render questions and answers inadmissible, they were powerful: non-compliance, without good reason, could and would render interviews inadmissible. They still have relevance and application today within the provisions of the *National Uniform Evidence Act* which govern when admissions made by suspects can be ruled admissible.

The history of the *Anunga Rules* and their potency here in the NT and other jurisdictions has been the subject of countless learned legal articles. Their commemoration in this article is a means of illustrating how Australia as a country has changed since that judgment and, more specifically, how the NT justice system's relationship with Aboriginal people has deteriorated. History, after all illustrates the present, sometimes starkly.

The 1975 *Anunga* case illustrated a Court and a society which was more generous and sympathetic towards the situation of its Aboriginal people. The case itself was a murder charge and the ruling related to admissions contained in typed records of interview of Aboriginal suspects which were ruled inadmissible by the trial Judge. The Court then laid down the Anunga Rules for police to observe. The ruling and some of the wording in the judgment are indicative of those times.

> *"It may be thought by some that these guidelines are unduly paternal and therefore offensive to Aboriginal people. It may be thought by others that they are unduly favourable to Aboriginal people. The truth of the matter is that they are designed simply to remove or obviate some of the disadvantages from which Aboriginal people suffer in their dealings with police."*

In many ways *Anunga* was a continuum of an enlightened and progressive jurisprudence which the NT Supreme Court had developed over previous decades going back to Kriewaldt J in the 1950s. By applying the inclusive principles of the common law system, Kriewaldt J had in many criminal cases examined the Aboriginal customary law relevant to the case before him, acknowledging its existence and application, and at times taking it into account in his ultimate judgement.

Justice Kriewaldt's approach can be seen when he said in 1954:

> *"in every case where I have been under duty to pass sentence on a native, irrespective of the charge, I have heard such evidence as has been available throwing light on the background and upbringing of the native. Where tribal law or custom might possibly be relevant, I have in every case endeavoured to inform my mind on these topics either by hearing evidence in Court or by using any material available to me which seemed to bare on the point."*

Such an approach, at times paternalistic and Victorian in language, was nevertheless progressive, respectful and one which was conducive to any Court's aim and function, namely the delivery of justice.

That mood of the times was reflected and led not only by the Supreme Court in Anunga in 1975. Following the unsuccessful NT Supreme Court land rights claim in *Milirrpum v Nabalco Pty Ltd and the Commonwealth of Australia [1971] 17 FLR 141*, the newly elected Liberal Fraser Government, displaying a bipartisan approach, passed the previous Labour Government's Bill which became the ground breaking *The Aboriginal Land Rights (NT) Act 1976*.

Further examples from Australian case law in the period of *Anunga*, which reflect a more respectful and generous approach to Aboriginal customary law and peoples generally, can be seen in the leading High Court decision on standing, namely *Alcoa*. In that case the High Court held that members of the Gourndith Jmara Aboriginal community in Victoria who claimed to be custodians of ancestral relics, according to the laws and customs of their community, had sufficient interest [standing] to institute proceedings to enforce the *Archaeological and Aboriginal Relics Preservation Act (Vic) 1972*, when certain of their relics were found on the land at Portland belonging to Alcoa. Similar sensitivity can also be found in the decision of the High Court in *Re Toohey and Another: Exparte Meneling Station Pty Ltd and Others*.

Such a relationship between the NT Supreme Court and Aboriginal people continued through the 80s and can be seen in various cases. Muirhead J said in 1982:

> *"in the exercise of its criminal jurisdiction the Supreme Court of the Northern Territory has for many years now considered it should, if practicable, inform itself of the attitude of the Aboriginal communities involved, not only on questions of payback and community attitudes to the crime, but at times to better inform itself as to the significance of words, gestures and situations which give rise to sudden violence which may explain the situation which are otherwise incomprehensible. The information may be made available to the Court in a somewhat informal hearsay style. This is unavoidable as it will often depend on consultation with Aboriginal communities in remote areas…"*

Whilst the Judges of the Supreme Court were at times willing to take into account Aboriginal customary law, it was done by following proper judicial method and not at the expense of other applicable principles. The Judges were just as aware then of the frequency and gravity of drunken, violent crimes committed by Aboriginal people, invariably upon Aboriginal people and, in particular, in domestic situations.

For example, in *The Queen v Edwards SCC155/156 (16 October 1981)* unreported, Justice Muirhead, if anything considered by the profession a tough sentencer, said this:

> *"Sitting as a Judge of this Court I am just not prepared to regard assaults of Aboriginal women as a lesser evil to assaults committed on other Australian women, because of customary practices or lifestyles, or because of what at times appears to be the almost hopeless tolerance by some Aboriginal people to drunken assaults of this nature."*

The same Judge said this back in 1985 pointing out the main cause of the dysfunction and crime then, (as it still is):

> *"As is usual in this depressing frequent type of offence, the root cause was alcohol. For over 10 years sitting in this Territory, I have endeavoured to draw attention to the need for something to be done about the marketing, the regulation and supply of alcohol, particularly to our Aboriginal community, the need for detoxification units, modern treatment and rehabilitation centres. I have not been alone in this exercise but it's been entirely fruitless. The Courts can achieve little, if nothing. The Aboriginal councils appear to recognise the problem and it is the Aboriginal people who almost entirely suffer its consequences. One can only keep hoping that at national level there will be recognition of the seriousness and complexity of the problems coupled, I hope with some action."*

And of course it was Muirhead J who was tasked by Prime Minister Hawke in 1989 to head up the Royal Commission into Aboriginal Deaths in Custody which sat from 1989 to 1991. It examined 99 deaths in custody and made 339 recommendations. Justice Muirhead, with Prime Minister Hawke's permission, expanded his original Terms of Reference in order to address the disturbing backdrop to the Inquiry which was the then perceived over-representation of Aboriginal people in jail. Then, as now, Aboriginal people made up about 2½ per cent of the Australian national population; however, they made up 14 per cent of Australia's prison population. Back then, that was considered a national disgrace. In the NT, Aboriginal people then made up 25 per cent of the population and 69 per cent of its jail population. Now the national figure for Aboriginal prisoners is 27%, and for the NT it is now touching 90%. Further, a third of women prisoners now are Aboriginal.

The imprisonment rate and the inhumane conditions experienced by Aboriginal prisoners are a catastrophe. The reasons are numerous and complex.

The recommendations from the Royal Commission were made in 1991. Around this time, the "law and order" auctions emerged as a significant political imperative. Community demands, partly reflected and partly encouraged by political parties on both sides, and egged on by much of the media, meant that laws were reformed to secure more convictions and increase the rates and the length of imprisonment. For 25 years the prevailing policy has been, "get tough on crime" and give more consideration to the victims of crime. That policy won elections – so, it became our law and more Aboriginal men, women and children would go to jail irrespective of the 339 Recommendations that most Governments had largely, at least in principle, agreed to.

Throughout this period, and consistent with driving ideology, resources to Aboriginal legal aid bodies and alternative sentencing options (e.g., alcohol and drug rehabilitation services and therapeutic justice approach programs like the Credit Court) were either decimated or abandoned.

All of this has occurred in an age of acquiescence and consensus. Australia has become very much a country of conformity, meek acceptance and complacency. Consensus has become the order of the day; nobody disagrees. As Australian Man Booker Prize winning author Richard Flanagan recently stated in bemoaning the fact that Australia has lost its way, as exampled by its offshore policies on refugees:

> *"These things… have happened because of a more general cowardice and inertia, because of conformity: because it is easier to be blind than to see, to be deaf than to hear, to say things don't matter when they do."*

Consistent with that, the traditional gatekeepers within the legal system, namely the independent Bar Associations and the like, have become compliant, invariably mere participants and lubricants to the criminal law reforms. The gates were unguarded, if not opened, and the Citadel fell into regressive hands. Predictably this has meant more Aboriginal men, women and children in the NT criminal justice system where the adversarial component has been neutered. Budgetary imperatives now drive the justice system. A mantra of efficiency, not justice, prevails; court proceedings are dominated by case law management, directions hearings and settlement conferences, rather than hearings and trials.

The criminal courts have become clearing houses where the vast majority of proceedings are sentencing matters whereby larger numbers of Aboriginal men, women and teenagers are rapidly dispatched to the now-full Superjail. Concomitantly and causatively, the quality and competency of the NT legal system has diminished significantly. This is not unique to the legal system: the serious drop in standards similarly applies to our education and health systems

The current Royal Commission into youth detention will undoubtedly expose a dysfunctional and malignant Corrections Department – a department whose odours and features were not out of sight and mind of the whole criminal justice system.

In conclusion, the subject of this article marks the 40th anniversary of *Anunga*; it doesn't celebrate the anniversary. Richard Flanagan is spot on – Australia has lost its way. The changes, regressive, are occurring ever rapidly.

Australia's relationship with its Aboriginal people now is worse than it has been in decades, and it is getting worse. Australian football supporters booed Adam Goodes in 2015 and threw bananas at Eddie Betts in 2016. That wouldn't have happened 20 years ago. No one booed Michael Long when he attacked Damien Monkhorst for being racially vilified by him in 1995. He was admired and applauded.

