

THE '67 REFERENDUM: WHERE TO NOW?

Tom Calma*

I would like to begin by acknowledging all the traditional owners of the land where we meet, the Gadigal people of the Eora Nation.

It is a pleasure to be here amongst such a distinguished and dedicated group of people. Some of you I've known and worked alongside for many years, and there are others whose work I've admired and appreciated from a distance.

It's great to see our young Indigenous brothers and sisters taking up leadership positions – bringing your own perspectives and life experiences into the debate. It is critical that you are influencing and shaping thinking now and into the future. Your views are appreciated, and it's important that we listen to you.

Some of you have helped to make this national forum happen – a forum that provides an important opportunity to reflect on just how far things have progressed over the last 40 years. But more importantly, we are also here to think collectively about how we negotiate the juncture we currently find ourselves at, given recent events in the Northern Territory and Western Australia.

Some of you have been prolific contributors in the national media, bringing insightful analysis and showing that the answers to the policy challenges exist within Indigenous communities and our cultures – something we need to keep reminding our politicians about.

And some of you, I am very pleased to say, have been instrumental in mounting an extremely effective national campaign to 'Close The Gap' and achieve Indigenous health equality within the next 25 years. As those billboards say, 'the Indigenous health crisis needs more than just a quick fix' – another message we must keep repeating!

So to the younger leaders amongst us – I want to thank you for the work you've initiated. More importantly, I want to encourage you to keep it up and to draw strength from those who've gone before you.

We are in the middle of a year of anniversaries, and given all the distress and concern that recent developments in Indigenous affairs have caused, I think we need to look back on these milestones in our country's history as a means of taking stock.

We also need to make sure we keep the spirit of those achievements alive.

It has become very clear to me as events have unfolded over the last few weeks that whether we are black or white Australians, events that happened 40 years ago are still very much with us. The 1967 referendum was one of those times in Australia's history where every single one of us could hold our head up high – knowing that we were each doing our bit to make sure Indigenous people had a better future in this country.

I think all of us who were around at that time sincerely believed that we had put the right constitutional foundations in place. We believed that from 1967 onwards there would only be one class of Australian citizen – rather than a nation deeply divided and in denial about the existence of its First Peoples.

The potential was certainly there, and I believe the hope was there amongst the 90 percent of Australians who said 'Yes', that things were going to change for the better. In hindsight we can and must ask the question: did we ever have the political leadership to drive that kind of change? I think there were certainly episodes of greatness.

We all remember Gough Whitlam's historic act of pouring the sand of the Gurindji land back into Vincent Lingiari's palm. Patrick Dodson recently referred to that gesture as, 'the iconic declaration of the Australian nation's intent to restore to Aboriginal people the dignity of their traditional lands'.¹

We all remember the sense of justice when the final reports of the Royal Commission into Aboriginal Deaths in Custody were handed down – vindicating all those families around the country who had fought for years to prove the true nature of their sons' and daughters' deaths in custody.

Some of us might be a bit hazy about the bi-partisan birth of the reconciliation movement in 1991 – but we all remember crossing those bridges in 2000 thinking we were at a turning point and experiencing the power of people.

And I think that power is still here. I think most Australians do have an inherent sense of what is right and what is wrong, and where our nation should be heading in 2007 and beyond. Forty years on, I think Australia wants to be able to hold its head up high on the international stage – knowing that we are dealing with the unfinished business and that we can do so in a fair and decent manner.

Maybe I am an eternal optimist.

But only a few weeks ago, the Indigenous Affairs Minister Mal Brough accused me of taking a 'glass-half-empty' perspective. He was disappointed with my latest report to Parliament, the *2006 Social Justice Report*. The Minister described it as 'unhelpful', and criticised me for ignoring the real outcomes being achieved in Indigenous affairs – 'the foundations that are being laid for the future'² as he called them.

Mr Brough is a committed Minister, determined to leave a legacy – no doubt like many before him. And anyone listening to the Minister can hardly doubt his zeal and good intent.

