The gaps are not closing: NT WORST
A word from the Chair

The NLC’s newly-elected Full Council met for the first time at Timber Creek mid-November last year, and I was honoured to have been re-elected as Chairman. John Christensen was elected Deputy Chairman.

The NLC exists by virtue of the Aboriginal Land Rights (Northern Territory) Act 1976, which commenced 40 years ago, on 26 January (Australia Day 1977). This year, 2017, we will mark several other anniversaries. Firstly, it’s the 50th anniversary of the referendum which famously brought about two important changes for Australia’s Indigenous peoples. The referendum, held on 27 May 1967, enabled the Commonwealth Government to (a) make laws for all of the Australian people by amending s12 of the Constitution (formerly, Indigenous people were not numerically included in the census but not counted for the purposes of Commonwealth funding grants to the states or territories). It’s also the 25th anniversary of the passing of the Native Title Act by the Labor government led by Paul Keating, following the High Court’s historic Mabo decision the year previously.

And, let’s not forget that 10 years ago the Commonwealth Government (on 21 June 2007) announced the notorious Northern Territory Emergency Response – the “Intervention”. The loss of Aboriginal people in the Northern Territory was most profoundly affected, and we continue to feel the effect.

A big agenda item for the new Full Council last November was a decision to signal an end to the “intervention”, instead of continuing the arrangements with the Northern Territory government. The decision will not affect the seven arrangements with the Government which allow permit-free access for commercial and recreational fishermen in “high value” fishing areas.

The NLC has since begun negotiations with the Government, the Australian Fisheries’ Association of the Northern Territory, the Northern Territory seafood Council, the Northern Territory Guided Fishing Industry Association and the Environmental Defender’s Office.

The NLC’s newly-elected Full Council

The NLC’s New Executive Council

The NLC’s newly-elected Full Council, the NLC has a new Executive Council, comprising the Chairman and Deputy Chairman, plus one member (chosen from each of the NLC’s seven regions). They are pictured with CEO Joe Morrison (left). Back row, L-R: Raymond Hector (VRD), Peter Lansen (Ngukurr), Richard Dixon (Borroloola-Barkly), Bobby Wunungmurra (East Arnhem), Ronald Lami Lami (West Arnhem), John Christensen (West Arnhem, Deputy Chairman), Samuel Bush-Blanasi (Katherine, Chairman), Elizabeth Sullivan (Darwin-Daly-Wagait).

The gaps are gapping

Where data on Closing the Gap targets can be measured in comparison with the States of Australia and the ACT, the Northern Territory has performed worst, according to the Prime Minister’s ninth annual Closing the Gap Report which was presented on 15 February.

What are the targets?

Closing the Gap aims to reduce Indigenous disadvantage. All Australian governments have committed to achieve Indigenous health equality within a generation.

In 2008, the Council of Australian Governments (COAG) set targets in health, education and employment to measure improvements in the health and wellbeing of Aboriginal and Torres Strait Islander people. The first Closing the Gap report was presented in 2009.

To monitor change, COAG has set measurable targets to monitor improvements in the health and wellbeing of the Aboriginal and Torres Strait Islander population. The targets are:

- Close the life expectancy gap within a generation (by 2031).
- Halve the gap in mortality rates for Indigenous children under five within a decade (by 2028).
- Halve the gap in reading, writing and numeracy achievements for children within a decade (by 2021).
- Halve the gap in early childhood education for all Indigenous four year olds in remote communities within five years (by 2013).
- Halve the gap in child mortality by 2018 (unachievable). The Prime Minister’s report on this target covers only four states to compare with the Northern Territory because the data elsewhere is not good enough.
- The gap in employment outcomes between Indigenous and non-Indigenous Australians has reduced by nearly half since 2008.
- Close the gaps between Indigenous and non-Indigenous school attendance within five years (by 2016).

Overall mortality rates by Indigenous status: NSW, QLD, WA, SA and the NT 2011-2015 (age standardised)

Child mortality rates (0-4 years) by Indigenous status: NSW, QLD, WA, SA and the NT 2011-2015
Fair Go, not Fair Game

By John Blaxland

The Four Corners program on Don Dale screamed on 25 July 2016. It showed Aboriginal boys being mistreated in a regime that had been in existence for nearly 20 years. It created a massive reaction locally, nationally and internationally.

The NT News headlined: “The Royal Commission has become a farce, and we’re footing the bill”. He called it a “disaster”. Another one was: “More Royal Commission still in the works”.

The sad and dangerous reality is that most Australians can’t remember what was in the news, including what happened in Don Dale. Even Senator Stan Grant and the rest of Australia can’t see right through it for what it is. They want this Royal Commission to be abandoned forthwith. Nevertheless, Stan Grant and the rest of Australia underestimate the community whom? To answer these questions, a Royal Commission is necessary for this nation to hold a regime that had been in existence for nearly 20 years and the communities.

The Royal Commission will inevitably dilute its potential effect on the subject matter of its terms of reference, as is the case for the NT News coverage of that compare? In Institutional Responses to Child Sexual Abuse. Another question to ask now is this: the effect is obvious and deliberate: creating and encouraging such views.

Aboriginal people have invested a lot of trust in this Royal Commission. They believe that this Royal Commission will be the solution to the community hostility towards child sexual abuse. The effect is obvious and deliberate: creating and encouraging such views.

