‘Mal, fetch some glasses. We’ve got an intervention to plan.’

NT Intervention 10 Years On pages 16-24
Scullion Praises NLC page 4
McArthure River Mine EIS pages 5-8
Don Dale: Australia’s Shame pages 10-15
NLC Community Development page 28
A word from the Chair

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

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

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

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

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

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

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

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

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

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

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

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

Kind regards to you all,
Samuel Bush-Blanasi, Chairman

NLC Executive Council calls for more substantive Constitutional reform

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

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

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

The Council said its recommendation was “both modest and substantive”.

“This preference took account of the objections raised against the alternative substantive constitutional amendment option: the insertion of some form of non-discrimination protection into the Constitution. The objections to a non-discrimination provision which would entrenched Indigenous advisory body. “It is a fact that for constitutional change to be successful, there can be no doubt that a bipartisan approach is the best path forward,” Mr Shorten said.

A word from the Chair

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

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

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

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

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

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

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

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

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

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

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

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

Kind regards to you all,
Samuel Bush-Blanasi, Chairman

NLC Executive Council calls for more substantive Constitutional reform

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

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

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

The Council said its recommendation was “both modest and substantive”.

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

The Council concluded.

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

The NLC’s Executive Council resolution was:

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


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

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

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

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

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

NLC Executive Council meeting, Katherine July 2017.
We, gathered at the 2017 National Constitutional Convention, coming from all points of the southern sky, make this statement from the heart:

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

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

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

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

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

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

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

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

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

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

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

1. Does not diminish Aboriginal sovereignty and Torres Strait Islander sovereignty.
2. Involves substantive, structural reform.
4. Recognises the status and rights of First Nations.
5. Tells the truth of history.
6. Does not foreclose on future advancement.
7. Does not waste the opportunity of reform.
8. Provides a mechanism for First Nations agreement-making.
9. Has the support of First Nations.
The Northern Land Council has welcomed a report by the Australian National Audit Office (ANAO) on the “Effectiveness of the Governance of the NLC”.

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

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

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

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

“Prior to 2015,” the ANAO has reported, “the Commonwealth’s commitment and management of enabling functions, including information and communications technology systems, human resource management and records management was poor, with serious weaknesses in financial management, fraud control and the management of risk.

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

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

Here is the ANAO’s conclusion:

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

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

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

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

MINISTER PRAISES NLC, GRANTS $7.5M FOR FISHING LICENCES

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

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

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

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

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

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

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

“A comprehensive settlement of claims related to the rights recognised in the Blue Mud Bay decision should involve benefits for traditional owners to participate in commercial fisheries and marine resource management activities. That’s why we introduced the Indigenous Land Corporation, which will work with traditional owners across its region to allocate funds.

“According to the Northern Territory Government there has not yet offered to settle these land claims, I support the traditional owners of this country and want them to control this fund.”

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

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

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

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

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

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

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

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

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

“This is a significant development towards final settlement of the Blue Mud Bay decision, and, like Senator Scullion, I hope that the NT Government will match the Commonwealth’s commitment.”
McArthur River Mine

NLC highly critical of draft Environmental Impact Statement

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

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

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

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

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

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

The submission concludes that the EIS is “plainly deficient in its present form”. “The proponent’s apparent reading of the levels of environmental harm and risk tolerable to the local, regional and other Northern Territory communities does not accord with the NLC’s understandings. The project could not be allowed to proceed on the basis set out.

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

Protest march against MRM at Borroloola, October 2014.
The core goals set out by the proponent are to leave the post-mining landscape “safe and secure” in the short term (100 years) and “safe” for the long term (1000 years). In going beyond these vague terms, emphasis is placed on geotechnical, erosional and geochemical stability and on monitoring these features at the mine site. Stability is an obvious requirement for safe and usable landscapes but it is remarkable that this term should be used to describe a situation that will require active intervention in perpetuity. For example, maintaining geochemical stability on site will require the regular removal of contaminated sediments and water from various sumps, trenches and natural drainage lines for disposal into the pit or directly into the river. Achieving local stability in the ways proposed under the EIS will create risks of destabilising areas outside the mine site and will themselves be unstable because they are dependent on undisclosed governance and financial arrangements.

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

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

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

What the NLC submission says about Aboriginal interests and environmental objectives

The Northern Land Council says the McArtur River Mine Environmental Impact Statement is unusual in that it sets very long term closure objectives. “The form and content of those objectives and the way they were arrived at says a good deal about the proponent’s view of Aboriginal landowners, their communities and their place in the Territory,” the NLC’s submission says.

Dealing with Aboriginal interests and environmental objectives, the submission continues:
From about 2037 to 2047, tailings will be reprocessed to extract residual lead/zinc concentrate, and McArthur River Mine is proposing that the waste from that reprocessing will be dumped in the open cut pit, which will then be filled with water. The NLC’s submission to the company’s draft Environmental Impact Statement says suggestions that the mine pit lake will, in a reasonable time, achieve water standards that will permit its reconnection to the McArthur River are premature; alternatives to a lake must be more seriously examined. “To set up the McArthur River as a permanent receiver of unspecifiable contaminant loads from multiple sources appears to us to be unacceptable. It is irresponsible and potentially misleading to have informed the traditional owners that they may be able to use the pit waters for any purpose in the reasonably foreseeable future,” the NLC has said.

“In regard to catastrophic failure, the EIS offers assurances that pit walls will be stable over the very long term so that risks of collapse, and consequent re-mobilisation of sediments and a pulse of highly contaminated water entering the McArthur River are low. “Similar types of risks may arise from failure of levees controlling water entry and outflow from or to the McArthur River. In our view any risk of such an outcome, for which there appears no plausible remediation, is too high.”
The proposal by McArthur River Mine (MRM) to construct an even bigger waste rock dump is a major focus of the NLC’s submission on the company’s draft EIS.

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

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

“Although the existing facility appears to be naturally underlain by alluvial clay over much of its area, it is also intersected by stream channels filled with highly permeable alluvium (sands and gravels), creating a number of competent pathways for seepage entry to groundwaters.

