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Australia

# IN GOOD HANDS

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The people and communities behind Aboriginal-led solutions

Cover image: Allorah Saunders, whose health care is provided by the Tharawal Aboriginal Corporation Medical Service in western Sydney. Photo: Steven Siewert.

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Aboriginal and Torres Strait Islander peoples should be aware that this publication may contain images or names of people who have since passed away. Oxfam acknowledges the Gadigal people of the Eora Nation as the custodians of the country on which Oxfam's Sydney office is based and where this report was produced. We pay our respects to their elders: men and women; past, present and future. We also extend our respect to all Aboriginal and Torres Strait Islander nations who, for thousands of years, have preserved their culture and practices across their nations.

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# FOREWORD



Josie Douglas photo: Dr Douglas receiving the Stanner Prize in 2017. Photo: Andrew Turner, AIATSIS.

For Aboriginal and Torres Strait Islander peoples, sovereignty always comes back to land because we are peoples who have been dispossessed. But it's important to think about what happens on that land in post-colonial Australia. Sovereignty is about land and more —it's also about local government, self-government and control over service delivery.

Aboriginal people possess great knowledge about their culture and they want to maintain and deepen that knowledge. One of the best ways to achieve this end is through the vast network of community-controlled organisations that serve the needs of communities across the country.

I've witnessed this phenomenon in my PhD research, which looked at how young people in Central Australia learn, hold and transmit Indigenous ecological knowledge (often called traditional knowledge). Together with technology like smartphones, our young people are a central element in the Indigenous knowledge system. I found that the major contemporary reflections of Indigenous ecological knowledge, such as going hunting, taking part in ceremonial life, believing in the efficacy of traditional healing practices, valuing language skills, and observing "rules" in relationship to conscious country, are salient

symbols of youth social identity.

Indigenous knowledge continues to be integral to the living landscape in Central Australia and in many parts of Australia. I've seen firsthand how gains have been achieved in the health of Aboriginal peoples when governments prioritise Aboriginal community-controlled health services. Sadly, this approach is not the norm in Australia, as funds have shifted away from community-based organisations.

I've also witnessed the sheer devastation that results when the top-down approach prevails and governments intervene directly in people's lives, such as with the Northern Territory Intervention. This was a complete policy failure. It just devastated people's lives. It took away people's control over their own communities.

What we need in the future is a smarter approach that recognises the inherent right to self-determination of Aboriginal people and communities, and the good economic sense involved in backing this approach. As this report shows, Indigenous knowledge is being applied successfully in a wide range of services and business activities, with good results for Indigenous peoples and, when government funding is involved, a great return on investment.

I call on governments to closely examine the evidence and case studies in this report and to urgently act on the recommendations. The relationship between Aboriginal peoples and non-Indigenous Australians is evidently at a crossroad. To move forward and make gains we need a fresh approach that is based on respect for the right to self-government and self-determination, and a commitment to provide the long-term funding and investment needed to empower Aboriginal communities and the knowledge they possess. Finally, I commend Oxfam Australia for producing this timely and highly relevant contribution to Indigenous policy.

**Dr Josie Douglas**

Dr Josie Douglas is Manager, Policy and Research at the Central Land Council. She won the WEH Stanner award in 2017 for her PhD thesis about Indigenous ecological knowledge in the lives of young Aboriginal people in Central Australia. Josie is a Wardaman woman from the Top End who has lived and worked for many decades in Alice Springs on the lands of the Arrernte people. She was a delegate and facilitator at the Uluru convention, and is a former participant in Oxfam's Straight Talk program.

# EXECUTIVE SUMMARY

The evidence in Australia and overseas is compelling. When Aboriginal community organisations receive the support they need and deserve, and have strong purpose and governance, they successfully address the effects of colonisation, dispossession and inter-generational trauma, which are still part of the lived experience of many Aboriginal and Torres Strait Islander peoples today.

Support for self-determination is the starting point for the way governments in the United States relate to Native Americans. Other countries with similar histories have found creative ways to foster self-determination for their First Peoples. But in Australia the policy pendulum has in many places swung back towards top-down approaches that disempower communities and often deliver inferior results.

The case studies in this report amply explain why community-based services are well placed to respond to the complex needs of the First Peoples of Australia. The unique network of more than 140 Aboriginal medical services is a prime example of how organisations that are grounded in community can deliver results that improve health outcomes and reduce the demand on the hospital system at the same time. Not only do Aboriginal-led services foster self-determination and thus a sense of control and confidence, supporting this model also means that services are holistic, culturally safe, and more trusted.

One of the case studies cited in this report is the **Katungul Aboriginal Corporation Regional Health and Community Services**, based on the south coast of New South Wales, which has helped to stem the inflow of Aboriginal people into the surrounding hospitals by providing an integrated system of preventative care. As the acting chief executive Jo Grant explains, Katungul has a much deeper understanding of the issues facing the Aboriginal people of the region. “We walk and work in two worlds. We have a far better grasp of the issues faced by these communities. We shouldn’t be overlooked because we are an Aboriginal medical service.”

The **Ngalla Maya** employment service in Western Australia is achieving great results for ex-prisoners by taking a cultural approach to its job programs. As the former inmate and now chief executive **Mervyn Eades** explains, “We’ve achieved these results because our mentoring and support are delivered in a holistic way: the cultural stuff, mentoring, that is the heart of our project. We talk a lot about culture. A lot of the young ones don’t have identity in heritage and the self-worth in being part of the oldest culture in the world; they haven’t been taught and told, the stories haven’t been handed down to empower them.”

Despite these results, many Aboriginal organisations are forced to navigate a never-ending treadmill of grant applications in order to keep their lights on and their staff paid. The experience of the **Djirra** family violence prevention service in Victoria is an example of how this plays out. Like other Aboriginal legal services Australia-wide, Djirra faces significant issues with resourcing. On its establishment, the service was funded through the Attorney-General’s Department. In 2013, however, all Aboriginal family violence prevention services were moved to the portfolio of the Prime Minister and Cabinet. As a result, they fell under the Indigenous Advancement Strategy, and had to compete in a competitive tender process for funding. And at the very same time, more than \$500 million was cut from Indigenous affairs programs. This meant programs for Aboriginal victims were competing for funding not only with perpetrator programs but also with mainstream legal aid organisations, state and territory governments, and mainstream providers including for-profit corporations.

Preferencing Aboriginal organisations like Katungul, Ngalla Maya and Djirra is an important starting point for all Australians to work towards a future underpinned by the principle of self-determination, community-control and effective service delivery to the First Peoples of Australia. Not only will this give First Peoples a sense of empowerment, control and indeed sovereignty, but as the case studies in this report show, this approach will help to address the systemic disadvantage that is a consequence of Australian history.

# RECOMMENDATIONS

## 10 WAYS TO FOSTER EFFECTIVE ABORIGINAL-LED SOLUTIONS

- 1. Implement UNDRIP:** The Council of Australian Governments (COAG) develop an action plan to implement the self-determination provisions of the UN Declaration on the Rights of Indigenous Peoples through a program that mandates this principle in all service delivery for Indigenous peoples.
- 2. Negotiate Settlements:** Federal, state and territory governments legislate frameworks for reaching negotiated settlements with Traditional Owner groups as an alternative to drawn-out legal battles, and support autonomy for First Peoples communities to negotiate treaties and agreements (see Part VII).
- 3. Preference Indigenous Organisations:** Government services for First Peoples preference First Peoples organisations and businesses; where no suitable organisations exist, funding terms must require non-Indigenous recipients to partner with First Peoples organisations and businesses.
- 4. Transfer Power to Communities:** Australian governments transfer power and resources to First Peoples communities through a long-term strategy that matches communities and organisations to service delivery, and builds the capacity of community leaders to manage these entities.
- 5. Invest in Capacity Building for AMS:** The Federal Government invest a minimum \$100 million to build the capacity of Aboriginal medical services so that they can fill services gaps, noting that a more substantial commitment over four years may be needed once service mapping is finalised (see Part V).
- 6. Expand Justice Reinvestment Programs:** Australian governments commit to expanding justice reinvestment programs around Australia, and establish a national coordinating body as recommended by the Australian Law Reform Commission's *Pathways to Justice* report (see Part IV).
- 7. Employ More Indigenous People in Service Delivery:** The corporate sector through peak organisations, together with governments, develop an Indigenous workforce and training strategy to ensure that greater numbers of First Peoples are directly employed in service delivery to First Peoples.
- 8. Tackle Over-crowded Housing:** Develop and deliver a 'Good Health for Good Housing' program in partnership with the National Aboriginal and Torres Strait Islander Housing Authority that will reduce over-crowding and improve the quality of living conditions for First Peoples.
- 9. Expand Land and Sea-Based Organisations:** Australian governments expand land and sea-based organisations through the Indigenous rangers program, and by developing business opportunities through trusts to support Indigenous communities and businesses in the fishing, timber and natural resource management industries. This strategy must include Traditional Owner-led management and control of Crown land, water and other public natural resources (see Part VI).
- 10. Strengthen Accountability for Service Delivery:** Australian governments create an independent, Aboriginal-led accountability body in each of their jurisdictions that can monitor, investigate and report on funding of services to First Peoples.

# INTRODUCTION

There is overwhelming evidence from Indigenous peoples around the world that the results are generally much better when local communities create and own the solutions to the challenges they face. And it is not only Indigenous peoples and non-government organisations like Oxfam Australia that hold this view.

The Federal Government’s **Productivity Commission** said in its *Overcoming Indigenous Disadvantage* report that “Community involvement is a key factor in the success of most case studies in this report”.<sup>1</sup> The commission cited decades of research from the United States which found that “self-determination led to improved outcomes for North American Indigenous people”.

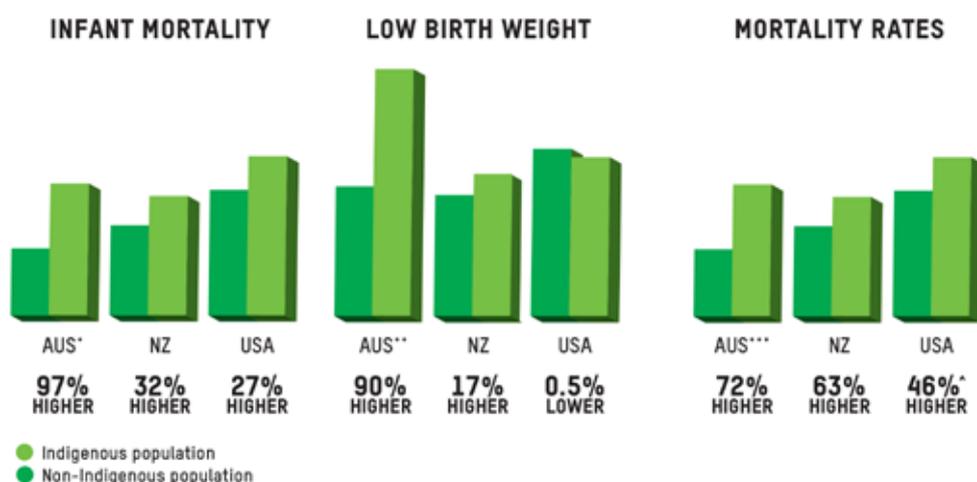
Unlike Native Americans and Indigenous peoples in countries with similar colonial histories, like New Zealand and Canada, First Peoples in Australia are a long way from attaining self-determination, or anything like the rights enshrined in the **United Nations Declaration on the Rights of Indigenous Peoples**. First Peoples in Australia are yet to achieve recognition through Treaty, unlike their Indigenous brothers and sisters in other countries.

*“[Self-determination] has proven to be the only policy that has worked to make significant progress in reversing otherwise distressed social, cultural and economic conditions in Native communities.”*

**Cornell and Kalt**

There is now a need for urgent action to ensure that self-determination for First Peoples becomes the policy norm in Australia. Decades of top-down, paternalistic policy have seen results go backwards for First Peoples across many key indicators. Indigenous peoples of Australia are well behind their contemporaries in comparable countries such as the United States and New Zealand. As shown by Figure 1, the rate of infant mortality is almost double

**Figure 1.**  
Health indicators for Indigenous Peoples in three countries, compared to non-Indigenous populations



\* The infant mortality rate for Indigenous Australians is 6.3 per 1,000 births compared with 3.2 for other Australians — this is a 97% disparity.

\*\* 11.8% of Indigenous Australians are born with a low birth weight compared with 6.2% among other Australians — this is a 90% disparity.

\*\*\*The mortality rate for Indigenous Australians is 999 per 100,000 compared with 578 for other Australians.

Data supplied by Australian Institute of Health and Welfare. Australian data 2014–2015, US data 2012, NZ 2012–2015. \*Espey D, 2014. *American Journal of Public Health*.

<sup>1</sup> SCRGP (Steering Committee for the Review of Government Service Provision), *Overcoming Indigenous Disadvantage: Key Indicators 2016*, Productivity Commission, Canberra, 2016, p.3.19.

for Indigenous peoples of Australia, compared with only 27% higher for Native Americans and 32% higher for New Zealand's Maoris. The gap in mortality is also much higher in Australia: 72% versus 46% in the US and 63% in NZ. On employment and income, Indigenous peoples of Australia also face a yawning gap.

In the United States, self-determination is embedded in the policy framework, as documented extensively by the research generated by the **Harvard Project on American Indian Economic Development**. As academics Cornell and Kalt write, this fundamental principle has been the policy norm in the US for five decades. "Since the 1970s, federal American Indian policy in the United States has been aimed at promoting self-determination through self-governance by federally-recognized tribes," they write. "This policy has proven to be the only policy that has worked to make significant progress in reversing otherwise distressed social, cultural, and economic conditions in Native communities.<sup>2</sup> And even though Republicans have been less enthusiastic than Democrats, the principle of self-rule is maintained as the most effective way to address the entrenched disadvantage of Native Americans. "Like a U.S. state, tribes are subject to federal law, but operate under their own constitutions, administer their own judicial systems, and implement self-managed tax and regulatory regimes," Cornell and Kalt add.<sup>3</sup> **Karen Driver**, a former special assistant to **President Barack Obama** for Native American Affairs, says it is important to focus not only service delivery mechanisms but also the development of the institutions that support governance and community-led decision-making. "Aboriginal governmental and community-led structures need to be legitimate in the eyes of the communities they serve."



Photo: Hollie Johnson.

Despite being so far behind, the First Peoples of Australia have fought tenaciously to overcome colonial domination by creating community-based organisations to deliver programs that serve needs directly. These organisations have demonstrated good results and value for money, thus ensuring their ongoing survival and expansion. The growing number of Aboriginal enterprises — with more than 3,000 Aboriginal corporations now registered under federal law — proves that Aboriginal people have organised themselves on a vast scale to overcome entrenched obstacles and build a better future for their communities. In the most recent federal election, however, Indigenous leaders were disappointed to see their call for investment to build the capacity of Aboriginal medical services was totally ignored. This unique network of more than 140 medical services around Australia provides an effective, though limited response to the health needs of the First Peoples of Australia.

As this report shows, community-led organisations reach into every corner of this country to deliver a wide range of essential services, from the well-known Aboriginal legal and medical services that began in the early 1970s to the more recent land and sea management groups that have shown how to look after country over the past decade. Karen Driver says that investment in Indigenous governments and community-led groups provides a key component of what is termed "nation building", namely cultural fit. "Building on traditional knowledge and values is key to effective solutions rooted in self-governance," she adds.

A thread running through all of these works is that investment in the community delivers big returns down the track. Whether it be stemming the inflow of people to hospitals through investment in primary and preventative health care, or the expansion of ranger operations to control feral flora and reduce catastrophic fires during the dry season, these community-led services are improving the wellbeing of Aboriginal people, their communities and the nation as a whole. The examples you'll find in this report represent a call to action and a reversal of a policy focused on funding services delivered by fly-in, fly-out non-Indigenous entities.

<sup>2</sup> S Cornell and JP Kalt, 'American Indian Self-Determination: The Political Economy of a Successful Policy', JOPNA Working Paper, 2010, p.v.

<sup>3</sup> *ibid.*, p.3.

While you'll find many of these stories a source of great inspiration, governments around Australia should see the good economic sense in backing and investing in Aboriginal communities. Sadly, support for communities has gone backwards over the past decade. The Productivity Commission's 2017 *Indigenous Expenditure Report* shows that a declining amount of government expenditure has been allocated directly to First Peoples organisations. In 2008–09, the share of Indigenous specific services — targeted expenditure assumed to relate exclusively to Aboriginal and Torres Strait Islander Australians — funded by federal, state and territory governments was 22.5%, whereas this had fallen to 18% in 2015–16.<sup>4</sup> This decline in part reflects the Federal Government's Indigenous Advancement Strategy (IAS), which gave preference to large, non-Indigenous organisations as service providers, with more than half the funding allocated in this way.

**The Indigenous Expenditure Report shows that a declining amount of government expenditure has been allocated directly to First Peoples.**



Photo: Hollie Johnson.

National Audit Office (ANAO) found that the Federal Government is still “in the early stages of implementing an evaluation framework that has the potential to establish a sound foundation for ensuring that evaluation is high quality, ethical, inclusive and focused on improving the outcomes for Aboriginal and Torres Strait Islander peoples”.<sup>5</sup> The ANAO said there had been “substantial delays in establishing an evaluation framework”. These delays were in spite of “its initial policy commitment to develop an evaluation framework for the IAS by June 2014”. Such a woeful record would not be tolerated of Indigenous organisations, which are getting on with the job of providing services for communities around Australia. The appointment of **Romlie Mokak** to the Productivity Commission is an encouraging sign. It is hoped that his work on the Indigenous Evaluation Strategy will find meaningful ways to reverse this trend and empower community-based organisations through better reporting on their effective work.

As an organisation that fundamentally supports the right to self-determination, Oxfam Australia wants to see governments enter into Treaty negotiations with First Peoples. We believe that creating the national Voice to Parliament, as called for in the **Uluru Statement from the Heart**, is an important step towards recognition. While these processes are important and will take time, there's a practical way that governments can make self-determination real for First Peoples, and that's through support for home-grown, community-based service delivery. Aboriginal community control is an important first step on the journey towards respecting the fundamental right of self-determination for the First Peoples of Australia.



Photo: Steven Siewert.

More than five years after the IAS was launched with great fanfare, it's pretty clear that the top-down approach is a flawed model and should be abandoned in favour of one that backs communities. A 2019 report by the Australian

<sup>4</sup> SCR6SP (Steering Committee for the Review of Government Service Provision), *2017 Indigenous Expenditure Report*, Productivity Commission, Canberra, 2017, p.xii.

<sup>5</sup> The Auditor-General, Report No.47 2018–19, *Performance Audit Evaluating Aboriginal and Torres Strait Islander Programs*, ANAO, Canberra, 2019, p.8.

# I. ORIGINS

## TAKING CHARGE OF OUR OWN DESTINY

Aboriginal activists in the 1920s articulated the core principles of self-determination and community control, writes **John Maynard**.



“Brothers and sisters, we have much business to transact so let’s get right down to it.” Those are the very words expressed by my grandfather **Fred Maynard** at the beginning of his inaugural address as president of the **Australian Aboriginal Progressive Association (AAPA)** in Sydney in April 1925. His speech marked the opening of the first Aboriginal civil rights convention ever staged in this country. It was conducted at St David’s Church and Hall on the corner of Arthur and Riley street, in Surry Hills. Many of the issues that the organisation challenged would, decades later, be finally recognised with the 1967 referendum.

The AAPA was instantly front-page news, with headlines trumpeting “On Aborigines Aspirations – First Australians To Help Themselves – Self Determination” and “Aborigines In Conference – Self Determination Is Their Aim – To Help A People”. This is an amazing revelation: self-determination

as a platform being expressed by Aboriginal activists five decades before the Whitlam government’s directive, which is widely attributed as instigating self-determination as Aboriginal policy.



Mr. F. W. Maynard, president of the Society.

It was noted that over 200 enthusiastic Aboriginal people were in attendance and “they heartily supported the objectives of the association”.<sup>6</sup> Fred Maynard wasted no time in outlining the Association’s directives:

*We aim at the spiritual, political, industrial and social. We want to work out our own destiny. Our people have not had the courage to stand together in the past, but now we are united, and are determined to work for the preservation for all of those interests, which are near and dear to us’.*

In 2002, notable Aboriginal commentator **Bill Jonas**, in his capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner, stressed:

*We need to adopt a rights approach that capacity to transform social, economic and political relations in Australia.<sup>7</sup>*

Recognition of the same call for “political, social and industrial” reform several decades apart clearly shows how little progress has been achieved. For decades, Aboriginal voices have stated the obvious needs and answers but have largely been ignored.

<sup>6</sup> *The Daily Guardian*, 24 April 1925.

<sup>7</sup> *The Australian*, 22 May 2002.

In 1925, Fred Maynard revealed that there were many government policies that were objectionable, “and if we can awaken the public conscience we hope to have them removed”.<sup>8</sup> Sadly, at that time wider white Australia was neither receptive nor ready for such far-thinking insight, particularly from an Aboriginal perspective.

Newspaper coverage of the first conference highlighted the large, enthusiastic cross-section of the Aboriginal community present:

*the old and young were there. The well-dressed matronly woman and the shingled girl of 19. The old man of 60 and the young man of athletic build. All are fighting for the preservation of the rights of Aborigines for self-determination.*<sup>9</sup>

## THE FORGOTTEN PIONEERS

Fred Maynard declared that “Aboriginal people were sufficiently advanced in the sciences to control their own affairs”. What is amazing about the AAPA and Maynard is that the memory of this incredible era of Aboriginal political activism has largely been forgotten or erased and one may argue that this was encouraged.

The Aboriginal activists of the 1920s were articulate, eloquent and educated statesmen and women far removed from the wider misconceptions of the time that portrayed Aboriginal people as belonging to the Stone Age, unable to be educated and a dying race.

The AAPA would eventually hold four annual conferences — Sydney, Kempsey, Grafton and Lismore — before they were harassed and hounded out of existence by the police acting for the NSW Aborigines Protection Board. The AAPA attracted widespread support from Indigenous communities, eventually establishing 11 branches, with a membership that exceeded 500.

Considering that the entire Aboriginal population of New South Wales at that time on Protection Board figures numbered less than 7000, and with the greater majority of Aboriginal people confined on restrictive reserves with denied mobility, this was a staggering achievement. The

AAPA even opened their own offices in Crown Street with the phone connected.

News of the AAPA spread rapidly through an active Indigenous community network and the formation of the organisation filled Aboriginal people with hope and inspiration, with the knowledge that some of their own were now speaking out against the oppressive policies that confronted Aboriginal people and communities. One old man “wrote from a far back settlement, asking that someone should come and tell them about the ‘Freedom Club’.”

## A MANIFESTO FOR SELF-DETERMINATION

The AAPA platform was clearly expressed in a manifesto that was sent to newspapers and politicians at both state and federal levels. It wanted a national land rights agenda, demanding around 40 acres of land to be granted to every Aboriginal family in the country. It wanted



Fred and Emma Maynard  
Photo courtesy of John Maynard.

the Protection Board policy of removing Aboriginal children from their families stopped, and the Board itself to be scrapped and replaced by an all-Aboriginal body to oversee Aboriginal affairs. It wanted citizenship within their own country, a royal commission into Aboriginal affairs, the Federal Government to

take charge of Aboriginal affairs, and the right to protect a strong Indigenous cultural identity.

The AAPA’s trailblazing work inspired the formation of other activist groups elsewhere. In 1936, a small group of Victorian Aborigines led by **William Cooper** formed the **Australian Aborigines’ League (AAL)**. Since September 1933, Cooper had been gathering signatures for a petition to the King, asking for, among other things, Aboriginal representation in federal parliament. In 1937, Jack Patten and William Ferguson founded the **Aborigines Progressive**

<sup>9</sup> *The Daily Guardian*, 7 May 1925.

<sup>8</sup> *The Daily Guardian*, 16 July 1925.

**Association (APA)** to campaign for the betterment of Aboriginal Australians. The APA and the AAL joined forces in 1938, when celebrations were planned across Australia to mark the 150th anniversary of the arrival of the First Fleet. They organised a “Day of Mourning” for 26 January to draw attention to the decimation of Indigenous populations since the arrival of Europeans.

*“We the representatives of the original people, in conference assembled, demand that we shall be accorded the same full right and privileges of citizenship as are enjoyed by all other sections of the community.”*

**Fred Maynard, 1925**

The AAPA was adamant that Aboriginal community control over their lives and directives was the only, and correct, decision. When one reflects upon the success of Aboriginal community-controlled services since the 1960s, like Aboriginal medical services, children’s services and Aboriginal legal services, the AAPA has been proven historically correct.