The NT News’ latest contribution came from its senior correspondent Ian Funston, who on 4 February 2017 concealed that the Royal Commission was “a disaster” and “just the most outrageous waste of public money in Territory history”. His judgement backed that of the Independent MLA and former CLP Minister Mr Terry Mills, who in the same week had called for the Royal Commission to be abandoned forthwith.

All these, too, are to be celebrated. Nevertheless, Stan Grant and the rest of Australia underestimate the community. The media assert that they are reflecting the views of the community, but they are, they are creating and encouraging such views.

He also wrote: “Things once seen, cannot be unseen; once heard, cannot be unheard”. The Royal Commission is an important work ahead, and Aboriginal people of the Northern Territory are concerned that it will be contested by those in positions of responsibility, but it is difficult to consider him as anything but a “disaster”. Another question to ask now is this: the effect is obvious and deliberate: creating and encouraging such views.

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All these, too, are to be celebrated. Nevertheless, Stan Grant and the rest of Australia underestimate the community. The media assert that they are reflecting the views of the community, but they are, they are creating and encouraging such views. 
Shine Lawyers is investigating a class action on behalf of Aboriginal people in the Northern Territory whose labour was exploited because of wage control laws in effect from the late 1800s until the 1970s.

Indigenous people fear their ancestors’ unpaid labour was the source of millions of dollars of wages due to them. However, the Commonwealth government, in relation to the Northern Territory, did not ordain, or even expressly authorise, the system of wages control. It was legally sanctioned at the time or not is a matter of contention for any possible reparations. The Commonwealth enacted new laws on Aboriginal wages and employment in 1902, but in the Commonwealth “system of wages control” continued.

The Commonwealth government was not a slave state in the manner of the American South. Nor did all Aboriginal people during the relevant period live in a condition who fell upon a piece of unleavened damper “like starving dogs’. The Commonwealth government did not control their food, clothing and wages. As such, the Committee strongly recommends that the Commonwealth government should “wait and see” whether such unpaid labour should be regarded as slavery.

Dr Rosalind Kidd was a key instigator of the 2006 Senate Legal and Constitutional Affairs Committee’s Inquiry into stolen wages. Her submission revealed that governments around Australia had exploited the private white workers, wages, child endowment, pensions, and inheritances of thousands of Indigenous people for most of the last century.

Dr Kidd works as a freelance researcher investigating effective responses to forced removals and various claims. Her work is funded by the Commonwealth’s Indigenous land rights law.

Since 1955 Dr Kidd has worked as a consultant to Cairns firm BE Law, in support of a class action to recover Indigenous stolen wages in Queensland, which was lodged with the Federal Court in September 2016. She is also an adviser to Shine Lawyers who are pursuing class actions in various jurisdictions, including the Northern Territory.

The following account of the history of exploitation and wage control is derived from Dr Kidd’s submission to the Senate Inquiry in 2006. Currency conversions are to the 2016 value which have been done via the Reserve Bank’s Pre-Decentralisation Inflation Calculator.
The administration admitted stockpiles did not know of their wage entitlement, nor how to claim it; it admitted other monies earned by workers were not banked in the trust account. Monies over 21 years did not necessarily gain control of trust funds; in 1923 a 22-year-old man who had worked since he was 15, with savings of £225 ($16,954.30) was denied permission to have a passbook on the grounds he was a "spendthrift." Evidence to the 1919/20 Royal Commission on Northern Territory under the Protector's control was £1516 ($19,485.80). By 1926, 24 girls and four boys had been sent from the Alice Springs region to Adelaide; their trust accounts was £160.68 ($2811.83). 160 official complaints were received from Aboriginal workers on trust accounts became unserviceable.

In 1932, the Superintendent at Jay Creek settlement (Central Australia) was happy with control of every half-caste male under 21 years south of the 20th parallel, whether in the institution or in employment. Boys were to be contracted to work including - until 1938 - children under 14 years, with the Superintendent as authorising officer to withdraw monies from the trust accounts, ensuring the boys were not defrauded or wasting their money. It was his responsibility to make deductions from wages in trust funds for the Medical Benefit Fund and to check employers of half-caste workers placed them under the Workmen's Compensation Ordinance. The Superintendent was directly responsible to the Chief Protector in the execution of these duties. In the 1930s the trust account held over £3000 ($281,183); 160 official complaints from Aboriginal workers on trust accounts became unserviceable.

The Ordinance (1927) empowered the Chief Protector to retain control of the savings of adult men; half-caste males over 18 years who applied could be released from state control if deemed capable of managing their own affairs. From 1928, the savings of half-caste workers with more than £20 ($1,558.62) were released from state controls if deemed capable of managing their own affairs. From 1928, the savings of half-caste workers with more than £20 ($1,558.62) were released from state controls if deemed capable of managing their own affairs. From 1929, a medical benefit fund was created for some workers to six shillings weekly after 21 years did not necessarily gain control of trust funds. In 1927, the Chief Protector argued this fund was part of the general benefit fund. He was overruled.

The Ordinance (1953) increased wages of female town workers to six shillings weekly, all of which was paid into the trust account, and mandated employer contributions to the Medical Benefit Fund.

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PRAISE FOR NLC and CLC CONSULTATIONS FOR GAS PIPELINE NEGOTIATIONS

Jemena, the company selected by the Northern Territory Government to build, own and operate the Northern Gas Pipeline (NGP), has praised the role of the Northern and Central Land Councils in their conduct of consultations with traditional Aboriginal owners and native title claimants.