The mood and temper of contemporary Australia is now less impressive, and our justice system has reflected this. It need not, indeed should not, be so. Our democratic system still has central to its existence the separation of powers: our judiciary is independent from the executive and the legislature. They are not there to "adapt to the situation" (the quotation is from the opening statement in the Nuremburg Trial III).

Justice Muirhead has figured frequently in this reflection. With the Royal Commission into the NT's juvenile detention system upon us, it is worth comparing what he said about the detention of Aboriginal juveniles in 1977 with what the previous Attorney General and Minister for Corrections, John Elferink, said in September 2014.

Justice Muirhead said this:

> *"…in dealing with Aboriginal children one must not overlook the tremendous social problems they face. They are growing up in an environment of confusion. They see many of their people beset with the problems of alcohol, they sense conflict and dilemma when they find the strict but community based cultural traditions of their people, their customs and philosophies set in competition with the more tempting short term inducements of our society.*
>
> *In short the young Aboriginal is a child who requires tremendous care and attention, much thought, much consideration. Seldom is anything solved by putting him in prison. If he becomes an offender he requires much by the way of support and perhaps much by way of discipline to set him on the right track..."*

John Elferink said this:

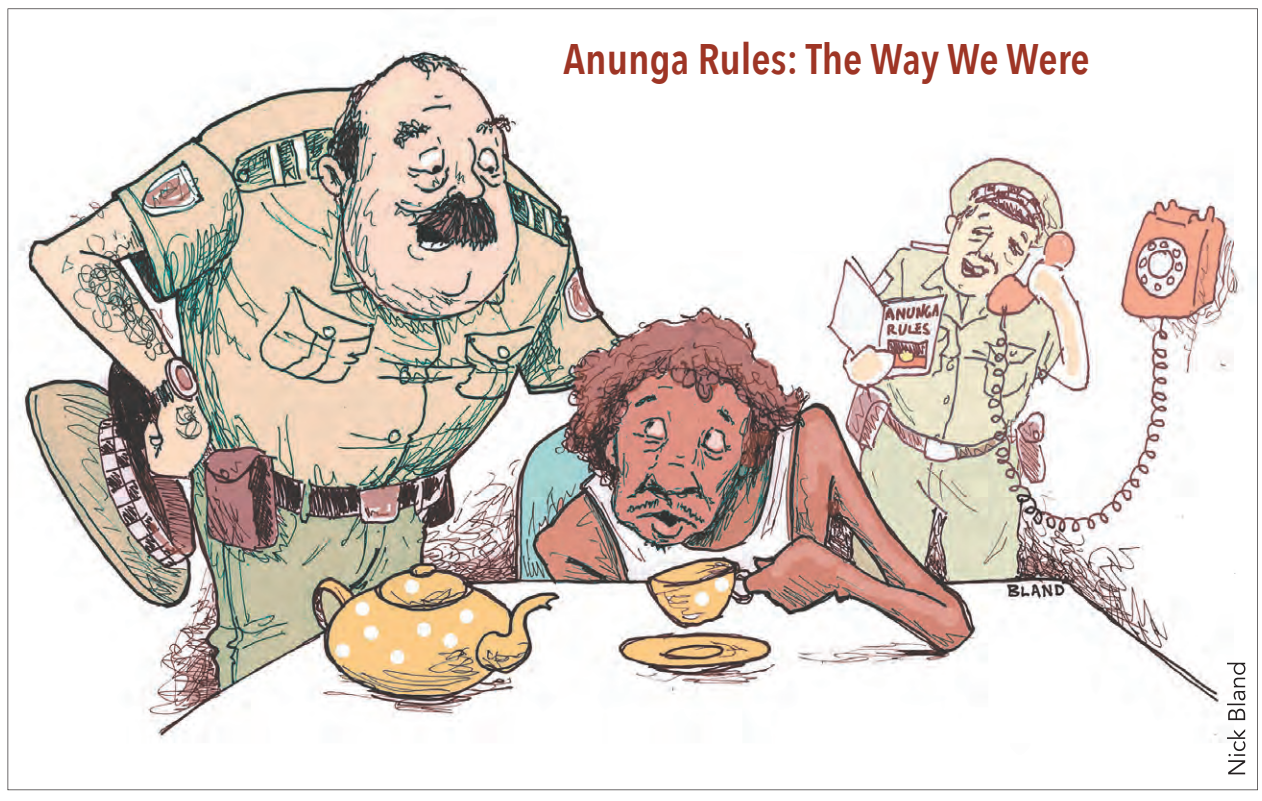
> *"These are strapping young lads, but my goodness gracious me we will crack down on them and we will control them."*

One statement is thoughtful, intelligent and measured, the other plainly foolish. That was then, this is now.

Many of Muirhead's statements were made in the Supreme Court at Alice Springs, where a new Supreme Court building is presently under construction. It looms as the biggest building in town and will be opened early next year, no doubt with much fanfare and ceremony, and no doubt with some Aboriginal involvement. It will be an impressive building, but never judge a book by its cover: ultimately it's supposed to be a Hall of Justice. What produced *Anunga* was a Hall of Justice. But that was then.

THE ANUNGA RULES

The Anunga rules, as laid down by Chief Justice Sir William Forster 40 years ago:



(1) When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the Aboriginal person's language should be present, and his assistance should be utilised whenever necessary to ensure complete and mutual understanding.

(2) When an Aboriginal is being interrogated it is desirable where practicable that a "prisoner's friend" (who may also be the interpreter) be present. The "prisoner's friend" should be someone in whom the Aboriginal has apparent confidence. He may be a mission or settlement superintendent or a member of the staff of one of these institutions who knows and is known by the Aboriginal. He may be a station owner, manager or overseer or an officer from the Department of Aboriginal Affairs. The combinations of persons and situations are variable and the categories of persons I have mentioned are not exclusive. The important thing is that the "prisoner's friend" be someone in whom the Aboriginal has confidence, by whom he will feel supported.

(3) Great care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms and say, "Do you understand that?" or "Do you understand you do not have to answer the questions?" Interrogating police officers, having explained the caution in simple terms, should ask the Aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the Aboriginal has apparent understanding of his right to remain silent. Most experienced police officers in the Territory already do this. The problem of the caution is a difficult one but the presence of a "prisoner's friend" or interpreter and adequate and simple questioning about the caution should go a long way towards solving it.

(4) Great care should be taken in formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross examination should be scrupulously avoided as answers to it have no probative value. It should be borne in mind that it is not only the wording of the question, which may suggest the answer, but also the manner and tone of voice which are used.

(5) Even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter in an endeavour to obtain proof of the commission of the offence from other sources. Failure to do this, among other things, led to the rejection of confessional records of interview in the cases of Nari Wheeler and Frank Jagamala.

(6) Because Aboriginal people are often nervous and ill at ease in the presence of white authority figures like policemen it is particularly important that they be offered a meal, if they are being interviewed in a police station, or in the company of police or in custody when a meal time arrives. They should also be offered tea or coffee if facilities exist for preparation of it. They should always be offered a drink of water. They should be asked if they wish to use the lavatory if they are in the company of police or under arrest.

(7) It is particularly important that Aboriginal and other people are not interrogated when they are disabled by illness or drunkenness or tiredness. Admissions so gained will probably be rejected by a court. Interrogation should not continue for an unreasonably long time.

(8) Should an Aboriginal seek legal assistance reasonable steps should be taken to obtain such assistance. If an Aboriginal, states he does not wish to answer further questions or any questions the interrogation should not continue.

(9) When it is necessary to remove clothing for forensic examination or for the purposes of medical examination, steps must be taken forthwith to supply substitute clothing.

Royal Commission into the Protection and Detention of Children

The Royal Commission into the Protection and Detention of Children in the Northern Territory formally opened in Darwin on 6 September.

The Commission is chaired by the Hon. Margaret White AO, a former judge of the Supreme Court of Queensland. The other member is Mr Mick Gooda, who retired as the Aboriginal and Torres Strait Islander Social Justice Commissioner to take up his appointment.

Two Counsel Assisting have been appointed: Mr Peter Callaghan SC and Mr Tony McAvoy SC. Here are their opening addresses (edited):

Peter Callaghan SC

Commissioners, this Inquiry has been set two distinct, but related tasks.

The first is to inquire into the failings of youth detention systems in the Northern Territory during the period from 1 August 2006, when the Northern Territory Youth Justice Act commenced, until the present.

Initially, this requirement is expressed in broad terms, although some structure is provided by the Terms of Reference that follow. Specific attention is drawn to the Don Dale Youth Detention Centre in Darwin, but all youth detention facilities administered by the Northern Territory government are under review.

We are of the view that a youth detention centre includes any place in which a young person might be detained and so may include, for example, a police watch-house. Focus is demanded on the actual conditions in which young people were detained in all such centres and whether, for example, those incarcerated had access to appropriate medical care.

But the Inquiry is required to go further, and to examine the way in which youth detention facilities were managed. This examination will not stop at the point of official management policies, but will also scrutinise the implementation of those policies, and any organisational culture that might have contributed to the management, or mismanagement, of these facilities.