In conclusion, it is fundamental to recognise and learn from the past – not just for Aboriginal Australia but for the wider community. At the close of the 1925 conference in Kempsey, my grandfather delivered a powerful resolution:

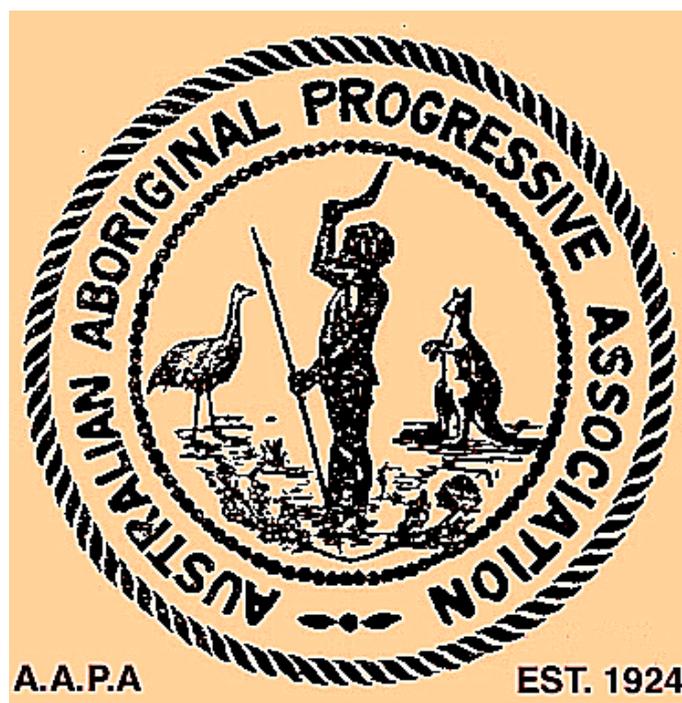
*As it is the proud boast of Australia that every person born beneath the Southern Cross is born free, irrespective of origin, race, colour, creed, religion or any other impediment. We the representatives of the original people, in conference assembled, demand that we shall be accorded the same full right and privileges of citizenship as are enjoyed by all other sections of the community.*

The events, people and voices of the past can inspire and lead this country to a new, shared future of prosperity where we are truly reconciled. We are left today to ponder, and lament, what might have been.

If the AAPA demands for enough land for every Aboriginal family had been met back in 1925, we would have witnessed several decades of Aboriginal opportunity to build on a solid base of economic independence. If the demand had been met to stop the Board’s practice of removing Aboriginal children from their families, we would not have endured another five decades of that horrific practice.

**The AAPA was adamant that Aboriginal community control over their lives and directives was the only, and correct, decision.**

If a rich Aboriginal cultural base had been recognised and protected, we would not now be entwined in the slow process of putting together a fragmented jigsaw puzzle, with many of the important cultural pieces, including language and story, missing.



# A DAY FOR PROTEST, NOT CELEBRATION

Aboriginal protests in 1938 — on the 150th anniversary of the landing of the First Fleet — advanced the civil rights movement for First Peoples in Australia and began a debate we are still having today, writes Ngarra Murray.



In January 1938, my grandfather donned a black suit as a sign of mourning, and in the summer heat he marched in silence through the streets of Sydney.

The 150th anniversary of the landing of the First Fleet in Australia had for others been a time to celebrate. There was a parade and a re-enactment of the landing, with Aboriginal men brought in from a remote area to assist in the re-enactment after Sydney residents refused to participate.

My grandfather, **Sir Douglas Nicholls**, our **Uncle William Cooper** and about 100 fellow Indigenous protesters had to wait patiently for the festivities to pass before they were allowed to march.

It was one of the first civil rights protests by Indigenous people against their callous and discriminatory treatment in Australia. When the protestors arrived at the Australian Hall in Elizabeth Street, they were not allowed to enter via the front door — they were instead told to enter through the back.

On this momentous day in 1938, my grandfather was only 32. He had just retired from a successful career with Fitzroy in the Victorian Football League.

This is a story my large family — my grandfather's five children, their children, my 11 siblings, my cousins and my own children — all know so well.

This moment on 26 January 1938 is part of our family history. It is a story that makes our family so proud.

But it is also a source of anger and frustration.

***“We refuse to be pushed into the background. We have decided to make ourselves heard”.***

**Jack Patten, 26 January 1938**

**Aborigines Progressive Association (APA)** president **Jack Patten** addressed the historic meeting, convened to call for an inquiry into the treatment of Indigenous people on government missions and to call for equal rights.

Opening the conference, Mr Patten told the gathering this was Aboriginal People's day of mourning — a day to mourn their “frightful conditions” and their treatment on the very land that until 150 years previous had belonged to their forefathers.

“We refuse to be pushed into the background,” Mr Patten told the crowd. “We have decided to make ourselves heard.”

He continued, “White men pretend that the Australian Aboriginal is a low type who cannot be bettered. Our reply to that is, ‘Give us the chance!’ We do not want to be left behind in Australia’s march to progress. We ask for full citizens’ rights.”

The resolution passed by the group included an appeal for new laws for the education and care of Aboriginal people, and a new policy that would lead to equality in Australia. Despite the sensible and fair-minded calls made in 1938, it was another 29 years before the referendum that would remove two constitutional provisions that discriminated against Aboriginal people. These changes allowed us to be counted in Australia’s population and gave the Commonwealth the power to legislate for Indigenous people.

**Eighty years on, the First Peoples of Australia still have no reason to rejoice on 26 January — and we never will.**

Nearly 50 years after that historic meeting, during the 1988 bicentenary celebrations, the year we didn’t “celebrate ‘88”, an estimated 40,000 people again marched through the streets of Sydney on 26 January to once more draw attention to the mistreatment of Aboriginal people.

The protesters called for land rights. It had been 200 years since British colonial settlement, the beginning of the dispossession of our people of their land without treaty or recognition.

The beginning of such a long period of violence and genocide to take our land.

## **TIME FOR CHANGE**

The First Peoples of Australia still have no reason to rejoice on 26 January — and we never will.

Looking back at the words spoken on that day eight

decades ago, there is an inescapable poignancy. These same words, these same themes, these same issues remain central to the debate we continue to have in Australia today.

Far too many Indigenous Australians continue to face stark inequality, and remain a marginalised and impoverished minority.

Aboriginal and Torres Strait Islander children are 25 times more likely to be sent to detention than non-Indigenous young people, the child mortality rate is double the national average, and Indigenous people still die at least 10 years younger than non-Indigenous Australians.

26 January is a day of sorrow and despair. For us, 26 January 1788 is the day our country was invaded, our people killed and our land stolen.

A national day of celebration feels like dancing on the grave of somebody’s grandparent on the day of the anniversary of their death.

There is growing momentum in support of our call to change the date of Australia Day to a national day that can be celebrated by all Australians.

In 2016, the City of Fremantle in Western Australia decided it would cancel its traditional celebrations on 26 January and hold a culturally inclusive event two days later.

In Victoria, the Moreland, Darebin and Yarra councils have voted to scrap events on the day, with the Hobart City Council also officially throwing its support behind the bid to change the date.

Now, the much-loved “tradition” of Triple J’s Hottest 100 has been shifted to 27 January after an online survey found a majority of respondents supported the change of date for the countdown.

The inescapable reality is that Australia’s current national day excludes and alienates our people. Eighty years after my grandfather marched the streets in a fight for equality, the time to change the date is here.

# II. FAMILY AND COMMUNITY

## WRAP-AROUND SERVICES AT OUR 'CHILDREN'S PLACE'

Aboriginal-led early childhood centres provide much more than education. Bubup Wilam offers wrap-around services, supports its staff and achieves great results, writes Lisa Thorpe.

A decade ago, there were as few as eight Aboriginal children enrolled in early childhood centres in the City of Whittlesea in Melbourne's north, according to an estimate by the Australian Institute of Family Studies. This poor record was despite the evidence that investment in early education provides overwhelming benefits for decades to come.

Today, the **Bubup Wilam for Early Learning Aboriginal Child and Family Centre** provides culturally centred care for about 70 Aboriginal children aged six months to six years.

We operate out of a purpose-built, innovatively designed centre that opened at 76 Main Street, Thomastown, in 2012 on Wurundjeri land. We have a 50-year peppercorn lease with the Whittlesea Council. Bubup Wilam means

"children's place" in Woi Warrung language, and everything we do is based on self-determination and Identity as the core fundamentals in ensuring that the children in our care are healthy, safe and strong.

**Our service has always been about health and wellbeing, a holistic approach for children and families.**



Parent Jessica Jones and her son Aston who attends Bubup Wilam. Photo: James Henry.

Education is what brings the children and families to Bubup Wilam, but our service has always been about health and wellbeing. We are the first Aboriginal early learning centre to be accredited as an early intervention child service in Australia. This means we can support families through the National Disability Insurance Scheme (NDIS), and they can have more support to address the early interventions that may be needed. We have received funding from the Eastern Melbourne Primary Health Network to support the development of our BWEL health and wellbeing program, which is inclusive of a maternal and child health nurse, and other allied health specialists. The Early Childhood Intervention Service, which is funded to support children with developmental needs, sits inside the BWEL program.

Our centre is driven by an educational focus and supported by health and wellbeing services for our families, but knowing and growing our children's Identity is the overriding influence and is most important. Our educators

are skilled in picking up what is going on. Then we engage with the parent — it is their child, and they must take the lead role in addressing all matters relating to the child, good or bad.

We are successfully engaging with, and supporting, vulnerable Aboriginal children and families in the northern suburbs of Melbourne, and providing them with an integrated range of services. These include our Aboriginal curriculum in early years, education and care, kindergarten, health assessments, case management, cultural programming, allied health services, parenting support, transition to school/extension programs, individual education, health and wellbeing learning plans, onsite vocational educational and training, and employment for Aboriginal people. This is provided to all our families at varying degrees, but we must never forget being an Aboriginal child in this country is a vulnerability to begin with.

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## TRAINING FOR ABORIGINAL PEOPLE BY ABORIGINAL PEOPLE

We are an ambitious centre: we have great ambition for the children in our care, and for our staff. Since its inception in 2012, Bubup Wilam has had a vision and commitment to develop an education and training program that would support the workforce development, employment, training and career pathway opportunities of Aboriginal people within the organisation. This was to uphold the organisation's values in developing and supporting the growth and workforce development of Aboriginal people, while also addressing the gap in the lack of Aboriginal people trained with the qualifications to work within the organisation.

The vision motivated Bubup to develop a partnership with a registered training organisation (RTO) that would enable the organisation to be deeply involved in preparing content through an Aboriginal perspective. Bubup Wilam wanted to provide onsite training that ensured a supportive learning environment, that made the most of the skills and knowledge trainees brought with them, and that embraced and respected their Aboriginality and knowledge system and ensured the best opportunity for success. It was

important that the program would be delivered onsite so that it catered for a small intake of students.

As well as the accredited training component, Bubup also wanted to ensure that ongoing training and support were subsequently provided to build the capacity of the employees. This would require hands-on and theory-based professional development and a leadership succession plan that ensured our trainees and employees would have opportunities, dreams and aspirations for career and leadership development.

This program came to life in 2014 and has been a success from the outset.

We are a good employer — in 2016 we won the distinguished Medium Employer of the Year award at the Victorian Training Awards. There are 48 staff at this centre, with our staffing ratios well above the benchmark. First Nations people make up more than 70% of the leadership positions and more than 50% of overall staffing.

**Next on our agenda is to become a registered training organisation.**

## LOOKING TO THE FUTURE

Next on our agenda is to become a registered training organisation. We are determined to have our own RTO. We have been running the onsite training for four years, and I believe the results are much better than in the mainstream system.

One challenge outside our control is funding. Our centre was established in 2010, when the Federal Government invested \$8 million to build the centre and operate it for a

number of years. The Victorian Government provided an additional \$500,000. The centre operated under a National Partnership Agreement, which ended in June 2014. After this time, funding was meant to be picked up by the State Government, but this funding has never been granted.

It is a shame that governments take such a short-sighted approach, given the evidence that shows that every dollar spent on early childhood education saves \$12–16 down the track. OECD figures also indicate that Australia is at the bottom end of the ladder.

Our culturally strong, purpose-built centre is achieving great results. We have been rated as “Exceeding” the National Quality Standard in our assessments taken in 2017 and in 2019. Given what we have achieved, we believe that governments at all levels should invest in Aboriginal-led early childhood services.

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## ‘A SENSE OF IDENTITY’

**Koorrin Edwards, a Gunnai, Gunditjmara, Mutti Mutti and Yorta Yorta woman, explains why Bubup Wilam is special to her and her two children, Worriyel and Minnahlah.**

Bubup embeds kinship into the curriculum. When we sign the kids up we write out family trees out. The centre connects everyone to each other to show how a lot of kids are related. They have the honour roll of Elders up on a board as you walk in. A lot of kids that go there are related to those names. The children gain knowledge of who they are and where they come from. They gain a sense of identity. I remember writing my kids names under more than half the names on that board. Our family has always been strong in who we are and our identity and its lovely to be able to see that happening to our children when they are not in our presence.

Bubup is special to me because a lot of the educators are trained at Bubup and they are Aboriginal. They have male role models as well which is amazing because in a child’s life they usually find that a female is the core person, especially for children that don’t have a male in their life it is beautiful to see there are other men around to be able to

help raise the children and put a paternal aspect into some children’s lives. I love the big open space, the children are welcome to go into each other’s rooms, so siblings are able to see each other and hang out with each other.

Every Monday and Friday they do smoking ceremonies, they are really connected to our culture and embed that into the children. They go out to connect to country once a week, the 3–4 year olds on a Tuesday, the babies and toddlers go on Thursday. They go out to the bush and have lunch. My son absolutely loves it, he loves being outside and outdoors.

My children have a very strong sense of culture. My parents and my partner’s parents have embedded it into us, they get it at home and at Bubup, it makes them feel comfortable. They come home and talk about the stories they learned.



Parent Koorin Edwards and her children Worriyel, 4, left, and Minnahlah, 2, right, who attend Bubup Wilam. Photo: James Henry.



## SUPPORTING SELF-DETERMINATION FOR CHILDREN AND FAMILIES

Aboriginal and Torres Strait Islander community-based organisations have developed transformational ways to support safety and wellbeing for our children, writes **Muriel Bamblett AO**, Chairperson of SNAICC-National Voice for Our Children and CEO of the Victorian Aboriginal Child Care Agency

The majority of Aboriginal and Torres Strait Islander children grow up in supportive, loving and positive environments, connected to their families, communities and cultures. However, many families continue to be impacted by intergenerational trauma and experience entrenched poverty that has resulted from the negative effects of colonisation and past and present discriminatory laws, policies and practices, including forced child removals. These impacts can manifest in higher rates of drug and

alcohol use, mental health issues and family violence. And it's often children who are affected the most when living households and environments that set the trajectory for a life of vulnerability and disadvantage.

These issues are compounded by policies and social attitudes that fail to acknowledge past harm, support healing and address disadvantage for communities. Discrimination is perpetuated through poor and culturally

insensitive decision-making in child protection that often fails to recognise the strengths of Aboriginal and Torres Strait Islander cultures, and wrongly applies assumptions about the dysfunction of Aboriginal and Torres Strait Islander parents and communities in providing care for children.<sup>10</sup> A number of our families have been denied the necessary support, assistance, guidance and training to break the continuing cycle of removal – a number of the children Aboriginal family services are currently dealing with are second and third generation of children who themselves had been removed. These issues help to explain why Aboriginal and Torres Strait Islander children are 11 times more likely to be removed from their families compared with other Australians.

Despite the disproportionate level of disadvantage that Aboriginal families face, they are under-represented in

accessing the services that could provide culturally safe support to address these issues and influence the incidence of child removals. Families continue to deal with a range of complex issues for which there are no Aboriginal and Torres Strait Islander specific programs or services available, such as parenting programs. SNAICC believe that for our families we must create an environment of caring and nurturing, to facilitate the education and development of our parents.

The answer lies in empowering Aboriginal and Torres Strait Islander families and communities to drive their own solutions. The evidence clearly shows that the strengths to address child wellbeing and safety concerns lie within Aboriginal and Torres Strait Islander communities as there is extensive research documenting the unique value of Indigenous-led solutions to improving outcomes.<sup>11</sup>



Muriel Bamblett AO, chief executive of the Victorian Aboriginal Child Care Agency. Photo: VACCA.

<sup>10</sup> Family Matters et al., *The Family Matters Report 2018*, SNAICC, 2018, <<https://www.familymatters.org.au/wp-content/uploads/2018/11/Family-Matters-Report-2018.pdf>>.

<sup>11</sup> J Lavoie et al., 'Have investments in on-reserve health services and initiatives promoting community control improved First Nations' health in Manitoba?', *Social Science & Medicine*, vol. 71, no. 4, 2010, pp.714–717. R Ritte et al., 'An Australian model of the First 1000 Days: An Indigenous-led process to turn an international initiative into an early-life strategy benefiting Indigenous families', *Global Health, Epidemiology and Genomics*, vol. 1, 2016. K Osborne et al., *What Works? A Review of Actions Addressing the Social and Economic Determinants of Indigenous Health*, Australian Institute of Family Studies, 2013, retrieved from <<https://www.aihw.gov.au/getmedia/8eab67d7-1752-45e7-aa82-ffaf33ce7e13/ctgc-ip07.pdf.aspx?inline=true>>. M Salmon, F Skelton, K Thurber & L Kneebone, 'Intergenerational and early life influences on the well-being of Australian Aboriginal and Torres Strait Islander children: Overview and selected findings from Footprints in Time, the Longitudinal study of Indigenous children', *Journal of Developmental Origins of Health and Disease*, vol. 10, no. 1, 2018, pp.17–23. S Blacklock et al., 'Stronger ways of working with Aboriginal children and families', *Developing Practice: The Child, Youth and Family Work Journal*, no. 44, 2016, pp.97–100.

## ROLE OF COMMUNITY ORGANISATIONS IN CHILD SAFETY AND WELLBEING

Aboriginal community-controlled organisations (ACCOs) working in the child safety and wellbeing field have a track record in providing prevention and early intervention services to support families to safely care for their children so that children do not have to be removed. ACCOs also work to find kinship carers for children who are removed from their parents and support the meaningful participation of children and their families in child protection decision-making. They provide pre- and post-reunification services, supporting families to make the changes necessary to have their children returned to them and once returned, make sure they are not removed again. In some jurisdictions, ACCOs case manage and have legal guardianship of children who are in out-of-home care, and focus on safely reunifying them with their families wherever possible. Transferring legal guardianship from the government to Aboriginal organisations is transformative because it means these agencies have full legal responsibility for Aboriginal children, acting in the place of the State as a child's guardian and promoting self-determination.

In parts of the country where ACCOs have received significant support and resources over decades, many have developed a very high level of service capacity. They have a significant community and workforce development capability and have become leading employers in their communities while delivering multi-faceted and complex services to meet the range of needs for children and families. Organisations like the **Victorian Aboriginal Child Care Agency (VACCA)** where I am the CEO, also lead on the design of culturally safe and responsive service models, and in developing systems and processes for monitoring and evaluating the outcomes of service delivery.

From the data available, it is evident however that most governments across the country provide very limited funding to resource ACCO child protection and family support services. For example, in the Northern Territory,

Transferring legal guardianship from government statutory bodies to Aboriginal organisations is transformative because it means Aboriginal and Torres Strait Islander agencies have full legal responsibility for Aboriginal children acting in the place of the State as a child's guardian and promoting self-determination.

ACCO services received just 3% of all funding to child protection and family support services in 2016-17, while in Western Australia only 5% of total family support and intensive family support funding, and 11% of total out-of-home care funding, went to ACCO services.<sup>12</sup> Queensland, on the other hand, provides to ACCOs a greater proportion of its funding to family support and intensive family support services—19.6% and 34% respectively.<sup>13</sup>

<sup>12</sup> Family Matters Report 2018, pp 82-83.

<sup>13</sup> Family Matters Report 2018, p 83.

## THE EVIDENCE

In order to effectively respond to the needs of Aboriginal and Torres Strait Islander children and families, all governments share a responsibility to work alongside Aboriginal and Torres Strait Islander communities and support their self-determination in child protection matters. In this context, self-determination includes ensuring that ACCOs design and deliver programs that reflect the needs of the communities in which they work. This work requires that government laws and policies support the role of and significant investment in ACCOs, and that strong partnerships are developed between ACCOs and government and mainstream organisations. International and Australian evidence strongly supports the importance of Indigenous participation for achieving positive outcomes in service delivery for Indigenous children and families. Studies in the United States have found that the best outcomes in community wellbeing and development for Indigenous peoples are achieved when those peoples have control over their own lives and are empowered to respond to and address the problems facing their own communities.<sup>14</sup> Canadian research has shown a direct correlation between increased Indigenous community-control of services and improved health outcomes for Indigenous peoples<sup>15</sup> and a direct connection between Indigenous self-government and reduced rates of youth-suicide.<sup>16</sup>

Existing programs in Australia, such as Victoria's guardianship programs (discussed in detail below), where ACCOs have been granted legal guardianship of Aboriginal children in out-of-home care, have also seen promising results. Preliminary data indicates that children in these programs have remained connected to, or re-develop connections to their families, communities and cultures by being placed within the care of their kin or by being reunited with their families.

*“A common theme emerging from these extensive reviews regarding ‘what works’ was the crucial importance of community engagement, ownership and control over particular programs and interventions”*

Denato and Segal undertook a comprehensive review of Australian evidence that indicates the crucial importance of Aboriginal and Torres Strait Islander community-control to outcomes in health service delivery. They cite several studies of the Office for Aboriginal and Torres Strait Islander Health to conclude: “A common theme emerging from these extensive reviews regarding ‘what works’ was the crucial importance of community engagement, ownership and control over particular programs and interventions.”<sup>17</sup>

Numerous Australian reports and inquiries confirm a lack of robust community governance and meaningful Indigenous community participation as major contributors to past failures of government policy.<sup>18</sup> These reports commonly highlight the importance of building capacity for Aboriginal and Torres Strait Islander community-controlled children and family services. The Australian National Audit Office (ANAO) found that building the role and capacity of Aboriginal and Torres Strait Islander organisations is not only important for effective service delivery, but an important policy objective in its own right in so far as it promotes local governance, leadership and economic

<sup>14</sup> S Cornell & J Taylor, *Sovereignty, Devolution, and the Future of Tribal-State Relations*, Harvard University, Cambridge, 2000, pp.6–7, retrieved 13 March 2013 from <<http://hpaied.org/images/resources/publibrary/PRS00-4.pdf>>.

<sup>15</sup> J Lavoie, J et al., ‘Have investments in on-reserve health services and initiatives promoting community control improved First Nations’ health in Manitoba?’, p.717.

<sup>16</sup> M Chandler & C Lalonde, *Cultural Continuity as a Hedge Against Suicide in Canada’s First Nations*, 1998, retrieved 15 April 2013 from <<http://web.uvic.ca/~lalonde/manuscripts/1998TransCultural.pdf>>.

<sup>17</sup> R Denato & L Segal, ‘Does Australia have the appropriate health reform agenda to close the gap in Indigenous health?’, *Australian Health Review*, vol. 37, no. 2, May 2013, p.235.

<sup>18</sup> See Australian National Audit Office (ANAO), *Capacity Development for Indigenous Service Delivery, Audit Report No. 26, 2011–2012*, Commonwealth of Australia, Canberra, 2012; C Cunneen & T Libesman, ‘Removed and Discarded: The Contemporary Legacy of the Stolen Generations’, *Australian Indigenous Law Reporter*, vol. 7, no. 4, 2002, pp.1–20; and NSW Ombudsman, *Addressing Indigenous Disadvantage: The Need to Do Things Differently*, NSW Ombudsman, Sydney, 2011.

participation, building social capital for Aboriginal and Torres Strait Islander peoples.<sup>19</sup> Twenty years ago, the *Bringing Them Home* report concluded that community development approaches to addressing child protection issues were needed not traditional models of child welfare that “pathologise and individualise Indigenous child protection needs.”<sup>20</sup>

In essence, the evidence confirms the effectiveness of Indigenous-led service design and delivery in consistently producing better results, and links Indigenous community empowerment to broadly positive social and emotional wellbeing outcomes for community members.