Jemena, 60 per cent-owned by the State Grid Corporation of China and 40 per cent-owned by Singapore Power International Pty Ltd, says that the Northern and Central Land Councils have made "an invaluable contribution" to the project.

“Their expertise, advice, and understanding of the local community, coupled with their commitment to working with traditional owners to achieve the smooth delivery of the project so far" said Jonathan Spink, the NGP Project Director.

The 622km pipeline (12 inches in diameter and made of steel) will be buried, and will transport gas from Philip Creek near Tennant Creek, in the NT, to associated infrastructure including compressor stations at Phillip Creek and Mt Isa, access tracks, main and portable camps, maintenance valves, separator stations and cathodic protection stations.

The NLC’s Full Council, meeting at Timber Creek in November, decided to enter into a Benefits and Impacts Agreement and Indigenous Land Use Agreements (ILUAs), clearing the way for the project to proceed.

About 16.5km (42 per cent) of the proposed NGP is located in the NLC’s region and about 32.5km (16 per cent) is in the CLC’s region. Lawyers for both land councils conducted negotiations with Jemena between March and October 2016.

In the NLC’s region, the project is proposed over land subject to three registered claims for non-exclusive native title rights. In the CLC’s region, it will traverse land subject to one claim for non-exclusive native title, land held by the Wakaya and Warumungu Aboriginal Land Trusts, and other unallocated Crown land and pastoral land that may be subject to native title claims in the future.

Jemena expects the majority of jobs during planning, construction and commissioning phases will be filled by residents of the Northern Territory and the Mount Isa region. The company is obliged to seek out and hire appropriately qualified local Aboriginal people, assist in training, and give preference to appropriately qualified local Aboriginal businesses.

Jemena acknowledges the work of the Northern and Central Land Councils in their conduct of consultations with traditional Aboriginal owners and native title claimants.
Opportunities and challenges discussed at recent NLC Indigenous Women Ranger Conference

The NLC Indigenous Women Ranger Conference held in Katherine in October was an opportunity for women from some of the ranger groups across the Top End to meet and exchange knowledge and support. It gave women a forum in which to discuss opportunities and challenges facing them, and inform the NLC of where they think ranger programs should head in the future.

The conference was attended by 19 rangers from ten ranger groups, including NLC, the Indigenous Land Corporation (ILC), and independent groups, from Crocker Island to Robinson River, Numbulwar to Timber Creek.

The NLC Chairman, Samual Bungu, gave a welcome speech affirming his support for empowering women in caring for country programs. He spoke of the importance of the contribution of women rangers to caring for country and noted that women are “the backbone of the organization.” Samual acknowledged the work women rangers do looking after country, and advised the group he supported them 100 per cent.

Supporting women has always been a NLC priority, but as of 2015/16 less than a quarter of permanent positions were female. As ranger groups are small, any ranger who is female has no one at work who understands the challenges she faces.

Ranger groups from across the Northern Territory gathered to discuss the objectives and aims of their ranger programs. There was engagement by the women rangers in identifying in their families and communities.

The priorities identified were to increase the number of women rangers, women coordinators, and women in leadership roles. The need for more culture camps was also highlighted, as was the need for more exchange programs with others.

The conference gave women rangers a platform to speak with others about their experience and knowledge.

Following the conference, rangers participated in land management training. Fifteen rangers undertook and passed a certified three-day course to apply chemicals and treat weeds introduced by Charlie Darwin University at their Katherine campus. The program was designed to involve women and the skills they have.

The final group training was prescribed burning delivered by Brett Stephens. Wagaman Ranger Group Coordinator Veronica Birdell and the Wagaman ranger group hosted a session with the Wanyi Garawa, Garawa, and Timber Creek ranger groups at the Wagaman ranger base at Lowa Springs. The training involved rangers to plan and undertook a-prescribed burning to protect assets and culturally significant sites, and it was said to be deadly.

Another Indigenous Women Rangers Conference is proposed for 2017 which will focus on developing policies and targets for employment in NLC groups, and leadership development.

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The NLC’s newly-elected Full Council meeting at Timber Creek mid-November 2016

L-R back row: David Warraya (Ramingining EA), John Daly (Daly River South DDW), Shadrick Retchford (Bulla VRD), Larry Johns (Timber Creek VRD), Phillip Goodman (Darwin South DDW), David Rumba Rumba (Ramingining EA), George Milaypuma (Milingimbi EA), John Wilson (Peppimenarti DDW), Woddy Bandi Bondi (Gagupiyiyak EA), Graham Kenyon (Darwin East DDW), George King (Yinggisuma VRD), Matthew Sheldon (Daly River North DDW), Raymond Baxter (Pigout Hole VRD), Jason Goydles (Galiwin’ku EA), Paul Harrison (Daly River South West DDW), Islat Larsen (Alexandra BB), John Finlay (Warruwi BB), Jason Bill (Maruku BB), Chris Natea (Ellor BB), Timothy Lansen (Nicholson BB) Linda Fletcher (Katherine Kath), Helen Loe (Burungay Kath), Lisa Mumbin (Katherine Kath) Samantha Lindsay (Bulman Kath).