This problem is exacerbated by construction at or below 2013/14 groundwater levels (the level at which the new NOEF will be built). Modelling suggests that groundwater will be at or higher than these levels at least one year in 12, posing a significant risk to the integrity of the base.

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

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

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

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

Design of the new NOEF

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

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

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

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

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

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

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

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

Seepage

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

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

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

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

Dust

“All overburden placement options, irrespective of levels of rehandling, raise serious issues in management of dust that led to elevated metal levels in sediment and fish in Barney Creek. The Independent Monitor noted failures to report exceedances of soil and sediment criteria at a number of sites during 2015. “The principle treatment for dust suppression is water, which is clearly inappropriate when handling non-benign waste rock which is most likely to produce bio-available metals. Problems are likely to be significant in all OEF areas. Ongoing and intensive mitigation measures such as sediment traps will be essential to avoid similar risks in all drainage lines within reach of dust plumes, but will not retrieve all metals deposited, which may accumulate in poorly drained depressions in the landscape.

“The NLC views the entry of lead and other toxic metals to food chains as a most serious threat to the health of Aboriginal people who regularly consume animals at higher trophic levels that may accumulate metals at dangerous levels. These include goannas, turtles, fish snakes and birds that consume small fish and that may move from the site of contamination. None of these have been examined for elevated lead or other relevant metals. It is essential that monitoring of lead in tissues extend beyond the obvious species like barramundi or plants that probably pose much lower risks.”
The Northern Territory Government has established an Aboriginal Justice Unit within the Department of the Attorney-General and Justice, to improve justice outcomes in the Territory and secure an Aboriginal Justice Agreement.

The government says the Agreement will:

- set out how the government and Aboriginal people will work together to make justice work in the NT;
- build trust and engagement on justice issues in the NT;
- focus on practical solutions to reduce the levels of Indigenous incarceration and reoffending;
- deliver strategies for the implementation of more local decision-making in the justice system.

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

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

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

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

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

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

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

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

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

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

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

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

The unit can be contacted on 08 89 35 655 or at agd.aju@nt.gov.au

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

Aboriginal Justice Unit Launched

At the launch of the AGD Aboriginal Justice Unit: (from left) Project Officer Douglas Lovegrove, Attorney-General Natasha Fyles, Cultural Broker Calvin Deveraux, Acting Director Aboriginal Justice Unit Leanne Liddle, Cultural Broker Margaret Dayi, Project Officer Jonathon Avila, AGD Deputy Chief Executive Meredith Day and AGD Chief Executive Greg Shanahan.
DON DALE: How the state brutalised a 14-year-old boy

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

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

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

A t his wit’s end, having been confined alone for 16 days in a dark, fetid cell, 2m x 3m, at Darwin’s Don Dale Youth Detention Centre, a 14-year-old Aboriginal boy bit breaking point on 21 August 2014. The boy gave evidence in closed session to the Commission about his experience at Don Dale. He was named in the Four Corners story, but at the Commission he appeared as “AD”. He also provided the Commission a six-page written statement which traced his upbringing, his rapid decline into a short history of crime and his traumatic imprisonment at Don Dale that culminated with his being targested, along with other juvenile prisoners.

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

In 2013, aged 13, he fell out with his carer because she was “too strict” and moved in with another relative, “who was much more strict and I was allowed to do what I liked.” “Inside I was feeling sad for the loss of (his first carer’s partner) and I was starting to feel really bad about my Mum and Dad never having been around. When I was in Year 9 (2013) I was selected as one of the leaders in the Clontarf program but I did not feel up to it.”

Suspected from school

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

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

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

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

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

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

Escape and punishment

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

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

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

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

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

NAAJA ‘Shocked’

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

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

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

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

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

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

Mr Hunyor: “I don’t think we did.” It became apparent during the proceedings of the Royal Commission that the Department of Correctional Services was prepared to keep AD and others locked up in the BMU indefinitely – that is, at least until the population of the then adult jail at Berrimah had been moved out to the new jail at Holtze, and the Berrimah jail converted for use by juveniles.

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

No bail, no lawyer

AD’s frustrations about his prolonged and isolated detention in the BMU (which the Department of Correctional Services knew...
going to talk to the boys in the BMU and I've been a bit puzzled. I've been in here too fucking long. The other boys started going off as well. I could hear the guards speaking through the other boys' intercom saying, 'Calm down'.

The information collected will assist the Commission in understanding the purpose of rehabilitation. In addition, they are unsuitable workplaces for youth justice officers and other staff.

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

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

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

There is still time for people to contribute; people can give information, provide submissions and share their personal stories with the Commission until 31 July.
Australia’s Morality Play 2017

John B Lawrence SC*

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

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

“What the Commission has heard over the last 8 months, and particularly over the last 3 weeks in this Courtroom and in Alice Springs, is that the system of youth detention in the Northern Territory has failed and, we think, is still failing (writer’s emphasis). As every level, we have seen that a detention system that focuses on punitive, not rehabilitative, measures, fails our young people”.

The Interim Report made several other telling observations:

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

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

Royal Commission

As you would expect with a Royal Commission tasked to investigate systemic problems, the whole Youth Justice System and its players have been placed under thorough scrutiny and few have emerged looking good. The evidence has revealed a crisis-ridden, dysfunctional “system”. The evidence points not just to the obvious suspects – the untrained, casual Youth Justice Officers (YJO) and Corrections generally – but more, much more. It has revealed a Youth Detention System that was and still is operating in a deliberately punitive and at times grossly inhumane way. The essence of the Inquiry is to now find out how this can happen in 21st century Australia, a developed country which, in competition with Spain, is presently appealing for a seat on the United Nations Human Rights Council. That question is largely answered by the systemic nature of the inadequacies. Responsibility for the system’s shame can be traced all the way to the top. Everyone, including Corrections Minister John Ellerink, Commissioner for Corrections Ken Middlebrook, Executive Director of Youth Justice Salli Cohen and the staff at Don Dale knew of the atrocious conditions that the children were being indefinitely detained in, and the inadequacy of staff training for those tasked with looking after them.