But my job as Aboriginal and Torres Strait Islander Social Justice Commissioner is to monitor the impact of government policy on the human rights of Indigenous Australians, and to report on the extent to which Indigenous Australians are able to enjoy their human rights.

I am also the Acting Race Discrimination Commissioner at HREOC. In this role I promote research and educational programs that combat racism and monitor

the implementation of the federal *Racial Discrimination Act 1975* (Cth), designed to ensure equality of treatment of all peoples regardless of their race.

My most recent *Social Justice Report* found that when the rhetoric of the Government is examined closely there are major discrepancies between what's been promised and what's been delivered. I reported that it was clear there are serious problems with the new 'whole-of-government' arrangements in Indigenous affairs.

The report documented the broad Government commitments to overcoming Indigenous disadvantage – which are by and large struggling because of a lack of strategic focus. Put simply, the policy direction and content is yet to be clearly articulated.

I reported that the most significant problem with the Government's approach is the lack of engagement and participation of Indigenous peoples. This manifests as a lack of connection between the local and regional levels, up to the state and national levels; and as a disconnection between the making of policy and its implementation.

In the report I wrote that the outcome is bad policy that lacks an evidence base. It is also not meeting standards set out by the Department of Prime Minister and Cabinet on policy implementation and released in late 2006.

You can see why Minister Brough was 'disappointed' with my report! The irony, if not the tragedy, is that in 2007-2008, the Australian Government will reportedly commit a record \$3.5 billion to programmes and services to address Indigenous disadvantage. It sounds like the money is pouring in, but it troubles me that I can't honestly tell you that it's being well targeted or spent. We simply don't know, because there are insufficient mechanisms for evaluating current programs, little transparency and even less engagement with local communities. This is an incredibly disappointing thing to have to say in 2007.

Development and human rights experiences, both in this country and worldwide, show that unless the people most affected by policy are most involved in its development, those policies will not succeed.

I advocate for individuals and communities to take responsibility. I recognise that responsibility is a learned

behaviour, and it must be embraced, nurtured and developed. Responsibility is rarely achieved by being imposed. This leads me to family violence and abuse. There's never an excuse for any sort of abuse and there never has been. It is not part of our culture, and never was.

Much has been written in recent weeks about the 'rivers of grog' that seem to underpin much of the family violence, neglect and dysfunction that we're now hearing about. As a nation we need to be prepared to ask the hard questions – and really hear the answers from Indigenous people. For example, why are so many Indigenous people drinking at harmful levels, and how can we start to reduce the need for alcohol so we can reduce the violence that follows?

We can't kid ourselves that simply closing the canteens or banning grog is going to fix the underlying problems of addiction or make people 'responsible'. In resolving these problems, it is the education and empowerment of peoples, the follow-up and the support, that is all-important.

Similarly, cutting out the heart of the permit system in the Northern Territory, compulsorily acquiring townships, and installing 'government business managers' is hardly empowering for Indigenous communities. I am yet to hear any compelling arguments about how this strategy will contribute to greater functionality and less child abuse.

On the contrary, I think there is sufficient evidence for us to hold real concerns that these measures will set Indigenous communities back. For example, we know from the Centre for Aboriginal Economic and Policy Research at ANU and Reconciliation Australia's 'Indigenous Community Governance Research Project' that

Indigenous skills, abilities, knowledge and leadership are most effectively mobilised and exercised when initiatives are Indigenous-designed and directed towards Indigenous goals.³

Their work also demonstrates that

[g]overnance is greatly strengthened when Indigenous people develop their own rules rather than simply adopting externally created institutions, and when they also design the processes by which they will enforce their rules.⁴

Yet here we are sending what are essentially government-appointed administrators into Indigenous communities across the Territory to take control of all programs, services and infrastructure that is federally funded. What expertise will these people have in running an Indigenous health clinic? What are the protocols that will govern their access to confidential patient records? Will they all be subject to police checks before they are appointed?