L-R 2nd row seated on stairs: Otto Dann (Gunbalanya WA), Bunuga Galaminda (Warruwi WA), Jenny Jumaluluk (Warrawi WA), L-R 2nd row after stairs: Yananymul Munungurr (Yirrkala EA), Faye Manggurra (Numbulwar Ngukurr) Shannon Dixon, kneeling (Murranji BB), Jabani Lalara, standing (Blue Mud Bay EA), Gordon Noonan, kneeling (Rockhampton Downs BB), Jonathon Nunggumajbarr, standing (Blue Mud Bay EA), Samuel Bush-Blanasi, seated from (Burwack Kath), Kenny Nyabunge, seated back (Galiwin’ku EA), Clint Felix (Kakadu WA), standing (Maruku BB), Michael Ali, standing (Milingimbi EA), Bobby Wunungmurri (Gapupiyiyak EA), George Campbell, seated from (Yarralin VRD), Elizabeth Sullivan, standing (Pine Creek DDW), Djawa Yaneipiru, standing (Kakadu EA), John Christopher, seated from (Kakadu WA), Ronald-Lui Lami, standing (Gunbalanya WA), (list continues next page)

Gabby Gamanurl, standing (Gunbalanya WA), Peter Lansen, standing behind (Notawond/Cox River Ngukurr), David Djalangi, standing from (Galiwin’ku EA), Keith Farrell (Hadjoon Downs Ngukurr), Audrey Tilmouth (Darwin DDW), John Sullivan (Daly River West DDW), Virginia Nandhirratha, seated from (Numbulwar Ngukurr), Jody Evans, standing (Burwack BB), Marane Wallace, seated back (Burwack Downs BB), Jason Muckleholm, standing (Burwack BB), Wayne Wauchope, standing from (Gunbalanya WA), Tobias Ngahe, seated on steps (Port Keats DDW), Martin (observer), seated on steps (Port Keats North DDW), Walter Rogers, seated on steps (Ngukurr).

Absent from photo:
Keith Rory (Burwack BB), Joy Priest (North Barkly BB), Richard Dixon (Robinson River BB), Kevin Quall (Darwin DDW), James Sing (Daly River West DDW), Mark Tammack Smith (Port Keats North DDW), Adrian Atius (Palumpa DDW), Sharon Daly (Daly River DDW), Dhuwarwar Marika (Virtikala EA), Caroline Dhunuymbul (Virtikala EA), Joselyn James (Matamarrka/Gjimina Kath), John Dalwater (Warruwi Kath), Grace Daniels (Ngukurr), Gregory Daniels (Ngukurr), Timothy Wurramara (Numbulwar Ngukurr), Cliftied Duncan (Urapunga Ngukurr), Kangaroo Anthony (Anmatjäli VRD), Matthew Ryan (Maruku WA), Victor Rostos (Marungala WA), Helen Williams (Marungala WA), Matthew Ngarihin (Croker WA).

Regions: BB - Borroloola Barkley; DDW - Darwin Daly Wagait; EA - East Arnhem; Kath - Katherine; Ngukurr - Victoria River District; WA - West Arnhem.
The Australian National Audit Office (ANAO) released its effectiveness audit of the Indigenous Advancement Strategy (IAS) on 3 February 2017. The IAS is the Commonwealth Government’s major grants program in Indigenous Affairs, allocating in excess of $1bn per annum for activities designed to deliver services to Indigenous citizens and communities.

The Australian newspaper described the audit as “scathing”, and noted: “However the audit found that a seven-week planning and design period had “limited the department’s ability to fully implement key processes and frameworks, such as consultation, risk management and advice to Ministers”.

The program’s short implementation time had then “affected the department’s ability to establish transitional arrangements and structures that focused on prioritising the needs of indigenous communities”.

Further, the department’s grants administration process “fell short of the standard required to effectively manage a billion dollars of Commonwealth resources”.

ANSAI’s report led with the following paragraph:

‘Though this be madness, yet there is method in it’

The Abbott government bungled its overhaul of Commonwealth resources”. An ABC story led with the following paragraph:

The Abbott government bungled its overhaul of billions of dollars worth of Indigenous funding, a major report has found.

The Department of Prime Minister and Cabinet website published a summary of the Department’s response to the audit which tries valiantly to shift the focus to the future and away from the findings, and, as a result in my opinion, fails to adequately acknowledge the seriousness of the findings.

The Minister for Indigenous Affairs published a media release in response to the audit, titled, Government a step ahead of the ANAO audit recommendations, which stated in the first paragraph that the audit findings related to the 2014 grant round, and

“should be viewed as a historical observation on a process carried out two-and-a-half years ago”. The implication that the ANAO and the Auditor General is a step behind the Government in releasing this report, and that its assessment is not “fair and reasonable”, is on its face extraordinary. It is in the Minister’s quite direct criticism of the ANAO for failing to focus on the Government’s successes as stated in the Minister’s media release:

“Assessing the success of the IAS based on the introductory period is premature. Any fair and reasonable assessment of the IAS needs to consider a timeframe well beyond the introductory period to give the strategy time to deliver the intended benefits.”

By focusing its audit on the grants round, the ANAO has paid insufficient regard to the state Indigenous Affairs was in when the Coalition Government came to office in 2013, hence the need for the Government to implement its response.

Before the Coalition introduced the IAS, it was not possible to say where and how much taxpayer money was being spent or what outcomes were expected for the audit. I know this to be true, because they were questions I repeatedly asked in Senate Estimates as an Opposition Senator. These criticisms ought to be seen for what they are: attempts to divert attention from the shortcomings identified by the ANAO. In relation to the claim about assessments, in the ‘introductory period’ the Minister himself decided that the previous Government’s Remote Jobs and Communities Program was a failure and should be abolished while it was still less than 12 months old, and the replaced the Community Development Program is in diabolical trouble, with soaring breach rates and substantial community concern. The comments about not being able to say where the money was being spent and what outcomes were expected under the previous Government are issues identified by the ANAO in relation to IAS. The degree of transparency in relation to the IAS is virtually non-existent, as a cursory trawl through the PM&C website will reveal.