It was during Ms Cohen’s reign that the Behaviour Management Unit (BMU) at Don Dale was used to hold children in isolation, in cruel and medieval conditions for extensive periods.

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

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

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

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

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

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

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

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

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

The reason for the visit in itself speaks volumes. It was the idea of Executive Director Ms Cohen. Her rationale appears logical, but reveals itself as
said, ‘Hang on a sec, are there kids

The arranged meeting between

The legal system's knowledge of what was

Furthermore, as a leader of the lobby group

So Ms Cohen's rationale for the visit to

So, Ms Cohen's rationale for the visit to

But, during this policy of punitiveness and

The legal system's knowledge of the facts was

Land Rights News • Northern Edition

July 2017 • www.nlc.org.au

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

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

Judge Borchers Rails at Teenage Criminal

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

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

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

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

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

Mr Bhutani: No, Your Honour.

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

Mr Bhutani: Not that I know of.

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

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

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

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

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

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

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

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

And so, amidst a Royal Commission into the Youth Justice System, how does that legal system react to the Judge’s conduct? That sort of conduct by a judicial officer...
anywhere, anytime beggars belief. To behave like that while the NT justice system is under a Royal Commission’s scrutiny is staggering. The matter has been referred to the Central Australian Aboriginal Legal Aid Service, (CAALAS) to the Commission for consideration, and goodness knows what the Commission will make of it.

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

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

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

To CAALAS’ credit, as well as informing the Royal Commission of this conduct, they have made various complaints to the Chief Judge of the Local Court. In the writer’s view, there is no dubiety in the public domain. Their argument is not without some merit: if these things are discussed in the public domain, it will undermine the integrity of the Judiciary and will deny the individual involved “natural justice.” Well, that has a logical ring to it, but the sad reality is that the NT legal system in 2017 has now gone past its tipping points; way past. Respect needs to be earned and maintained, not just individually, but also with the institution of the Judiciary within the separation of powers and the rule of law.

**Situation Normal: “It’s All Good”**

As this was going on, the Royal Commission was sitting in the Darwin Supreme Court in the week beginning Monday 26 June. While the Commissioners were hearing evidence that day, having been alerted to the transcript of Mr Borchers’ performance, the rest of the Supreme Court building was empty. CLANT was holding its 16th biennial conference in Bali. Ironies abound and the symmetry was surreal. So while the Royal Commission, appointed by the Prime Minister of Australia, was comprehensively investigating the systemic problems within the criminal legal system of the NT, much of the body of that legal system was over in Bali, attending the criminal law conference as if everything was “situation normal”. While papers were being delivered on DNA evidence, motorcycle gangs in Queensland and Crown disclosure etc., there was very little, if any, acknowledgement that there was a Royal Commission looking into the NT Youth Justice System. There was little mention of “the war” or that herd of elephants grazing on the lawns outside. At this point in history, the NT legal system seems to be in a state of “hypernormalisation” – or, should I say, the catch-cry of contemporary Australia, “It’s all good.”

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

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

**Conclusion**

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

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

*John Lawrence SC is a Darwin barrister. He is a former Principal Lawyer at the North Australian Aboriginal Legal Aid Service, a former president of the Northern Territory Bar Association and a former president of CLANT.*
Almost ten years after the Northern Territory Intervention was rolled out, the Federal Government was made aware of Aboriginal child abuse. It’s not the kind that ostensibly precipitated the Intervention. It is more a symptom of the Intervention. The abuse is broadcast on ABC’s Four Corners in July 2006 and includes images of large, stocky white men beating Aboriginal children, spraying tear gas in their faces and all over their bodies; caging them in isolated cells, trapping their heads in hoods and their wrists and ankles in shackles. It is the abuse in youth detention.

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

The Royal Commission has reported on a stream of expert witnesses from across Australia. Most witnesses have been non-Aboriginal people (e.g. youth justice officers, youth detention managers, government ministers, case workers and educators) – which include substantial proportion from outside of the Northern Territory (e.g. health specialists and academics) – relative to the number of Northern Territory Aboriginal people.

Aboriginal families have not been called to give evidence on what was and is needed for their affected children. A powerful source of evidence has been presented by abused children who have spoken in open hearings and closed sessions and have provided written statements. For some of these vulnerable witnesses, the Northern Territory Government Counsel has sought to undermine their credibility in adversarial attacks.

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

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

Thalia Anthony**

The Elephant in the Royal Commission Room: the Intervention

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

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

Despite it not being a focus of the Royal Commission, the Intervention elephant in the room was rapidly unleashed. On the second day of hearings, Alyawarre woman and Chair of the Lowitja Institute, Pat Anderson, told the Commission that when the Federal Government “sent in the Army” to impose the Intervention, respectful relations between government and Indigenous people were jeopardised. Aboriginal women grabbed their children and ran because it brought back memories of violence in child protection and torture since the Intervention.

Aboriginal children have been removed to residential care, foster and group homes and youth detention at unprecedented rates since the Intervention. The surveillance of school attendance and government health checks have been a mechanism for child removals from Aboriginal families and the policing of young people (for under-age sex with other young people). The Northern Territory has also become the only jurisdiction where it is mandatory for everyone in the community to report suspected child mistreatment. Many notifications to child welfare are unsubstantiated, but it nonetheless triggers a government encroachment on Aboriginal families and children.

Most substantiations are based on perceptions of neglect, including the child’s “failure to thrive” (gain weight) due to poverty. Aboriginal children taken from their immediate family are often placed outside of their community. Over one-fifth are placed in residential care rather than with a family.

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

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

Evidence was given of over-policing of children under state care in residential and group homes. Police would be notified of an incident where the child was merely “mucking up”. Police have been called for spraying sauce at the “kitchen table”. The chair of Aboriginal Health Agency Danika Dilba, Olga Havnen, told the Commission that the police are contacted when a child in out-of-home care does something such as breaks a glass, which results in them being charged and ending up in the justice system.