## WHAT’S WORKING ON THE GROUND

**Queensland** has a dedicated generational strategy to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care through its Our Way strategy. The strategy, developed in partnership with and overseen by ACCOs, represents a long-term commitment to transforming Queensland’s child and family services systems and increasing culturally safe, community-based supports for Aboriginal and Torres Strait Islander peoples. Significant increased funding of ACCOs is a key component of the Our Way strategy. The Queensland Government has acknowledged the evidence supporting the value of community-controlled service design and delivery and resourced 33 Aboriginal and Torres Strait Islander Child and Family Wellbeing Services across the state to support families who are at risk or have come into contact with the child protection system.<sup>21</sup>

**Thirty-three Aboriginal organisations that deliver early intervention support to families have achieved half the rate of re-notification to the department.**

According to the Queensland Government, community-based design and delivery is essential “to ensure support and responses are culturally safe and responsive, reflect community and family strengths, local needs and aspirations, leadership and cultural knowledge”.<sup>22</sup> **Aboriginal and Torres Strait Islander Family Wellbeing Services** work in collaboration with other culturally appropriate services, ranging from prevention and placement services, and each family to provide families with the diverse and tailored supports they need, including early intervention and intensive supports.<sup>23</sup> Data from the first 12 months of operation demonstrate that the 33 Aboriginal organisations that deliver early intervention support to families have achieved half the rate of re-notifications to the department compared with mainstream, non-Indigenous organisations.<sup>24</sup>

<sup>19</sup> See Australian National Audit Office (ANAO), *Capacity Development for Indigenous Service Delivery, Audit Report No. 26, 2011–2012*, Commonwealth of Australia, Canberra, 2012.

<sup>20</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Human Rights and Equal Opportunity Commission, Sydney, 1997, pp.453–454.

<sup>21</sup> Queensland Government, *Support Families Changing Futures 2018 Update*, Department of Child Safety, Youth and Women, Brisbane, 2018, retrieved from <<https://www.csyw.qld.gov.au/campaign/supporting-families/background/embedding-strengthening-reforms>>.

<sup>22</sup> Queensland Government, *Aboriginal and Torres Strait Islander Family Wellbeing Services*, 2018, retrieved from <<https://www.csyw.qld.gov.au/child-family/child-family-reform/meeting-needs-requirements-aboriginal-torres-strait-islander-children-families-communities/aboriginal-torres-strait-islander-family-wellbeing-services>>.

<sup>23</sup> *ibid.*

<sup>24</sup> N Lewis, CEO of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, *SNAICC Conversations: Family Matters*, 7 May 2019, panel.

In addition, the introduction of family-led decision making has seen improvements in decision-making for children at risk in Queensland. The national peak body SNAICC worked in partnership with the **Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)**, and local ACCOs to conduct trials of Aboriginal family-led decision-making (AFLDM) in a number of sites across the state in 2016-17. The trials provided an opportunity for families to meaningfully participate in child protection decision-making affecting their children's lives. An independent evaluation of the trials found that: "Successful outcomes for families were achieved when Aboriginal and/or Torres Strait Islander conveners and the [Aboriginal] FLDM service providers were truly empowered to do things their way."<sup>25</sup> In particular, the evaluation found that in the trial sites that focused on supporting families to prevent the entry of children into out-of-home care, 32 out of 40 families who participated were reported to have benefited from improvements in safety and protection from harm as a result of this Aboriginal-led process.<sup>26</sup> As a result of the success of these trials, the Queensland government has now rolled out a Family Participation Program across the state, commencing in 2018 and providing funding to 15 ACCOs to support Aboriginal and Torres Strait Islander families to participate in child protection decision-making.

In **Victoria**, Wungurilwil Gagapduir: Aboriginal Children and Families Agreement, was signed in 2018 and is a tripartite agreement between the Aboriginal community, the child and family services sector and the government to address over-representation. The agreement sets out a partnership approach to improving outcomes for Aboriginal children and young people in Victoria. The agreement and accompanying action plan aim to progress self-determination for Aboriginal peoples by ensuring that ACCOs are fully resourced to participate in program design and delivery. The implementation of the agreement is overseen by the Aboriginal Children's Forum, comprised primarily of ACCOs working in the sector. As part of these commitments, the government has pledged to progressively transfer case management and statutory guardianship of all Aboriginal

and Torres Strait Islander children to ACCOs by the end of 2021. As part of this process, the organisation I run, the Victorian Aboriginal Child Care Agency (VACCA), launched its Nugel program in November 2017. In October 2018, the program was managing 72 children.

**With Nugel, kids are much more likely to go home and are much more likely to live through their culture and be proud in their culture.**

Nugel provides out-of-home care services to children in VACCA's care by capitalising on the organisation's intrinsic cultural knowledge to deliver holistic services. The program pursues reunification plans centered around the themes of cultural safety, family empowerment and community engagement. Families and children are provided with holistic services, including healing services. The initial pilot program saw more than 50% of the children in care going 'home' from foster or residential care to their parents or another family member, despite being in out-of-home care for lengthy periods and despite being considered as having limited potential to ever return home.<sup>27</sup> Nugel supports children to see families as frequently as the law allows and we work towards children moving home to parents or families. With Nugel, kids are much more likely to go home and are much more likely to live through their culture and be proud in their culture.

And just this year, **Bendigo and District Aboriginal Co-Operative (BDAC)** in rural Victoria launched a guardianship program called Mutjang Bupuwingarrak Mukman, which means "keeping kids safe" in the Dja Dja Wurrung language. The program currently has 36

<sup>25</sup> Winangali & Ipsos Australia, *Evaluation – Aboriginal and Torres Strait Islander Family-led Decision Making Trials*, 2017, retrieved from <[https://www.snaicc.org.au/wp-content/uploads/2018/05/Evaluation\\_Report\\_ATSIFLDM-2018.pdf](https://www.snaicc.org.au/wp-content/uploads/2018/05/Evaluation_Report_ATSIFLDM-2018.pdf)>, p.8.

<sup>26</sup> Winangali and Ipsos Australia, *Evaluation – Aboriginal and Torres Strait Islander Family-led Decision Making Trials* (2017). Retrieved from [https://www.snaicc.org.au/wp-content/uploads/2018/05/Evaluation\\_Report\\_ATSIFLDM-2018.pdf](https://www.snaicc.org.au/wp-content/uploads/2018/05/Evaluation_Report_ATSIFLDM-2018.pdf), p. 21.

<sup>27</sup> Naughton & Co., *S.18 'As If' Project Evaluation Report*, 2015, <<http://www.vacca.org/wp-content/uploads/2016/03/Final-s18-Evaluation-Report-27-Oct-2015-1.pdf>>, p.42.

Aboriginal children with plans to increase this number to 72 in 2020 and 110 in 2021.<sup>28</sup> According to the **Victorian Aboriginal Children & Young People's Alliance**, "During the pilot program all children remained connected to their culture and communities, half were placed into kinship care and half were reunified with their parents."<sup>29</sup> BDAC's CEO, **Raylene Harradine** said that during the pilot she saw "transformational changes" for the families. She explains that "since we've taken on the pilot... we've seen a massive change in our community where our children aren't in limbo in the child protection space, because we're working with our families to put supports around them... This is about families taking back the power."<sup>30</sup>

## THE WAY FORWARD

The primary functions of the Aboriginal and Torres Strait Islander model of child welfare is to provide children and young people with a safe home where such passage of rights, and experiences are entrenched as an entitlement to ensure positive transitions to adulthood. All Aboriginal and Torres Strait Islander children and young people have to

be able to experience their culture regardless of their living arrangements, to legitimise meaningful connection to self, family, community and country and be able to access their inherent rights as the First Peoples of Australia.

International and Australian evidence clearly indicates that ACCOs have the capacity to support Aboriginal and Torres Strait Islander children, families and communities in ways that transform their lives. Governments across Australia must ensure ACCO services are well-resourced and can be expanded so they can sustain and strengthen the quality support they provide and reach more families and communities. As evidenced by the experience in Victoria and Queensland, this could be progressed by developing holistic, coordinated strategies, overseen by Aboriginal and Torres Strait Islander people, that develop the capacity of ACCOs to do this important work and that place children's and families' needs front and centre. This will lead to better outcomes for our children and families and go towards eliminating the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

<sup>28</sup> Victorian Aboriginal Children & Young People's Alliance, 'Alliance Submission to Productivity Commission into the Social and Economic Benefits of Improving Mental Health', 2019, <<http://www.vaccho.org.au/assets/01-RESOURCES/TOPIC-AREA/VACYPA/2019/VACYPA-PRODUCTIVITY-COMMISSION-2019.pdf>>.

<sup>29</sup> *ibid.*

<sup>30</sup> SNAICC would like to thank the Victorian Aboriginal Children & Young People's Alliance for this case study.



Baabayn Elders discuss the Koori Court. Pat Field, -Linda Jurotte from NSW Police, -Elaine Gordon -and chair Margaret Farrell. Photo: John Fotiadis.

## STRONG WOMEN, STRONG COMMUNITY

The Baabayn Aboriginal Corporation proves that decades of lived experience can be transformational in local communities.

Seven years ago, a group of Aboriginal women decided to make a change in their community in Sydney's western suburbs, which is home to one of the biggest Aboriginal populations in Australia.

The area known as Mount Druitt, 45 kilometres from the Sydney CBD, had been stereotyped in a bad way, and the Elders wanted to do something positive for their community. They formed the **Baabayn Aboriginal Corporation**. Baabayn means "ancestral women", and the name was chosen to emphasise the role that women can play in building strong and resilient communities.

Baabayn is now a thriving centre of culture, support and healing. On any given day, there's generally a lot going on at Baabayn's converted community hall in Mount Druitt. Baabayn's mission is to connect individuals and families with links to services that help them heal from past trauma. The services are aimed at building confidence, deepening the understanding of culture, and developing greater optimism about the future.

On the morning that we visit the centre, the Elders are meeting to discuss the Koori Court program, which aims to find an alternative to custodial sentences for Aboriginal youth in the region. The discussion is intense and passionate as the women canvass the significance of a program aimed at re-building respect for Elders and interest in education and work.

**Pat Field**, 61, a Gamilaroi Elder raised on a mission, has been working on the Koori Court program for a number of years. She says that the Koori Court gives Elders a platform to engage with young people by discussing their culture

and history, and in so doing the youngsters learn greater respect for their culture and themselves.

"The Elders can lay down the law and talk about our culture and talk about what would happen if they got caught in our time," says Ms Field.

**Elaine Gordon**, a Barkindji woman from western NSW and a director at Baabayn, says one of the key aims of the program is get children into school. She tells the young children about how difficult it was to get into school in her day and the racism that she faced. Ms Gordon worked for more than 25 years in an Aboriginal medical service in western Sydney and says she found it very rewarding to help Aboriginal people.

"When you work in an Aboriginal service it's completely different from being in a non-Aboriginal service. We understand each other and our culture. That's exactly how Baabayn works. It's a sisterhood. We look after our community and our families," she explains.

Baabayn runs on a shoestring budget of about \$160,000 a year, with only one person in a paid, part-time position. It relies on the typical drip feed of funding from various levels of government. After going through an exhaustive application process for the Federal Government's Indigenous Advancement Strategy, Baabayn received a one-off grant of \$50,000.

Despite these meagre resources, Baabayn runs a packed program throughout the year. Regular services include a homework club, which has tutors coming in from all over Sydney, and a mum's and bubs group.



Last year Baabayn hosted a family seaside weekend for more than 80 people, an ochre healing forum, a bike-riding safety class, holiday programs, and drug and alcohol support.

Daisy Barker, a Yorta Yorta woman and one of the Baabayn founders, says there is good and bad in every community and thinks it's unfair the way Mount Druitt is portrayed. Ms Barker has lived in Mount Druitt for 43 years, and her children and grandchildren have all grown up there. Now her great-grandchildren are doing the same.

"Wherever you go, a lot of people put Mount Druitt down, but there is nothing wrong with Mount Druitt, there are a lot of good people here," she says. "I love my community, and I come to Baabayn because that's where we all meet, all us Elders. We welcome everyone here, that's what our community is for."

*"I love my community and I come to Baabayn because that's where we all meet, all us Elders".*

**Daisy Barker**

**Rachael Munro**, who has seven grandchildren, says the children are drawn to the homework club because Aboriginal culture is part of it. The children learn Aboriginal

songs. "I learn to sing in my culture," says Kaila, aged eight, who attends the club regularly.

*"I learn to sing in my culture"*

**Kaila, age 8**

"It's really important to have strong women leading this organisation, like Aunty Margaret [the chair]. These women have been doing amazing things in the community, they are very well known. They are really humble about everything they do, and they are there for the community," says Rachael.

Baabayn chair **Margaret Farrell** says the demand for Baabayn's services indicates that they've got the right mix of cultural and practical solutions for the community.

"There are more and more local Aboriginal people turning up at our centre because it's a place where people feel they belong, and we don't turn anyone away".

"I've been part of other organisations, but I haven't seen people coming in to look for help to the extent that happens at Baabayn. Baabayn is here to listen to the needs of the Mount Druitt Aboriginal community and support our people in whatever way we can".

**Paul Cleary**

# III. CAPITAL

## CULTURE, COMMUNITY AND COMMERCE DOING BUSINESS THE YINDJIBARNDI WAY

The Yindjibarndi people have developed a framework to manage holistically, and for the very long-term, the business and community opportunities that we choose to pursue, writes Michael Woodley.



The iron ore boom over the past five decades has profoundly affected our community in ways that are often difficult to describe. For much of this period, our people have been pushed to the margin as they have watched outsiders amass fortunes from the exploitation of their land. Our Elders especially have been saddened by the way our country, culture and social fabric has been impacted by mining.

As the legal owner of the native title rights and interests recognised by the Federal Court of Australia, the board of the **Yindjibarndi Aboriginal Corporation** realised that our people needed to engage with the business world in a balanced way, while preserving our culture and strengthening our community. This is what self-determination means to our people. Since 2012, our country has been mined without a land use agreement in place, even though the Court recognised our exclusive possession over this land in 2017. We are still having to fight for our rights through the legal system.

But at the same time we have negotiated an agreement for rail access with **Rio Tinto** that has generated some income, and we have established a commercial arm that has employed many local people.

We've done this through a framework that has involved the Yindjibarndi community. In May 2011 we held a meeting of our community — with no external consultants or other influences involved — which generated grass roots ideas and priorities by Yindjibarndi people.

The ideas that came out of this meeting led to our Three Cs framework, which is:

1. Preservation and celebration of **Culture**
2. Investment in and empowerment of **Community**
3. Delivery of **Commercial** outcomes to benefit the Yindjibarndi people.

In 2013, YAC set up a business arm that we called Yurra, which is 66% owned by Yindjibarndi people and runs a portfolio of business ventures, including ground and maintenance crews for mining companies. All of the people who want to do something on country need to first come through YAC's door. Then we say our preferred business arm is Yurra.

So far, Yurra has put some serious runs on the board for a business that started only six years ago. It has secured more than \$70 million in contracts and employs about 100 people, with about half of them Aboriginal people. We have long-term contracts with bigger subcontracting firms that provide catering and cleaning services. Yurra also manages the protection of heritage works carried out by Elders where a mining company wants to develop on our country.

**We have a structure in place to manage the benefits for the long term.**

Should we benefit further from agreements with mining companies, or indeed from compensation for unauthorised mining of our land, we have a structure in place to manage the benefits for the long term. Any revenues negotiated by YAC on behalf of the Yindjibarndi people are managed by a separate, independent organisation called the Yindjibarndi Community & Commercial Ltd, which in turn is the trustee for two separate trusts being:

- Yindjibarndi People Community Trust; and
- Yindjibarndi Commercial Trust (Capital and Wealth).

The nature of the trusts is that they are fully discretionary. This means no one person has a right to receive income or capital in the absence of a trustee decision to do so.

Our latest and proudest achievement has involved the complete renovation and restoration of Roebourne's once notorious Victoria Hotel. This first hotel in the region, which dates back to 1893, closed in 2005 as a result of the social problems sparked by heavy alcohol consumption in the town. The Victoria was a mecca for the cashed up miners who flooded into the region from the early 1970s onwards. At one point, the Victoria had one of the highest turnovers of any pub in Western Australia, which led to great social problems for our people. In 1983, John Peter Pat, 16, was struck by a police officer outside the Victoria and hit his head on the kerb, before later dying in custody.



YAC decided to remove this blight on our community by developing a plan to return the Victoria to its former glory through a renovation project that has transformed it into a cultural and business centre. YAC bought the derelict building for just over \$2 million, and with funding of \$2 million each from the State and Federal governments, we now have the **Ganalili Centre**. Ganalili is the Yindjibarndi word for the dawn light that emerges before the sun rises above the horizon in the morning.

The project has exceeded its goal for Aboriginal employment of 2000 hours by a factor of five times. The work on the project was very diverse and complex. It involved highly skilled operations such as stonemasonry, scaffolding, fork-lift driving, demolition and asbestos removal, which has required the acquisition of new skills and qualifications for the Indigenous workers. Three of



the Aboriginal workers on the project came from the local prison. They gained new skills and will move on to become adult apprentices. One of them came out of prison and went straight into a job.

**We've fully-leased the business premises upstairs which is very pleasing for us because it shows that our new tenants are invested in our community.**

The project partners GBSC/Yurra also engaged students from Roebourne High School, with construction-based school learning as an activity. We demonstrated in this project our ability to bring partners and community to work together.

The result of this ambitious project is truly impressive, I believe, both architecturally and from a cultural and business viewpoint. We've fully leased the business

premises upstairs which is very pleasing for us because it shows that our new tenants — the **City of Karratha**, the Aboriginal-owned employment agency **REFAP**, **Mission Australia** and **MacKillop Family Services** — are invested in our community.

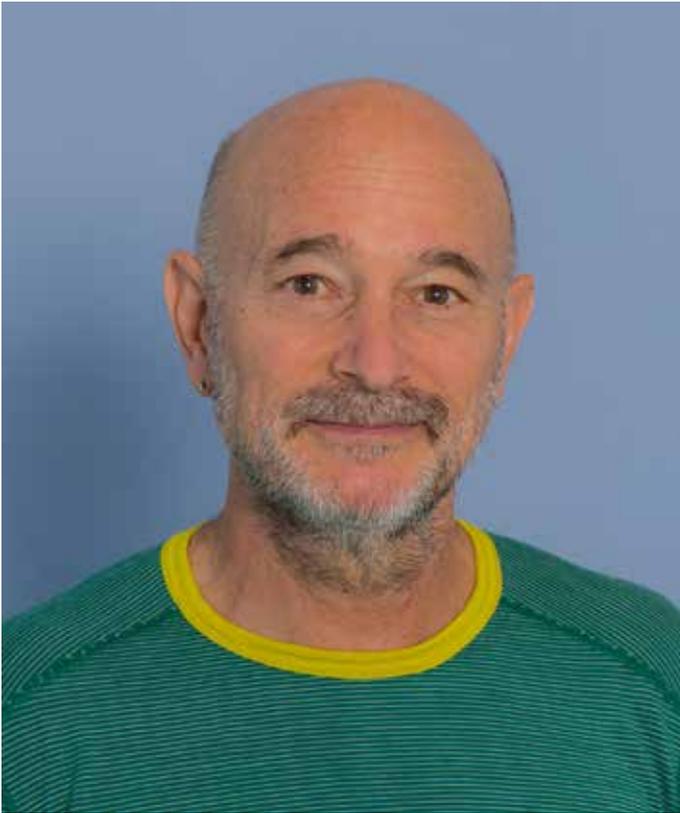
**Our Aboriginal culture can now be accessed and studied by swiping a touch screen.**

On the ground floor we have a vibrant cultural centre with a café and eatery. The cultural centre features interactive displays that have brought to life the compilation of our culture by our sister organisation, the Juluwarlu Aboriginal Corporation. Our Aboriginal culture can now be accessed and studied by swiping a touch screen.

It has been truly gratifying for us to see the Victoria Hotel transformed into Ganalili. It represents a new dawn for our people after enduring much hardship for so long. Ganalili shows what can be achieved with a holistic approach that involves community, culture and commerce.

# AN ABORIGINAL FUTURE FUND CRYING OUT FOR LEADERSHIP AND STRATEGY

The \$800 million Aboriginals Benefit Account is a future fund that has been operational for 40 years. Getting its stewardship right is a big challenge for the Indigenous Australians Minister, Ken Wyatt, writes Jon Altman.



When the *Aboriginal Land Rights Act* was passed in 1976, there was great optimism that the return of ancestral lands to their rightful owners might result in economic improvement: sometimes thought of just in mainstream ways, sometimes in accord with Aboriginal aspirations and wishes.

Under this act, Aboriginal “land rights” ownership (as distinct to “native title” determination) has expanded to just on 50% of the Northern Territory, after a protracted claims process. But economic improvement does not come from land ownership alone, especially when that land is extremely remote and has low commercial value. Financial capital is also needed for any profitable engagement with market capitalism, or to support alternative forms of Aboriginal economy.

And so the major architect of land rights law, **Justice Edward Woodward**, who was appointed by Prime Minister Gough Whitlam to head the Aboriginal Land Rights Commission, devised a scheme to assist in the generation of financial capital alongside the natural capital of land rights.

Woodward recommended that Aboriginal people in the Northern Territory be vested with a full royalty right — that is, that the royalties usually paid to governments as the asserted sovereign owners of subsurface minerals be instead paid to Aboriginal people.

This was a progressive masterstroke that was influenced by two logics.

The first logic was historical precedent. In 1952, in another progressive masterstroke from an earlier era, the Minister for Territories, **Paul Hasluck**, earmarked all statutory royalties raised on Aboriginal reserves to be held in trust for Aboriginal people.

This was an extraordinary decision for its time, because it at once recognised that crown land was exclusively reserved for Aboriginal use and benefit. If mining was to occur on reserves, then compensation was to be paid. What is more, Hasluck ushered in the introduction of a legal requirement that this compensation would constitute the royalties that would have been paid to the Commonwealth (then administering both the Northern Territory and reserves) and that the royalty rate would be double the standard rate stipulated in the Mining Ordinance.

Hasluck’s policy intent was that such financial resources paid into the Aborigines (Benefits from Mining) Trust Fund (ABTF) could be deployed to assist the process of economic integration of Aboriginal people in accord with the policy of assimilation formally espoused in 1951.

The second logic was a form of political compromise with Aboriginal interests.

Prime Minister Whitlam had instructed Woodward to vest title in land with the Aboriginal inhabitants of the Territory, as well as “sovereign” rights in minerals and timber. After intense lobbying by the peak mining industry association, Woodward decided that attaching mineral rights to land rights was a step too far. His compromise was the provision of a royalty right: all royalties raised on Aboriginal land would be foregone by the Commonwealth and paid to a new institution, the **Aboriginals Benefit Trust Account (ABTA)**, which is today known as the **Aboriginals Benefit Account (ABA)**.

While the earlier ABTF had been legally established in 1952, it only became operational in 1969, when royalties from mines established on Groote Eylandt and Gove started flowing to Commonwealth coffers. A key challenge that the ABTF faced was how to divide its income between those directly affected by mining and Aboriginal people in the Northern Territory more generally. Eventually a decision was made to allocate 10% to those in areas affected, with the remaining 90% to be either allocated as grants or loans to Aboriginal individuals and groups, or held in trust.

In 1974, Woodward proposed a profound change to this arrangement and recommended a formula whereby 40% of royalties would be earmarked to meet the cost of running land councils, with one of their key roles being to mediate and represent traditional owners in negotiations with mining corporations; 30% would be paid as compensation to land owners and others directly affected by mining; and 30% would be retained by the ABTA to be applied to or for the benefit of Aboriginal people in the Northern Territory.

Woodward’s recommendations were all incorporated in the *Aboriginal Land Rights Act* passed two years later.

## CONTROL AND ACCOUNTABILITY: KEY QUESTIONS ARE RAISED

From 1978, when these new financial arrangements were operationalised, the ABTA did not receive royalties from mining companies, but rather their near equivalence from the Commonwealth. This led me to deploy, when I first started research in this area in 1982, the clumsy term

“mining royalty equivalents”, or MREs, a term that is still in common use today.

Significantly, MREs were paid from consolidated revenue, and this raised enduring ambiguity as to whether MREs are public moneys (which they are technically) or Aboriginal moneys (which they are in the spirit of Woodward’s adjudications).