I don't know, and more importantly, Indigenous communities don't know.

People like Patrick Dodson who have been travelling around to some of the communities where the Government's 'survey teams' have visited, are reporting that communities are none the wiser about the Government's plans even after these survey visits. As he said in media reports earlier this week:

[People's] anxiety is heightened by the fact that no one can actually explain to them what it is that the Federal Government is doing, and how long they're going to be in crisis mode and what the exit strategy is going to look like.⁵

Further, I think we all need to take note when authoritative independent legal experts such as the Law Council of Australia publicly state:

We regard the compulsory acquisition of land as an extreme measure which conflicts with the fundamental rights to land ownership ... [we] can see no relevant explanation for compulsory acquisition of Aboriginal land on the scale currently proposed. All in all there seems to be a significant risk that the special measures proposed could well breach the *Racial Discrimination Act*.⁶

The Australian Government has a responsibility to ensure that each of the proposed measures in the Northern Territory does not adversely impact on the way of life and cultures of Indigenous communities. This is one of our human rights obligations under the *Convention on the Elimination of All Forms of Racial Discrimination*⁷ – something that I want to return to shortly.

At the same time, I firmly believe that the Government's announcement provides a historic opportunity, one that arguably only comes along once in a generation of political and public policy debate.

We must applaud the Prime Minister, Minister Brough and the Opposition leader for the coming together of political concern. After decades of pain and the ignored cries from our people - the very ones being hurt - the issue is finally, firmly on the political radar and on the front pages. And it must stay there.

What I am urging is for us to learn the lessons of past mistakes and also past successes. We are not starting from scratch here. And politicians need to understand that they do not need to denigrate and demean Indigenous people in order to move forward on policy reforms. We have been advocating for policy reform for generations.

This is why I believe Indigenous communities have every right to take offence at comments in recent days by the Chair of the Government's Emergency Response Taskforce, Dr Sue Gordon. On Wednesday the media reported that Dr Gordon had accused organisations in the Territory of 'causing mischief' in a bid to block any change in Indigenous communities. The 'evidence' of this mischief was a pamphlet being circulated that compared the intervention in the NT to the military occupation of Gaza.

Dr Gordon was reported as saying:

The misinformation is by people who don't want change, who don't want people in Aboriginal communities to have a better existence. It's pretty powerful and a lot of it's coming from Aboriginal people themselves who I feel don't want to change the status quo ... to me, the priority is the protection of children, the safety of community.⁸

Sadly Dr Gordon's comments are an echo of the mantra of Minister Brough: that Aboriginal organisations in the Territory and elsewhere have been sitting on their hands and doing nothing for our mob, and now we need the Minister and the military to come in and save us from ourselves.

A reader of the Minister's recent media releases about all the achievements of his survey and health teams after their first month in the Territory would be forgiven for thinking that the Minister had introduced the first ever health checks for Indigenous people in the Territory.

Nothing could be further from the truth.

We know that Indigenous Child Medical Checks available through Medicare have been in place since May 2006, and about 1,000 children have benefited from them.⁹ One of the reasons these Medical Checks have been so well received in the Territory is that many are delivered by Aboriginal-controlled health care professionals.

It's a similar story when you look back at who has actually been developing and running the successful programs in the Territory and elsewhere, such as: night patrols; cultural healing and well-being programs; mothers and babies programs; alcohol and kava management programs; nutrition and school breakfast programs; and family violence programs.

We all know it's the Indigenous communities - in particular the women - who have run these programs. Some of these programs have received federal money, but the questions remain. Were they ever really supported? Did they ever get ongoing, multi-year funding? Was there investment in fostering good governance and financial management within fledgling Indigenous organisations? Were these programs ever strategically aligned in a broader and comprehensive regional plan?