She stated, “I have known of cases where children who have not been in contact with the justice system until such time that they were removed from families and put into care and protection of the department. The Royal Commission’s Interim Report, handed down in April 2017, described Child protection as a “pathway” to youth detention. The role of Territory Families, the department responsible for Child Welfare, has been focused on child removals (rather than family support) which breaks their connection to home and community and puts them on the radar of the criminal justice system. One witness, Keith Hamburger, referred to the increase in child protection as a “ticking time bomb” that will lead to an explosion in detention rates due to the trauma caused by removal from family. Havnen explained that “the primary desire” of children is to “go back to family and to establish those connections and relationships”.

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

Torture of Aboriginal children in Northern Territory detention

The Intervention has not only increased the quantity of young people in detention, it has also led to the “moral decay” in the treatment of children in institutions. Although the detail from the Royal Commission to date has focused on the cruelty in child youth, there has been emerging evidence of such violence in child protection. In youth detention, the Commission heard that young
**For these reasons, AN described her experience in detention as contributing to a lost youth in which she wished she could do it again. Nonetheless, her vision for the future is shaped by her love of horses and children and detaining them was not her work experience. She is hopeful the Commission and her contribution to it may help avoid detenances.**

**Torture: an extension of treatment under the Intervention**

The punitive racism pervading the Intervention has seeped into the treatment of Aboriginal children in detention. Pat Anderson, who co-authored the *Little Children are Sacred report* (with Rex Wild) on strategies for addressing child abuse in the Northern Territory, was aghast at the report, which recommended Aboriginal community-owned solutions, had been used to justify the Intervention’s top-down policy of dispossession. During examination by the Commission, she referred to the Intervention as a “huge betrayal”. The report, which was intended to be “an extension” of the abuse of Indigenous children under the Northern Territory’s intervention policy, produced a “general moral decay” that “has allowed children being treated in a more repressive manner” due to the culture among officers and the Northern Territory government’s passage of legislation to allow restraints. For Anderson, “no doubt in my mind” that the “disempowerment” and “appalling” treatment of Aboriginal people living under the Intervention culminated in the torture of Aboriginal children at Don Dale.

Following the Intervention, the Royal Commission was told, ad hoc violence against Aboriginal children was intensified. Groups of three were used in youth detention. The Commission heard that a “boys club” emerged, such as “Jimmy’s” where boys would conduct a “wedgies method” by randomly bashing children, extracting saliva, and spraying tear gas. Experienced officers who refrained from this “muscle men”, did not get hired. These officers included professional prize fighters and steroid-taking body builders. Experienced officers who refrained from using the brutal tactics of何もを上次発掘しと見なすことなく和慣渇水（e.g. “stupid black cunt” and “fucking slut”), telling them to eat bird’s poo and filming them in the shower and toilet. Experienced officers who refrained from using the brutal tactics of were also not allowed to attend funerals and weddings, made to defacate in their pillow slip or towel, or even the car would be dispossessed, and if the income from the car would be repossessed, then the land would be attack, which resulted in him urinating on the chair. The officers did not alleviate his pain but instead tormented him. He said that there was “no responsible adult there to draw the line when his pain became too great”: “I was defenceless at that time. Feeling like there was nothing I could do.”

The shame Dylan endured was not only in highly violent episodes, but also in everyday acts, such as being taken a shower and strip searched every time he had visitors, went to court or to the medical centre, sent to an isolation cell or was at risk of self-harming. He found it humiliating that he was not allowed to cover his “private parts”. At one stage, the officers would conduct a strip and pat search every time he came from the toilet.

Young girls were also strip searched, sometimes forcibly by up to six male officers. Stripping girls included cutting off their clothes, wrapping them around a football team. But he remains saddened by the fact no one has ever apologised for the treatment of children. Dylan Volier said he also saw “putting [Aboriginal children] down because they can’t speak English properly”. The children inside also lost visits from families when they were taken from a remote community to detention, or transferred from Alice Springs to the Don Dale centre in Darwin, which was 1,500 kilometres away. They were then tormented by officers by telling them that their “family did not really care” and refusing them phone contact. They were also not allowed to attend funerals and sorry business when family passed on. This resulted in dislocation from family, community and country. The effect of moving far away from community was that the children “ended up getting more dislocated from their family groups”.

**What can be expected from the Commission?**

The focus of the Royal Commission thus far has been on reform: making the youth justice system more therapeutic and rehabilitative, providing residential care institutions more positive and “home-like” for children; and creating better training and operational procedures. This is not transformative but sanitising the status quo in youth detention and child protection. For instance, the CEO of Territory Families stated that children need a better induction process by providing a “plain English version of the restraint policy”. What is lost is a discussion about the abolition of youth detention, the cessation of Aboriginal children being taken away from Aboriginal families and communities and a repealing the Intervention’s current legislative guise in *Stronger Futures* that has impoverished, alienated and disengaged Aboriginal families. Muriel Bambett who is from the Yorta Yorta and Dja Dja Wurrung explained to the Commission that the greatest resource in the Northern Territory comes from the strengths of Aboriginal communities and their strong cultural base and laws, which need to be fostered. These discussions require a greater engagement with Aboriginal families, which has been hampered by the silence and listening from the Royal Commission hearings.

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

---

Different officers have different approaches and as a detainee you will need to help you predict what will happen to you if you behave poorly. Officers deal with situations. This will help you understand how you will be treated. The treatment of children is illustrated in the evidence of Aboriginal boys, AD and Dylan Volier, and Aboriginal girl AN. The common themes of their stories were: violence and humiliation endured at the hands of officers, segregation for extensive periods of time, and an absence of support through programs or trauma-informed strategies. The treatment that AD experienced was likened to “caged animal” or a “dog”. He was first sent to Don Dale at 14 years of age. Even before arriving he feared this centre because he had heard stories of Aboriginal children being bashed and raped. Don Dale lived up to these terrifying expectations. He was indefinitely placed in an isolation cell, which is part of the Behavioural Management Unit (BMU), for 23 hours per day, which lasted for 17 days until he escaped. The cells were dark, dirty and smelt like sewage. There was no running water, air conditioning, fans or air flow for children to cope with the tropical temperatures.