To take just one example: the level of detailed available in relation to expenditure on the Minister’s signature program, the Remote School Attendance Strategy is woeful, with no accessible detail on the allocation of funding, no detail on the numbers of students impacted, only one internal quantitative evaluation which suggests that the program’s impact, while positive, is far from making a meaningful difference to overall remote school attendance. Yet the media releases, magazine articles and good news stories keep rolling out.

In an interview with the ABC in relation to the ANAO report, the Minister was reported as stating that he did not think errors were made:

“I don’t accept that this was some sort of disaster at all,” Senator Scullion told the ABC.

“All of these criticisms are about departments and processes. What my job is to do is focus on what people who receive the services think.

“The fact is Aboriginal and Torres Strait Islanders, as a consequence of these remarkable changes, are better off.”

In essence the Government’s response has been to argue that the IAS involved “remarkable changes”, that any issues identified by the ANAO are “historical observations” of no relevance today and that these criticisms are “unreasonable and unfair” and all about bureaucratic processes for which the Minister is not responsible.

Before assessing the merits of these arguments, it is worth noting some of the ANAO’s detailed findings. By focusing its audit on the grants round, the ANOA identified by the ANAO. In relation to the claim about assessments, in the ‘introductory period’ the Minister himself decided that the previous Government’s Remote Jobs and Communities Program was a failure and should be abolished while it was still less than 12 months old, and the replaced the Community Development Program is in diabolical trouble, with soaring breach rates and substantial community concern. The comments about not being able to say where the money was being spent and what outcomes were expected under the previous Government are issues identified by the ANAO in relation to IAS. The degree of transparency in relation to the IAS is virtually non-existent, as a cursory trawl through the PM&C website will reveal.

To take just one example: the level of detailed available in relation to expenditure on the Minister’s signature program, the Remote School Attendance Strategy is woeful, with no accessible detail on the allocation of funding, no detail on the numbers of students

10. The department’s grants administration processes fell short of the standard required to effectively manage a billion dollars of Commonwealth resources. The basis by which projects were recommended to the Minister was not clear and, as a result, limited assurance is available that the projects funded support the department’s desired outcomes. Further, the department did not:

• assess applications in a manner that was consistent with the guidelines and the department’s public statements;
• meet some of its obligations under the Commonwealth Grants Rules and Guidelines;
• keep records of key decisions; or
• establish performance targets for all funded projects.

11. The department has commenced some evaluations of individual projects delivered under the Strategy but has not planned its evaluation framework. The ANAO identified 11 applications that were under assessment for funding. Further, 222 projects that were awarded assessment scores of 26 or above, and a need score of 3 or less were not recommended for funding. Further, 222 projects that were awarded assessment scores of 26 or above, and a need score of 3 or less were not recommended for funding.

12. The department advised the ANAO that it had met with Indigenous leaders and national peak bodies outside of the council but did not keep records of the meetings. As such, it is not clear who the department met with, what feedback the department received and how this was considered in developing the Strategy.

13. There is limited evidence that regional profiles were considered in the grant assessment process. As at August 2016, two years after the commencement of the regional network, the department had drafted but not finalised regional strategies.

14. The department advised that it has provided the Minister with dashboard reports since August 2015. The reports include a short list of issues section that, until January 2016, focused on the Community Development Program and Remote School Attendance Strategy. The dashboard reports provide a reflection of activity within the regions, but do not meaningfully report on the performance of the regional network.

15. The ANAO does not have assurance that the department has produced complete records of the design and implementation of the Strategy.

16. The department did not meet its commitments with respect to providing advice on all the elements identified as necessary for the implementation of the Strategy. The department also did not advise the Minister of the risks associated with establishing the Strategy within a short timeframe.

17. The department did not maintain sufficient records throughout the assessment and decision-making process. In particular, the basis for the committee’s recommendations is not documented and it is not possible to determine how the committee arrived at its funding recommendations.

18. The department did not advice the ANAO that it had changed its narrative in relation to the Community Development Program.

19. The department did not maintain adequate records of Ministerial approval of grant funding.

20. The department’s grants administration processes fell short of the standard required to effectively manage a billion dollars of Commonwealth resources. The basis by which projects were recommended to the Minister was not clear and, as a result, limited assurance is available that the projects funded support the department’s desired outcomes. Further, the department did not:

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22. The department provided the ANAO with a list of 413 demand-driven applications assessed, but could not confirm that it was a complete list of the applications received. The ANAO identified 11 applications that were under assessment for funding. Further, 222 projects that were awarded assessment scores of 26 or above, and a need score of 3 or less were not recommended for funding.

23. The department provided the ANAO with a list of 413 demand-driven applications assessed, but could not confirm that it was a complete list of the applications received. The ANAO identified 11 applications that were under assessment for funding. Further, 222 projects that were awarded assessment scores of 26 or above, and a need score of 3 or less were not recommended for funding.

24. The review of applications identified 300 missing applications that the department had

Indigenous Affairs Minister, Nigel Scullion addressing the NLC Full Council meeting at Timber Creek, November 2016.
Parkinson acknowledges what he terms shortfalls considers the shortfalls in its processes outlined in and implementation challenges …The department projects. Analysis by the ANAO identified that 815 the department has limited Minister.