One example that I became aware of recently is from the Kapululangu Aboriginal Women's Law and Culture Centre in the south-east Kimberley. The women Elders of Balgo set up the program in 1999 to care for their community, particularly their youth and children. Their overarching goal is to heal the social and health problems that their community is facing as a result of the continuing cultural trauma that affects their health and social well-being.

The spokeswoman for the Centre, Patsy Mudgedell, said in a media release:

The Kapululangu elders have been providing a cultural program for young people and children since 1999, but we haven't been properly funded by the governments. We don't want the military coming into our community. We want to have our Indigenous programs funded, particularly our women's projects. Aboriginal people have solutions to our own problems ... but Kapululangu's attempts to run these programs have repeatedly gone unfunded. This is because governments don't understand the central importance of Law ... and culture ... to building pride of Aboriginality as a mechanism of protection in young people. The elders know

that without this solid foundation all the bricks of health, education and housing will continue to fall down.¹⁰

There are also some valuable lessons in the ashes of the Aboriginal and Torres Strait Islander Commission ('ATSIC') that can help us find a way forward. For example, in 2003 ATSIC developed a family violence strategy with a series of primary actions to be implemented, all mapped out at a regional level. It was a far-sighted, practical piece of policy planning – but in the rush to yet another policy revolution, it was consigned to the dustbin.

For a long time now the various state, federal and territory health departments have also developed a series of regional health planning forums under the National Indigenous Health Strategy. There are also ATSIC regional plans, and similar plans for housing and criminal justice at the state level. But are these being considered in the emergency response? No. We have yet another 'let's do it my way' bold experiment.

As a rapid response to the Government's emergency measures in the Territory we have seen the emergence of the Combined Aboriginal Organisations of the Northern Territory. I want to acknowledge Pat Turner and Olga Havnen's leadership. In the space of less than a couple of weeks they have managed to bring this mob together – no mean feat, I can assure you!

These Northern Territory organisations have come together with the broader Australian community sector to sign off on a comprehensive 30 page blueprint to address child abuse in the Territory, most of which could be picked up by Government and implemented tomorrow.

That is one of the positives in Indigenous affairs at the moment – in adversity we do come together from all different sectors of Indigenous affairs, all different age groups, and all different parts of the country. As the saying goes, in every dark cloud there's a silver lining.

The Combined Aboriginal Organisations report outlines over 50 practical and proven recommendations to ensure that any intervention in the Northern Territory to protect children will be successful both in the short term, and most importantly, bring lasting change to the communities.

One of the key messages of the report which I wholeheartedly support is that:

[A]ny response [to child abuse in Aboriginal communities] must be informed and led by local Aboriginal communities. It is only by strengthening the capacity of families and communities to protect and nurture children that the problems will be resolved. Aboriginal ownership and control of land and access to communities are important in this regard.¹¹

As the report indicates, we are not just talking about addressing child sexual abuse. It's about addressing the full range of issues that exist and contribute to abuse.

It's about addressing broader health issues like closing the 17 year life expectancy gap between Indigenous and non-Indigenous Australians and treating alcoholism and substance abuse.

It's about providing adequate and appropriate housing to address overcrowding.

It's about educating people about their rights and the responsibilities that go hand in hand with rights.

It's about creating and providing life opportunities.

And it's about partnerships and meaningful engagement with those most affected. It must be a holistic and comprehensive partnership that is in place for as long as it takes to address the inequalities.

When he announced the 'national emergency response' in June, the Prime Minister estimated that the cost would be some tens of millions of dollars. He later confirmed that the full power and resources of the Commonwealth will be directed to making lasting change. These commitments are welcomed and I will be closely monitoring their fulfillment.

However, unless all governments understand that this national crisis is a long-term catch-up commitment with a big price tag, I'm afraid we will be dealing with the same shameful statistics and the same shocked and appalled headlines in 10 or 20 years time.