When AD attempted to escape he was shocked to discover that his door was unlocked and walked straight out of his cell. Soon after, the riot squad descended on the detention centre. They were wearing gas masks, carrying shields and batons and were accompanied by an Alsatian dog. Despite AD offering to talk “as our own” and to “give up”, he was told “it was too late”. At this time, an officer shouted, “I’ll pulverise your little fucker” . The riot squad sprayed tear gas as AD ran because of the tear gas. My body was racing because of the tear gas. My eyes were burning, I couldn’t see properly; ... my heart was racing because I didn’t know what was going to happen next.

After the tear gassing, the riot squad shackled the children’s ankles and wrists and placed spit hoods on them. They were taken to the maximum security unit of the adult prison. AD gave evidence that, “The guards to the maximum security unit of the adult prison. AD gave evidence that, “The guards shackled the children’s ankles and wrists and segregated the team. But he remains saddened by the fact no one has ever apologised for the treatment of children. Dylan Volier said he also saw “putting [Aboriginal children] down because they can’t speak English properly”. The children inside also lost visits from families when they were taken from a remote community to detention, or transferred from Alice Springs to the Don Dale centre in Darwin, which was 1,500 kilometres away. They were then tormented by officers by telling them that their “family did not really care” and refusing them phone contact. They were also not allowed to attend funerals and sorry business when family passed on. This resulted in dislocation from family, community and country. The effect of moving far away from community was that the children “ended up getting more dislocated from their family groups”.

**What can be expected from the Commission?**

The focus of the Royal Commission thus far has been on reform: making the youth justice system more therapeutic and rehabilitative, providing residential care institutions more positive and “home-like” for children; and creating better training and operational procedures. This is not transformative but sanitising the status quo in youth detention and child protection. For instance, the CEO of Territory Families stated that children need a better induction process by providing a “plain English version of the restraint policy”. What is lost is a discussion about the abolition of youth detention, the cessation of Aboriginal children being taken away from Aboriginal families and communities and a repealing the Intervention’s current legislative guise in *Stronger Futures* that has impoverished, alienated and disengaged Aboriginal families. Muriel Bambett who is from the Yorta Yorta and Dja Dja Wurrung explained to the Commission that the greatest resource in the Northern Territory comes from the strengths of Aboriginal communities and their strong cultural base and laws, which need to be fostered. These discussions require a greater engagement with Aboriginal families, which has been hampered by the silence and listening from the Royal Commission hearings.

*This story was first published in *Arena* magazine (No 148).*
A Decade of Lessons: Ten Years Since the Intervention

Senator Patrick Dodson

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

For many, the most visible sign of the Intervention was the sudden appearance of large iridescent reflective blue signs that warned, on any public road, that you were about to cross into the lands of Aboriginal people. The signs depicted a large warning message, indicating you were entering a Prescribed Area, allowing No Liquor and No Pornography.

A twenty-four hour, seven-day hotline number pointed you to the Northern Territory Emergency Response Hotline for further information. The signs warned those Aboriginal people living there that those lands, their homes for countless generations, were now restricted areas where different laws applied, that they were communities in crisis, subject to emergency laws and conditions.

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

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

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

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

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

In May of 2006 the ABC program Lateline broke a story of child abuse, based on an interview with Nanette Rogers, a Central Australian Crown prosecutor. Earlier reports of neglect and abuse of children had been in the public domain, but did not create much in the way of political or media attention. The issues were revealed in two earlier reports: The Royal Commission into Aboriginal Deaths in Custody 1996 in which I was involved; and the Australian Human Rights Commission report Bringing Them Home in 1997. It was also flagged in the ongoing reports of the Social Justice Commissioner.

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

Such findings were echoed by the Little Children are Sacred Report in June 2007 from the Northern Territory Government’s Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, chaired by Pat Anderson and Rex Wild QC. This report evidenced widespread abuse and neglect of Aboriginal children in the Northern Territory. The findings were based on considerable consultation with indigenous Australians and the wider community. The primary recommendation was for:

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

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

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

Over the following days, and without any form of consultation with the Aboriginal communities of the Northern Territory, a new regime was legislated into existence. It became an intervention of military scale, military style and authoritarian intent.

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

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

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

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

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

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

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

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

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

I argued at the time for: “... investing in the reconstruction of Indigenous society through traditionally based governance structures.”
The Intervention was also plainly a breach disempowerment.

approach of assimilation, dispossession and freehold title, was tantamount to a return

I have argued further that the forced "informed consent" and "full compliance", disempowered and disenfranchised.

to deal with the issues confronting their legislation.

days Mission Superintendent, or Welfare in and stepped into the role of the olden

as the Ginger Bread Man) was parachuted Business Manager (often known locally

was imposed on us, so yes of course we could have done it better.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Separately, NT budget estimates revealed the number of children in out of home care had tripled, while the proportion in
I wondered what celebration or reproach Homelands Movement in Australia. And revisiting of some future Intervention. so it remains unclear how an Indigenous 'race' powers in the Constitution and in the Australian parliament.

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

People recognise their vulnerability to unilateral state intervention due to their relative poverty and deep poverty levels. That is, including a high dependence on the state, the fundamental change of welfare to emphasise ‘mutual obligation’, and the fact that they are black and so susceptible to explicit or implicit personal vilification and institutional racism.

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

The people I interact with are angry that their rights and diversity are not recognised, acknowledged, accepted and accommodated in the everyday workings of the Australian settler state. The people I talk to and the places I visit also demonstrate an absence of any developmental progress since the Intervention, indeed there is growing evidence that Indigenous people living in remote communities in the NT have become more deeply impoverished since the Intervention, a perverse and very tragic outcome. Some people have few little media attention; and little acknowledgment or lament by those who have implemented Intervention and Stronger Futures measures or those outspoken who would blacken advances for this paternalistic top down approach who have become strangely silent and conveniently forgetful at this 10th anniversary juncture.