4.48. Similarly, brief, but was unable to provide evidence of this. The department advised the ANAO that it provided recorded on the brief that the committee with the value of funding recommendations Neither spreadsheet matched spreadsheets that, according to the department, keep records of key decisions of interest recorded by committee members, also created a system which created the potential for

4.41. The ANAO was provided with two different paragraphs 2.18 and 2.19), or it decided to ignore or didn't recognise the full nature of the risks (but see presumably set by the Minister – either because it attempting to implement major change to Indigenous governance. It is staggering to see some of the departments, including the ANAO, that the core business for the bureaucracy is core business for the bureaucracy, and political agendas under the guise of operating in transparency and equal and fair grant management... the land claim to the Aboriginal groups making clear that the advice was substantively faulty the decision to split the claim can be seen as one of the most important and problematic decisions taken by the NLC on counsel's advice deciding to divide the Larrakia claimant groups into Aboriginal owners" as required to win a

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Inside The Kenbi Land Claim

Kenbi—a brief and inadequate

legal history

Formally lodged in 1979, the Kenbi land claim was the key battleground in the fight for jurisdiction over land between the newly formed Northern Territory Government, and the NLC (established under the Aboriginal Land Rights (Northern Territories) Act 1976 ("ALRA"). The claim was particularly controversial because it covered principal real estate immediately adjacent to Darwin, encompassing the wealth of the Cox Peninsula’s natural lush beauty, a wildlife reserve, and sandy beaches. It was ripe for urban development and feared for its fishing.

In 1978, just five months after the Northern Territory gained self-governance, the new Northern Territory Government of the day was faced with defending a Kenbi land claim by one of a number of Aboriginal owners' as required to win a case. A number of southern states, including Queensland and New South Wales, had already lost similar cases. The Kenbi claim has become a classic case of the limitations of ALRA and the inadequacy in the nation's approach to providing land rights for Indigenous Australians.

The Minister of the risks and the need to take corrective action. And, of the ANAO report that this occurred in relation to this program, but the question is: where is the assurance that it didn't occur, and where is the assurance that it is not occurring today? That is the purpose of good process, record keeping, timely dissemination of information and equal and fair grant management processes.

The decision to split the claim can be seen as one of the most important and problematic decisions taken by the ANAO. This decision was based on counsel's advice deciding to divide the Larrakia claimant groups into "Aboriginal owners" as required to win a case.
on one’s perspective. In December 2000, Justice Gray found that the six members of the Tommy Lyons group were ‘traditional Aboriginal owners’ of most of the land, and that it should be granted as freehold to an Aboriginal land trust for their benefit, as well as for the benefit of the other claimants who were found to have traditional rights and interests in the land. While this result looked like the findings might again raise the prospect of the court process, challenges by the NT and members of the Danigunga clan were won, and the decision was at least a victory for those involved in the claim.

From a legal process to a political one—why did Kenbi lead to the settlement?

Most claimants consider they have “won” the Kenbi claim, given the documents that report is published, and there is usually only a short period between the report and the settlement. Of course, the result was not as straightforward as it would seem. The Tommy Lyons group were “traditional owners” of the land, but they were not the only a short period between the report and the settlement. Of course, the result was not as straightforward as it would seem. The Tommy Lyons group were “traditional owners” of the land, but they were not the only stakeholders claiming interests in the land. There were other stakeholders whom the Commissioner found would suffer detriment from the grant. They included the optimistic planned development, such as a large regional conference centre in Darwin with solid financial commitments. The decision was that the land be granted as freehold to an Aboriginal land trust established under the Act, for the benefit of the NLC, not mine, and the government.

The settlement of Kenbi—the false start and the power of politics

From reading the news headlines about Kenbi in the Darwin media, one would think that the signing of an “In-Principle Settlement” in 2001 would appear that Kenbi had been settled. In 2003, the Northern Land Council (NLC) and the governments of the Northern Territory and the Commonwealth of Australia signed an Indigenous Land Use Agreement (ILUA) that was considered to be the first of its kind. The ILUA was proposed by the NLC as a way to secure the land for the benefit of the community. The ILUA was designed to provide a mechanism for the government to recognize the rights of the community to the land and to facilitate the development of a comprehensive land use plan.

The ILUA was accepted by the governments and the communities, and it was seen as a positive step towards resolving the land rights issues. The ILUA was signed by the Northern Land Council (NLC), the Northern Territory Government, and the Commonwealth Government. The ILUA was intended to provide a framework for the development of a comprehensive land use plan, and it was seen as an important step towards resolving the land rights issues. The ILUA was designed to protect the rights of the community to the land and to facilitate the development of a comprehensive land use plan.

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Aboriginal Land Rights (Northern Territory) Act

Eventually, in December 1976, the Northern Land Council (NLC), which had Central Land Council (CLC) and the opposing land rights were mobilised – the message to pass the land rights legislation to the Government was dismissed the following February 1973 and his two reports in July 1963 and the Gurindji walk-out place in this nation”, he overcame the aborigines are denied their rightful us as Australians are diminished while the aborigines are denied their rightful their role in identifying traditional owners, their function in facilitating land claims, providing expert advice and professionals for proposed use of land, essential for the land. The Court, Barwick CJ dissenting, agreed to Vincent Lingiari at Wattie Creek on hen in November 1972 Gough Vincent Lingiari, I had no idea where it was. ‘Christ’, he would become “a running sore” and “a harbor of disease”. A complaint about the handover, which he emailed to me Geoff Eames has a lovely story about the film of the handover of title at Wattie Creek, and it is all so memorable. Gough had handed me the title document (a lease, at that stage) for safe keeping, after the famous furore in Vincent’s land, and people kept borrowing it for photos, until when he asked me in land it back (presumably, for his own photo copy) I said, “I had no idea where it was” he said, “it took them two hundred years to get title back and you lost it again in one day.” Fortunately, I did track it down – and watch red earth finger marks all over it.