The Inquiry will question whether, because of such a culture or for any other reason, there has been mistreatment of young people within these facilities. The concept of "mistreatment" will be gauged by reference to any breach of law, policy or duty of care, and also by reference to inconsistency with any of the human rights or freedoms to which young people are entitled.

That there have been some failings has already been identified in the reports of earlier reviews and inquiries. Two of these are mentioned in the Terms of Reference, but there are many more – we have identified at least a dozen such reports that are potentially relevant, and intend to learn from the experiences of those who have already examined the issues under consideration.

The Terms of Reference do require you (the two members of the Royal Commission) to consider whether more could have been done to act upon the recommendations of such reports, but perhaps the most important work of this Inquiry will be to identify measures that might now be adopted in order to prevent the occurrence, at youth detention centres, of any further inappropriate behaviour towards young people.

The second line of inquiry demanded by the Terms of Reference is into the failings of child protection systems implemented by the government of the Northern Territory since 1 August 2006.

This task turns your attention to the needs and circumstances of vulnerable children and their families. The imperatives that drive the necessity of protecting children in detention apply with equal force to protecting children in the community. There are complex issues that lie at the intersection between the roles shared by family, community and the state in ensuring the wellbeing of a child. Those issues form the background to an Inquiry that will include investigation into the functions, policies, procedures and resources, of the government agencies and community bodies that com-prise the child protection system.

In this, too, we remain conscious of that which has gone before. For example, the 2010 report entitled "*Growing them strong, together*" by the Board of Inquiry into the child protection system in the Northern Territory, is one of many sources of information that will inform our work.

This part of the Inquiry is potentially very wide in scope. Specifically, though, we can say it will include addressing the question as to whether there are methods by which children who appear to be heading towards engagement in anti-social behaviour can be diverted from that course. There are obvious and profound benefits, for the children, their families and the community, if such measures can be deployed successfully.

Tony McAvoy SC

One of the key measures of the moral prosperity of any society, is the manner in which treats its most vulnerable. The Convention on the Rights of the Child, to which Australia is a signatory, sets out in broad terms the international norms. While there are many Articles of that Convention which are relevant to this inquiry and will come under some scrutiny, it is worth noting Article 19 which provides:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

In many senses, the capacity to undertake this inquiry and inquiries such as this, form an important part of the protective measures the international community expects to be afforded to children in this country. This inquiry also fulfils a role in scrutinising whether the measures existing in the Northern Territory have been and continue to be adequate and appropriate. This can only be achieved with detailed and accurate information and evidence. That is what we will aim to provide to you.

Royal Commission Terms of Reference

The Royal Commission is charged with inquiring into the following matters:

(a) failings in the child protection and youth detention systems of the Government of the Northern Territory during the period since the commencement of the Youth Justice Act of the Northern Territory (the relevant period);

(b) the treatment, during the relevant period, of children and young persons detained at youth detention facilities administered by the Government of the Northern Territory (the relevant facilities), including the Don Dale Youth Detention Centre in Darwin;

(c) whether any such treatment during the relevant period may:

(i) amount to a breach of a law of the Commonwealth; or

(ii) amount to a breach of a law in force in the Northern Territory; or

(iii) amount to a breach of a duty of care, or any other legal duty, owed by the Government of the Northern Territory to a person detained at any of the relevant facilities; or

(iv) be inconsistent with, or contrary to, a human right or freedom that:

(A) is embodied in a law of the Commonwealth or of the Northern Territory; and

(B) is recognised or declared by an international instrument; or

(v) amount to a breach of a rule, policy, procedure, standard or management practice that applied to any or all of the relevant facilities;

(d) both:

(i) what oversight mechanisms and safeguards (if any) were in place during the relevant period at the relevant facilities to ensure that the treatment of children and young persons detained is appropriate; and

(ii) whether those oversight mechanisms and safeguards have failed, or are failing, to prevent inappropriate treatment, and if so, why;

(e) whether, during the relevant period, there were deficiencies in the organisational culture, structure or management in, or in relation to, any or all of the relevant facilities;

(f) whether, during the relevant period, more should have been done by the Government of the Northern Territory to take appropriate measures to prevent the recurrence of inappropriate treatment of children and young persons detained at the relevant facilities and, in particular, to act on the recommendations of past reports and reviews, including:

(i) the Review of the Northern Territory Youth Detention System Report, of January 2015; and

(ii) the Report of the Office of the Children's Commissioner of the Northern Territory about services at Don Dale Youth Detention Centre, of August 2015;

(g) what measures should be adopted by the Government of the Northern Territory, or enacted by the Legislative Assembly of the Northern Territory, to prevent inappropriate treatment of children and young persons detained at the relevant facilities, including:

(i) law reform; and

(ii) reform of administrative practices; and

(iii) reform of oversight measures and safeguards; and

(iv) reform of management practices, education, training and suitability of officers; and

(v) any other relevant matters;

(h) what improvements could be made to the child protection system of the Northern Territory, including the identification of early intervention options and pathways for children at risk of engaging in anti-social behaviour;

(i) the access, during the relevant period, by children and young persons detained at the relevant facilities, to appropriate medical care, including psychiatric care;

(j) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (i).

Reflections on the 40th anniversary of the *Aboriginal Land Rights (NT) Act 1976*

Nancy Williams *

During the past few months I have been surprised to hear Yolngu as well as others occasionally speak negatively about the Northern Land Council. These comments also struck me as being almost reflex; as if opposition were being made as much to what the Land Council is, as to what it does – even though a comment about 'stopping' or 'blocking' would sometimes be added.

This seemed to me profoundly anomalous because my opinion of the Land Council has always been positive. And so in an effort to understand the anomaly, to understand how some people's perceptions of the Land Council had become negative, I turned my mind to history. It is perhaps not surprising, in view of my long interest in the topic of decision-making, that I also thought about the possible influence of changing circumstances in decision-making in local Aboriginal contexts and in Land Council responsibilities and about how through time changing imperatives in decision-making may have played a role.

And to begin I considered the state of play, as it was, at my arrival in Australia in 1969, when there was neither an Aboriginal Land Rights Act nor a Northern Land Council.

Let me say that upon my arrival (as a PhD student), I was deeply impressed, as I am sure all visitors are, by Australian friendliness. Aboriginal land rights were of course on the national radar, and when I told people that I hoped to work with Aboriginal people, I was further impressed by white Australians' eagerness to tell me about 'our Aborigines.' They were fonts of a certain type of knowledge. And their opinions seemed well formed and, so they suggested, generally shared. They 'knew,' for instance, that Aborigines did not own land or even have a concept of what might constitute a land boundary and their language was perhaps unique in not possessing a future tense. As a visitor, I was scrupulously polite, but as an anthropologist, I was sceptical.

Soon after arriving at Yirrkala, I discovered that although my politeness had perhaps not been misplaced, my scepticism was more than justified. I sought the clan leaders' permission for research at Yirrkala and explained that I was hoping to learn about how people settled disputes. But the leaders had in mind other research objectives for me: two of Australia's most eminent anthropologists, Professor W E H Stanner and Professor Ronald Berndt, were assisting them to prepare for their land claim, and the appropriate research for the newly arrived anthropologist was related to that.

And so, after spending a year at Yirrkala – a year in which Yolngu leaders taught me about their system of land tenure and during which I heard them give extensive evidence in the Milirrpum land rights case in the Northern Territory Supreme Court – I decided to write a book about the Yolngu system of land tenure. It was not a simple task. But I was motivated to write it by my incredulity at Judge Blackburn's finding that although the Yolngu had a system of law (the first time an official of the Australian legal or political system had said that), it made no provision for proprietary interest in land [p. 273 in the 1971 judgment]. The title of the book was *The Yolngu and their Land; a System of Land Tenure and the Fight for its Recognition*. I gave a copy of the book to Galarrwuy. He said he liked the subtitle!

These are the first sentences in my preface to that book (1986: xi-xii – why did it take me so long? That's not an anomaly but another story, one of searching for historical precedents):

At Yirrkala in late 1969 I found virtually every member of the Aboriginal community of eight hundred people preoccupied by an impending court hearing. They had begun an appeal to Australian law in December 1968 by seeking from the Supreme Court of the Northern Territory in Darwin an interim injunction to restrain the Commonwealth Government and a mining company from proceeding with bauxite mining. …I saw leaders of the Yirrkala community preparing for a legal contest in which they planned to demonstrate to an Australian court the validity of their claim to land. The leaders of the clans with whom I worked were anxious to have me record information about their land that they believed would be useful in that contest: how land came to be vested in particular groups of Yolngu, and how they defined its features and regulated their relations to it. They also wanted a written source for future generations of their own clans. In keeping with their definition of 'anthropologist', Yolngu expected me to write about their culture accurately and in terms that an English-speaking audience could understand. This posed a special difficulty, because in Yolngu epistemology understanding entails respect. …I think none of us then imagined that their land rights case would result in a benchmark legal decision, from which would follow governmental inquiries and legislative action that continue (as does a flow of commentary) amid Australia-wide debate…

Anthropologist Nancy Williams (right) at north-east Arnhhem Land, 1970. From left is her son Frederic, and niece Yalmay; daughter Winifred has her back to camera.