This in turn raises questions around who should control the financial resources raised from mining on Aboriginal-owned land, and who should be accountable for how they were used. This lack of clarity provided considerable and unintended structural opportunity for these new financial institutions to be dominated by politicians, which remains the case to this day.

In 1984, as an early-career academic, I was greatly honoured to be appointed by one of those politicians, Clyde Holding, to chair a wide-ranging review of the role, structure, functions and operations of the ABTA. This review was conducted in a spirit of productive cooperation with a working party. Membership came from the then three land councils, the ABTA Aboriginal Advisory Committee and the Department of Aboriginal Affairs (DAA).

**This in turn raises questions around who should control the financial resources raised from mining on Aboriginal-owned land, and who should be accountable for how they were used.**

Some of the findings from that review tabled in Federal Parliament in early 1985, over 30 years ago, still have purchase today. It was highlighted that there was a lack of clarity between the clearing house and granting functions of the ABTA, and that there was a need for a process to establish strategic financial (how much to spend, how much to save), expenditure (what to spend on) and investment (where to invest) policies.

There was some disagreement within the working party on whether royalty equivalents are public or Aboriginal

moneys, and associated questions around the form of financial accountability required for their utilisation.

But there was unanimous recognition by all members of the working party that complete Aboriginal control of the ABTA was a desirable objective. A comprehensive plan and timetable for the systematic and responsible shift to Aboriginal control over a five-year period was proposed. The review was conducted at a time when “self-determination”, if not quite the policy of the day, was at least perceived as desirable. A basic principle accepted by the working party was that control of the ABTA must be transferred to Aboriginal people.

Many of the 73 recommendations from this first and last independent and comprehensive review of the ABTA were implemented by government, in particular in relation to transparency and proper reporting, with a separate annual report being published (a practice that has since lapsed) and granting policy and practice being placed on a sounder and more strategic footing. For a time, advice provided to the Aboriginal Advisory Committee by federal bureaucrats was supplemented with independent advice from land council professionals operating as a sub-committee.

But the key issue of whether MREs are public or Aboriginal moneys (or both) has never been properly addressed. And the key recommendation for complete Aboriginal control was never seriously countenanced. I believe that finding creative ways that would allow regional Aboriginal organisations or communities to utilise accumulated reserves by setting up their own future funds, and devolving decision-making, are cogent issues for **Indigenous Australians Minister Ken Wyatt** to act on as the first Indigenous Australian to hold this position. It is especially important that the minister find ways to mobilise ABA capital for the benefit of First Nations Peoples in the Territory given the persistent under-spending by the NT government on services for Aboriginal people, which the Yothu Yindi Foundation estimates at more than \$500 million a year. But it is also important that the payments from mining on Aboriginal-owned lands that are primarily compensatory are not utilised to defray the obligations of governments to Indigenous people as Australian and Territory citizens. The foundational principle of Australia’s fiscal federalism of equitable needs-based funding must be reaffirmed by Commonwealth and NT governments and urgently implemented.

Lack of clarity about ABTA income has resulted in a lack of clarity about the proper purpose of its grants scheme directed to or for the benefit of Aboriginal people in the Northern Territory, with much of this expenditure totalling millions of dollars underwriting the functional responsibilities of governments. And it has left open possibility for political interference in the operations of the ABTA that has escalated rapidly in recent years, especially since the abolition of the Aboriginal and Torres Strait Islander Commission, which managed the ABTA prudentially from 1990 to 2004.

## ASSESSING THE PERFORMANCE OF THE ABORIGINALS BENEFIT ACCOUNT

Today, looking back to the optimism of the early days of the land rights movement, one has to ask: what has the innovative ABTA institution, now renamed the Aboriginals Benefit Account (or ABA) with the word “trust” of great symbolic value deleted, delivered? And where has it disappointed?

In terms of sheer numbers, a rare tallying of income and expenditure for the 37 years from 1978–1979 to 2014–2015 is impressive: over this period, more than \$2 billion of MREs has been paid to the ABA with expenditure roughly according with Woodward’s intention, bearing in mind that the income of the ABA exceeds annual allocation of MREs owing to interest and other income.

To complicate this financial picture, payments of MREs out of the ABA have attracted an unnecessary and inequitable — arguably racist — mining withholding tax introduced by then Treasurer John Howard in 1978. And it is certainly difficult to make historical comparisons, because over this period the Consumer Price Index has seen a dollar in 1978–1979 become worth more than \$4 today.

I estimate that \$670 million — or \$18 million per annum — has been allocated to the now four land councils. It is hard to say if this allocation represents good value for money. I suspect that, from an Aboriginal standpoint, those who have benefitted from the more than doubling of the Aboriginal land base since 1978, and the successful legal recognition of ownership rights over 85% of the coastline

and the statutory mediating role played in literally hundreds of negotiations for land and resource use agreements, might say it is excellent value. Others, like the dominant politicians and bureaucrats in Canberra, might disagree.

In 2006, the Howard Government amended the *Aboriginal Land Rights Act* to replace the 40% of MREs guaranteed to land councils with a higher degree of ministerial discretion in calculating their budgets. This has provided a ready means for the relevant minister to exert unconscionable political pressure on land councils to acquiesce to the agenda of the government of the day rather than prioritise the views of their constituents: Aboriginal land owners.

I estimate that just over \$600 million has been paid in “areas affected” moneys, with most going to just a few regions where there are major resource extraction projects, like at Gove, Groote Eylandt and Jabiru in the Top End, and the Granites, Tanami, Palm Valley and Mereenie in the Centre.

These payments are similar to private compensation payments for surface and social disturbance paid to other Australians. Some payments have been used productively, others wasted. It is unclear what accountability metrics should be attached to these moneys, although clearly it is tragic if expenditures exacerbate negative impacts they are supposed to ameliorate.

Finally, nearly \$500 million has been expended in hundreds of grants to or for the benefit of Aboriginal people in the Northern Territory. To my knowledge, the net benefit of these grants has never been rigorously assessed, even though concern was raised back in 1984 that too often grants were substituting for the citizenship entitlements of Aboriginal people.

## AN ERA OF INCREASING POLITICISATION

There is no doubt that many grants have provided important contributions of community and environmental benefit, be it in underwriting funerals or “caring for country” activities or capital allocations for community stores and art centres.

But there has also been some scandalous ministerial interference from both sides of politics in pre-empting,

overriding or reversing the considered views of the Advisory Committee — starting with the notorious decision of **Mal Brough** in 2006 to direct \$100,000 to support the Woodford festival, which just happened to be in his electorate in Queensland, well outside the Northern Territory.

In other egregious examples, it has been reported that ABA funds have been allocated to fund a number of initiatives that have originated from the minister, thus reversing statutory intent that proposals originate with the Advisory Committee.

Perhaps most controversial has been the decision of former minister Nigel Scullion in early 2014 to overturn an Advisory Committee decision to allocate \$10 million to support the work of a foundation established to assist Aboriginal people suffering from the debilitating Machado Joseph Disease. This decision was successfully challenged by the foundation in the Federal Court, and a subsequent appeal by the then minister was dismissed.

In the same round, a supportive decision by the Advisory Committee to allocate \$1 million to the **Karrkad Kanjdji Trust** — of which I am a director, to transparently disclose my interest — to assist ranger groups “caring for country” in western Arnhem Land was similarly overturned at ministerial whim.

The ABA has increasingly become a highly politicised fund, with grant allocations made at ministerial discretion, and timing of grant announcements aligned with electoral cycles rather than pressing Aboriginal priorities. Unfortunately this growing politicisation has coincided with the long mining boom. Over the past decade the ABA has regularly averaged well over \$100 million per annum in mining royalty equivalent income. These are serious amounts that should have generated serious beneficial outcomes.

There is equity of more than \$800 million held in reserve — a massive financial bucket of extraordinary developmental potential

Instead, ABA funds have been deployed, after statutory amendment in 2006 and 2007, to promote ideologically driven proposals for land tenure changes most evident in the underwriting of the activities of the **Office of the Executive Director of Township Leasing** and the push for 99-year leases of Aboriginal townships lubricated with upfront sweeteners from the ABA.

According to the latest financial statements and the annual report of the ABA for the 2018–2019 financial year, deeply concealed in the annual report of the Department of the Prime Minister and Cabinet, there is equity of over \$800 million held in reserve — a massive financial bucket of extraordinary developmental potential.

But its use remains at ministerial discretion. One wonders what rabbit-out-of-the hat grants any minister might announce in the near future to maximise electoral prospects federally and in the Northern Territory, underwritten by the ABA?

## A NEED FOR INDEPENDENT INQUIRY

The financial underpinnings of land rights law and the role of the ABA have slipped from public scrutiny in recent years. It has been two decades since a parliamentary inquiry, *Unlocking the Future* in 1999, examined their operations.

When I first worked in this area, the ABA was regarded as a progressive institution for Aboriginal

economic empowerment and development. Now it has been transformed into a ministerial slush fund, an institution for dependence to underwrite neoliberal experimentation for reforming land tenure to “develop the North” and to depoliticise and manipulate Aboriginal statutory authorities and community organisations.

The inability of well-intentioned reform to unshackle the ABA from increasingly politicised ministerial control and limited accountability has been very costly, in my view, to Aboriginal interests in the Northern Territory.

One has to ask: why were we able to openly and productively inquire into such fraught issues in ministerially sponsored independent inquiries in the past, but not today?

Who should control the financial resources generated from mineral resource extraction on Aboriginal land? Who is benefiting from the status quo? How can Aboriginal people wrest control of the ABA from the Commonwealth to ensure that it works in their best interests and according to their priorities?

If complete Aboriginal control of the key financial institution of land rights was accepted unanimously as a desirable objective in 1984 by a working party representing a diversity of key stakeholders, why is this not the case in 2019, more than 40 years after the passage of the *Aboriginal Land Rights Act*?

*An earlier version of this article was published in Land Rights News Northern Edition*

# IV. JUSTICE

## STORIES OF SELF-DETERMINATION— COMMUNITY-CONTROLLED LEGAL SERVICES WORKING FOR JUSTICE

Across the country, Aboriginal community-controlled legal services are using care and cultural knowledge to work for justice, writes Cheryl Axleby.

Aboriginal and Torres Strait Islander peoples' action for justice is the longest-running campaign for social and political change on this land. The colonial justice system controls, divides and oppresses our communities; as a result, Aboriginal and Torres Strait Islander people are the most incarcerated group of people in the world.<sup>31</sup> The justice system continues to take children from our families, lock us away from our culture and Country, and criminalise the disadvantage and poverty that so many of our communities experience as a result of colonisation.

It is within this context that **Aboriginal and Torres Strait Islander Legal Services (ATSILS)** began. In recognition of the failure of mainstream services to meet the structural, cultural and service needs of our people, Aboriginal and Torres Strait Islander peoples wanted a different model: community control.

Community control sets ATSILS apart from mainstream legal services. Community voices, cultural connections and a deep understanding of the way that the justice system impacts Aboriginal and Torres Strait Islander communities are embedded in the way ATSILS work, from governance to service delivery. Community control is driven by self-determination, the knowledge that Aboriginal and Torres Strait Islander people know what our communities need to thrive. ATSILS began in 1970, prior to the formal establishment of Legal Aid commissions and community legal centres.<sup>32</sup> By 1975, there was an Aboriginal and Torres

Strait Islander Legal Service in every state and territory.<sup>33</sup> Today, ATSILS operate from more than 80 offices around Australia and are represented nationally by the peak body, (NATSILS). Today, ATSILS operate from more than 80 offices around Australia and are represented by the peak body, the National Aboriginal and Torres Strait Islander Legal Service (NATSILS).

As early as 1976, a government inquiry found that “the introduction of Aboriginal legal services has meant a dramatic decrease in the rate of convictions recorded, and severity of sentences against Aboriginals [sic]”.<sup>34</sup> Despite this, successive governments have continued to strip funding from our services, particularly from programs that create a fairer justice system, like advocacy and holistic support services.



Cheryl Axleby: “There are layers of systemic inequality in the justice system which mean that laws or policies disproportionately target Aboriginal and Torres Strait Islander people.” Photo: NATSILS.

<sup>31</sup> FactCheck Q&A: Are Indigenous Australians the most incarcerated people on earth?, *The Conversation*, 6 June 2017, <<https://theconversation.com/factcheck-qanda-are-Indigenous-australians-the-most-incarcerated-people-on-earth-78528>>.

<sup>32</sup> R Coates, ‘A History of Legal Aid in Australia’, 4th Annual Colloquium of the Justice Conference of Australia, 1999, <<https://jca.asn.au/wp-content/uploads/2013/11/CoatesPaper.pdf>>; ALS NSW/ACT, About ALS n.d. <<https://www.alsnswact.org.au/about-als/>>.

<sup>33</sup> ALS NSW/ACT, Our History, n.d., <<https://www.alsnswact.org.au/>>.

<sup>34</sup> DO Hay, *Review of Delivery of Services Finances by Department of Aboriginal Affairs, Report to the Government*, June 1976, p.166, as cited in Commonwealth of Australia, House of Representatives Standing Committee on Aboriginal Affairs, *Aboriginal Legal Aid*, 1980, <[https://parlinfo.aph.gov.au/parlInfo/download/publications/tables/papers/HPP032016007252/upload\\_pdf/HPP032016007252.pdf;fileType=application%2Fpdf#search=%22publications/tables/papers/HPP032016007252%22](https://parlinfo.aph.gov.au/parlInfo/download/publications/tables/papers/HPP032016007252/upload_pdf/HPP032016007252.pdf;fileType=application%2Fpdf#search=%22publications/tables/papers/HPP032016007252%22)>.

The following stories from across the seven ATSILS show the power of community-controlled services to change lives, policies and laws in a 230-year-old push for justice.

## THROUGH CARE: ATSILS' UNIQUE MODEL OF CARE AND CONNECTION

### Kirsten

*Kirsten<sup>35</sup> is a 32-year-old woman who does not have a support system around her in community. Kirsten has a long history of reoffending; before starting Throughcare, the longest period of her adult life outside prison was three months. Child safety services removed all four of Kirsten's children.*

*ATSILS QLD met Kirsten to begin a Throughcare program to support her to stay happy, healthy and in the community after being released from prison. Support from Throughcare has empowered Kirsten to change her life.*

*After working with Throughcare for around two years, Kirsten has not been returned to custody for 12 months, she has regular contact with her children, and she is working to reunite with her youngest children. Kirsten attends alcohol and other drug counselling on a regular basis and has reunited with her partner, the father of her youngest daughter. Kirsten rents a unit, maintains her tenancy and has completed her parole order. ATSILS QLD's Throughcare team is available for Kirsten when she needs support. Kirsten contacts Throughcare for assistance with connections to emergency relief services for basic needs like food and vouchers.*

Throughcare is a unique model developed by ATSILS that demonstrates the effectiveness of holistic justice approaches. A study of the **North Australian Aboriginal Justice Agency's (NAAJA) Throughcare** program in the

Northern Territory demonstrated that only 14% of clients reoffended while part of the program.<sup>36</sup> This is a stark contrast to the experiences of the majority of those recently released from prison in the Territory, 60% of whom return to custody within two years.<sup>37</sup>

The majority of ATSILS have experience running a Throughcare or a post-release support program.<sup>38</sup> Throughcare supports clients in the prison system with housing, employment, education, financial, cultural and other social needs. Run with intensive case management, Throughcare operates differently in each jurisdiction, using local knowledge of the unique strengths and challenges in different communities. Throughcare can begin when a client first enters prison and continues until they are living a safe, fulfilling life in the community and free from contact with the justice system.

## SUPPORTING OUR CHILDREN WITH CULTURE AND COMMUNITY

### Jess

**Aboriginal Legal Service Western Australia (ALSWA)** assisted Jess,<sup>39</sup> a 13-year-old female client who has Fetal Alcohol Spectrum Disorder (FASD), on an arrest warrant. ALSWA lawyers worked with the Youth Engagement Program to provide Jess with the best services to navigate the justice system and be supported in community.

*Youth Engagement Program diversion officers visited Jess at home, encouraged her to hand herself into the court and picked her up the following morning to transport her to court. Jess was sentenced to a four-month conditional release order, a suspended sentence of detention. Staff stayed with Jess throughout the day for support, before taking her home.*

<sup>35</sup> Name has been changed for privacy.

<sup>36</sup> T Quayle, presentation to the conference 'Race and Incarceration: Comparing re-integration in Australia and the United States', 2017, <<https://www.ussc.edu.au/events/race-and-incarceration-comparing-re-integration-in-australia-and-the-united-states>>.

<sup>37</sup> *ibid*.

<sup>38</sup> For eg. ATSILS Qld, NAAJA, VALS (called 'Reconnect'), ALSWA and ALS NSW/ACT: NATSILS Submission to the Independent Review of the Indigenous Legal Assistance Program, 5 October 2018.

<sup>39</sup> Name has been changed for privacy.

*Youth Engagement Program staff supported Jess to complete her order with transport, help reporting to youth justice and ongoing mentoring. Jess successfully completed the order, avoiding four months in detention. Jess told her diversion officer that she was the first person who had ever helped her.*

*ALSWA's Youth Engagement Program has had 140 clients and currently supports 24 active clients like Jess.<sup>40</sup> The program provides holistic wrap-around case-management, advocacy, mentoring, referral, practical and legal supports to reduce offending behaviours, and to improve wellbeing and future prospects.<sup>41</sup>*

### **Dane**

*Dane<sup>42</sup> is a young Aboriginal man who had stolen cars and was involved in a nearly fatal accident. Dane worked with Luke Edwards, client service officer (CSO) at Balit Ngulu, the Victorian Aboriginal Legal Service's dedicated children and youth legal service, to discuss his case, as well as his living situation, connections and future.*

*Dane and Luke made a folder of Dane's family history, country and other information to connect Dane with his identity and community. Such folders are also provided to magistrates to demonstrate clients' connections to people, places and services. Luke sat with Dane and his lawyers to ensure Dane knew what was happening and to guide him through the court process. After court, Luke connected Dane with cultural programs and school: "we got him [Dane] back into school, he was given a second change and he hasn't committed a crime since."<sup>43</sup>*

*Balit Ngulu was Australia's only dedicated legal service for Aboriginal and Torres Strait Islander young people like Dane. The service provided holistic, integrated and culturally appropriate services to 100 Aboriginal and Torres Strait Islander young people to address the drivers of contact with the justice system, such as recidivism, as well as cultural needs, connection to family, education, employment and leadership. Balit Ngulu existed to help young people, many of whom have been shut out of services like schools, to feel that they are not a "lost cause" and that their voice is important.*

*Balit Ngulu cost about \$1 million a year to run, staffed by four lawyers and two CSOs. Ngaga-dji, a report by the Koorie Youth Council, found children felt safer and had better outcomes when using a service like Balit Ngulu, making them less likely to reoffend.<sup>44</sup> Despite positive outcomes for young people, Balit Ngulu had to close its doors on 29 September 2018 due to a lack of government support and funding.<sup>45</sup>*

ATSILS are set apart from mainstream services because our clients are more than statistics — they are our community members. ATSILS staff are trained to understand the underlying causes and systemic injustice that can lead to contact with the justice system. For young people like Jess and Dane, these causes are often family violence, child removal, poverty and homelessness.

ATSILS' holistic approach to legal service provision means that clients are connected with one another and supported to deal with issues that are trapping them in the justice system. This leads to better outcomes for clients by resolving the driving causes of contact with the justice system, thereby reducing ongoing legal need, reoffending, and adverse health and social outcomes.

<sup>40</sup> As of 3 June 2019.

<sup>41</sup> NATSILS, Submission to the Review of the Indigenous Legal Assistance Programme, 8 October 2018, p.20, <<http://www.natsils.org.au/portals/natsils/submission/NATSILS%20ILAP%20Submission%20For%20Website.pdf?ver=2018-10-29-161426-540>>.

<sup>42</sup> Name has been changed for privacy.

<sup>43</sup> C Agius, 'Victorian Aboriginal Legal Service shuts down youth service', ABC News, 28 September 2018, <<http://www.abc.net.au/news/2018-09-28/victorian-aboriginal-legal-service-shuts-down-youth-service/10315948>>.

<sup>44</sup> Koorie Youth Council, *Ngaga-dji (Hear Me): Young Voices Creating Change for Justice*, 2018, <<https://www.ngaga-djiproject.org.au/the-report/>>.

<sup>45</sup> NATSILS, Submission to the Review of the Indigenous Legal Assistance Programme, 8 October 2018, p.34.

# JUSTICE BY US: BUILDING CULTURAL SAFETY

## Karen

Karen<sup>46</sup> called South Australia's **Aboriginal Legal Rights Movement (ALRM)** to ask for help with her nephew, who was being held in prison. The prison had denied her nephew permission to attend the funeral of his aunt (Karen's sister). Due to the personal and cultural significance of sorry business,<sup>47</sup> Karen held concerns that her nephew would harm himself as a result of the decision.

ALRM made contact with the Aboriginal liaison officer at the prison, who initiated a protocol to ensure the client was safe. ALRM successfully pushed for the **Department for Correctional Services** to review their decision to deny permission to attend the funeral, and the department eventually granted permission for the client to honour his aunt by participating in sorry business.<sup>48</sup>

Karen's interaction with ALRM shows the cultural knowledge, understanding of structural barriers and accountability to community that are fundamental features of a culturally safe service. For clients like Karen to feel culturally safe in a service, staff and systems must be culturally competent. Cultural competency is about valuing diversity, having the capacity for cultural self-assessment, and adapting service delivery so that it reflects an understanding of the diversity between and within cultures.<sup>49</sup>

Karen's story also demonstrates that Aboriginal and Torres Strait Islander staff are key to cultural safety. Field officers (FOs) and client service officers (CSOs) work across criminal, civil and family law matters. These staff members

understand local community history, families, skin, language, lore, Elders and organisations. This knowledge is applied in conjunction with individual and community demographics – such as profile, gender, age, population – used in a western legal culture to understand client needs, situation and experiences.

CSOs and FOs also provide community legal education, offer practical support like transport to court, and connect Aboriginal and Torres Strait peoples to other support services, providing a holistic, community-centred approach to their needs. CSOs may also assist lawyers, particularly to communicate matters on their behalf so that clients are clear on their rights and understand legal processes.

For legal services, NATSILS is of the view that cultural safety for Aboriginal and Torres Strait Islander peoples includes:<sup>50</sup>

- feeling heard, believed and understood, including in your own language;
- being able to seek service without fear of mistreatment, repercussions or misunderstanding of cultural needs;
- not having to justify your experience of systemic or cultural barriers or discrimination to your lawyer;
- having a shared understanding between community member and lawyer that your legal issue has arisen in the context of a culturally incompetent legal system; and
- knowing that your legal representative will endeavour to overcome those barriers to get you a fair hearing and outcome.

An integral feature of a culturally safe service is one that pushes the justice system to be more inclusive and understanding of Aboriginal and Torres Strait Islander culture. In the case of Karen's family, ALRM had the cultural expertise to argue for the importance of allowing Karen's nephew to uphold his cultural responsibilities under lore.

<sup>46</sup> Name has been changed for privacy

<sup>47</sup> Sorry business is a term used in many Aboriginal and Torres Strait Islander communities to describe rituals and obligations surrounding death of a loved one e.g. attending a funeral.

<sup>48</sup> NATSILS, Submission to the Review of the Indigenous Legal Assistance Programme, 8 October 2018, p.43.

<sup>49</sup> National Health and Medical Research Council, *Cultural Competency in Health: A Guide for Policy, Partnerships and Participation*, 2006, p.7, as cited in Australian Human Rights Commission, *Social Justice Report 2011*, 2011.

<sup>50</sup> NATSILS considers that the definition of cultural safety and competency for the justice system, in line with self-determination, must be developed and agreed to by ATSILS, National Family Violence Prevention Legal Services and our community members accessing the justice system. This is an iterative process.

# JUSTICE WITHOUT BARRIERS

## Jack

Jack<sup>51</sup> is originally from a remote Aboriginal community. He has been an ALSWA client for many years. Jack is sometimes difficult to understand and often converses in his Aboriginal language. Jack has been verbally and physically violent toward banks in the town; all banks have taken out restraining orders on him.

Jack's anger was not understood until ALSWA staff spoke with him in his Aboriginal language. Jack told ALSWA staff that he was not able to access Centrelink benefits because he had no bank account. Jack was unable to open a bank account because he did not have satisfactory proof of identity. Centrelink had tried to get other organisations in the town to help Jack, but they were not willing or able to offer assistance. The lack of a birth certificate meant that Jack had not had any income for the last five years.