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

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

In the 21st century it looks to deploy neoliberal might to deliver liberal democracy and the free market to remote communities on Aboriginal-owned land, but with greatly enhanced and hugely expensive ministerial and bureaucratic surveillance and control. Just after the 10th anniversary of the Intervention, the Australian Bureau of Statistics released the second tranche of data from the 2016 Census, the most important source of information about the Indigenous situation in general and in remote Indigenous communities. Unfortunately for my analysis labour market information will not be processed and available till late October this year. But we already know from a recent OECD Report Connecting People with Jobs (2017) that there is a gap of nearly 50% between the overall employment rate of Indigenous and non- Indigenous people in the NT, with this divergence being even greater in remote communities.

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

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

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

I select these two communities for personal and historical reasons. Papunya was the first Aboriginal community in the NT that I visited in 1977; Maningrida is a community that I have visited on 56 occasions since 1979 most recently this month.

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

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

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

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

These are two key areas where the Intervention set out to make a difference through the provision of 1756 ‘real’ jobs that was proving very effective at reducing the Northern Territory Jobs Package and through the $2 billion National Partnership Agreement for Indigenous Housing in the NT, 2008 to 2018.

The two tables tell a similar dismal story. First, Indigenous adults are in receipt of just over $200 a week in communities where basic foods can cost 50% more than in capital cities, they are living in deep poverty. But what is worse is that when adjustment is made for inflation of 24% since 2006, over the past decade adult median income has dropped significantly, people who survived with income under the poverty line in 2006 are now deeper in poverty after 10 years of Intervention.

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

By the time of the 2016 Census most the unemployed were participating in the new Community Employment Program (work for the dole 5 hours a day 5 days a week) that was proving very effective at reducing people’s welfare income with ‘no show no pay’ penalties: about 15,000 jobless in the NT attracted nearly 75,000 penalties in census year 2015/16, with 26-week
employment outcomes totalling just 843.
The development architecture of the Intervention and subsequent Stronger Futures was not just impoverishing people but also seeing their relative income, the economic disparity between Indigenous and non-Indigenous community members, increase: from 4.8 to 5.9 times at Papunya and 3.1 to 6.9 times at Maningrida. At the same time, the census indicates that for poor Indigenous community members are paying more rent than relatively well-off non-Indigenous people.

On housing, and as the National Partnership Agreement that aimed to deliver about 1500 new homes ends, reducing overcrowding from 10.7 per house to 9.3 according to the Australian National Audit Office, the situation remains bleak. In Papunya overcrowded houses needing one or more bedrooms increased from 50% to 68% according to the census while at Maningrida the rate decreased from 82% to 79% of households. Again, the situation for non-Indigenous residents of these places is markedly different because the employment rate is significantly high and jobs come with housing.

This pattern is repeated in community after community with depressing similarity, be it Yirrkala, Gumbalumba or Wadeye in the Top End or Yuendumu or Mutitjulu in the Centre. Readers of Land Rights News who might have access to the Internet, another area of extreme disadvantage and disparity, can visit the ABS Community Profiles website www.abs.gov.au:8080/abs/ [D319114:ns/Home/2016%20Census%20Community%20Profiles] to get a sense of what has happened in their home community since the Intervention in 2007.

Most that I interact with are all too aware of their deepening poverty and in many cases periodic episodes of household food shortage, hunger and poor health; and the lack of improvement in their overcrowded housing situations. This is despite the plethora of expensive Stronger Futures, intervention Mark 2 measures that are supposed to assist, like the BasicsCard instrument to regulate expenditures and the Community Stores Licencing Scheme that aims to deliver ‘food security’.

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

This is not to say that it is all doom and gloom, there is success at remote communities and jobs for rangers, in the arts, in tourism, in pastoralism, in carbon farming and in community service delivery. But having a waged job is the exception, income inequality between Indigenous people is growing and this in turn creates a new set of distributional pressures in domestic situations that remain very kin focused.

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

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

In a highly influential book Lands of Shame: Aboriginal and Torres Strait Islander ‘Homelands’ in Transition (2007) the late non-conservative economist Helen Hughes looked to influence Minister Brough and senior bureaucrats with neoliberal solutions to deeply entrenched and structural development challenges. Then the Noel Pearson-inspired and Helen Hughes-advised report From Hand Out to Hand Up (2007) provided design recommendations for the Cape York Reform Project while also delivering guidance and moral authority to the Intervention’s architects.

And in another influential book, The Politics of Suffering: Indigenous Australia and the end of the liberal consensus (2009) anthropologist Peter Sutton (whose main expertise is in Cape York) argued that the progressiveness of the self-determination era was impossible in large measure for the hyper-marginality of remote communities, culturally maladapted to late modernity. But the current ‘reality of suffering’ that is the result of a decade of continuing punitive and unproductive ‘neoliberal consensus’ is fast entrenching a disaster, the result of the continual application of suites of measures that constituted the Intervention and now its aftermath that are largely unadapted and unabated despite poor results.

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

We debate as a nation the need for reform 50 years after the 1967 referendum eliminated our nation’s indigenous peoples from the Australian Constitution; purportedly made full citizens and yet were rendered constitutionally invisible. Ten years ago, Aboriginal people in prescribed communities in the Northern Territory were made all too highly visible as ‘others’ whose behaviour was unacceptable and who needed to be treated with racially discriminatory impunity as non-citizens.

And still Intervention and Stronger Futures measures persist, a sucken investment of billions in an institutional architecture that is impoverishing and causing harm. Who wants to own up to the errors and the waste? When will the major parties, both now, eventually reverse, will flattened people and institutions magically bounce back as is nothing has happened? Will the community organisations that delivered positive outcomes, demeaned as worthless by the Australian state and its compliant supporters, somehow automatically reconstitute? Unfortunately, I do not think so; it will take years for diminished local organisational capacity to re-establish.

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

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

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

Jon Altman is Research Professor at the Alfred Deakin Institute for Citizenship and Globalisation, Deakin University, and a regular columnist for Land Rights News.
When the Northern Land Council’s Murray McLaughlin, asked me to make a contribution to Land Rights News on the 10th anniversary of the rollout of the Northern Territory Emergency Response (NTER), without thinking about it I readily agreed. For Murray, it was a rare opportunity to get an “inside look” at handling the NTER including how I was co-opted, how I felt about it, and how the Public Service accommodated a senior Army officer being in charge. For me, having left the Australian Public Service in 2014, and no longer being employed by anyone, I saw no reason not to agree.