"At Yirrkala in late 1969 I found virtually every member of the Aboriginal community of eight hundred people preoccupied by an impending court hearing."

In 1971 Yolngu at Yirrkala were devastated and immensely angry when they learned that the result of their land rights case was to deny that they owned their land. At least one clan leader refused to concede that they had lost the case. Indeed he dismissed my various attempts to placate him after passage of the Aboriginal Land Rights Act, when from time to time I would remind him that, despite the loss, the Yirrkala evidence had been critical to the ultimate passage of the nation's first land rights act.

Ted Woodward was the lead barrister for the Yolngu in the land rights case and at the end of 1972 Prime Minister Whitlam appointed him to head the Royal Commission into Aboriginal Land Rights. Yolngu enthusiastically welcomed Woodward when he visited Yirrkala in the course of his inquiry during 1973 and 1974 – events Yolngu later told me about since I was not at Yirrkala during those years. They pointed out a particular tree they called 'the land rights tree' because they sat in its shade during those discussions with Woodward.

Woodward's first report in 1973 was a summary of his findings from his consultations. He noted (p.33) that his terms of reference made it clear that the government wished to vest title in an appropriate body or bodies, and he then considered the matter of form the title to be vested. He said one thing seemed clear (ibid:37):

...ownership, in the first instance, must be communal. Communities will no doubt wish to give leases to individuals in some cases and, at some time in the future, individual title to land may become appropriate. However, ***inalienable communal title is quite basic to the Aboriginal system*** *and so seems to provide the only possible way of dealing with reserve lands in the Northern Territory today ...* (my emphasis).

(Continued next page)

Conferring in the ACT courts building during the Gove Land Rights case, September 19980: From left, Jeremy Long from the Office of Aboriginal Affairs; Bill Prisetley, counsel for the mining company Nabalco, who took silk in 1972 and later became a justice of the NSW Supreme Court and Court of Appeal; Commonwealth Solicitor General Bob Ellicott; and Bill Harris QC, one of Mr Ellicott's junior counsel. Photo National Archives of Australia.

Woodward designated four pages of the first report (S1-S5) as 'information and discussion notes for the use of Aboriginal people of the Northern Territory relating to the recommendations and suggestions contained in the first report'. He recommended that the government set up two Aboriginal land councils (a Northern Land Council and a Central Land Council) and 'that the government arrange and pay for independent legal advice for each land council'. One of the legal advisors was Gerard Brennan, later Chief Justice of the High Court. I attended as an observer two of the three meetings organised by the interim Northern Land Council, meetings at which Brennan as well as officers of relevant government departments were present to discuss Woodward's recommendations and suggestions and record the results. I especially enjoyed discussions with Brennan. The two meetings I attended were held in July and October 1975, after the publication of the second report (April 1974). The traditional owners were impatient because the Land Bill had not yet become law and they were urging that it be passed as soon as possible.

The formation of a separate northeast Arnhem Land council was promoted by one of the delegates, a proposal that seemed to have some support. It should be articulated to the Northern Land Council, but its objective was to ensure land owners retained control of decision-making governing traditional land at the local level. This proposal was also related to the issue of the authority to issue permits to enter Aboriginal land: delegates strongly supported legislation ensuring that local communities have this authority and that the NLC issue permits based on the local community's decision.

Woodward's second and final report (1974) contained 'suggested drafting instructions for proposed legislation' (pp. 155-177), and the Bill introduced in 1976 by the Fraser government followed the suggestions closely with two modifications (no provision for land acquisition for commercial purposes or based on need, and Northern Territory government responsibility for measures dealing with sacred sites and a permit system), and was the framework for the *Aboriginal Land Rights (Northern Territory) Act 1976*. The 1976 Act was 44 pages in length, including the list of Schedule 1 lands (pp. 38-44), Aboriginal reserves which were to be freehold land held by Land Trusts. Part II of the Act (Grants of Land to Aboriginal Land Trusts) established 'Aboriginal Land Trusts to hold title to land in the Northern Territory for the benefit of groups of Aboriginals entitled by Aboriginal tradition to the use of occupation of the land concerned… and shall so establish Land Trusts to hold the Crown land described in Schedule 1'.

The Act effectively separated the basic functions of traditional land ownership and assigned responsibility for their operation to separate entities: Land Councils to have administrative and advisory functions, title to be held by Land Trusts, and final decisions with respect to land ownership and use to be the responsibility of traditional land owners.

The question of the relation between the elected Land Councils and the Land Trusts was – at least according to my 1975 notes – inconclusively discussed at the interim NLC meetings (relevant to Arnhem Land, the Arnhem Land Aboriginal Land Trust), but there was disquiet at the interpretation of the function of the Land Trust, however it might be constituted – a matter that was never entirely clear – as holder of the title to land. A suggested explanation at the meetings that Land Trusts holding title was a legal fiction, necessary to allow Australian law to recognize traditional Aboriginal land ownership, was not well received. The understanding of 'title' – at least as it had developed in the context of the Milirrpum case and in Yolngu terms – was that whoever held the title owned the land, that is, had ultimate control over it.

During their preparation for the hearing in Darwin, Yolngu leaders had discussed the status of their clans' sacred objects and paintings on bark as embodying the titles to their land. Acting on the premise that the Judge had to be persuaded of their title by something more tangible than words, the Yolngu witnesses showed some of the sacred objects and paintings to the Judge in his chambers. To me it was inconceivable that Yolngu could be convinced that holding the title to land was not tantamount to having ultimate control over the land to which the title pertained. Or that the sacred objects and symbolic representations did not instantiate that relationship.

The increasing complexity of the Aboriginal Land Rights Act currently in force (as of 5 September 2015) may be indicated – at least it may be measured – by its current 398 pages compared with the spare 44 pages of the Act in 1976 and the 22 pages of 'suggested drafting instructions' in the second report (1974) that were followed by a 2-page appendix (pp. 178-179). Woodward wrote the appendix 'for the Aboriginal people of the Northern Territory' and is a laser-precise summary that makes the objectives as well as the procedures of ensuring traditional owners' continued control of their land unambiguous.

The increase in size and complexity of the Act is of course related to economic, social, and cultural changes that have occurred in Australia and in the Northern Territory in the intervening 40 years. In the 1970s Woodward anticipated the possibility of change and some of the directions of change in his reports and in his drafting suggestions. In his first report, as noted above, he anticipated the possibility of future change in title and linked it to economic development. He referred to the kind of changes he anticipated; for example, '…Communities will no doubt wish to give leases to individuals in some cases and, at some time in the future, individual title to land may become appropriate …' (1973, para 119). In the first place freehold title must be communal and incapable of sale or mortgage (1973, para 296) but '… there must be provision for the operation of Aboriginal businesses' (1973, para 165). The examples of economic development he suggested might be developed or expanded were based on enterprises then underway in the 1970s, such as 'fishing ventures' or 'market gardening'. At the time he wrote he could not have conceived of multi-million dollar Aboriginal mining projects or comparable other developments such as those now under way.

Throughout Woodward's considerations of change were issues related to decision-making. Silas Roberts, the first chairman of the Northern Land Council, in giving evidence to the Ranger Uranium Environmental Inquiry in 1976, spoke about the lack of fit between traditional owners' decision-making and that required by the dominant system. He said, in a prescient statement, that

> *Aborigines did not run their business as same as the white men. We did not and do not reach decisions in the same way. Our people are not as free to make decisions and give evidence as white men seem to be . . . We have got to make decisions in respect to land our own way. It is a long hard road to final answer. Sometimes a person or group will say 'yes' then talk a little more and the say 'no'. Then more talk might take place after a few months and still no final answer. Then all the people who really belong to that country will go over it all again until everyone is sure of his answer and then the answer is given. That may be years after the first talks if the question is a hard one* (1976:2-3).

The Aboriginal Land Rights Act established the Northern Land Council in 1976 as the body with primary responsibility to ensure that Aboriginal land owners continue to exercise control over the land that the Act defines is traditional Aboriginal land. The Land Council and its functions are defined by the Act and I think that the anomaly that puzzled me arises from a disjunction that is created by the link – an organic link – between the provisions governing the functions of the Land Council and related provisions in the Act.

The Act defines Aboriginal land owners as a group and requires that decisions involving their land must be made by free, prior, and informed consent of the group. It is the statutory responsibility of the Land Council to ensure that the decisions have been made in accordance with traditional Aboriginal procedures (or other decision-making procedures that the Aboriginal people involved agree is legitimate). Officers of the Land Council are required to consult relevant land owners when the land owners are required to make a decision regarding their land; they are also required to consult any other Aboriginal people who may be affected by the decision, a group that may be larger than the group of traditional owners defined by the Act. As Silas Roberts observed, this may take a very long time. It also anticipates (as Yolngu have told me), that sometimes no decision is made.