An ALSWA court officer who speaks Jack's Aboriginal language helped Jack obtain a birth certificate free of charge, went to a bank with Jack and helped him open an account. Centrelink then advised that it had deposited funds into Jack's new account.

Access to justice should be universal, yet many Aboriginal and Torres Strait Islander peoples, like Jack, are shut out from legal representation because of where they live and the language they speak. ATSILS are committed to access to justice for all Aboriginal and Torres Strait Islander communities, and in many cases ATSILS are the only legal services available to remote communities and in Aboriginal and Torres Strait Islander languages.

Many ATSILS staff speak Aboriginal and Torres Strait Islander languages. ATSILS are committed to arranging interpreter services for clients so that clients receive a fair hearing and just outcomes; however, there is a shortage of qualified legal interpreters for many Aboriginal and Torres Strait Islander languages. This limitation can affect the ability of ATSILS to deliver culturally competent services

and demonstrate the importance of ATSILS' advocacy for systemic change in justice.

# WORKING FOR A JUST SYSTEM

## Bugmy v The Queen<sup>52</sup>

### **Aboriginal Legal Service NSW/ACT (ALS NSW/ACT)**

represented Bugmy, a 29-year-old man who had experienced significant domestic violence, substance abuse, head injury and mental health issues including suicide attempts. Bugmy was illiterate and had spent most of his life in prison.

Bugmy pled guilty to assaulting police officers and intentionally causing grievous bodily harm. Subsequently, Bugmy was sentenced and then appealed the length of his sentence. ALS NSW/ACT argued that more weight should have been attached to his Aboriginality and the systemic disadvantage of Aboriginal people in sentencing as a mitigating factor. However, the NSW Criminal Court of Appeal increased his sentence on the basis that too much emphasis had been placed on the disadvantages he had experienced, given the seriousness of the crime.

On further appeal, the High Court of Australia found that the disadvantaged background of an offender is relevant for all people. Social and economic disadvantage is not particular to Aboriginal people, but it is relevant to any person's experience and culpability. The High Court upheld that the "effects of profound deprivation do not diminish over time" and that they are to be given "full weight" in sentencing.

Bugmy's case created an important precedent and much debate. Most recently, the Australian Law Reform Commission considered Bugmy and recommended that sentencing legislation should provide that courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.<sup>53</sup>

<sup>51</sup> Name has been changed for privacy.

<sup>52</sup> *Bugmy v The Queen* [2013] HCA 27 (2 October 2013).

<sup>53</sup> NATSILS, Submission to the Review of the Indigenous Legal Assistance Programme, 8 October 2018, p.67.

There are layers of systemic inequality in the justice system that mean that laws or policies disproportionately target Aboriginal and Torres Strait Islander peoples. ATSILS hold an integral place in the activism and advocacy for the rights of Aboriginal and Torres Strait Islander peoples.

ATSILS use a range of methods to change the systems that oppress Aboriginal and Torres Strait Islander peoples. These include grassroots work like joining our communities in public marches against Aboriginal deaths in custody and unjust guardianship laws.<sup>54</sup> ATSILS represent community voices to key decision-makers across the justice system, and coordinate national and international efforts to drive changes in policy and legislation.<sup>55</sup> ATSILS also engage in legal action on behalf of community members to bring public and political awareness for the need to change unjust laws and policing, also known as strategic litigation.<sup>56</sup>

## COMMUNITY STRENGTH THROUGH KNOWLEDGE

*The Community Legal Education team from Tasmanian Aboriginal Community Legal Service (TACLS) brought their program to men in the minimum-security wing of Hobart's Risdon Prison. TACLS asked the group to choose a topic for the session, and they requested information on family violence.*

*The program took the form of a casual chat and covered different types of family violence orders and information about breaching orders. The group asked a number of questions of TACLS staff, on subjects such as contacting children from prison and ensuring the best interests of their children are protected.*

*The session provided a culturally safe space for the group to gain a deeper understanding of the impact of family violence on individuals, families and the broader community. Specific information about the group's rights and obligations was an important focus of the session. The group was supportive of TACLS' work and future education sessions at Risdon.<sup>57</sup>*

Community legal education is a cornerstone of ATSILS' work. When communities and the services they use are supported to understand how the system works, Aboriginal and Torres Strait Islander peoples are empowered to navigate and challenge it, know their rights and ultimately live free from contact with the justice system.

All ATSILS provide community legal education to their communities. ATSILS' community legal education practices are unique because they are tailored to community needs and delivered by culturally competent staff. This model provides a safe space where communities can discuss legal issues that are often deeply personal and stigmatised by mainstream society.

<sup>54</sup> See for eg., Madeline Hayman-Reber 'Petition calls for abolition of public drunkenness in Victoria', NITV News, 1 February 2019, <<https://www.sbs.com.au/nitv/article/2019/02/01/petition-calls-abolition-public-drunkenness-victoria>>; Lorena Allam, 'More than 800 Aboriginal children could be adopted under NSW law change', The Guardian, 7 November 2018, <<https://www.theguardian.com/australia-news/2018/nov/07/more-than-800-aboriginal-children-could-be-adopted-under-nsw-law-change>>.

<sup>55</sup> NATSILS, Submission to the Review of the Indigenous Legal Assistance Programme, 8 October 2018, p.64 <<http://www.natsils.org.au/portals/natsils/submission/NATSILS%20ILAP%20Submission%20For%20Website.pdf?ver=2018-10-29-161426-540>>.

<sup>56</sup> See, for example: ALRM in landmark stolen generation case *Trevorrow v State of South Australia* (No.5) [2007] SASC285 (1 August 2007). VALS in *Cemino v Cannan and Ors*: Media release, 17 September 2018, <<https://vals.org.au/assets/2018/09/Cemino-MEDIA-RELEASE-FINAL.pdf>>; ALSWA in *Inquest into the Death of Ms Dhu*: Decision in *Ms Dhu's death in custody inquest*, 14 December 2016, <<https://www.als.org.au/decision-ms-dhus-death-custody-inquest/>>; VALS in *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796: Jane Lee, Bianca Hall & Richard Willingham, 'Tough stance in tatters after backflip sees Aboriginal children removed from jail', The Age, 29 November 2016, <<https://www.theage.com.au/national/victoria/aboriginal-children-removed-from-barwon-adult-jail-after-government-backdown-20161129-gszsxa.html>>.

<sup>57</sup> NATSILS, Submission to the Review of the Indigenous Legal Assistance Programme, 8 October 2018, p.45, <<http://www.natsils.org.au/portals/natsils/submission/NATSILS%20ILAP%20Submission%20For%20Website.pdf?ver=2018-10-29-161426-540>>.

# ON OUR OWN TERMS: SELF-DETERMINATION IN GOVERNANCE

## **NAAJA board**

### **The Northern Australian Justice Agency (NAAJA)**

*is governed by a board of 16 Aboriginal people from across the Northern Territory. The diversity of communities is represented by ensuring appointments are made from five regions: Darwin, Nhulunbuy, Katherine, Tennant Creek and Alice Springs.*

*The board is committed to open and transparent election processes. Members of NAAJA nominate and select their directors based on:*

- *skills and experience;*
- *commitment to meet the organisation's objectives; and*
- *ability to represent the interests of their region and diversity of their communities.*

*All directors are supported with governance training every year over a three-year term.<sup>58</sup>*

NAAJA's board elections demonstrate community-control in action. Similarly, across all seven ATSILS and the national forum NATSILS, culture and accountability are embedded at a strategic level. ATSILS boards understand the local community and cultural protocols, and they ensure accountability and transparent decision-making across the board and organisation.

ATSILS hold community and Aboriginal and Torres Strait Islander stakeholder meetings regularly to ensure that community voices are heard and incorporated in projects.<sup>59</sup> This means that community members have control over the design and delivery of ATSILS services, a critical strength of ATSILS that sets them apart from mainstream legal services.

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*This article has captured only eight stories of ATSILS' work in communities and courtrooms. There are hundreds of stories like these created every day in ATSILS across the country. To ensure this work continues, we need strong, adequately funded, community-controlled ATSILS with the power to advocate and create community solutions. This is a vital part of creating a fair and equitable justice system.*

<sup>58</sup> *ibid*, p.28.

<sup>59</sup> See for e.g. VALS, Victorian Government Redress Scheme Institutional Child Abuse Aboriginal Community Consultation, 2015, <[https://www.vals.org.au/assets/2015/09/VALS-Community-Consultation-A4\\_Ballarat.pdf](https://www.vals.org.au/assets/2015/09/VALS-Community-Consultation-A4_Ballarat.pdf)>.

# WORKING TOGETHER FOR JUSTICE

Collaboration and community participation offer the best hope in the face of entrenched and historically based disadvantage, writes Stephen Gray.

## WHAT WE KNOW

For decades, much public debate about Indigenous policy in Australia has been characterised by a polemic impasse between advocates of self-determination and advocates of social and personal responsibility. Stepping outside this often-fraught debate offers an opportunity to focus on positive programs that are delivering change on the ground for communities.

Against the legacy of historically based disadvantage in the legal system, a range of programs offer hope of attaining twin goals of the Change the Record campaign: closing the gap between Indigenous and non-Indigenous people in incarceration rates, and closing the gap in rates of violence, especially against women and children.

Such programs have existed since at least the 1980s, when some central Australian Aboriginal communities established night patrols to combat alcohol-related violence. They include programs such as Tiwi Islands youth justice conferencing, the Clean Slate Without Prejudice program at Redfern, Family Group Conferencing in Alice Springs, and others noted below.

This emerging evidence brief is designed to inform and stimulate thinking about what future initiatives might look like if they are to be responsive to these examples of positive practice, while being well suited to practical and policy considerations.

Our synthesis is not a comprehensive overview of Indigenous-led alternative justice programs. Instead, we focus on three key case studies, together with emerging literature and evaluation, that show collaboration and community participation can offer hope in the face of entrenched and historically based disadvantage.

We believe this evidence supports the conclusion that community programs are more likely to be effective when

they are informed by Indigenous-led and community-designed programming, even as they also involve working closely with non-Indigenous people and services.

## WHAT WORKS

These programs involve multi-faceted, integrated and well-resourced strategies that consider the following key elements:

- Early intervention
- Prevention or diversion from the mainstream criminal justice system
- Rebuilding relationships
- Respect for elders and senior law people, healing processes
- Empowering communities to take control of their lives

## WHAT DOESN'T WORK

- Dependence on the energy and initiative of a few skilled and committed individuals
- Vulnerability to changes in government policy or in the law
- A "top down" approach imposed by government or bureaucracy

## WHERE TO FROM HERE

The three case studies outlined below provide insight into the practical and policy considerations of concepts such as "shared network governance", proposed by the NT Royal Commission as a way of expressing a "new relationship between local and regional networks of community representatives, government agencies and service providers."

As the royal commission itself acknowledged, this idea is not new. Calls for the inclusion of Aboriginal people in decision-making, for their engagement and empowerment, are at the core of self-determination. The case studies show the emergence of an evidence base that correlates with increased community self-management and pathways to reduce incarceration.

It is essential, however, that these inter-related elements be underpinned by a comprehensive understanding of the community context. “Shared network practice” cannot be packaged into a universal policy. It is concerned with “understanding the conditions of success in one place, then negotiating, applying and testing these in another place”.

This emerging evidence brief seeks to provide just three examples that demonstrate these conditions. It is important to recognise local languages and history, and local responses and dynamics, as well as more general issues such as poverty, and poor access to education, employment and health services. Understanding these more general issues will be critical to learning from the examples in ways that generate solutions by, with and for communities.

## RECOMMENDATIONS

- A commitment to educating mainstream services about shared network governance, in particular the significance of understanding local languages and history, as well as respect for senior elders and law people
- A shared commitment to the goals of Changing the Record, especially reducing Indigenous incarceration as well as reduced rates of violence
- A particular focus on juvenile justice and avoiding youth incarceration, as a demonstration of sincere commitment and the importance of building relationships

## DISCUSSION

Aboriginal policy can appear to be a revolving parade of slogans, a veneer of fly-in, fly-out “community consultations” generating work for bureaucrats, and paper mountains of official reports, but very little real change. This circularity “has produced a generation of Aboriginal people and non-Aboriginal activists who are both cynical and fatigued”, as the Northern Territory Royal Commission pointed out.<sup>60</sup>

One way of stepping outside this polemical atmosphere is to focus on positive programs that seem to be working on the ground. Such programs are usually generated by Indigenous communities and are community designed and led, although they also involve working closely with non-Indigenous people.<sup>61</sup> They generally involve early intervention, prevention or diversion from the mainstream criminal justice system. More powerfully, according to experienced criminal lawyer **Shahleena Musk**, a Larrakia woman from Darwin working with the Human Rights Law Centre in Melbourne, they involve rebuilding relationships, respect for elders and senior law people, healing processes, and empowering communities to take control of their lives.

*[Successful programs] generally involve early intervention, prevention or diversion from the mainstream criminal justice system. More powerfully they involve rebuilding relationships, respect for elders and senior law people, healing processes, and empowering communities to take control of their lives.*

<sup>60</sup> Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report*, vol. 1, 2017, p.247 (‘NT Royal Commission Final Report’). A cycle is generated, in which the proclamation of an ‘emergency’ is followed by the creation of a new advisory body or consultation process, which gradually atrophies until it is abolished.

<sup>61</sup> From a global human rights perspective, they could thus be seen as consistent with UN goals of empowerment for the purpose of poverty reduction and ‘leaving no one behind’: see <<http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/what-does-it-mean-to-leave-no-one-behind-.html>>.



Shahleena Musk: "When Aboriginal and non-Aboriginal laws work together and are respected justice can be achieved for those in trouble with the law." Photo: HRLC.

Such programs are limited in several ways in their capacity and scope. One of these is their dependence on the energy and initiative of a few skilled and committed individuals. This carries a high emotional cost, particularly for Indigenous people whose own family and community are most affected, and the attendant risks of burnout or despair. Another is their vulnerability to changes in government policy or in the law, such as the decision of former Northern Territory Chief Magistrate **Hilary Hannam** in 2012, which led to the suspension of Northern Territory Community Courts.<sup>62</sup>

However, these programs offer the best hope to attain the twin goals of the Change the Record campaign: closing the gap between Indigenous and non-Indigenous people in incarceration rates, and closing the gap in rates of violence, especially against women and children.<sup>63</sup> Around Australia, such programs have existed since at least the 1980s, when central Australian Aboriginal communities established night patrols to combat alcohol-related

violence.<sup>64</sup> In some places, they probably existed earlier.<sup>65</sup> They have proliferated in recent years. They include Tiwi Islands youth justice conferencing, the **Clean Slate Without Prejudice** program at Redfern, **Family Group Conferencing** in Alice Springs, **Aboriginal Family-Led Decision-Making (AFLDM)** in Victoria, **Circle Sentencing and Care Circles** in NSW, the **Mt Theo** program in central Australia, community mediation in Queensland and the NT, and justice reinvestment programs in NSW.<sup>66</sup>

It is not possible to analyse all of these here. Instead, I wish to focus on three successful programs from different parts of Australia, describing their origins and the individuals involved, as well as suggesting the factors that have enabled them to succeed. They provide an antidote to the sometimes shrill ideological wrangling that sets Indigenous people against each other, and against non-Indigenous people – They are examples of how collaboration and community participation can offer hope in the face of entrenched and historically based disadvantage.

<sup>62</sup> See Thalia Anthony & Will Crawford, 'Northern Territory Indigenous community sentencing mechanisms: an order for substantive equality', (2013) 17 *Australian Indigenous Law Review* 79 at 84–85.

<sup>63</sup> On the Change the Record campaign, see <<https://changetherecord.org.au/solutions>>.

<sup>64</sup> Harry Blagg & Thalia Anthony, 'If those old women catch you, you're going to cop it: Night patrols, Indigenous women, and place based sovereignty in outback Australia', (2014) 8 *African Journal of Criminology and Justice Studies* 103.

<sup>65</sup> See discussion of proposals for the establishment of Native Courts during the 1930s in R Austin, *Never Trust a Government Man*, NTU Press, Darwin, 1997, pp.228–240, and Jeremy Long, *The Go-Betweens: Patrol Officers in Aboriginal Affairs Administration in the Northern Territory 1936–74*, ANU, Casuarina, 1992, pp.21–22.

<sup>66</sup> Most of these programs were presented in evidence to the NT Royal Commission, and are listed and described in the NT Royal Commission Final Report, vol. 1, pp.276–286. Back in 1991, the Royal Commission into Aboriginal Deaths in Custody referred to 'literally hundreds' of successful Aboriginal organisations, and to the 'tremendous part' that such organisations play in 'raising the status of Aboriginal society in their own eyes and in the eyes of non-Aboriginal society': RCIADIC National Report Volume 1 – 1.8, at <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/22.html>>.

# THE BURNAWARRA/ MANINGRIDA JUSTICE COLLABORATION AGREEMENT

In the East Arnhem Land region of the Northern Territory, traditional law remains strong. **Elders Councils** operated in some communities there in the early 1990s. They were referred to in the Northern Territory Law Reform Committee report of 1997, which recommended legal recognition of some Aboriginal laws.<sup>67</sup> Back then, the Law Reform Committee recommended a scheme to allow community and elders greater input into sentencing. This was consistent with the recommendations of the Royal Commission into Aboriginal Deaths in Custody (recommendation 104).<sup>68</sup>

Community courts operated on some northeast Arnhem Land communities during the early 2000s.<sup>69</sup> They always faced threats, sometimes because of kin conflict or unavailability on the part of Elders. More powerfully, they were threatened by changes in the political and legal climate following the two controversial cases of Pascoe and GJ, in which Aboriginal men received sentences perceived as too lenient after they committed sexual crimes against young girls.<sup>70</sup> Following this, the Northern Territory Government restricted the ability of courts to hear evidence of Aboriginal customary law. Shortly afterwards, through the NT Intervention legislation, the Federal Government moved to prohibit it entirely.<sup>71</sup>

However, community courts in various forms continued to exist. Charles Darwin University law lecturer **Danial Kelly** was instrumental in pulling together the **Maningrida Justice Collaboration Agreement** from the non-Aboriginal side. When he was a lawyer at **North Australian Aboriginal Justice Agency (NAAJA)** in 2009, he told me Aboriginal clients would frequently ask him how to bring Aboriginal law into Australian law problems.

These issues came to a head when a police SWAT team kicked down the door of a senior Aboriginal man from Ngukurr, mistakenly believing he was responsible for criminal problems on the community. In fact, he had been trying to stop them. Following this, NT Police and Aboriginal leaders signed the **Mutual Respect Agreement**,<sup>72</sup> with police agreeing, as far as possible, to respect Aboriginal law. Kelly also negotiated the text of the Mutual Respect Agreement on behalf of the **Yugul Mangi Aboriginal leaders of Ngukurr**. People at Maningrida heard about this, and Kelly worked with them on the Burnawarra/Maningrida Agreement.<sup>73</sup>

The agreement formally establishes the **Maningrida Elders Dispute Resolution Group**, or the **Burnawarra**. The role of the Burnawarra is to “hear and resolve certain justice and safety issues in Maningrida by mediation”. It also aims to “assist the Northern Territory Police by providing possibilities for diversion”, as well as Correctional Services by providing alternative sentencing options.

*Indigenous people lose the most when law and culture is not respected.*

To an outsider, some of the issues dealt with in the agreement seem unfamiliar, even strange. For example, the agreement contains detailed protocols for police who wish to execute a search warrant or search for alcohol or drugs while a ceremony is being performed. It also prevents police from exposing articles of cultural significance, or taboo. It contains protocols for baggage checks for people entering the community, and rules for conducting games of cards. There are also rules for “proper women’s clothing”, with a general prohibition on trousers or shorts for females. While not standard features in a non-Indigenous context, these rules clearly emanate from the community and

<sup>67</sup> These included Galiwinku, Maningrida and Groote Eylandt: see Northern Territory Law Reform Committee, *Alternative Dispute Resolution in Aboriginal Communities*, NT Government, 1997, pp.8–9, 42.

<sup>68</sup> Recommendation 104 requires that ‘sentencing authorities consult with Aboriginal communities and organisations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases’.

<sup>69</sup> See discussion in Anthony S Crawford, ‘Northern Territory Indigenous community sentencing mechanisms: an order for substantive equality’, p.82.

<sup>70</sup> See *Hales v Jamilmira* [2003] NTCA 9; *Queen v GJ* [2005] NTCCA 20.

<sup>71</sup> See, however, *R v Wunungmurra* (2009) 196 A Crim R 166, and for discussion of the issues still arising, Danial Kelly, ‘The Black and White of Wunungmurra’, [2012] 2.4 *Northern Territory Law Journal* 227.

<sup>72</sup> <<https://www.atns.net.au/agreement.asp?EntityID=4926>>.

<sup>73</sup> Maningrida Justice Collaboration Agreement, available online; see also NT Royal Commission Final Report, vo. 1, p.28.

customary law, and are just as important as more familiar provisions, such as sentencing guidelines.<sup>74</sup> The agreement also provides for ceremonial sentencing, including by madayin and ngarra, and in a gunapipi ceremonial law learning camp.<sup>75</sup>

It seems clear that the Burnawarra has been “carefully constructed in accordance with culture”. The NT Royal Commission stated that it “illustrates what an alternative approach to law and justice might look like.”<sup>76</sup>

While this is true, it is also true that the Burnawarra is far from having the power to resolve all issues arising at Maningrida in accordance with customary law.

## *Non-Indigenous personnel come and go, but the issues remain the same.*

For example, in heartfelt language, the Burnawarra submission to the NT royal commission complains that there is “no trust between child protection services and the Maningrida community.” It states that “it is impossible to create trust when the workers come to our houses with Police. We are treated like criminals. We know the Police are there to protect the welfare workers. The workers just grab the children. We see parents standing there powerless and afraid.”

Clearly, it is an ongoing project to create and maintain trust in a community like Maningrida. In common with most other Aboriginal communities, Maningrida has a long and traumatic history of contact with police, and later with child protection services. Non-Indigenous personnel come and go, but the issues remain the same; and the burden of educating successive individuals about Indigenous culture and law falls mainly on Indigenous people, who lose the most when law and culture are not respected.

## THE KURDIJI LAW AND JUSTICE GROUP (CENTRAL AUSTRALIA)

The **Lajamanu Kurdiji Law and Justice Committee** has its origins in night patrols and other law and justice initiatives dating back to the early 1990s, or even before.<sup>77</sup> Such initiatives are unique in the extent to which they reflect traditional law and offer an alternative to mainstream models of policing and dispute resolution. Women play a central role in most such initiatives, as do non-adversarial methods of dispute resolution centred on the notion of community.

Following the Royal Commission into Aboriginal Deaths in Custody, the NT Government launched a law and justice strategy. This helped create or support law and justice groups at Ali Curung, Lajamanu, Yuendumu and Willowra.<sup>78</sup> The general idea was to devolve responsibility for law and justice issues to community organisations, and to incorporate traditional dispute resolution mechanisms and customary law.

The Kurdiji Law and Justice Group is a group of **Warlpiri** Elders. The Elders work with lawyers from NAAJA in “bridging the gap in understanding between the two legal systems.”<sup>79</sup> They assist NAAJA to write letters to the judge outlining the community’s views on the defendant’s offending, including background information and advice about punishment. They conduct media interviews and have made short films. As well, they have “developed innovative ways to explain Warlpiri legal concepts, both for their young people and non-Warlpiri people.”<sup>80</sup>

Using traditional conflict resolution methods, they also conduct mediations. In October 2016, two members of NAAJA’s CLE team, together with an anthropologist and a consultant from the Central Land Council, witnessed one

<sup>74</sup> For example, sentencing guidelines require the Burnawarra to have regard to the nature and seriousness of the offence, whether the offender pleaded guilty, and evidence of harm to the victim and to the community: Maningrida Justice Agreement, at p.15.

<sup>75</sup> ‘Madayin’ refers to the Aboriginal law of Arnhem Land. ‘Ngarra’ is the central term for the customary law of the Yolngu people of Arnhem Land. A ‘Gunapipi’ ceremony or ‘prison’ is a law learning camp for those who have breached the Yolngu law: see George Pascoe Gaymarani, ‘An introduction to the Ngarra law of Arnhem Land’, [2011] 1 *Northern Territory Law Journal* 283.

<sup>76</sup> NT Royal Commission, p.283.

<sup>77</sup> Night patrols have existed for decades on both Lajamanu and Yuendumu, with the Yuendumu patrol being the longest running women’s patrol in Australia, according to Harry Blagg: see Blagg & Anthony, ‘If those old women catch you, you’re going to cop it’, 113.