The complex issues being tackled and the proposed measures to be taken in the Northern Territory also raise a host of fundamental human rights principles. It is of the utmost importance to Australia's international reputation, and for community respect for our system of government,

that solutions to all aspects of these matters respect the human rights and freedoms of everyone involved.

These rights are clearly spelt out in international conventions (such as the *Convention on the Rights of the Child*, the *Convention on the Elimination of Discrimination Against Women* and the *Convention on the Elimination of All Forms of Racial Discrimination*), to which Australia is a party.

The reality is that the human rights obligations in each of these international instruments have to be upheld in this country, as we have national legislation to give effect to every single one of them. Also, it is clearly possible to develop laws and policies to address child abuse without having to wind back cultural rights and land rights. Child abuse and alcohol abuse can be addressed without discriminating against one race of people.

This is because there is no hierarchy of human rights – they are not in competition with each other. Human rights are universal and interdependent. It is the Government's responsibility to find a way to mesh these rights together in a coherent, mutually reinforcing and workable whole.

The way to do this is by taking a human rights-based approach to Indigenous affairs. It involves working with Indigenous peoples as active partners in creating a positive life vision for our communities – not treating us as 'problems to be solved'. So much of the planning has already been done. The requirements now are resources and the commitment to action. It will take leadership, bi-partisanship and determined collaborative action with honest and open conversations to keep the commitments and responses on track.

It will require some stability in policy reform, and that is why I call for a moratorium on program and policy changes to enable Indigenous Australians to understand what is happening, to allow us the time to engage, and enable us to be active and informed partners in this reform process.

Australians demanded equality and fair treatment for Indigenous Australians in 1967 and the Government must acknowledge, respect and honour this mandate today.

Endnotes

- * Tom Calma is the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Human Rights and Equal Opportunity Commission.
- 1 Patrick Dodson, 'An entire culture is at stake', *The Age* (Melbourne), 14 July 2007.
- 2 Mal Brough, 'Disappointing treatment of social justice reforms' (Press Release, 14 June 2007).
- 3 Dr Don Weatherburn, Director of the NSW Bureau of Crime Statistics and Research, recently completed a study which found that alcohol abuse is the most explicit cause of violence and sexual abuse in Aboriginal communities. The chances of an Indigenous person becoming a victim of violence double when that person regularly consumes large amounts of alcohol. See Patricia Karvelas, 'Alcohol at the heart of violence', *The Australian*, (Sydney), 13 July 2007.
- 3 Janet Hunt and Diane Smith, 'Further Key Insights from the Indigenous Community Governance Research Project 2006' (Centre for Aboriginal Economic and Policy Research, 2007) 5.
- 4 Ibid.
- 5 Patrick Dodson, 'Some causing mischief to stop Government's Indigenous intervention', *ABC News Online*, 18 July 2007.
- 6 Law Council of Australia, 'Law Council Criticisms of NT Emergency Plan' (Press release, 5 July 2007).
- 7 The Human Rights Committee has found that the ultimate goal of governments under article 27 of the *International Covenant on Civil and Political Rights* must be to ensure the 'survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of the society as a whole'. This requires governments to ensure that any restrictions they place on the right of an individual member of a minority have a reasonable and objective justification and are necessary for the continued viability and welfare of the minority group as a whole. See Human Rights Committee, *General Comment 23: Article 27 (Rights of minorities)*, HRI/GEN/1/Rev.8, [9], 200.
- 8 Sue Gordon cited in Patrick Dodson, 'Some causing mischief to stop Government's Indigenous intervention', *ABC News Online*, 18 July 2007.
- 9 Interview with Tony Abbott, (Doorstop interview, 5 July 2007).
- 10 Kapululangu Aboriginal Women's Law and Culture Centre, 'Revitalising women's culture – caring for women and community' (Press release, 13 July 2007).
- 11 Combined Aboriginal Organisations of the Northern Territory, *A proposed emergency response and development plan to protect Aboriginal children in the Northern Territory: A preliminary response to the Australian Government's proposals* (2007) 3.