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The short resolution of the anomaly I began by describing – which I concede is an analysis, not concluded as the basis of reform – is this: to be regarded as licit and have any chance of being implemented by the decision-makers, a traditional owners' decision must be acknowledged as the consensus outcome of a group, the individual members of which have an acknowledged right to contribute to the outcome (i.e. the decision); the Land Council must obtain and certify that the decision has been made if certain conditions, i.e. prior, free, and informed, have been met (there is a determined outcome). Since traditional owners' underlying assumption about decision-making (as I have observed) is that it is a continuous process during which it is anticipated that decision-makers will change their minds from time to time, how can the Land Council satisfy both the traditional owners' criteria and those required by the Act? It is logically and existentially impossible. So in these circumstances the Northern Land Council is faced with a structural contradiction that seems impossible to transcend. The way in which this impasse may be resolved poses a mighty challenge both to the Land Council and to traditional land owners; I maintain my confidence in their ability to come to a workable consensus.

Nancy William with Joe Morrison, CEO of the NLC, at the Garma Festival 2016

* Nancy Williams' research on land tenure, land management, and dispute settlement began at Yirrkala in 1969. She has worked with Dhimurru Aboriginal Corporation since its inception in 1982 and has worked with the Northern Land Council on land claims since 1979 and on other matters since then. She has also prepared and peer reviewed Native Title applications.

She has a BA from Stanford, an MA and PhD from the University of California at Berkeley. She has taught at the University of California, University of Washington, the University of Queensland, and was affiliated with the Centre for Indigenous Natural and Resource Management at the Northern Territory University. Her current appointment is Honorary Reader in Anthropology in the School of Social Science at the University of Queensland. She is a Fellow of the Academy of Social Sciences in Australia.

Her publications include *The Yolngu and their Land: a System of Land Tenure and the Fight for its Recognition* and *Two Laws*, and edited books *Traditional Ecological Knowledge* (with G. Baines) and *Resource Managers* (with E. Hunn).

Yambirrpa schools win prestigious International Award

Yalmay Yunupingu, Langani Burarrwanga, Stuart Bramston, Monica Perena (President of Linguapax International), Merrkiyawuy Ganambarr-Stubbs, Sue Baynon, Trevor Stockley, Brian Hughs, Rarriwuy Marika, Djuwalpi Marika.

The Yambirrpa schools, which incorporate the Yirrkala School and ten Homeland Learning Centres in the Laynhapuy region of north-east Arnhem Land, have won the prestigious 2016 International Linguapax Award, in recognition of more than 40 years of outstanding bilingual and bicultural education.

The Linguapax organisation, based in Barcelona, makes an annual award on the occasion of International Mother Language Day (21 February). Its award to the Yambirrpa schools was marked at a ceremony at the Buku-Larrŋgay Art Centre on 16 August. The president of Linguapax International, Ms Monica Perena, presented the award to the Yambirrpa Schools Council and the Djarrma Action Group.

The Yambirrpa schools were joint winners with the International and Heritage Languages Association, founded in 1977 in Alberta, Canada, to help build a multicultural and multilingual country. A jury of 40 international experts made the ward, and said both winners shared the perseverance and the will to preserve languages that are either threatened in their own territory or are "part of the assets of displaced persons or individuals.

Linguapax said the Yambirrpa School Council and the Djarrma Action Group represented 14 Aboriginal language groups of the Yolngu people of Yirrkala and Laynhapuy. "These institutions carry on the struggle initiated more than 40 years ago by the community elders to convey the cultural and linguistic heritage of their people through bilingual teaching programs in Yolngu, in steady decline since 1980 due to government action".

A vibrant traditional ceremony, which included singing and dancing by the Rirratjingu clan was held to celebrate the presentation of the Linguapax Award. Yolngu elders, NT Education Department representatives, teachers, children and community members attended, and the ceremony ended with a musical performance by local singer, Dhapanbal Yunupingu.

Trevor Stockley, a retired teacher who's worked in bi-lingual education for 40 years, spoke at the awards ceremony: "The Linguapax Award recognises the important role of the two decision making bodies for Yolŋu education at Yirrkala and the Laynhapuy schools - the Yambirrpa School Council and the Djarrma Action Group. Both of these groups were established in the 1980s and they have continued to meet for 30 years, upholding the vision of the Elders and the expectations of the community by taking a continuing and active role in guiding Yolŋu education."

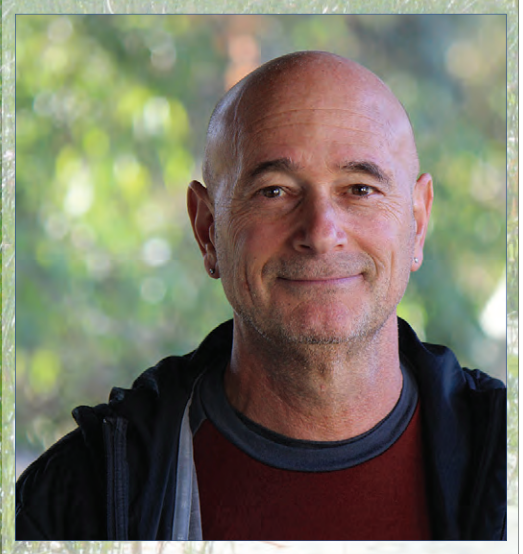
Mr Stockley nominated the Yambirrpa schools for the Linguapax Award with Professor Kathryn McMahon, principal co-ordinator of the NT bi-lingual program. He said the award acknowledged the generations of Yolŋu who fought for a proper education for their children.

"They want a respectful and positive education where their children's first language, Yolŋu matha and Yolŋu knowledge are an integral and major part of each Yolŋu child's learning. A Yolŋu education which leads learners to stand strong and proud on their own country, speaking their clan language and English. The Elders believed their children had a right to learn using their own Yolŋu language and knowledge and that they should, as Dr Yunupiŋu said, 'not have to leave their cleverness outside the classroom door'.

"The celebration of the Linguapax Award is a good time for us to look back and to remember the insightful vision and strength of the Elders, the Ḏilak now passed on, those Yolŋu warriors – both men and women, who fought for their and your land rights and fought for their children's and grandchildren's right to a balanced bilingual education. It is also a good time to look forward and to prepare the ground for the future development of multilingual Yolŋu education fulfilling the hope and sustaining the vision for your children's children."

Where there is territory there is hope

On the occasion of the 40th anniversary of the passing of the *Aboriginal Land Rights (Northern Territory) Act 1976* by the Commonwealth Parliament, Professor Jon Altman reflects on the expectations which existed 40 years ago, and what has actually been achieved over the years since.



Jon Altman, a regular columnist for Land Rights News, is a Research Professor at the Alfred Deakin Institute for Citizenship and Globalisation, Deakin University, Melbourne.

This year we commemorate the 40th anniversary of the passage of federal land rights law for the Northern Territory. When it was passed this was crash-through, path-breaking law. With its passage, 20 per cent of the NT that had been reserved for Aboriginal use under the watchful surveillance of colonial authorities was transferred to land trusts to be managed by statutory land councils as instructed by the owners of that land.

A mechanism was set up to allow all unalienated crown lands to be claimed, with the criteria for claim being the ability to demonstrate membership of a local descent group with primary spiritual responsibility for land and associated sacred sites and the enjoyment of a right to forage over land claimed. This claims process has seen an additional 30 per cent of the NT returned to Aboriginal land ownership.

While this law can be attributed very directly to the political genius of Gough Whitlam in 1972, it had a long gestation that included decades of activism by Aboriginal people and their allies for land justice nationally that had been denied them since 1788. This denial included the upholding of the fiction of terra nullius by Justice Blackburn in the Supreme Court of the NT in the Gove case in 1971.

A Royal Commission was set up to look at how land rights might be implemented. In another stroke of Whitlam genius, Justice Edward Woodward, who acted for the plaintiffs in the Gove case, was appointed as commissioner. After a thorough inquiry in 1973 and 1974 Woodward came up with a thoughtful and sophisticated template for land rights law for the federally-controlled NT.

As Sir Edward Woodward outlines in his 2005 memoir, One Brief Interval, his recommendations were heavily influenced by what he observed on a fact-finding visit to Canada and the USA. His approach was measured seeking to ensure implementation 'taking into account financial and political realities'.

In his memoir, Woodward notes the prescient prediction by fellow jurist Gerard Brennan that his report would 'for all time mark the high-water mark of possible Aboriginal aspirations'. This was a big call that to date has proven correct: Woodward's schema subsequently incorporated by the Fraser government in the *Aboriginal Land Rights (NT) Act 1976* (ALRA) goes well beyond any land or native title laws since.

In particular, Aboriginal land owners have the legal power to determine what happens on their land, a power sometimes referred to as a right of consent or a right of veto, in recent times as 'free prior and informed consent rights'. There are provisions in ALRA for the equivalent of statutory royalties raised from resource extraction on Aboriginal-owned land to be paid to Aboriginal interests, especially land owners; and for the establishment of Aboriginal land councils as statutory authorities to represent Traditional Owners at arms-length from Commonwealth and Territory governments of any political persuasion.