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

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

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

Whether the measures in the Emergency Response were the right ones or not (and many were needed such as licencing community stores and expanding night patrol services), I think it was very wrong morally, in a policy sense and in every other way not to have properly engaged with Aboriginal people across the Territory and their representative organisations to secure their understanding and advice as the measures were being designed and before they were implemented. The situation in the remote communities of the Northern Territory was a genuine and particular concern in relation to housing, education and community safety. This had become apparent to me from when I returned to the Northern Territory in 2004 to become the Manager of the Office of Indigenous Policy Co-ordination. Moreover, the Territory Government had made some mistakes in responding to this crisis including being too slow in responding to communal violence in Wadeye. In addition, the excellent report it commissioned into the Protection of Aboriginal Children from Sexual Abuse (Little Children are Sacred) concluded that neglect (not sexual abuse) of children in Aboriginal communities had reached crisis levels and demanded that it be designated as an issue of urgent national significance by both the Australian and Northern Territory governments. Undoubtedly, decisive action was needed by the Commonwealth and Northern Territory Governments, but it was needed in concert with Aboriginal people and their representative organisations. It was not for the Commonwealth or its own to start an Emergency Response in such a dramatic manner using the Army to support its rollout. It was not true, as the Commonwealth claimed at the time when it announced the Emergency Response, that the Northern Territory Government was not prepared to act. It developed a sensible set of measures in response to the Little Children are Sacred report after consultation. The Territory Government, with the benefit of hindsight, probably should have engaged the Prime Minister much sooner about the Little Children are Sacred report. But much of the Territory Government’s seeming inaction in Indigenous Affairs stems from a lack of resources and capacity to support a comprehensive development agenda in remote communities. It is not a state and its revenue base is tragically small.

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

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

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

Five years on from the development of the Stronger Futures package, put together by a Taskforce that I led and which worked to the Minister, Jenny Macklin MP, I can appreciate much better why it was not supported in the way it could have been. It was done without consultation and in a way that many were needed such as licencing community stores and expanding night patrol services, I think it was very wrong morally, in a policy sense and in every other way not to have properly engaged with Aboriginal people across the Territory and their representative organisations to secure their understanding and advice as the measures were being designed and before they were implemented. The situation in the remote communities of the Northern Territory was a genuine and particular concern in relation to housing, education and community safety. This had become apparent to me from when I returned to the Northern Territory in 2004 to become the Manager of the Office of Indigenous Policy Co-ordination. Moreover, the Territory Government had made some mistakes in responding to this crisis including being too slow in responding to communal violence in Wadeye. In addition, the excellent report it commissioned into the Protection of Aboriginal Children from Sexual Abuse (Little Children are Sacred) concluded that neglect (not sexual abuse) of children in Aboriginal communities had reached crisis levels and demanded that it be designated as an issue of urgent national significance by both the Australian and Northern Territory governments. Undoubtedly, decisive action was needed by the Commonwealth and Northern Territory Governments, but it was needed in concert with Aboriginal people and their representative organisations. It was not for the Commonwealth or its own to start an Emergency Response in such a dramatic manner using the Army to support its rollout. It was not true, as the Commonwealth claimed at the time when it announced the Emergency Response, that the Northern Territory Government was not prepared to act. It developed a sensible set of measures in response to the Little Children are Sacred report after consultation. The Territory Government, with the benefit of hindsight, probably should have engaged the Prime Minister much sooner about the Little Children are Sacred report. But much of the Territory Government’s seeming inaction in Indigenous Affairs stems from a lack of resources and capacity to support a comprehensive development agenda in remote communities. It is not a state and its revenue base is tragically small.

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

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

The Northern Territory Emergency Response was replaced by the Commonwealth’s 10- year initiative, Stronger Futures in the Northern Territory. Significant aspects of it weren’t supported either by Aboriginal people in the Northern Territory and its development including the legislation was
development which had not secured the necessary support of land councils or traditional owners. Moreover, not without justification, there was an increasing level of concern about the extraordinarily damaging consequences of alcohol abuse in remote communities and the poor policing which the Commonwealth thought was due in part to the Territory Government not doing enough. Political relations between the Commonwealth and Northern Territory governments in relation to Indigenous Affairs were at the lowest point I had ever seen and the Federal response to the Territory’s handling of the Little Children are Sacred report was predictable. It was clear that the Commonwealth wasn’t likely to support the Labor Government in Darwin for much longer nor the community development approach that I had been trained in over many years, starting in the former Department of Aboriginal Affairs, which seemed woefully inadequate to respond to the scale of the crisis in remote Northern Territory. 

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

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

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

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

It was clear from the outset that the Government did not want the Emergency Response to be led by a senior public servant. There was a view conveyed to me more than once from within the Government that it was a time for change, that many politicians thought public servants like me had got us into the crisis in the first place, that the public would not be persuaded to support the Emergency Response if it were
led by public servants and that we needed someone from the Army who had the organisational and planning skills that had been so effective in Australia’s responses to the crises in Timor Leste, the Solomon Islands and Aceh. Air Chief Marshal Angus Houston AC, the Chief of the Defence Force, was asked to come up with a senior person to lead the Emergency Response and that is how I came to be appointed.

Why successful relationships can form very quickly between very different people is often difficult to explain, and particularly when a senior public servant from a different political culture had to work half of the day on the basis I would be his Deputy and fill in the gaps in his experience working with Aboriginal communities which he had not done in the past.