<sup>78</sup> NT Royal Commission, above, pp.282–283.

<sup>79</sup> Alexandria Jones, Robert Chapman, Miles Holmes & Warlpungku Jerry Jangala Patrick, ‘The Warlpiri *Ngalkinpa*: Principles of Warlpiri conflict resolution’, available online.

<sup>80</sup> *ibid.*, p.2.

such mediation. It involved a conflict between two groups of male youths who had begun fighting over basketball; however the issue escalated until it threatened to “evolve into a serious community-wide dispute”.<sup>81</sup>

*“Elders were able to calm emotions and bring all the families together to resolve these issues in a peaceful and respectful manner”.*

Elders used kardiya (non-Aboriginal) police as an active (but observing) presence, to show the process was sanctioned by white authority. However, they used traditional methods to emphasise kinship, justice and the refusal to allocate blame, until both sides were prepared to atone and apologise to each other.

The process involved “a lot of shouting and gesticulating”, to the point where the non-Aboriginal observers thought the groups appeared to be on the verge of further conflict.<sup>82</sup> Had police not been forewarned about their role, and about what was happening, their intervention at this point might have inadvertently derailed a complex and subtle process. As Shahleena Musk writes, “elders were able to calm emotions and bring all the families together to resolve these issues in a peaceful and respectful manner.”<sup>83</sup>

The Lajamanu Kurdiji Law and Justice Group seems to have been successful. As the NT royal commission noted, the Lajamanu court list revealed a 50% decline in the overall number of criminal cases between 1996 and

2014.<sup>84</sup> However, the royal commission also pointed out that the group remains vulnerable to the “vagaries of government policy”, and has been surviving without any government assistance. It depends on the support of NAAJA and some community-controlled mining royalty funds.

## DJIRRA (FORMERLY ABORIGINAL FAMILY VIOLENCE PREVENTION LEGAL SERVICE VICTORIA)

In 2003, the Victorian Indigenous Family Violence Task Force reported on the increasing level of family violence among Victorian Indigenous people. It spoke of the “silence of acceptance”, which allowed the voice of a sexually or physically abused person to go unheeded.<sup>85</sup> Shortly before this report was made public, the Victorian Government established the **Koori Court**, with the express aim of using culturally appropriate methods to reduce Aboriginal over-representation in the criminal justice system.<sup>86</sup>

However, concerned advocates continued to express doubts about whether the legal system adequately represented the needs of victims, particularly women. As **Kyllie Cripps** pointed out, at Koori Court the offender would typically be represented by an Aboriginal Legal Service solicitor, but the victim might not be represented at all.<sup>87</sup> There is strong and consistent evidence that many Aboriginal women do not access mainstream domestic violence services, and that these services are, in any case, unlikely to understand their particular experiences and history.<sup>88</sup>

The Aboriginal Family Violence Prevention Legal Service Victoria (FVPLS Victoria), now known as **Djirra**, was established in 2002 as part of the national family violence

<sup>81</sup> *ibid.*, p.3.

<sup>82</sup> ‘The Warlpiri *Ngalkinpa*: Principles of Warlpiri conflict resolution’, p.4.

<sup>83</sup> Shahleena Musk, ‘I know our criminal justice system inside out and it is being misused’, *The Guardian*, 27 March 2018.

<sup>84</sup> NT Royal Commission, vol. 1, p.282; and see Anthony & Crawford, 89.

<sup>85</sup> Kyllie Cripps, ‘Speaking up to the silences: Victorian Koori Courts and the complexities of Indigenous family violence’, [2011] 26.7 *Indigenous Law Bulletin* 31; and Victorian Indigenous Family Violence Task Force, Final Report (2003), 3.

<sup>86</sup> See the *Magistrates’ Court (Koori Court) Act 2002*, and discussion in Cripps, ‘Speaking up to the silences’.

<sup>87</sup> Controversially, she argued further that some serious cases were being diverted into Koori Court, resulting in light penalties and a suspicion that intimidation and violence were continuing to occur: see for example *R v Morgan* [2010] 24 VR 230, and discussion of this case in Cripps, ‘Speaking up to the silences’.

<sup>88</sup> Commonwealth Attorney-General’s Department and the Nous Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth of Australia, 2013, p.52.

prevention legal service program. Its goal is to provide “culturally safe and holistic assistance to Aboriginal victims/survivors of family violence and sexual assault”.<sup>89</sup> It is an Aboriginal community controlled organisation (ACCO) directed by an Aboriginal Board, and is designed to combine community legal education, early intervention, and prevention and awareness programs with frontline services.

## *Calls for the inclusion of Aboriginal people in decision-making, for their engagement and empowerment, are at the core of self-determination.*

In common with other Aboriginal legal services Australia-wide, Djirra faces significant issues with resourcing. On its establishment, the service was funded through the Attorney-General’s Department. In 2013, however, all Aboriginal family violence prevention services were moved to the portfolio of the Prime Minister and Cabinet. As a result, they fell under the Indigenous Advancement Strategy, and had to compete in an open, competitive tender process for funding; at the same time, over \$534 million was cut from Indigenous affairs.<sup>90</sup> This meant programs for Aboriginal victims were competing for funding not only with perpetrator programs, but also with mainstream legal aid organisations, state and territory governments, and mainstream providers including for-profit corporations.

Nevertheless, Djirra continues its work of “amplifying the voices and leadership of Aboriginal women”, as well as supporting victims and advocating for law reform and attitudinal change. However, it struggles with difficulties arising from insecure funding, including high staff

turnover, difficulty in recruitment, and the loss of corporate knowledge and relationships within the sector.<sup>91</sup>

## **WHERE TO FROM HERE?**

The NT royal commission proposed the concept of “shared network governance” as a way of expressing a “new relationship between local and regional networks of community representatives, government agencies and service providers”. It was designed to “build trust and respect”, with both sides learning about the perspectives of the other, with the ultimate goal of “improving the wellbeing of children and young people”.<sup>92</sup>

As the royal commission itself acknowledged, this idea is not new. Calls for the inclusion of Aboriginal people in decision-making, for their engagement and empowerment, are at the core of self-determination. They are central to many of the other mantras of previous policies, including self-management, mainstreaming, rights and responsibilities, shared responsibility and mutual obligation, and “closing the gap”.

One important aspect of this is that “shared network practice” cannot be packaged into a universal policy. Rather, it is concerned with “understanding the conditions of success in one place, then negotiating, applying and testing these in another place.”<sup>93</sup> It means recognising local languages and history, and local responses and dynamics, as well as more general issues such as poverty, and poor access to education, employment and health services.

Nobody should underestimate the amount of effort involved in this process. There is a personal toll to this kind of work, particularly on Indigenous people whose own family and friends are most directly affected.

Indigenous lawyer **Eddie Cubillo**, who worked as director of engagement at the NT royal commission, spoke recently of his deep hurt and anger at being confronted by an Aboriginal man who recognised him and informed him “that they still didn’t have their children who had been

<sup>89</sup> Djirra, cover letter endorsing the National Family Violence Prevention Legal Services Forum submission to the Australian Law Reform Commission’s Family Law Review – Issues Paper, 2018, at <<https://djirra.org.au/wp-content/uploads/2018/05/National-FVPLS-Forum-Submission-to-ALRC-Family-Law-Review-Issues-Paper.pdf>>, p.2.

<sup>90</sup> Aboriginal Family Violence Prevention Legal Service Victoria (FVPLS Victoria), submission to the Royal Commission into Family Violence Victoria, 2015, <<https://djirra.org.au/wp-content/uploads/2018/02/FVPLS-Victoria-submission-to-Royal-Commission-FINAL-15Jul15.pdf>>, pp.28–29.

<sup>91</sup> *ibid.*, p.66.

<sup>92</sup> NT Royal Commission Final Report, vol. 1, p.247.

<sup>93</sup> *ibid.*, p.249.

taken away by child protection and that they don't see any indication of real positive change as a result of the Royal Commission's investigation".<sup>94</sup>

He spoke of how hard it is "working for change within the system when that system is so stacked against our people. No one sees the long hours, mental strain and time away from your family. Nor do they appreciate the emotional toll of the work – of hearing stories we can't un-hear or that trigger our own trauma". "It's not a game for us", he added, when their family and their kids' lives are at stake.

Shahleena Musk made a similar point, highlighting the "emotional and personal cost, as many work and perform voluntary service to help their families and communities. They are not paid, they are often not supported in kind and do so to ensure others receive the assistance they need – particularly access to justice and equality before the law."

*In the end, many of the most significant programs are occurring at a local level.*

The **Change the Record** campaign, along with state-based justice reinvestment programs, is attempting to put these principles into effect. Change the Record is a coalition of Aboriginal, human rights and community organisations. It has released a "blueprint for change", which emphasises early intervention, prevention and diversion strategies. These are designed both to cut imprisonment rates and to reduce family and other violence, and to empower Aboriginal and Torres Strait Islander peoples to drive these solutions.

Running in parallel to the Change the Record campaign is a governmental rebranding of the original Closing the Gap program, known as Closing the Gap Refresh. Created on the ten-year anniversary of the original Close the Gap campaign, Closing the Gap Refresh is designed as a "partnership with Indigenous leaders, organisations and communities" to agree on a new Closing the Gap

framework, including new "targets and performance indicators".<sup>95</sup>

Is this a genuine commitment to form better relationships, or more bureaucratic words? One indicator will be whether government is prepared to invest funds: the federal government failed to make a financial commitment in response to the NT royal commission's recommendations, for example,<sup>96</sup> and over the last few years has significantly cut funds to Aboriginal legal aid.

Another indicator is whether the federal government is prepared to make equally significant symbolic commitments. Again, the failure to pursue criminal prosecutions against any of those responsible for the shortcomings of the NT's juvenile detention system is not a good sign.<sup>97</sup> More significant, of course, was the then Turnbull government's dismissal of the Uluru Statement from the Heart, the culmination of over ten years of work on constitutional changes to reset the relationship between Indigenous and non-Indigenous people in Australia.

However, there are positive programs being developed, and positive things happening. As the Closing the Gap Prime Minister's Report noted in 2018, three of the Closing the Gap targets are on track to be met. These are halving the gap in child mortality rates, enrolment of Indigenous pre-schoolers in early childhood education, and halving the gap in Year 12 attainment for Indigenous Australians. On the other hand, the gap in employment outcomes and in life expectancy does not appear to be narrowing significantly; and the issue of incarceration rates does not appear as an explicit target at all.

In the end, many of the most significant programs are occurring at a local level. They are signs that it is possible, as Indigenous lawyer Shahleena Musk points out, for the two laws, Aboriginal and non-Aboriginal, to "work together, be respected and support each other in achieving justice for those in trouble with the law. Only in this way can we achieve justice and equality in a way that is more meaningful, effective and responsive to the unique needs and issues of our Aboriginal and Torres Strait Islander peoples."

<sup>94</sup> Eddie Cubillo, 'On the personal toll for Indigenous advocates and people when governments fail to act', *Croakey*, 18 June 2018, <<https://croakey.org/on-the-personal-toll-for-Indigenous-advocates-and-people-when-governments-fail-to-act/>>.

<sup>95</sup> See for example Helen Davidson, 'NT says it cannot afford all of juvenile detention royal commission's recommendations', *The Guardian*, 20 April 2018, <<https://www.theguardian.com/australia-news/2018/apr/20/nt-says-it-cannot-afford-all-of-juvenile-detention-royal-commissions-reforms>>.

<sup>96</sup> *ibid.*

<sup>97</sup> Jacqueline Breen, 'No criminal charges to be laid from Northern Territory youth detention royal commission', ABC News, 24 May 2018, <<http://www.abc.net.au/news/2018-05-24/no-criminal-charges-stemming-nt-youth-detention-royal-commission/9797440>>.

# OUR PLACE, OUR PEOPLE, OUR FUTURE

*Culture and community-control are the drivers of a transformative job program, writes Mervyn Eades*

I'm a Noongar man and I run the Ngalla Maya employment program, which helps people coming out of prison find jobs. "Ngalla Maya" is a Noongar phrase that means "our place". Over the past three years we have trained around 300 former prisoners in Western Australia and helped them find jobs.

I spent most of my adult life in prison. My father died when I was 10. I grew up down in the bush with the old people. I was in and out of juvenile detention from the age of 13, and then went to adult prison when I was 18, and pretty much stayed there until I was 31.

The death of my younger brother from suicide made me realise that I had to turn my life around. A lot of our young boys and sisters just give up and many have taken their lives in the prison system. During my years of incarceration, I've seen nine, maybe 10 suicides in the prison system. The first year out of prison is a dangerous time for former inmates. They are in an elevated risk group for suicide or unnatural death.

I created a business of my own when I got out of prison. Nearly three years ago, **Ngalla Maya Aboriginal Employment Access** became a reality.

The most important thing about the way we work is that our organisation is run by Aboriginal people. I believe if we can run and control our own organisations we will smash the jail rates. The governance is all black. There are no white people on our board. It is literally run by grass-roots people. We are not-for-profit; we are not here to make money off our people's misery.

*I believe if we can run and control our own organisations we will smash the jail rates.*

Ngalla Maya is community controlled. It is driven by our people, for our people. That is something so vital in working with First Nations people. The structure has to be our people. Any program written up for our people has got to be delivered by our people. I strongly believe in that. There are no barriers and breakdowns in our community. We can use a bit of tough love — that is accepted by our people because we only want the best for them.

With this approach we have achieved some of the best employment outcomes for any boys and girls coming out of prison. The Department of the Prime Minister and Cabinet in WA have all our data. We are federally-funded. We have to report to PM&C and they oversee our project. Our funding is outcome-based; it is proven through outcomes.

*We can use a bit of tough love — that is accepted by our people because we only want the best for them.*

We've achieved these results because our mentoring and support are delivered in a holistic way: the cultural stuff, mentoring, that is the heart of our project. We talk a lot about culture. A lot of the young ones don't have identity in heritage and the self-worth in being part of the oldest culture in the world; they haven't been taught and told, the stories haven't been handed down to empower them.

We let the younger ones know where they fit into society. They do belong. But a lot of them don't think they fit in anywhere. Poor self-esteem and self-worth is within a lot of them because of a lack of opportunity, support and direction from people.

So far, about 200 men and women have been through the program. Seventy, who had never previously worked in their lives, are working today.



Mervyn Eades outside his Ngalla Maya employment centre in Perth. "The most important thing about the way we work is that our organisation is run by Aboriginal people."  
Photo: Ross Swanborough/News Corp.

*So far, about 300 men and women have been through the program. Seventy, who had never previously worked in their lives, are working today.*

The penny-pinching West Australian government has not given us a cent. While former Indigenous Affairs Minister **Nigel Scullion** copped lots of flak from all around the

country, our program would not have happened without him. When he came to see us we didn't have a proper governance structure; we only recently got all that together. We needed the resources to make it happen and the right people. Minister Scullion believed in us when no one else believed in us. He believed that the design of my program could work for our people, so credit must be given to him and the Federal Government for their contribution.

About two years ago we almost went broke. Our phones were disconnected, the electricity wasn't far behind and we were behind in our rent. One of our former clients heard about our problems and came over and paid our bills. He told me how we'd helped to turn his life around.

# V. HEALTH

## WHERE PREVENTION IS THE BEST CURE

The Katungul Aboriginal medical service is changing lives and cutting the flow of people into local hospitals, writes Paul Cleary

Together, **Jo Grant** and **Angela Nye** have more than half a century of experience in health service delivery to Aboriginal peoples, but recently they witnessed a remarkable change that took them by surprise.

When the **Katungul Aboriginal Corporation Regional Health and Community Services** produced data for a specialist program dealing with chronic disease, the staff noticed how many of the patients were getting quite old. They were in their seventies, and even in their eighties, which was very unusual given the typical gap in life expectancy that persists for Aboriginal peoples.

“We were funded two to three years ago for an Integrated Team Care program, purely around chronic disease,” says Ms Nye, a Yuin woman, who is Katungul’s director of

community services and a 35-year veteran of Aboriginal health. “When we first started, you looked at the data and some of our clients were in their sixties and seventies, and when we did our last report we were quite surprised as some of the data showed clients in their eighties. We were sitting there, saying, ‘Oh my gosh, this person is in their eighties!’”

*“We were sitting there, saying, ‘Oh my gosh, this person is in their eighties!’”*

**Angela Nye**



Angela Nye, Katungul Aboriginal medical service’s director of community services and a 35-year veteran of Aboriginal health. Photo: Heide Smith.

Ms Grant, a Wiradjuri woman and the acting chief executive, says the impact of Katungul's work is that it is not only enhancing the wellbeing of the community but also saving the government money. The regional health data clearly shows that the hospitals near Katungul's network of three clinics in southern New South Wales have fewer admissions for Aboriginal and Torres Strait Islander peoples.

"We are getting less people presenting to the hospitals than in the past," says Ms Grant. "We're the only organisation around that is dealing with preventative issues. If you end up in the hospital, that is too late. If you look at our gym, that cost \$30,000 and that is addressing a lot of issues."

She adds that in the past many Aboriginal people would make the emergency ward their first port of call, but now they are presenting at Katungul's clinics, where they receive holistic care.

Like a number of Aboriginal medical services (AMS), Katungul began life as a community response to the poor health of many Aboriginal people in the region, and their negative experiences in the mainstream health system. It was first established when three Aboriginal communities — Ghuryungan, Markarling House and Narooma Community

**Centre** — joined forces in 1993. When the Narooma clinic opened its doors, the service was well received. Doctors were completely booked, and Indigenous people were eager to seek treatment.

Katungul, which means coastal people in the Yuin language, expanded to meet growing demand, opening clinics in Batemans Bay and Bega. Outreach and specialist programs were also developed to serve surrounding areas and provide Aboriginal-specific health care.

More recently, the service has developed innovative approaches to address the health needs of the community. The gym that Ms Grant refers to was acquired last year in order to provide regular exercise programs to clients who face chronic illnesses or are at risk of acquiring them.

All of the groups coming to the clinics now go the gym, including those on the drug and alcohol program. "It helps with mental health, reduced isolation, it's a yarning space as well, it is really culturally appropriate but it is very disguised," Ms Grant explains.

*[Preventable hospitalisations] in the south-east NSW region, where Katungul operates, have fallen by a staggering 30% in the six years to 2016-17.*

The results from the gym sessions so far have been impressive, with a real reduction in illnesses and an improvement in key indicators. Ms Nye explains: "They are lowering their blood sugars, they're lowering their heart rates, they are getting fitter, their chronic diseases are coming to a stage where they can manage it. It is not out of control any more. And then when you look at the young ones coming through, we have quite a few youth activities, you're trying to find ways to prevent chronic disease."

Katungul has adopted new techniques such as the **Deadly Choices** campaign, which offers clients a colourful shirt with an Indigenous design when they attend a clinic for a regular check-up. Katungul is one of only five clinics in New South Wales to be part of the Deadly Blues program, a partnership with the **National Rugby League** that offers patients a free NSW rugby league-inspired shirt.



Joanne Grant, Katungul's acting CEO, says "We go above and beyond but our funding doesn't often allow for that." Photo: Heide Smith.



Muriel Slockee works out at a regular gym classes at Katungul. Photo: Heide Smith.

Despite this impressive record, Ms Grant expresses frustration at the extent to which governments fail to support the AMS network, which she says is often drip-fed with funding and faces higher levels of reporting than the mainstream health system.

“We walk and work in two worlds. We have a far better grasp of the issues faced by these communities. We shouldn’t be overlooked because we are an Aboriginal medical service. Many in our community are inter married. It’s important that government organisations value the fact that we do work in two worlds and we are well placed for mainstream opportunities. We should not be overlooked.

“Aboriginal organisations have other levels of accountability. It is unfair but it makes us rise to the challenge. If you look at our funding agreements as an Aboriginal service we have to demonstrate and report on cultural competency. We have to be a lot more flexible and resourceful in our funding.”

Ms Grant is frustrated that the State Government isn’t doing more to support Katungul’s preventative approach and is instead expanding hospital services in the region.

“The government just announced a plan to build a \$200 million hospital. You won’t need a \$200 million hospital. Bricks and mortar don’t fix people. Give us a fraction of that for some early intervention programs, put nurses and dentists into schools,” says Grant.

Ms Grant is also concerned about a new AMS funding model that she believes will adversely affect smaller clinics. Katungul is defined as a regional clinic and may do well as a result, but nonetheless she is concerned about the uncertainty raised by the changes.

“If you don’t have your model of care in place where you are capturing every angle of Medicare revenue, then you are going to be bypassed. The government is not going to be funding big buckets for NSW health. Medicare is going to be counted as funding. Smaller AMSs that don’t have a strong model of care are going to lose funding.”

These comments seem to reflect the proposal outlined in the 2019 federal budget and a shift that, according to the government, is aimed at ensuring that resources are “directed to areas of greatest need”.

Another problem with the funding and data reporting is that it lacks a holistic approach to health care. If, for example, the clinic receives funding for alcohol and drug treatment, it may not be supported to treat the related mental health and chronic disease problems.

“So while we are ticking the box that we have an alcohol and drug client, there is very little room for a narrative — all they want is data. What we are doing is mapping out a client’s journey, from the time they have a health check to what happens after that. We go above and beyond but our funding doesn’t often allow for that,” says Ms Grant.

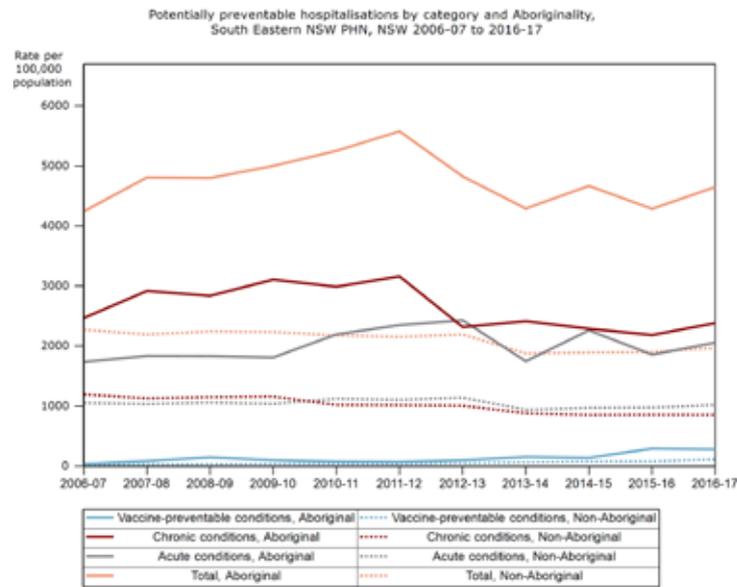
The federal Department of Health says that the purpose of a new funding model is to “distribute primary health care funding under the Indigenous Australians’ Health Programme as fairly as possible”. The department has set up an advisory committee to negotiate the new funding model with the Indigenous health sector and provide advice to Government. This committee includes representatives from the Indigenous community-controlled health sector, along with departmental officials. The new funding model is expected to commence on 1 July 2020, the department said in a statement.

Ms Grant is also critical of the funding structure that sees the government funnel its support through the Primary Health Networks (PHNs). “The PHNs get the funding and we are drip-fed.”

Despite these challenges, the Katungul clinics are undoubtedly showing how their holistic, preventative care model is stemming the rise of hospitalisations in the region, bucking the trends for both Indigenous and non-Indigenous people across the State. NSW Health produces data for what is called “Potentially Preventable Hospitalisations (PPH)”, which means conditions for which hospitalisation is considered potentially avoidable through preventive care and early disease management, usually delivered through primary health care. But as shown in Figure 2, the incidence of PPH in the south-east NSW region, where Katungul operates, have fallen by a staggering 30 % in the six years to 2016-17 (from 5448 people per 100,000 population, to 4,185/100,000. This compares very favourably with a general PPH rise of 20% across the NSW population, and a 30% rise for Aboriginal people in the State (see Figure 3).