Woodward's 'measured' approach had shortcomings.

First, counter to his instructions from Whitlam, Woodward did not recommend the vesting of property rights in sub-surface minerals with land owners, instead choosing a second-best option of a right of veto subsequently termed 'de facto' rather than 'de jure' mineral rights.

This was mainly a response to vehement opposition from the mining industry, the so-called political reality to which Woodward referred.

Second, political jurisdiction over Aboriginal lands was vested almost exclusively with mainstream forms of government, in marked contrast to Canada and the USA where First Nations have varying forms of authority to make and police local laws on their lands.

This means that while Aboriginal people own land under inalienable title, most of what happens on that land is legally subject to external governance, not local Aboriginal regulation.

And ALRA as passed had shortcomings, most notably an unwillingness by government to adopt Woodward's recommendation that land could be claimed on the basis of need.

My involvement in Aboriginal economic development research began coincidentally at the very moment land rights law was passed. I had moved to Australia as a young economist with some minimal experience working in the Pacific.

I was attracted to the prospect of working on Indigenous development for a variety of reasons – mainly because this was an area of deeply-ingrained economic injustice I was keen to address. Mainstream economists at the time preferred to view Aboriginal disadvantage as simply an issue of social welfare not the inevitable consequence of settler colonial invasion.

I collaborated with fellow economist John Nieuwenhuysen on a research project that sought to garner some sense of the economic situation of Indigenous people across the Australian continent. Some of our findings, almost entirely based on the analysis of secondary data, still have relevance today.

Using 1971 Census information, we highlighted the extent of the 'gaps' at the national and sub-national levels and noted that the project of statistical equality would be extremely challenging and in some situations impossible to achieve.

We also noted that the diversity of Indigenous circumstances, dictated in large measure by the nature

of destructive colonisation as well as environmental variation, would require a diversity of development approaches.

And we highlighted that a combination of historical neglect and discrimination would require well-targeted Indigenous-specific measures.

This research was undertaken at an important policy crossroads from colonisation to partial decolonisation.

A colonial attitude shaped the 1961 definition of assimilation policy with its expectation that all Aboriginal people would attain the same manner of living as other Australians and live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs as other Australians.

Decolonisation was envisioned in the new policy of self-determination: 'Aboriginal communities deciding the pace and nature of their future development as significant components within a diverse Australia'. Or as Justice Woodward put it, 'Aborigines should be free to choose their own manner of living'.

This was a moment of great optimism about post-colonial possibility especially for those with newly-acquired land rights.

This was especially the case for people who had moved to outstations from the government settlements and missions where they had been centralised, voluntarily and involuntarily, under earlier colonial policy regimes.

It is generally overlooked today that centralised communities were a development disaster where state and mission-sponsored attempts at market capitalism failed.

So the people who chose to decentralise were looking optimistically for lifeways that accorded with their traditions and with aspirations for betterment.

Back then it was estimated by the Department of Aboriginal Affairs that there were perhaps 100 such outstation communities with a total population of 4000, mainly in the NT.

Woodward saw the aims of land rights as 'the doing of simple justice to a people who had been deprived of their land without their consent and without compensation' and 'as a first essential step for people who are economically depressed and who have at present no real opportunity for achieving a normal Australian standard of living'.

And he warned realistically that 'In truth the granting of land rights can only be a first step on a long road towards self-sufficiency and eventual social and economic equality for Aborigines' and that 'there is little point in recognising Aboriginal claims to land unless the Aboriginal people concerned are also provided with the necessary funds to make use of that land in any sensible way which they wish'.

These were views that Nieuwenhuysen and I echoed, concerned that expectations of economic independence, especially for those on remote decentralised communities, should not be overestimated and that viability was neither certain nor assured.

A year later I changed my focus from the macroscopic to the microscopic, from economics to anthropology, and from secondary data analysis to primary data collection and analysis and a far greater engagement with Aboriginal lived realities.

I was provided a life-altering experience to see what land rights meant on the ground when I went to live with the late Anchor Kalumba and his family, speakers of the Kuninjku dialect (of Bininj Gunwok language), residing at a tiny outstation called Mumeka in western Arnhem Land.

My goals as an apprentice anthropologist in 1979 and 1980 were to gather information on how, with land rights, Kuninjku people made their living and to gain some insights into their ways of thinking about development.

These people had settled in Maningrida township on the land of the Dekurridji in the early 1960s just as the policy of assimilation was at its most potent. They lived there for a decade where they were treated paternalistically as legal wards of the state, marginalised and experiencing structural violence from both colonial authorities and other more powerful Aboriginal groups.

In the early 1970s, by now nominal Australian citizens, they returned to live on their ancestral lands.

What I documented back then was a truly remarkable and theoretically-challenging 'post-colonial' economic transformation. Kuninjku people who had centralised and so abandoned their precolonial hunter-gatherer way of living went back to live as modern hunter-gatherers.

This return to living off the land reflected both the failure of market capitalism and assimilation in this remote location, as well as Kuninjku preference and agency; it fundamentally challenged evolutionary thinking about the superiority of capitalism and the benefits of moving up the settlement hierarchy from smaller to larger, rural to urban, settings.

Using a variety of research methods I demonstrated with quantitative data that people worked consistently in the food quest exploiting the resources on their country for their benefit, and that most dietary intake was from bush foods. When the value of this bush food was quantified using market replacement value, most income (cash and non-cash) came from hunting and fishing.

But Kuninjku people did not forego their engagement with market capitalism. Assisted by a community-controlled arts centre minimally supported by government and based in Maningrida, they produced art for sale. Over time they became increasingly adept at refiguring their artistic traditions, mainly bark paintings and wooden sculptures using local materials and reference to sacred places and events, for sale.

A Kuninjku seasonal camp at Nandel (Photo: Tony Griffiths)

And while people did receive state transfer payments (initially just pensions and family allowances and then unemployment benefits), such payments were not the mainstay of their economy.

Despite nominal citizenship, Kuninjku people received very little from the state in terms of health or education or community services; in 1973 pre-land rights they had gratefully received a small $10,000 establishment grant to set up Mumeka after they had demonstrated to Commonwealth authorities a commitment to living out bush.

This was land rights and self-determination at work—Kuninjku people were taking primary spiritual responsibility for their clan lands, protecting sacred sites and enjoying the economic right to make a living on their land.

In 1985, when a mining company sought permission to undertake mineral exploration over their lands, the Northern Land Council professionally mediated, as required by law, to identify Traditional Owners and consult.

I participated in the process of identifying the right people to speak for country; key land owners chose to exercise their right to veto exploration and any associated mining activity. Land rights law proved it would guarantee them access to their lands and resources.

Kuninjku people were now relatively economically and politically autonomous and they implicitly accepted a social compact that saw them lead a materially-modest, but spiritually rich and socially cohesive lifeway.

Over a two-year period from 1985 to 1987, two important national inquiries to which I provided submissions based on my observations at Mumeka condoned this way of living based on land rights.

The first was the Miller Committee on Aboriginal Employment and Training Programs that saw value in living off the land and recommended the rapid expansion of the Community Development Employment Projects (CDEP) scheme as income support to outstation residents. This recommendation was implemented as a part of the Aboriginal Employment Development Policy, but another to build the economic base of the Aboriginal-owned remote Australia was largely ignored.

The second was a comprehensive parliamentary inquiry 1985–1987, the only national review of outstations living to date. The report Return to Country not only lauded the relative autonomy of outstation residents, but recommended the flexible delivery of citizenship entitlements such as education and health and municipal services to these communities.

It is an enduring indictment of Australian fiscal federalism and intergovernmental buck passing that both the Commonwealth and NT governments were never held to account to properly implement these service delivery and appropriate development recommendations.

In August 1996 I participated in a conference 'Land Rights: Past, Present and Future' convened by the Northern and Central Land Councils at Old Parliament House in Canberra to celebrate the 20th anniversary of ALRA.

It was hardly a joyous event as a political storm was brewing in the form of a newly elected conservative Coalition government with its 'For all of Us' platform and a plan to fundamentally alter Indigenous policy.

The self-determination era was increasingly discredited for not delivering economic sameness and policy swung to a greater focus on the individual and mainstreaming rather than on the community and Indigenous-specific approaches.

In contrast to the first 20 years of land rights from 1976 with its limited commitment to a form of self-determination, the period since 1996 can be categorised as a second wave of colonisation with renewed neo-assimilationist goals—the forceful imposition of western norms and values on all Indigenous Australians.

The new government had opposed both the Mabo High Court judgment and native title law in Opposition; now the new Prime Minister, John Howard, disingenuously represented native title to the Australian public as dangerously anti-development.

And the iconic high-water mark ALRA was in the new government's sights for dramatic reform and dilution to at least match the inferior rights conferred by native title law.

The initial assault from 1997 to 1999 took the form of a major review of ALRA by John Reeves QC and its aftermath that can only be described as a policy fiasco.

Reeve's massive two-volume report *Building on Land Rights for the Next Generation* was completed after nine months at considerable public expense. It sought to fundamentally and unilaterally alter the purpose of ALRA, to turn it from the doing of simple justice to become a grandiose vehicle to secure the economic and social advancement of all Aboriginal people in the NT, not just Aboriginal land owners.