There would not have been a successful claim to the Gurindji land if the Utopia Station had not been successful. The Utopia claim was the first cattle station and the first land claim under the Land Rights Act to be considered by the High Court. It was begun before Justice Tuckey in September 1979. Self government had been attained on the Northern Territory on 1 July 1978. There was no shortage of politicians; the Northern Territory was new, the land was now self-governed, and was in a period of planning. It was bitterly opposed to Aboriginal owned cattle stations becoming Aboriginal land. The Attorney-General and Chief Minister Paul Everingham attacked the land claim on Utopia Station and the Land Council alleging that the claim had been lodged without instructions and that the station would become “a running sore” and “a thorn in the flesh”. Because it was the first amount of work for the Land Council and the first time that they would be asked to deal with a land claim, very little was given to the Land Council and the Authority became involved. One of the more contentious areas of the claim was the opposition to them, and the number of times they went to the High Court. Each was a claim to land adjacent to a town, Tennant Creek in the case of Warumungu, and Darwin in the case of Kenbi. The hearing of the Warumungu claim, lodged in November 1978, commenced before Justice Karmey in November 1982. It had difficulties due to the anthropologist’s report (the “R Report”) which was ideological and Vibeke in style, significantly irrelevant in content, and failed to address issues relevant to the Land Rights Act. Fortunately, for the first time in the hearing of the warumungu, the High Court was adjourned and the Land Council submission that the land, save for one area, was able to appeal to the High Court. In March 1985. In the meantime, the High Court, and the hearing of the Warumungu claim, and of the opposing parties, the judge exposed his “developing sense of powerlessness and frustration” at the limits of what might be achievable under the Land Rights Act. He made the following plea: we are into a fifth year and we have heard a lot of evidence from Aboriginal people who have got quite clearly traditional claims to ownership of country around Tennant Creek. We have heard a lot of evidence from non-Aboriginal people who have got legitimate connections with the owners of the same country. The claims that have been made by the Aboriginal people have quite understandably been made to the areas they have

Rosie Howie, Central Land Council lawyer, delivers opening address to the Aboriginal Land Commissioner, Justice John Tuckey, at Dagargun during the land claim by Gurindji to Dagargun Station, July 1981.

Land claims are…invariably substantial, lengthy, and complex litigation, and often enough, vigorously contested. At the time, have appeared remarkably. For those involved in land claim work, as I was for 24 years from 1978 to 2002, there have been many memorable moments. One was to give effect to the announcement of the tiing to Vincent Lingiari at Wattie Creek on Gough’s appointment to the Northern Territory land councils as had been part of the original Bill, were not included in the Act. The land laws in Northern Australia are based on unalienated Crown land, and held by the Northern Territory. Those lands are held for the benefit of Aboriginal people entitled by Aboriginal tradition to use or occupation of the land in question and which is included in Schedule 1, has been won to more than sixty traditional land claims in the Northern Territory. The Central Land Council – the Northern edition of this publication is now available to all those involved in researching, preparing and presenting land claims, with many parties, including the Northern Territory Government, contesting the claim. In the Fifth week of the hearing, as he heard the evidence of the Aboriginal claimants and of the opposing parties, the judge expressed his “developing sense of powerlessness and frustration” at the limits of what might be achievable under the Land Rights Act. He made the following plea: because they are the only areas left. They are not necessarily the areas of choice, but because they are the only areas left and that they affection Aboriginal interests, they create tremendous disorientation and put people in confrontation with one another. The more so if your land is like this, and you cannot let the parties get together and work out alternative areas which could be found for the Aboriginal land in one of the more contentious areas under claim.

Despite this plea the hearing continued during 1985. It became even more contentious. The R Report had suggested that descent was not a factor in responsibility for land. Although the claimants did not rely on this report, the Northern Territory was hoping for finding information in the field notes of the researchers managing the claim. Summarized were the results of all the research that the researchers carried on. The researchers made affidavits, produced documents, their...
The Northern Territory then objected to producing the documents relating to the making of the regulations, claiming they were subject to legal professional privilege. Justice Kenway dismissed this objection and ordered that the documents be produced for inspection by the Land Council. The Attorney-General’s appeal to the Federal Court was dismissed and his appeal to the High Court was also dismissed.

When the opportunity came to examine the merits of senior officials of the Northern Territory there were some real problems. One from the Department of Land, under the Selector General (Ian Barker QC) dated 28 November 1978 had noted: “It was news to counsel for the claimants, that the information gathered by it, could not be reasonably disassociated from the claims made for the land in the letter.”

One has only to read the accounts and view the photographs and drawings of Spencer and Gillen to realize that in 1902 the Warumungu were a powerful nation in the ordinary sense: a large number of people of language and history, inhabiting a land that had been defined limits and forming a society under one government. They were reputed to be the most warlike and physically the best tribe in Central Australia.