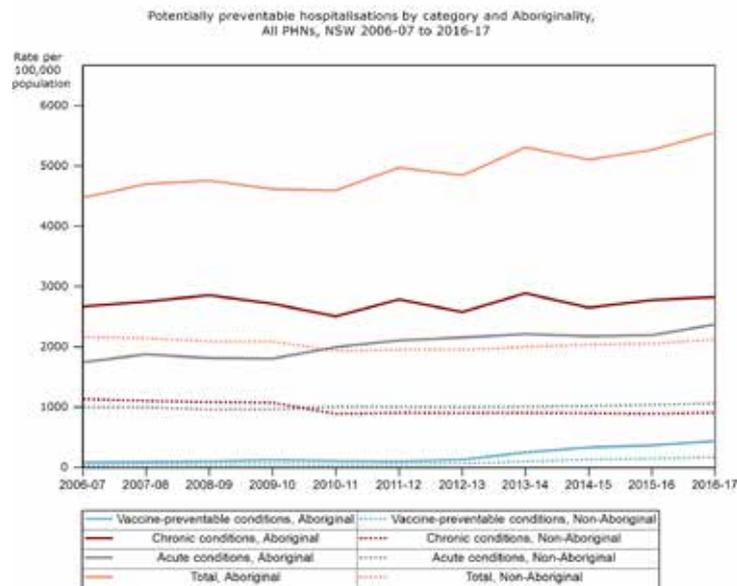
**Figure 2.**

Potentially preventable hospitalisations for Aboriginal people in south-eastern NSW, the area where Katungul operates, have been declining over the past five years. Source: HealthStats NSW.



**Figure 3.**

Potentially preventable hospitalisations for Aboriginal people in NSW have been steadily rising. Source: HealthStats NSW.



## GRASSROOTS SUCCESS STORIES

The success of the Katungul services is not unique. In fact, Aboriginal medical services can be found in more than 140 locations around Australia. They vary in size and capability, but at their core is Aboriginal control and high levels of Aboriginal staffing. An **Australian Institute of Health and Welfare (AIHW)** report said that around 90% of the services are run by boards comprised of Aboriginal people. These services were able to achieve the highest standard of

health care in Australia, with 96% accredited against the **Royal Australian College of General Practitioners’ (RACGP)** standards for general practice, and/or organisational standards.<sup>98</sup>

Aboriginal medical services are also one of the biggest employers of Aboriginal people in Australia, with many of these health professionals living in regional and remote parts of Australia. According to AIHW, they employed around 5,600 full-time equivalent staff in 2014–2015, with Aboriginal people making up around 60% of these positions. The majority of positions held by Indigenous staff were

<sup>98</sup> Australian Institute of Health and Welfare, *Healthy Futures—Aboriginal Community Controlled Health Services: Report Card 2016*, Cat. no. IHW 171, AIHW, Canberra, 2016, p.12.

in clinical roles, which is significant because Indigenous nurses are under-represented in the mainstream system.<sup>99</sup>

The very first medical service opened in Sydney's inner-city Redfern in the early 1970s, followed by similar operations in Melbourne and Brisbane. As **Gary Foley** wrote in a history of the Redfern service, it "pioneered a concept of Aboriginal community controlled health care services as the only successful way of improving the health of Aboriginal communities". He added: "Programs developed by [Redfern] AMS have attracted world-wide interest, particularly in the area of community health education, where the World Health Organisation has adopted the AMS HIV education video for use in Asia and the Pacific."<sup>100</sup>

*"Our experience in Redfern has proved that Aboriginal people are capable of solving their own problems if we are given control of the resources and facilities to do it our way".*

**Gary Foley**

The network of 23 clinics in south east Queensland operating under the umbrella of the **Institute of Urban Indigenous Health (IUIH)** is, like the Katungul centres, closing the gap. Adopting a hub and satellite approach to reach the growing population, IUIH has achieved an eight-fold increase in its number of health checks over a period of seven years by offering patients a new Indigenous-designed shirt each year. It's made huge gains through exercise programs for people who are overweight and chronically ill, and its improved infant mortality and low birth weight results through a birthing on country program. Using a measure known as Health Adjusted Life Expectancy (HALE), which takes into account the impact of time lost to ill health and disability, IUIH has reduced

the gap by 0.7 years over a four year period, according to an epidemiological study by **Dr Stephen Begg** of La Trobe University. The IUIH approach is now being adopted in other parts of Australia.

Former Indigenous affairs minister **Nigel Scullion** had the highest praise for these locally-based services. During a tour of remote service providers in the Northern Territory last year, he said there was "no enterprise" that Aboriginal-organisations could not undertake. Scullion said Aboriginal health services were outperforming the mainstream system not because there was "anything wrong" with the latter, but because Indigenous organisations were more engaged with people on the ground.

"They are completely [staffed] ... with people with cultural competence," he said.

## PRIORITY REFORMS

In order to build on the success of these services and prioritise future policy direction, more than forty Aboriginal and Torres Strait Islander peak organisations came together in 2019 to negotiate a new Closing the Gap agreement with Australian governments. Known as the Coalition of Peaks, they finalised an historic Partnership Agreement on Closing the Gap with the Council of Australian Governments (COAG). The Partnership Agreement sets out how governments and the Coalition of Peaks will work over the next ten years to improve the lives of Aboriginal and Torres Strait Islander people across Australia. It also embodies the belief of all its signatories that shared decision making with Aboriginal and Torres Strait Islander community controlled representatives in the design, implementation and monitoring of the Closing the Gap framework is essential to improve life outcomes for Indigenous Australians. Closing the Gap is the government response to the Close the Gap campaign, which was launched in 2007 to advocate for an end to Indigenous health inequality.

The Joint Council, the Ministerial / Coalition of Peaks Council established under the Partnership Agreement, has met twice since March and in its second meeting agreed in principle to three priority reforms

<sup>99</sup> *ibid.*, p.13.

<sup>100</sup> G Foley, *Redfern Aboriginal Medical Service 1971–1991*, Aboriginal Medical Service Cooperative Ltd, Redfern, 1991, p.1.



to underpin shared efforts over the next ten years to accelerate progress on Closing the Gap.

They are:

- Developing and strengthening structures to ensure the full involvement of Aboriginal and Torres Strait Islander peoples in shared decision making at the national, state and local or regional level and embedding their ownership, responsibility and expertise to close the gap
- Building the formal Aboriginal and Torres Strait Islander community-controlled services sector to deliver closing the gap services and programs in agreed priority areas, and
- Ensuring all mainstream government agencies and institutions undertake systemic and structural transformation to contribute to Closing the Gap.

Pat Turner, lead convener of the Coalition of Peaks, CEO of the peak body NACCHO, and co-chair of the Joint Council says the proposed priority reforms are based on what Aboriginal and Torres Strait Islander peoples have been saying for a long time is needed to close the gap, and we now have a formal structure in place to put those solutions to governments.

“If we are to close the gap it will be Aboriginal and Torres Strait Islander community-controlled organisations leading the way on service delivery. We already know that community-controlled organisations achieve better results because we understand what works best for our peoples,” Ms Turner added.

The priority reforms will form the basis of engagements with Aboriginal and Torres Strait Islander people, communities and organisations across Australia during September and October 2019. The engagements will be led by the Coalition of Peaks, with the support of Australian Governments, to hear what needs to be done to close the gap in life outcomes between Aboriginal and Torres Strait Islander people and other Australians and to build awareness and understanding of the new Closing the Gap agreement.

“The Coalition of Peaks is pushing ahead in the pursuit of better outcomes for Aboriginal and Torres Strait Islander people based on greater support for community controlled organisations. This partnership represents significant progress in Aboriginal and Torres Strait Islander people regaining control over the decisions that impact them,” said Ms Turner.



Professor Roianne West. Photo: Griffith University.

## THE WEST FAMILY – CLOSING THE GAP

*Professor Roianne West comes from a long line of Aboriginal health professionals.*

Our success we attribute to many things but mostly to being born in Cloncurry and raised between Cloncurry and Mount Isa on our grandmother’s ancestral lands. We will be forever grateful to our parents for making a deliberate and conscious decision to raise their children and grandchildren on our ancestral lands and to raise us Aboriginal.

Our mother has dedicated over forty years of her life to improving the health of Aboriginal people – most of which has been on her country. Mum keeps us grounded and ensures that the work we do is steeped in community and culture. Mum knows that the job she does is of

critical importance to the lives of many people, that she is trusted and therefore has access to the “real story” – something that she sees as a great responsibility and privilege, and something that she has handed on to her children.

We come from a long line of healers, and our passion for improving the circumstances of Aboriginal people can be attributed to the tireless work of my grandmother and mother in Aboriginal affairs. In spite of the challenges that came with the times back then and come with the times now, my grandmother and mother still managed to envisage a life for us that was full of possibility.



Karen West, a 45-year veteran of Aboriginal health, and mother of three health professionals. Photo: West Family.

## *Mum keeps us grounded and ensures that the work we do is steeped in community and culture.*

It is because of my mother that my twin sister, my brother and I completed nursing degrees on our country. I was the only one who went on to complete a master's degree and then a PhD. There are four generations of nursing in our family.

The greatest significance of me completing a PhD was that my grandmother only went to Grade 3, my mother to Grade 8, and I completed the highest level of education possible.

We have all seen that being well educated is a way to help improve the circumstances of our people, leading us to

jobs and opportunities beyond either our grandmother's or mother's experiences, and sometimes even our own.

Today I am Foundation Professor of First Peoples Health at **Griffith University** and Director of the First Peoples Health Unit, which I spearheaded the establishment of. I have 25 years of experience in Aboriginal health.

I was Australia's first nursing director in a tertiary hospital with a dedicated portfolio of Indigenous health and Australia's first Professor of Indigenous Health in a joint appointment between a hospital and a university.

My mum, **Karen**, is a senior health worker at **Gidgee Healing Aboriginal Community Controlled Health Service** in Mount Isa. She has 45 years of experience in Aboriginal health.

My twin sister, **Leeona**, works within the North West Hospital and Health Service, and has recently been appointed as the director of nursing at the **Mornington Island (Gununa) Hospital** in the Gulf of Carpentaria. She has 25 years of experience in Aboriginal health.

My brother, **Laurie**, is the regional practice nurse for **ATSICHS Brisbane** (Aboriginal & Torres Strait Islander Community Health Service). He has 25 years of experience in Aboriginal health.

My twin daughters, Tayla and Tyla, both work at Gidgee Healing Aboriginal Community Controlled Health Service in Mount Isa. One works within the Deadly Choices team and is undertaking a Bachelor of Nursing part-time, and the other works as part of the Work It Out Team while undertaking a Bachelor of Communications part-time. Both have three years of experience in Aboriginal health.

We all believe we would be somehow diminished to choose a life lesser than what our grandmother and mother were holding out as possible.

**A university-trained Indigenous health workforce is paramount to improving health outcomes and genuine self-determination for Indigenous peoples.**

My family background is the main reason why I have focused on health workforce development, including the recruitment, education and training of Indigenous peoples into the health professions, and building the cultural capability of the wider health workforce. I strongly believe that pathways to health programs in higher education are critical to building a more highly skilled and highly educated Indigenous Australia. I am committed to ensuring that Indigenous people who have the ability to and aspire to study at university get the opportunity to do so, and I believe that a university-trained Indigenous health workforce is paramount to improving health outcomes and genuine self-determination for Indigenous peoples.

I've experienced firsthand how university outreach programs can change lives. I studied and graduated together with my twin sister and brother as registered nurses through Deakin University's Mount Isa Nursing Education project.

There is much to talk about regarding the critical role of Indigenous knowledge in health care. There is unexplored potential that exists for two-way learning, where new and more sophisticated ways of working together are made possible.

# VI. LAND AND WATER

## CARING FOR COUNTRY THROUGH CULTURE, KNOWLEDGE AND COMMUNITY

There are valuable lessons from grassroots Indigenous ranger enterprises, which support greater self-determination, national prosperity and sustainability, writes **Seán Kerins**.

*“Our vision is to have our healthy people living and working on our healthy country ... We want to work with partners to achieve mutually agreed objectives using Indigenous and Western science-based knowledge systems. We want the management of our land to be in our hands now, and into the future”<sup>101</sup>*

Warddeken Land Management



The Indigenous ranger initiative, perhaps the most valuable land enterprise to have been developed over the past two decades, was itself the result of the Indigenous homeland communities' initiatives in Australia's remote regions. These communities were born out of Indigenous peoples' pursuit of their right to self-determination; the right to freely determine their political status and the right to decide their economic, social and cultural development.<sup>102</sup>

There are about 1,200 discrete Indigenous communities scattered over Indigenous-owned lands throughout the remote regions of Australia. With a total population of

about 100,000 people, they account for about 20% of the estimated Indigenous population of Australia. A small number of these communities have a population of over 500 people, while nearly 1,000 have a population of less than 100 each. The larger communities are townships, established during the colonial period as government settlements and missions. The tiny communities are generally referred to as outstations, or homelands, or are community living areas on pastoral stations and within some national parks.<sup>103</sup>

While spread thinly, many of the Indigenous peoples living in these remote regions are utilising their land, social capital, and ecological knowledge to develop collaborative partnerships for the betterment of Australia's natural environment. Working with government, the private sector, research institutions, schools, language centres, and conservation and philanthropic organisations, these communities are at the forefront of operating dynamic, community-based ranger enterprises.

These ranger enterprises are not only about creating meaningful employment in regions with few mainstream opportunities, and passing cultural knowledge between generations, they are also providing a variety of

<sup>101</sup> Warddeken Land Management, *Warddeken Land Management Annual Report 2011–2012*, Kabulwaramyo, Western Arnhem Land, Northern Territory, 2012.

<sup>102</sup> International Covenant on Civil and Political Rights (Article 1.1), and the International Covenant on Economic, Social and Cultural Rights (Article 1.1).

<sup>103</sup> J Altman and S Kerins (eds), *People on Country, Vital Landscapes, Indigenous Futures*, The Federation Press, Sydney, 2012, pp.9–10.

environmental services. This work is in the national interest and is vital to all our lives.

No matter where we live, we all benefit from the multitude of natural resources and processes that are supplied to us by the ecosystems located within the remote regions of the continent. Together, these benefits are known as ecosystem services.<sup>104</sup> They include things so fundamental to our lives that we often overlook how they function: clean drinking water; carbon sequestration and climate regulation; waste decomposition and detoxification; and crop pollination. Our energy, minerals, food and pharmaceuticals are all products of ecosystem services.

**No matter where we live, we all benefit from the multitude of natural resources and processes that are supplied to us by the ecosystems located within the remote regions of the continent.**

Many of us also draw cultural, intellectual and spiritual inspiration from the remote regions; they feature in Australian art, stories, songs and poems with the “outback” woven through the collective Australian identity.

Crucial to the protection and maintenance of the ecosystem services are the lands of Indigenous Australians. Indigenous-owned lands, held under a variety of tenures, currently embody around 35% of the continent, representing as much as two million square kilometres of land.

Over the past 40 years this land has been returned to its original owners through land rights and native title legislation.

Not all of Australia’s Indigenous peoples were lucky enough to get back some, or all, of their ancestral land, or have full control of it. Land that had high mainstream economic value in the 18th, 19th, and 20th centuries tended to have been appropriated permanently via free-holding. In New South Wales, the state with the highest Indigenous population, less than 1% of the land is in Aboriginal ownership. Most of the land returned is in regions where it



Donald Shadforth, Garawa Ranger, undertaking aerial controlled burning of the Garawa Aboriginal Land Trust in the south west Gulf of Carpentaria region. Photo: Michael Lawrence Taylor.

<sup>104</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Biodiversity Synthesis*, World Resources Institute, Washington DC, 2005.

had little or no commercial value for a variety of reasons, such as climate, poor soils or distance from markets.

Land returned to Indigenous peoples includes places like the Aboriginal Reserves in Arnhem Land, where pastoralism never gained a foothold, and the arid regions of central Australia, long considered the dead heart by European Australians. This Reserve land was returned without the need for claim.

Indigenous peoples outside the reserves managed to get some of their land back by claiming unalienated Crown land and then demonstrating authenticity of attachment. Or, when pastoral leases came on to the market, purchasing the leases, usually through Aboriginals Benefits Account grant monies, before turning them into inalienable freehold property under the *Aboriginal Land Rights (Northern Territory) Act 1976*. These lands represent places where capitalism never succeeded, or spectacularly crashed and burned through inappropriate large-scale development and a lack of environmental knowledge.

## INDIGENOUS LAND IS VITAL TO NATIONAL PROSPERITY AND MUST BE NURTURED

Today, however, these landscapes are of vital importance. This can be clearly demonstrated by overlaying a template of Indigenous-owned lands onto resource atlas maps of Australia illustrating priority regions of high biodiversity value, mean annual water run-off, and the extent of land and river disturbance. This demonstrates Indigenous-owned lands contain substantial areas of very high biodiversity significance — essential for developing an adequate and representative system of protected areas within the National Reserve System — along with vast areas of low land disturbance where there remains significant coverage of native forests, scrublands, heathlands and grasslands.<sup>105</sup>

Indigenous lands also contain river systems that are virtually untouched by human development, uninterrupted from their headwaters to their mouths with intact riparian

margins. It's not only the high biodiversity value of the land or its vast size that is important, but also its connectivity, which plays a vital role in providing essential corridors for native animals to freely move about their ranges to various breeding and feeding habitats.

These enormously rich ecosystems, from the monsoonal tropics in the north to the arid lands in the centre and the temperate lands of the south, are under threat from species decline, the invasion of exotic species (feral animals and weeds), changed fire regimes, and mining activity. There's a great need to be vigilant, especially at a fine scale.

Ecologists tell us that species are relatively specialised in their roles within ecosystems and their ability to compensate for the specialised activities of another species at its extinction is not always optimal, sometimes escalating ecosystem disturbance.<sup>106</sup> The downstream effect of individual species loss and the impact on ecosystem function has been described using an analogy of rivets on an aeroplane wing. If only one species becomes extinct, the loss of the ecosystem's efficiency as a whole is relatively minor. However, when several species disappear, the whole ecosystem may collapse in much the same way as the wing of the plane does after popping dozens of rivets.<sup>107</sup>

With Australia having one of the highest global extinction rates of native wildlife there is an urgent need to halt this decline before the downstream catastrophe affects us all, imposing unprecedented economic and social costs.

Significantly, it's not only at the fine scale with the loss of individual species that Australia's ecosystems are beginning to unravel, but also at a much broader scale where vast regions of diverse ecosystems and habitats are being rapidly degraded.

One of the most significant drivers of change on a massive scale is altered fire regimes. This is especially so in regions where Indigenous Australians have been forced off their ancestral lands and moved into townships. Unmanaged landscapes have become characterised by frequent extensive wildfires, occurring

<sup>105</sup> JC Altman, G Buchanan & L Larsen, *The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia*, CAEPR Discussion Paper No. 286/2007, 2007.

<sup>106</sup> JH Lawton, 'What do species do in ecosystems?', *Oikos*, vol. 71, no. 3, 1994, pp.367–374.

<sup>107</sup> PR Ehrlich & AH Ehrlich, *Extinction: The Causes and Consequences of the Disappearance of Species*, Random House, New York, 1981.

in the late dry season and typically under parched, hot weather conditions, often exacerbated by climate change. The effects can be catastrophic. In some places, wildfires annually burn thousands of square kilometres of land, threatening not only habitat but people's lives and properties.

The long-term result of uncontrolled hot fires is evident in many places across Australia where vast areas have lost vegetation. The loss of this vegetation means the loss of feeding and breeding habitats for many species, and has a particularly harsh impact on vulnerable or critically endangered species. Vegetation loss exposes skeletal soils to erosion by monsoonal rains.

Furthermore, hot late-season fires emit hundreds of thousands of tonnes of greenhouse gases (methane, nitrous oxide and carbon dioxide) into the atmosphere, exacerbating global warming. Combine these fine and broad-scale changes with climate change and the future of the ecosystems we all depend on looks bleak.

What is even more alarming is that the federal Department of the Environment admits that "an overarching national policy that establishes a clear vision for the protection and sustainable management of Australia's environment to the year 2050 is lacking".<sup>108</sup> In choosing which direction to move forward it is important to look at the evidence of what is working to halt or mitigate some of these environmental changes and invest in them.

## CARING FOR COUNTRY WORKS AND IS ESSENTIAL

For the past 25 years many of Australia's Indigenous peoples have been playing an essential role working to halt or mitigate drastic environmental degradation through a variety of ranger enterprises, or what Indigenous Australians term "caring for country".<sup>109</sup> Numerous Indigenous community-based ranger enterprises provide excellent case studies of the caring for country activities which make a valuable contribution to a potentially more sustainable future. Indigenous ranger enterprises have a variety of governance models. Some have developed

company models, limited by guarantee, under the *Corporations Act 2001* (Cth), where membership is based on different clan affiliations. In these circumstances each clan elects a number of its members to sit on the board of directors who guide the activities of the groups. Others operate under customary Law exercised through the authority of senior traditional owners and a board of directors. At the heart of Indigenous ranger enterprises are planning documents developed mostly through participatory processes over a number of years. These planning documents become live when land owners give their free, prior informed consent to their implementation.

For the past 25 years many of Australia's Indigenous peoples have been playing an essential role working to halt or mitigate drastic environmental degradation through a variety of ranger enterprises, or what Indigenous Australians term "caring for country".

**Warddeken Land Management Limited** is a company established in West Arnhem Land by the **Bininj** people. It manages the Warddeken Indigenous Protected Area, a region of international biodiversity and cultural significance encompassing over 13,000 square kilometres of land. Warddeken, along with Indigenous and non-Indigenous partners, was instrumental in developing the West Arnhem Land Fire Abatement project.

This intercultural project is contracted to abate at least 100,000 tonnes of carbon equivalent greenhouse gases per year for the 17-year life of ConocoPhillips's liquefied natural gas plant based in Darwin. Since 2006, ConocoPhillips has

<sup>108</sup> WJ Jackson, RM Argent, NJ Bax, E Bui, GF Clark, S Coleman, ID Cresswell, KM Emmerson, K Evans, MF Hibberd, EL Johnston, MD Keywood, A Klekociuk, R Mackay, D Metcalfe, H Murphy, A Rankin, DC Smith, B Wienecke, 'Overview', *Australia State of the Environment 2016*, Australian Government Department of the Environment and Energy, Canberra, 2016, <<https://soe.environment.gov.au/theme/overview>>.

<sup>109</sup> S Kerins, 'Caring for Country to Working on Country', in J Altman and S Kerins (eds.), *People on Country, Vital Landscapes, Indigenous Futures*, The Federation Press, Sydney, 2012.

contributed about \$1.2 million per year to offset emissions from the plant. This project has exceeded the initial target of abating 100,000 tonnes of carbon equivalent greenhouse gases per year, abating an average 140,000 tonnes, and has now grown into a much bigger carbon farming project that includes much of Arnhem Land. They have also established and crowd-funded a school (**Nawarddeken Academy**) to deliver bi-cultural education on country.

**This intercultural project is contracted to abate at least 100,000 tonnes of carbon equivalent greenhouse gases per year for the 17-year life of ConocoPhillips's liquefied natural gas plant based in Darwin.**

To support their work and diversify their funding base, landowners established in 2010 the **Karrkad Kanjdji Trust**. Karrkad Kanjdji operates as a Trustee Company and is independent from locally based Indigenous organisations. It is led by skilled Indigenous and non-Indigenous directors. The Trust is a bridge between Indigenous land managers and those in the broader Australian community with the capacity and desire to contribute to landowners' aspirations. Working with Indigenous ranger enterprises in Arnhem Land the Karrkad Kanjdji Trust has a focus in five areas. These include: the recovery of native species; the employment of rangers; the education of the next generation of rangers and custodians; the management of cultural heritage and the sustainability of remote ranger bases that allows this work to occur.

Warddeken Land Management works closely with neighbours, the **Djelk Rangers**, who also play a key role in fire abatement in western and central Arnhem Land,

along with undertaking coastal surveillance and biosecurity protection services for Australian Customs, Australian Quarantine Inspection Services and Northern Territory Fisheries. Operating for over 20 years, the Djelk Rangers manage the Djelk Indigenous Protected Area of 6,672 square kilometres and are a success.

Working with Maningrida College, the Djelk Rangers were instrumental in establishing the Learning on Country Program to develop a strong partnership between Rangers, school and local community to deliver a culturally responsive, secondary school curriculum that integrates Indigenous knowledge and western knowledge systems.

The **Dhimurru Aboriginal Corporation**, established by Yolngu people on the Gove Peninsula in north east Arnhem Land, has for the last 25 years been trailblazing in "both-ways" management: using Yolngu (local Aboriginal) and western scientific knowledge systems in combination to deal with ecological threats such as the highly invasive and ecologically destructive Yellow Crazy Ant.