To achieve this end, Reeves proposed a change in the basic architecture of ALRA including the fragmentation of land councils, the abolition of the permit system, and the dilution of the rights of traditional land owners so that non-land owners, residents on Aboriginal land, would be equally recognised.

In an extraordinary outpouring of protest, Aboriginal people in several Central Australian communities made bonfires of copies of the Reeves Report.

In March 1999, a conference was convened at the Australian National University in Canberra (attended by Reeves, to his credit) that was highly critical of most of the review and published and widely disseminated its proceedings *Land Rights at Risk? Evaluations of the Reeves Review* (that I co-edited).

> **Reeves proposed a change in the basic architecture of ALRA including the fragmentation of land councils, the abolition of the permit system, and the dilution of the rights of traditional land owners so that non-land owners, residents on Aboriginal land, would be equally recognised.**

The controversy around the review was so great that Senator John Herron, the Minister who commissioned it, needed to take the unprecedented step of referring it for inquiry by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.

The parliamentary inquiry was headed by the late Hon Lou Lieberman who ensured its conduct was meticulously even-handed.

Sir Edward Woodward was so appalled by its recommendations that in his late 70s he made a submission and gave verbal evidence to the inquiry highlighting two particular shortcomings: proposals to disband the Northern and Central Land Councils and to alter land ownership from the descent group to local communities inclusive of residents.

The parliamentary report Unlocking the Future: The Report of the Inquiry into the Reeves Review opened with an overriding recommendation that ALRA should not be amended without the free, prior and informed consent of traditional Aboriginal owners.

The multi-party committee was unanimous in its condemnation of the Reeves recommendations, most of which were never implemented.

It beggars belief that John Reeves, a jurist subsequently appointed by the Howard government as a judge of the Federal Court, could seriously countenance such blatant dilution of political representation and dilution of existing property rights in land.

Unlike Woodward, Reeves misjudged political reality.

The spectre of reform bubbled away beneath the surface, first in the form of a performance appraisal of the land councils by the Australian National Audit Office that found no impropriety. It then re-emerged as a concerted assault on ALRA in the period 2005 to 2007.

The Howard government was emboldened in its renewed efforts by a number of factors: an election victory in 2004 that provided rare control of the Senate; the abolition of ATSIC that left ALRA exposed with only land councils as its protectors; and a ramping up of the neoliberal discursive assault on the institutions of Indigenous Australia and a commitment to a greater focus on the 'mainstreaming' of individuals.

The initial renewed call for reform of ALRA came in the name of enhanced opportunity for home ownership and business development in early 2005 from the appointed (not elected) National Indigenous Council that replaced ATSIC. Its main promoter was Warren Mundine, a council member; it was greeted with favour by powerful officials and the government.

By the time of the 2007 NT Intervention, purportedly to address the issue of child abuse in remote communities, the rhetorical attack on land rights promoted by politicians in the popular media was so extreme that even the permit system was being blamed, with no evidence, for providing a protective umbrella for child sexual abusers.

At this time of moral panic amendments were made to ALRA: the guarantee of an income stream for land councils from a hypothecated share of mining royalty equivalents was eliminated; new arrangements for 99-year (s19A) leasing of townships to be managed by a Canberra-based statutory office holder appointed by the Minister and paid for from mining on Aboriginal land were established; and the permit system to public areas of townships on Aboriginal land was abolished.

As an element of the NT Intervention, entire townships located on Aboriginal land were compulsorily leased for five years and so extinguished the interests of land owners for this period.

In response to an action brought by Traditional Owners of Maningrida, the High Court found in early 2009 that such unilateral acquisition of property required just terms compensation under the Australian constitution—compensation eventually paid by the Rudd/Gillard governments via land councils after protracted legal negotiations.

To date, and despite the concerted efforts of successive conservative governments, the s19A, 99-year township lease option that effectively alienates the land and places the Executive Director of Township Leasing in ultimate control has been taken up only on the Tiwi Islands and on Groote Eylandt (where Traditional Owners are now articulating regret for making this decision).

According to recent research by the Centre for Appropriate Technology in Alice Springs there are now in the region of 600 outstations populated by up to 11,000 Aboriginal people.

Hunting at Mimanyar billabong (Photo: Joe Morrison)

What has this long and bitter struggle over land rights reform meant on the ground for those looking to pursue their lifeways on Aboriginal land?

To give a sense of this, I return to the case of the Kuninjku of west Arnhem because I have maintained my close friendship with these people and have continued to observe the transformation of their economy over the years.

Their community provides a sound litmus test of what is happening on the ground because they have remained committed to their country for decades in the face of ongoing deep ambivalence and underfunding by governments.

Up until the time of the Intervention, Kuninjku continued to grow an economy based on what they do best: hunt and fish for bush food and produce art inspired by tradition for domestic and global tourist and fine art markets.

This growth was assisted by relatively unconditional income support from CDEP and the remarkable developmental efforts of their regional resource agency, the Bawinanga Aboriginal Corporation.

By the early 21st century I was convinced of the resilience and sustainability of this unusual form of economic system based on the productive combination of resources guaranteed by land rights and native title laws with Kuninjku specialities that I had observed for more than two decades.

I theorised that this plural economy constituted an unusual form of economic hybridity productively deploying custom and minimal unconditional state support to self-provision and engage with market capitalism.

Indeed, it seemed to me that Kuninjku understood the theory of comparative advantage of 19th century British classical economist David Ricardo far better than the politicians and bureaucrats who were busily devising new interventionist policies in far-away Canberra for their improvement.

This form of economy resonated with a qualifier that Justice Woodward had articulated in 1974. 'Aborigines should be free to choose their own manner of living', he noted, but 'In saying this it is necessary to remind some non-Aboriginal enthusiasts that this involves a freedom to change traditional ways as well as a freedom to retain them'.

Actually existing hybrid economies very much reflected the transformational choices that Kuninjku had made to both retain and reconfigure tradition, bearing in mind the limited market opportunities available in remote Arnhem Land.

I have advocated hard for enhanced development support for those pursuing such productive livelihoods on their

land using empirical evidence from west Arnhem.

In November 2003, I was afforded a rare opportunity to directly address the now defunct Ministerial Council for Aboriginal and Torres Strait Islander Affairs on this issue.

Unfortunately, the then Minister for Indigenous Affairs Amanda Vanstone was so uninterested that she rose from the table to take her morning tea of scones with jam and cream half way through my presentation: she appeared disinclined to hear that some Aboriginal people might not be living in 'cultural museums', as she later dubbed outstations, but rather engaged with global capitalism as best they could.

And if people like the Kuninjku were indeed 'land rich and dirt poor', maybe the absence of appropriate development support from her government and others played a crucial role in this. After all, there are few in remote Australia who are not dependent on support from Canberra of one form or other.

Unable to fundamentally 'reform' ALRA, to convert inalienable land title held under a common property regime into alienable individual title and so facilitate mining industry access, a new suite of neo-assimilationist measures looked to reform the people to convert their norms and values to match those of some imagined responsible neoliberal subject.

And so a set of punitive measures deploying carrot and stick behavioural logic was implemented to get people off the land.

CDEP that allowed people to unconditionally receive income support while living at outstations productively engaged in self-provisioning and arts production was eliminated and replaced by the Community Development Programme (CDP) paying welfare on condition that training and work-like activities are undertaken five hours a day five days a week.

In this way people are tied by such compliance requirements to the Centrelink office in the township of Maningrida, but are still regularly breached for non-compliance – losing their meagre welfare income.

Income management and the Basicscard have been imposed on people supposedly for their own good, to modify their expenditure behaviour and ensure western food security; people are thus tied to the stores in Maningrida even as their access to bush foods is dramatically reduced.

The payment of welfare to parents has been made conditional on child school attendance, thus tying people to English monolingual schooling in Maningrida while education is barely provided on-country at outstations and certainly not in a bilingual form to people who mainly speak Kuninjku.

New housing is provided in Maningrida only to supposedly address extreme overcrowding, while housing at outstations is redefined by the state as a private matter rather than a social housing obligation. And so people are drawn to the township and, paradoxically, extreme overcrowding is maintained.

And an enhanced police presence and heavy-handed regulation of vehicle registration and driving licences reduce transportation links to country living; and the expensive requirements and complex administrative hurdles of gun laws reduce access to hunting equipment and food sovereignty opportunity. Non-compliance results in prohibitive fines or imprisonment.

Kuninjku are well aware of all these strategies that aim to recentralise them in Maningrida, to eliminate their mobile way of living, and to inculcate them with western civilising norms and values ostensibly to close statistical gaps via enhanced engagement with market capitalism.

They are too well aware that any choice to retain their productive form of hybrid economy is being eliminated.

And they ponder why, when the Global Financial Crisis dramatically impacted on demand for their arts commodity exports, they received no industry restructuring support from the Australian government.