Within a matter of years, the Warumungu had been almost completely dispossessed of their land. They had fought vigorously to defend their stolen land from the white invasion, but their hopes and boomerangs were no match for men on horseback carrying firearms... Astonishingly, perhaps, much of the Warumungu identity remains, and even today the sense of belonging to land is a powerful influence in the lives of these people in the Barkly Region.

It is curious, however, to observe what the people of the Warumungu claim, in a broad sense, falls under the definition of ‘unalienated Crown land’ as defined in the Land Council Act. This notion of land – having as its basis the unalienated Crown land, land grant and the granting of the land – has raised the ire of some of the Warumungu claimants.

Land Rights News • Northern Edition January 2017 • www.nlc.org.au

**Note:** This is an excerpt from the Northern Edition of Land Rights News for January 2017. The full article can be found on the Land Council’s website at www.nlc.org.au. The content provided here is for informational purposes only.
Dr Gumana: a great man who won the respect of all

Jonathan McLeod was the Northern Land Council’s acting CEO when the memorial service was held at Gagan for Dr Gumana, and he delivered the following eulogy:

In May 2007, Dr Gumana was awarded an Honorary Doctorate by Charles Darwin University. The then Chancellor of CDU, Richard Ryan, presented Dr Gumana with the degree of Doctor of Arts, Honoris Causa, in recognition for his outstanding contribution to the whole of Australia and the Northern Territory in particular – especially in recognition of his part in creating a contemporary world where people can live together with mutual respect and understanding; and in acknowledgement of his notable work as an artist.

The following text is drawn from Mr Ryan’s address at the award ceremony.

Dr Gumana was born in north-east Arnhem Land in about 1930. He grew up around Gangan, near powerful sources of traditional lore and culture and alongside the continuing presence of the creative ancestors. His early life was steeped in tradition and the learning of skills such as the making of canoe voyages across the open sea to Groote Eylandt. When he was a young man he was diagnosed with leprosy. It was then a fearful disease and he was brought into the Channel Island leprosarium for confinement and treatment. Later, he moved to the new East Arm facility and he underwent treatment for more than a decade. During that time he learned English, got married and became a Christian. He also began painting, drawing on his memory to depict scenes of his country and its stories. That was the beginning of his links with his land.

Dr Gumana said later that during his time around Darwin he learned three ways to look at the world – the Yolngu Aboriginal way, the western way, and God’s way. His importance as a mediator in many complex situations flows from that ability to see and understand things from these different points of view. Eventually he returned to Arnhem Land, settled at Yirrkala and was given an important place in local life as the eldest son of the clan leader Birnhikil. By then, issues were arising about the future ownership and management of the land which the Yolngu people had thought was theirs alone.

In 1962 Dr Gumana joined with other Yolngu artists to paint the panels which were installed on either side of the altar in the Yirrkala church. The panels depicted the creation stories that gave the Yolngu their claim to the land on which they lived. The panels inspired the bark petition of 1963 which put all Australians on notice that there were people whose claims to land long predated European arrival in 1788. It was a turning point in Australian history. In 1968 Yirrkala people took action in the Northern Territory Supreme Court to protect their interests in their land. They claimed that they had occupied the land since time immemorial and that the government had no right to negotiate arrangements for mining the land without their consent. Dr Gumana acted as an interpreter and cross-cultural bridge during the proceedings.

The Yolngu lost their Supreme Court action, but the loss was a direct catalyst for the enactment of laws which protected Aboriginal land rights in the Northern Territory. The homelands movement, the return of Aboriginal people to live on their traditional country, was one of the outcomes of the new land rights system. Dr Gumana led his clan back to its traditional country at Gangan, about 150 kilometres south-west of Nhulunbuy. There, he led his people in the creation of a homeland centre for about 80 people. Gangan has been acknowledged as one of the notable success stories of the homelands movement.

In 1992 he was ordained a Minister of the Uniting Church, following study through Nungalinya College in Darwin. He regarded his course of theological study as part of the lifelong process of acquiring knowledge; education continued as a lifelong journey. The then Chancellor of CDU, Richard Ryan, presented Dr Gumana with the degree of Doctor of Arts, Honoris Causa, in recognition for his outstanding contribution to the whole of Australia and the Northern Territory in particular – especially in recognition of his part in creating a contemporary world where people can live together with mutual respect and understanding; and in acknowledgement of his notable work as an artist.

Over the last two decades his stature as an artist and ambassador for Yolngu culture has been recognised. He has been painting for almost 60 years and his work has been included in many documentary productions which describe Yolngu art and aspirations.

In 2002 Dr Gumana won the Telstra National Aboriginal Art Award, for a painting on a hollowed-out stringybark log of the kind which was once used to store the remains of the dead. His status among his people was further demonstrated when he was selected to be the lead plaintiff in the 2005 Federal Court case which resulted in the affirmation of Yolngu native title rights over inland and coastal waters. Dr Gumana is now continuing his life mission to bring knowledge of the western world to his Yolngu people, and to help outside people to learn about the Yolngu. He accepts that before he can teach about these things he must first learn as much as he can about life, culture and lore. For him, that is an essential part of the process of people learning how to be closer to each other in an undivided Australia. He can be well satisfied with his own role in helping to create a better Australia, a place where people can indeed live closer together.

Jonathan McLeod, Acting CEO, NLC delivering the eulogy at Dr Gumana Memorial Service


Publication dates
January, April, July, October

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