Whether it was right to appoint a general from the Army who had led the response of Australia so well to the Aceh tsunami in 2004 is debatable. After all the crisis in response to the terrorist suicide attacks in Sydney was not caused by a natural disaster or a war and a senior officer visiting remote communities caused them great anxiety and they were very uncharacteristic of me handshaking and walking in the media and others who opposed the Emergency Response. However, there can be no doubt that General Chalmers did well what he was appointed to do. He was a born nurse who had worked in remote communities and had been recently recruited to take the role of Permanent Secretary in Cabinet in their Indigenous Policy area. The decision was then made early to develop a Commonwealth land management initiative which did empower Anindilyakwa people: to at least give them an opportunity to raise their concerns with a senior public servant who many knew, and was prepared to engage with them in a way that would have a significant impact on their lives before it started. I couldn’t have done this without Alice Kemble who did a remarkable job of keeping me informed and brief on the situation.

For me, this was the most challenging task I had ever had to do in the Australian Public Service. Day after day, I was meeting Aboriginal communities including councils and local staff working for health and education services who were committed to the people they supported as much as anyone. Day after day, we were confronted with hostility or suspicion. Many community members whom I had worked with before refused to engage with me or become upset with me personally in meetings. Some communities refused to co-operate at all. Others brought the media, ignored the visit or made speeches opposing what the government was doing. I believed that I owed this to Aboriginal people: to at least give them an opportunity to raise their concerns with a senior public servant who many knew, and was prepared to engage with them in a way that would have a significant impact on their lives before it started. I couldn’t have done this without Alice Kemble who did a remarkable job of keeping me informed and brief on the situation.

Ultimately, General Chalmers and I were more concerned about implementing the Government’s policy in a way that achieved its original purpose of making welfare payments to Aboriginal people. The compromise I reached was to respect the Community Development Employment Program to work with them on this ground-breaking initiative which did empower Anindilyakwa people, possibly for the first time since they achieved land rights and their own land council.

I finally cracked, however, on the day she said in response out of respect for him but he was sympathetic to the concern I had for the adverse consequences to Aboriginal people in the Territory of a set of measures being developed and imposed without involving them at all. Nonetheless, the experience of the time of the Apology was a turning point for me. Having worked in the public service for over 20 years, and at a senior level responding to instructions from Ministers, their advisers and Secretaries, I realised I had lost a sense of myself and what I believed was right. I was right to remove myself from the Emergency Response Centre when it moved to Darwin but mentally I was already preparing to leave from 13 February and returning to be the State Manager. When I did, the opportunity to do something right did come about when I was able to continue negotiating with the Anindilyakwa people to reach agreement about reforms to improve their own lives which they identified and took responsibility for. That was known as the Grote Eylandt Regional Partnership. They signed a letter of intent to the Anindilyakwa Land Council and its supporters for giving me the opportunity to work with them on this groundbreaking initiative which did empower Anindilyakwa people, possibly for the first time since they achieved land rights and their own land council.

Finally, I want to say sorry to Aboriginal people of the Northern Territory. I am sorry not so much because of the role I played in it, but mainly because I remained in a system that made the Emergency Response possible. I was in the wrong place at the wrong time. I thought that it disrupted Aboriginal people’s lives and they were disempowered. They were treated badly in the Emergency Response. I didn’t have to do it and I could have said no. I would also like to let Aboriginal people in the Northern Territory know that I have never regretted for a second the decision I took to do what I thought was right. The Apology brought a very important step and like most other Federation through the Commonwealth Act. He worked in the Northern Territory again as a graduate trainee in 1983, and then a field officer responsible for Indigenous Affairs. He left from 2004 to 2009 as the Commonwealth’s senior officer responsible for Aboriginal Affairs. He returned to Canberra and became the manager of the Centre for Appropriate Technology Ltd and wish to thank them for their patience and kindness to me.

* Brian Stacey is a former senior public servant who worked in Indigenous Affairs in the Australian Government for over 30 years. For many of those years, he worked in the Northern Territory, starting as a graduate trainee in 1983. In 1989, he returned to Canberra and became the manager of the Centre for Appropriate Technology, where he worked as a graduate trainee in 1983. In 2009, he returned to Canberra and became the manager of the Centre for Appropriate Technology Ltd and wish to thank them for their patience and kindness to me.
The CSIRO wants to develop “investment-ready” prospectuses that can establish and sustain land-and-water-based Indigenous enterprise on Indigenous lands in northern Australia. The aim is to have one case study in each of the jurisdictions across the north (Western Australia, Northern Territory and Queensland).

But the studies and their funding, by the Indigenous Advancement Strategy (IAS), have been criticised by Aboriginal groups. The CSIRO says it will work with communities to:

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

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

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

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

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

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

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

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

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

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

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

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

“Indigenous people can and are doing it for themselves, but to develop their lands more broadly, they must also have access to concessional finance.”
Getting chased by buffalo, flying in helicopters, getting enough sleep, and having clean uniforms you can take pride in were just some of the topics covered by Malak Malak Rangers Rob Lindsay, Aaron Green, and Theresa Lemon in their recent interviews for the NT Department of Education’s ‘Conservation Land Management’ video project.

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

This footage, along with some action footage to be taken at the Ranger base at Daly River, will be cut together to make a fifteen minute short film which will be available through the NT Department of Education and on the internet towards the end of the year. This is just one of the projects the Caring for Country branch are taking part in this year to help encourage Indigenous youth to get involved in ranger work.
Holding an annual country camp is a founding principle of the Joint Management Partners of the Judbarra/Gregory National Park. This year’s camp was held at Paperbark Yard in the south of the park. This part of the park is within the Central Land Council region, and provides a great opportunity for Traditional Owners from both NLC and the CLC region to get together.

Camp highlights include Joint Management meetings and workshops, as well as time spent on country with family members both young and old. A tourism workshop allowed Traditional Owners to discuss ideas for tourism related enterprises. Conversations were also held regarding proposals to muster and sell feral animals from within the park, which TOs hope will generate jobs and economic opportunities. Parks & Wildlife service rangers updated the Traditional Owners on park management programs for 2017/18, and undertook a planning session to review and prioritise the implementation of the Plan of Management for the final half of its 10 year time-frame.
It has been a busy and exciting time for the NLC’s Community Planning and Development Program, with the first three community development projects approved by Traditional owner groups. These projects have initiated strategic partnerships with locally recognised and trusted organisations.

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

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

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

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