And they are severely frustrated and angered by their inability to resist this second wave of colonisation, with any pushback being punished with deeply impoverishing loss of welfare support on which they are becoming increasingly dependent.

At the same time their regional representative organisation Bawinanga that was so instrumental in opening up on-country, post-colonial possibilities has been depoliticised and co-opted to assist the state deliver draconian programs like work-for-the-dole and the Remote School Attendance Strategy that punish non-compliance.

All this is despite the willingness of people like the Kuninjku to voluntarily include their environmentally-rich lands in the Djelk Indigenous Protected Area, an environmental commons formally declared in 2009 and financially supported by the Australian government.

And to voluntarily include their lands in a massive carbon farming commons that now extends over most of Arnhem Land and that has successfully abated greenhouse gas emissions in the national interest for nearly a decade.

The attempted reform of land rights and of people in tandem has resulted in such apparent contradictions based on western logics to marketise the assets of these biodiversity rich lands; and to manage them with small teams of rangers – waged labour sent out from Maningrida in vehicles and helicopters on an expeditionary basis – rather than by people living on country.

The second wave of colonisation is doing economic violence and imposing forms of bureaucratic torture on Kuninjku people.

Their ancestral lands are being emptied of Traditional Owners, with this emptying process reflecting the rapidly escalating antipathy of governments to support outstations living. This constitutes a form of cultural genocide for a people for whom connection to country, sacred sites and ancestors in the landscape are paramount values.

In his Nugget Coombs memorial lecture in October 2016, Northern Land Council CEO Joe Morrison refers to the 40th anniversary of ALRA as an unhappy anniversary and asks rhetorically, what is there to celebrate?

My analysis of the past decade of neo-assimilationist recolonization is also pessimistic – irrespective of governmental intent, impressive transformational progress by people like the Kuninjku has been reversed, they are currently more impoverished that at any time in the last four decades.

The positive growth of their hybrid economy has been reversed as engagements with the customary and the market sectors and state support have all declined.

How might we ensure that in a decade's time the celebration of 50 years of ALRA is more joyous than the celebrations of 1996 and 2016?

How might we see those tantalising post-colonial possibilities that opened up with land rights and self-determination in the 1970s re-opened rather than being brutally slammed shut by the settler state?

How might we ensure that the social justice principle that Guy Standing has termed the 'security difference principle' – that demands institutional changes should improve the circumstances of the most insecure in society rather than making their life projects more precarious – is honoured?

In October 2016, in a rare example of political honesty, the ex-Prime Minister of Australia Tony Abbott acknowledged that 'Abolishing CDEP was a well-intentioned mistake'.

Irrespective of intentionality, I would argue that the undue policy focus on reforming land rights in the past two decades has been a costly mistake, alongside the suite of neo-paternalistic measures that have sought to alter the norms and values, the conduct of Aboriginal people who want to pursue development alternatives on their lands.

History shows that Indigenous policy is littered with such well-intentioned failures that Australian settler society seems ever-willing to revisit.

Instead of imagined market capitalist 'real' economies on Aboriginal land in the NT it would be preferable to support realistic hybrid economies that afford land owners real choice.

In 1974 Justice Woodward used the metaphor of a road to emphasise that the granting of land rights can only be a first step on a long road towards self-sufficiency and eventual social and economic equality.

After a period of positive progress along that road, at best minimally facilitated by the state, a series of road blocks have been placed on that road. And so a people whom Woodward described as economically depressed has in recent times become even more, not less, economically depressed.

Woodward also noted that Aboriginal people in remote parts of the NT had no real opportunity to achieve a normal Australian standard of living. Forty years on that observation still resonates.

Perhaps in the next decade policy might be recalibrated to better support and align with the wishes of Traditional Owners of Aboriginal land, to countenance development alternatives that include: self-provisioning and food sovereignty, self-servicing, sustainable cultural industries, and the expansion of conservation and carbon economies.

Given the costly errors of the second wave of colonisation, it might be time to once again open up post-colonial possibilities, this time round more equitably resourced, more realistic of economic possibilities, and properly responsive to diverse Aboriginal aspirations.

Despite the endless land reform campaigns by governments, Aboriginal political resistance ably led by land councils has seen the territorial integrity of almost all Aboriginal lands retained.

And this territoriality has been supplemented in recent years by judicial decisions that guarantee expanded resource rights for customary and commercial use and forms of political authority over such property.

Undeniable territorial gains in the NT since 1976 must be supplemented now with the economic right to pursue dignified life ways that will deliver a form of social justice for the First Peoples of a rich nation.

And so rather than being demeaned and demolished, the efforts of people like the Kuninjku might be celebrated and supported as the extraordinary economic transformations that they constitute.

Where there is territory there is hope.

New NLC Full Council

The Northern Land Council 2016-2019 will have 22 new members – eight of whom are women. They will join the 56 members who have been re-elected or re-appointed for another three-year term when the new Full Council meets at Timber Creek the week beginning 14 November.

The first day will be set aside for governance training. On the second day, the Full Council (78 members) will elect a Chairman and Deputy Chair, who will be members of the Executive Council. The elections will be supervised by the Australian Electoral Commission. Also, each of the NLC's seven Regional Councils will appoint a member to the Executive Council. The meeting will also co-opt five women, in order to address the gender imbalance.

The new Full Council membership is listed in the table below. New Council members are marked in blue

NLC Region	Community Area	Member
Borroloola Barkly 13 Members	Alexandria	Brian Limerick
	Borroloola	Jason Mulholland
	Borroloola	Keith Rory
	Borroloola	Jody Evans
	Brunette Downs	Maxine Wallace
	Elliott	Christopher Neade
	Muckaty	Jason Bill
	Murranji	Shannon Dixon
	Nicholson	Timothy Lansen
	North Barkly	Joy Priest
	Robinson River	Richard Dixon
	Rockhampton Downs	Gordon Noonan
	Wombaya	John Finlay
Darwin Daly Wagait 15 Members	Daly River	Sharon Daly
	Daly River North	Matthew Shields
	Daly River South	John Daly
	Daly River West	John Sullivan
	Darwin	Kevin Quall
	Darwin	Audrey Tilmouth
	Darwin East	Graham Kenyon
	Darwin South	Phillip Goodman
	Darwin South West	Paul Henwood
	Darwin West	James Sing
	Palumpa	Adrian Ariuu
	Peppimenarti	John Wilson
	Pine Creek	Elizabeth Sullivan
	Port Keats	Tobias Nganbe
	Port Keats North	Mark Tunmuck Smith
East Arnhem 16 Members	Blue Mud Bay	Jonathon Nunggumajbarr
	Blue Mud Bay	Jabani Lalara
	Galiwinku	Johnny Burrawanga
	Galiwinku	Kenny Djekurr Guyula
	Galiwinku	Jason Guyula
	Galiwinku	David Djalangi
	Gapuwiyak	Bobby Wunungmurra
	Gapuwiyak	Wesley Bandi Bandi
	Milingimbi	George Milaypuma
	Milingimbi	Michael Ali
	Ramingining	David Rumba Rumba
	Ramingining	David Warraya
	Ski Beach	Djawa Yunupingu
	Yirrakala	Yananymul Mununggurr
	Yirrakala	Caroline Dhamarrandji
	Yirrakala	Dhuwarrwarr Marika

NLC Region	Community Area	Member
Katherine 7 Members	Barunga	Helen Lee
	Beswick	Samuel Bush Blanasi
	Bulman	Samantha Lindsay
	Katherine	Lisa Mumbin
	Katherine	Linda Fletcher
	Mataranka/Djimbra	Jocelyn James
	Weemol	John Dalywater
Ngukurr 9 Members	Hodgson Downs	Keith Farrell
	Ngukurr	Gregory Daniels
	Ngukurr	Grace Daniels
	Ngukurr	Walter Rogers
	Numbulwar	Virginia Nundhirribala
	Numbulwar	Timothy Wirramara
	Numbulwar	Faye Manggurra
	Nutwood/Cox River	Peter Lansen
	Urapunga	Clifford Duncan
Victoria River District 6 Members	Amanbidji	Kenovan Anthony
	Bulla	Shadrack Retchford
	Pigeon Hole	Raymond Hector
	Timber Creek	Larry Johns
	Yarralin	George Campbell
	Yingawunari	George King
West Arnhem 12 Members	Cobourg	Ronald Lami Lami
	Gunbalanya	Gabby Gumurdul
	Gunbalanya	Wayne Wauchope
	Gunbalanya	Otto Dann
	Kakadu	John Christophersen
	Maningrida - Outstations	Matthew Ryan
	Maningrida - Outstations	Victor Rostron
	Maningrida	Julius Clint Kernan
	Maningrida	Helen Williams
	Minjilang	Matthew Nagarlbin
	Warruwi	Jenny Inmulugulu
	Warruwi	Bunug Galaminda

NLC Region	Members	Men	Women
Borroloola Barkly	13	10	3
Darwin Daly Wagait	15	12	3
East Arnhem	16	13	3
Katherine	7	2	5
Ngukurr	9	6	3
Victoria River District	6	6	0
West Arnhem	12	10	2
Total	**78**	**59**	**19**

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