**These ranger groups operate under the authority of Aboriginal traditional land owners, with their day-to-day activities managed by the Northern Land Council.**

Neighbouring Dhimurru, the **Yirralka Rangers** manage 15,000 square kilometres of land and sea country. They are seeing the loss of paperbark trees, a freshwater species, and the growth of saltwater mangroves in their place, most likely due to the impacts of feral animals, such as buffalo and pigs. This can be mitigated to a degree by the removal of water buffalo (culling) that trample riparian plants and create



Early season burning of the Garawa Aboriginal Land Trust in the south west Gulf of Carpentaria region. Photo: Michael Lawrence Taylor.

swim channels that aid the flow of saltwater into freshwater ecosystems.

However, climate change and the rise in sea level are likely to impact on many more sensitive freshwater ecosystems.

In Cape York, there are many ranger groups, like the **Olkola** working on species recovery, fire management and habitat protection, and the **Jabalbina Rangers** working to keep invasive weeds from threatening waterways. Also in the Cape are groups like the **Pompuraaw Rangers** working to save endangered turtle species from feral pigs along with biosecurity monitoring, ghost-net removal and fire management.

Near the NT/QLD border, the Garawa and Waanyi Garawa Rangers operate two ranger groups to manage two Aboriginal Land Trusts that together cover 20,000 square kilometres of land. The primary focus of their work is fire management and managing the **Ganalanga-Mindibirrina Indigenous Protected Area**. These ranger

groups operate under the authority of Aboriginal traditional land owners, with their day-to-day activities managed by the Northern Land Council.

In Western Australia, groups such as the **Bardi Jawi** are focused on dugong and turtle management, where they are deploying both science and Indigenous ecological knowledge to manage threatened and endangered populations.

In the sensitive lands of the arid centre, Indigenous peoples have established groups like the **Nolia Yukultji Ward**, working with fire and hunting feral cats to protect endangered species like the bilby. The Spinifex Rangers, among other things, are working with neighbouring groups to protect country from feral camels. While the **Kanyirninpa Jukurrpa Martu Rangers** are managing vast areas of the Western Desert where they deploy their ecological and cultural knowledge to burn their country to reduce wildfires and enhance habitat for threatened species. In South Australia, the **Warru Rangers** are focussed on the Black Footed Wallaby.

## THE WAY FORWARD ON SELF-DETERMINATION

There are now more than 130 Indigenous ranger initiatives operating across Australia and the off shore islands — too many to acknowledge in this article.

In most of these groups, women play vital roles in governance, day-to-day management and sharing vital ecological knowledge. Pat Anderson, an Alyawarre woman and chair of the Lowitja Institute, says: “All across Australia, women are applying their know-how, learning new skills, sustaining local knowledge, creating opportunities for kids and younger women, bringing their own inherent leadership qualities to the job, and being positive role models.”<sup>110</sup>

The Indigenous ranger initiative is one of the fastest growing Indigenous driven projects, with more and more communities founding ranger groups. This is because the ranger groups view Indigenous cultures, languages, kinship, country and knowledge as assets, not barriers, to social and economic development. Ranger groups also build on Indigenous governance processes to guide ranger group development and day-to-day management. Collaborative partnerships with an array of non-Indigenous organisations have also assisted in building ongoing supportive relationships that aid the transfer of knowledge between both Indigenous and non-Indigenous partners.

Some valuable lessons can be learnt from Indigenous ranger enterprises that may guide greater self-determination in other important social, cultural and economic development initiatives. The most significant is that when Indigenous peoples’ aspirations, knowledge, cultures and skills are given priority in project development they often succeed. In addition, where outsiders participate in these Indigenous-led projects, instead of making Indigenous peoples participate in externally defined, top-down government programs, as is the dominant practice, both Indigenous socio-economic circumstances and biodiversity outcomes can improve.

**Some valuable lessons can be learnt from Indigenous ranger enterprises that may guide greater self-determination in other important social, cultural and economic development initiatives.**

This can be seen where the Australian Government instituted policy frameworks such as the Indigenous Protected Area program to support Indigenous people with some of the costs of managing vast areas of country in the national interest. Or where the Australian Government and some state governments have invested in some ranger wages and operational costs, although much greater long-term investment is urgently needed to grow the Indigenous ranger initiative across the nation.

While the environmental work of remote, regional and urban living Indigenous peoples is in the national interest, it remains largely on the margins of debates about climate change, biodiversity loss, change in water availability, resource depletion and Indigenous economic development.

It’s time to start looking at the evidence of what’s working for many Indigenous peoples, their communities and country, to understand why it’s working. Only then can we begin developing more policy frameworks to build on this success: creating broader opportunities for public and private investment, intercultural collaborations, education initiatives and problem-solving towards a more sustainable future.

It is vital to support Indigenous self-determination as an ongoing process of choice for Indigenous peoples to ensure they are able to meet their social, cultural and economic needs to build a nurturing future and an

<sup>110</sup> The Pew Charitable Trust, *Strong Women on Country: The Success of Women Caring for Country as Indigenous rangers and on Indigenous Protected Areas*, The Pew Charitable Trust, Canberra, 2018.

## RECOMMENDATIONS

1. Align the whole-of-governments response to Indigenous policy development so that it reflects Indigenous aspirations, recognises its crucial role in ameliorating climate change impacts on populations, ecosystems and natural resources, and supports Indigenous cultural and natural resource management.
2. Address any inequities in funding natural resource management activities and increase funding and governance support to Indigenous organisations that effectively undertake natural and cultural resource management activities, so that they can further develop to meet local and regional challenges and continue to play an important role as incubators of innovation and partnership in caring for country.
3. Include cultural and natural resource management within school curricula, as learning through country, especially, but not exclusively, in remote area Indigenous schools, and develop more two-way post-school training opportunities for Indigenous rangers in cultural and natural resource management.
4. Develop long-term investment timeframes on a rolling basis, contingent on annual performance reporting and triennial review, for community-based ranger groups to ensure realistic planning horizons and development of long-term environmental management actions to address deeply entrenched environmental threats.

# RANGERS WORK UNDER OUR LAW

Jacky Green, Senior Cultural Advisor, Garawa and Waanyi / Garawa Rangers, Borroloola, NT.

Rangers work under our Law. They work under the authority of the **Minggirringi** (“owners” or “boss”) and **Junggayi** (“manager” or “policeman”) who are the only ones who can speak for their Country.

The Minggirringi isn't free to do what he or she wants like an “owner” in a white system can. Under our Law they have restrictions placed on them. These may be on visiting certain places, or on the hunting or eating of certain animals, using resources, or burning the Country. When making decisions about their country the Minggirringi has to seek permission from the Junggayi. It's a bit like when a whitefella businessman says he can't make a decision until he has talked to his lawyer who will give him the go-ahead.

All these people, the rangers, Minggirringi and Junggayi, all work together. This is very important for us Aboriginal people. It's our Law.

At all of our land management planning meetings and firework we have made enormous effort to have the senior Minggirringi and Junggayi for each Country present at the meetings and involved in the decision-making. During our firework, when we are doing aerial controlled burning from the chopper, we have the Junggayi for the country up in the front directing the work. All of our caring for Country work reinforces our customary Law. It's important as it demonstrates to everyone that we don't want to undermine

our law but keep it strong. It's about our self-determination as Aboriginal people and how we stand in our Law.

All of our Caring for Country work reinforces our customary Law.

It's also important because our young ones get to see how Minggirringi and Junggayi work together to make the Law strong. They see that they are not just a poor black kid living in town, but part of a bigger land owning group, a people with a unique identity and the right to make their own decisions for their Country. This gives our kids some pride when we say “are you listening, because one day you will have to carry this out.”

Our young ones see they are not just a poor black kid living in town, but part of a bigger land-owning group.



Jacky Green, left and Robert O'Keefe, right. Photo: Seán Kerins.

# WHERE THERE IS TERRITORY THERE IS HOPE

Despite a long and bitter struggle over land rights, Jon Altman sees signs of an extraordinary economic transformation in remote areas.

In 2016 we commemorated the 40th anniversary of the passage of federal land rights law for the Northern Territory (NT). This was crash through, path-breaking law. With its passage in 1976, 20% of the NT that had been reserved for Aboriginal use under the watchful surveillance of colonial authorities was transferred to land trusts to be managed by statutory land councils as instructed by the owners of that land.

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

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

Whitlam set up a royal commission with clear instructions to look at how land rights might be implemented in the NT. In another stroke of sound judgement, Whitlam appointed as Commissioner **Justice Edward Woodward**, who had acted for the plaintiffs in the Gove case. After a thorough inquiry in 1973 and 1974, Woodward came up with a thoughtful and sophisticated template for land rights law for the federally controlled NT.

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

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

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

Woodward’s “measured” approach had shortcomings.

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

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

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

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

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

## A LONG AND BITTER STRUGGLE

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

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

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

We also noted that the diversity of Indigenous circumstances, dictated in large measure by the nature of destructive colonisation as well as environmental variation, would require a diversity of development approaches.

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

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

This was a moment of great optimism about post-colonial possibility, especially for those with newly acquired land rights. This was especially the case for people who had

moved to outstations from government settlements and missions, where they had been centralised, voluntarily and involuntarily, under earlier colonial policy regimes.

It is generally overlooked today that centralised communities were a development disaster, where state and mission-sponsored attempts at market capitalism failed. So, the people who chose to decentralise were looking optimistically for life ways that accorded with their traditions and with aspirations for betterment.

Back then, it was estimated by the Department of Aboriginal Affairs that there were perhaps 100 such outstation communities, with a total population of 4,000 people, mainly in the NT.

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

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

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

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

In the early 1970s, by now nominal Australian citizens, they returned to live on their ancestral lands. What I documented back then was a truly remarkable and

theoretically challenging “post-colonial” economic transformation. Kuninjku people, who had abandoned their precolonial hunter-gatherer way of living, went back to live as modern hunter-gatherers.

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

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

And while people did receive state transfer payments (initially pensions and family allowances, and then

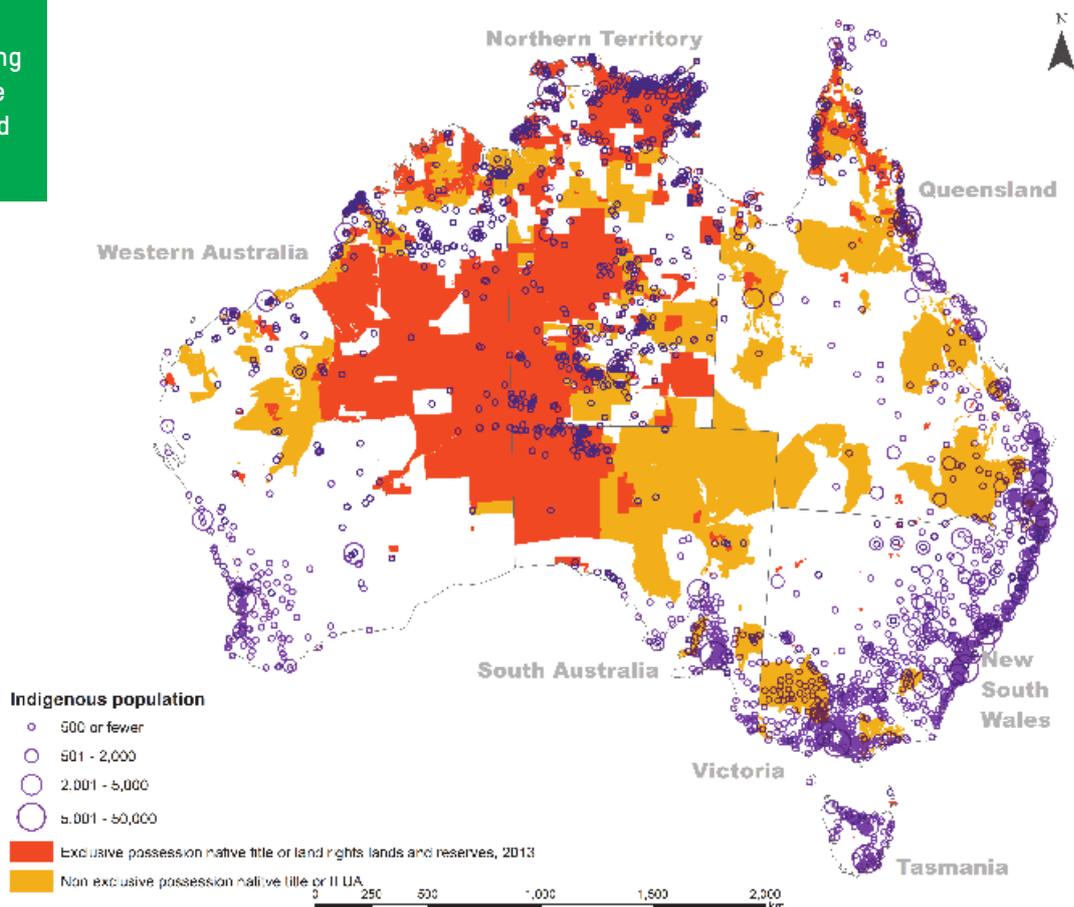
unemployment benefits), such payments were not the mainstay of their economy.

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

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

In 1985, when a mining company sought permission to undertake mineral exploration over their lands, the Northern Land Council professionally mediated, as required by law, to identify traditional owners and consult. A process was established to identify the right people to speak for country; key land owners chose to exercise their right to veto exploration and any associated mining activity. Land rights law proved it would guarantee them access to their lands and resources.

Professor Jon Altman’s map of Australia showing areas covered by native title determinations and land rights awards.



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

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

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

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

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

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

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

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

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

In opposition, the Coalition had opposed both the Mabo High Court judgment and native title law; now, the new prime minister, **John Howard**, disingenuously represented native title as dangerously anti-development to the Australian public.

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

The initial assault from 1997 to 1999 took the form of a major review of ALRA by John Reeves QC; its aftermath can only be described as a policy fiasco. Reeves’s massive two-volume report *Building on Land Rights for the Next Generation* was completed after nine months at considerable public expense; it sought to fundamentally and unilaterally alter the purpose of ALRA to turn it from the doing of simple justice to become a grandiose vehicle to secure the economic and social advancement of all Aboriginal people in the NT, not just Aboriginal landowners.

**The period since 1996 can be categorised as a second wave of colonisation with renewed assimilationist goals — the forceful imposition of western norms and values on all Indigenous Australians, using terms such as “normalisation”.**

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

Such changes were supported by the conservative Territory government, which had consistently opposed ALRA and land councils for two decades (since elected after self-government in 1978), seeing them as diluting its political jurisdiction and power.

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

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

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

Woodward was so appalled by Reeves's recommendations that, aged in his late seventies, he made a submission and gave verbal evidence to the inquiry, highlighting two particular shortcomings: proposals to disband the large Northern and Central land councils and to alter land ownership from the descent group to local communities inclusive of residents.

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

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

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

Unlike Woodward, Reeves misjudged political reality.

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

The Howard government was emboldened in its efforts by a

**Entire townships located on Aboriginal land were compulsorily leased for five years, extinguishing the interests of landowners.**

number of factors: an election victory in 2004 that provided rare control of the Senate; the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), which left ALRA exposed with only land councils as its protectors; and a ramping up of the neoliberal discursive assault on the institutions of Indigenous Australia and a commitment to a greater focus on the "mainstreaming" of individuals.

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

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

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

the minister, and paid for from mining on Aboriginal land; and the permit system to public areas of townships on Aboriginal land was abolished.

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

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

To date, and despite the concerted efforts of successive conservative governments, the s19A township lease option that effectively alienates the land and places the Executive Director of Township Leasing in ultimate control, has only been taken up on the Tiwi Islands and on Groote Eylandt (where traditional owners are now articulating regret for the decision). According to recent research by the Centre for Appropriate Technology in Alice Springs, there are now some 600 outstations, populated by up to 11,000 Aboriginal people.

## THE LIVING TRUTH OF LAND RIGHTS

What has this long and bitter struggle over land rights reform, aided and abetted by conservative NT governments, meant on the ground for those looking to pursue their life ways on Aboriginal land?

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

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

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

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

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

This plural economy constituted an unusual form of economic hybridity; it productively used custom and minimal unconditional state support to self-provision and engage with market capitalism.

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

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

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

I have advocated fiercely for enhanced development support for those pursuing such productive livelihoods on their land using empirical evidence from west Arnhem.

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

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

And if people like the Kuninjku were indeed “land rich and dirt poor” maybe the absence of appropriate development support from her government and others played a crucial role in this.

After all, there are few in remote Australia not dependent on support from Canberra in one form or other.

Unable to fundamentally “reform” ALRA by converting inalienable land title held under a common property regime into alienable individual title, to facilitate mining industry access, another approach was used. A new suite of neo-assimilationist measures tried to convert people’s norms and values to match those of some imagined responsible neoliberal subject.

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

**They are severely frustrated and angered by their inability to resist this second wave of colonisation, with any pushback being punished with deeply impoverishing loss of welfare support.**

The CDEP employment program, which underpinned the hybrid economy in these outstations, was replaced by the Community Development Programme (CDP), which pays welfare on condition that training and work-like activities are undertaken five hours a day, five days a week.

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

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

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

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

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

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

They are too well aware that any choice to retain their productive form of hybrid economy is being eliminated. They are severely frustrated and angered by their inability to resist this second wave of colonisation, with any pushback being punished with deeply impoverishing loss of the welfare support on which they are becoming increasingly dependent.

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

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

All this is occurring despite the willingness of people like the Kuninjku to voluntarily include their environmentally rich lands in the **Djelk Indigenous Protected Area**; this is an environmental commons formally declared in 2009 and financially supported by the Australian Government that allows sustainable use of resources.

As well, they are voluntarily including their lands in a massive carbon farming commons that now extends over most of Arnhem Land and successfully abates greenhouse gas emissions via prescribed burning on a commercial basis in the local and national interest.

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

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

Their ancestral lands are being emptied of traditional owners, with this emptying process reflecting the rapidly escalating antipathy of Commonwealth and NT

governments to support outstations living. This constitutes a form of cultural genocide for a people for whom connection to country, sacred sites and ancestors in the landscape are paramount values.

In his Nugget Coombs memorial lecture in October 2016, Joe Morrison referred to the 40th anniversary of ALRA as an unhappy anniversary and asked rhetorically, what is there to celebrate?

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

My analysis of the past decade of neo-assimilationist recolonisation is also pessimistic — irrespective of governmental intent, impressive transformational progress by people like the Kuninjku has been suddenly halted and they are currently more impoverished than at any time in the last four decades.

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

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

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

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

In October 2016, in a rare example of political honesty, former prime minister Tony Abbott acknowledged that “Abolishing CDEP was a well-intentioned mistake”.

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

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

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

In 1974, Woodward emphasised that the granting of land rights was only a first step on a long road towards self-sufficiency and eventual social and economic equality.

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

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

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

Given the costly errors of the second wave of colonisation in the early 21st century it might be time to once again open up post-colonial possibilities, this time more equitably resourced, more realistic about economic possibilities and properly responsive to diverse Aboriginal aspirations.

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

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

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

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

*Where there is territory there is hope.*

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

## RECOMMENDATIONS

Governments must support and equitably resource community-based, bottom-up initiatives while remaining realistic about economic possibilities especially in remote areas.

Governments and all Australians must recognise and support the contributions that peopled Indigenous lands make to the environmental wellbeing of the Australian continent.

# VII. AGREEMENTS

## RESOURCES, POWER AND THE ART OF AGREEMENT-MAKING

Successful agreement-making for Aboriginal peoples must involve control over writing the rules and financial autonomy, says Jason Mifsud.



Jason Mifsud, while coaching the Fitzroy Stars in 2016, speaks to his team during a game against Thomastown in Melbourne, Victoria.  
Photo: Mark Dadswell, Newspix.

Power and resources are very important things for First Nations peoples who are seeking to re-establish their rights and position after centuries of dispossession.

When it comes to agreement-making by First Nations communities, it is often the case that the rules are written by governments and they also control the purse strings. I have heard thousands of stories from communities who say they have native title but they don't have an equal negotiating position. This is why I believe that Native Title does not equate to land rights, because it is not allowing us to negotiate a fair and equitable reparation.

In Victoria, the fundamental difference with our Treaty-making process is that First Nations representatives have been authorised to write the rules, and that is a big shift in agreement-making.

In any form of agreement-making, we need to be very clear about what we are getting. If we are not being authorised legal power and if we are not being authorised resources, we are not in an agreement-making framework. What I mean by power is that if we are not being authorised to

In Victoria, the fundamental difference with our Treaty-making process is that First Nations representatives have been authorised to write the rules, and that is a big shift in agreement-making.

elect our own representatives and if government still has all the resources and power, then we are really not negotiating very much. In any form of agreement-making, we need to be very clear about what we are getting. If we are not being authorised legal power and if we are not being authorised resources, we are not in an agreement-making framework. What I mean by power is that if we are not being authorised to elect our own representatives and if government still has all the resources and power, then we are really not negotiating very much.

Process is very important, as this involves the authorisation and mandate from the community. This can be very tedious and burdensome, and you have to get it right. When we over-invest in understanding the process, we end up with better outcomes.

The *Advancing the Treaty Process with Aboriginal Victorians Act* involves a far-reaching agenda for the advancement of First Nations communities in the state. The Victorian Treaty Advancement Commissioner, Jill Gallagher, has overseen the elections and formation of the First Peoples' Assembly

of Victoria, which will serve as the voice of Aboriginal communities during the next phase of the Treaty process.

The Assembly includes 33 Traditional Owner representatives, with 12 from formally recognised Traditional Owner groups with Native Title, Traditional Owner Settlement Act or Registered Aboriginal Party status. Additional seats will be added as groups become recognised. The remaining 21 representatives have been elected from within set Aboriginal electoral boundaries that are based on the Aboriginal population, not Country. They have been elected by all Aboriginal Victorians living in their electorate.

The Assembly's role is not to negotiate treaties. Rather, its role is to work with the government to develop three things. Firstly, the Assembly will establish the treaty negotiation framework — the “ground rules”, including who can negotiate a treaty and what may be included in a treaty. Secondly, it will develop a Treaty Authority that will act as an independent umpire for the treaty process. And thirdly, the Self-Determination Fund will give Aboriginal Victorians the resources to negotiate a Treaty. Once this framework is in place, Aboriginal Victorians will be empowered to negotiate treaties at the local level.

In my travels throughout Victoria while Assembly elections were underway, I met many Elders who told me they would be nominating for the Assembly. It is mob stepping up like this that will ensure the Assembly and Treaty process succeeds.

I realise that the term “Treaty” can create fear and anxiety for some sections of the community. But what we are really talking about is simply an agreement, which is the language used in the Uluru Statement when it talks about the role of the “Makarrata Commission to supervise a process of agreement-making between governments and First Nations”.

**I realise that the term “Treaty” can create fear and anxiety for some sections of the community. But what we are really talking about is simply an agreement.**

While the Treaty process is a game changer for Aboriginal Victorians, we shouldn't lose sight of international frameworks to strengthen the position of First Peoples across Australia. One concern I have is that First Nations peoples don't double down on the United Nations Declaration on the Rights of Indigenous Peoples. This is an international instrument, and we should be leveraging it at every opportunity. I think us owning that as First Nations people should be a top priority. It has been authorised at the international level — there is a new push coming out of the UN now for Commonwealth countries to develop action plans. We should be really clear as First Nations communities about what comes out of that. We need to pressure governments to enact an international instrument that has been written by us and for us from a global perspective.

Agreement-making for First Nations must involve the big issues of climate policy, and water and fire management. I've had many conversations over the years with Traditional Owners about forming a climate policy and engaging in water and fire management. There's potential to use our knowledge to generate economic independence within our communities. One question we are contemplating at the federal level is how do we price our knowledge and convene our knowledge holders to inform government policy. This is a question we are contemplating — we don't have the answers for that. But one thing is for sure: any such initiatives must be underpinned by agreements.

This work must also involve the role of First Peoples in managing the Indigenous Estate, including Indigenous Protected Areas and national parks such as Uluru and Kakadu. These parks are not managed properly, because power and resources are not evenly distributed. It's a falsehood to believe that Traditional Owners are authorised and resourced to “jointly manage” state and national parks.

For First Peoples, the ability to convene is king, in my view. This involves what we choose to discuss, debate and decide. I don't want to be naive and try to predict what Treaty will mean for Australia. I think the way it is emerging through — I'll call it agreement-making — is the right way. It has largely been localised through the states and territories, and I think at some time there will just be a movement through states and territories that a Commonwealth government wraps itself around and introduces legislation to empower those localised agreements.



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