

# DRIVING DISUNITY

A yellow circle is positioned behind the text 'THE BUSINESS COUNCIL AGAINST ABORIGINAL COMMUNITY'.

THE  
BUSINESS COUNCIL  
AGAINST  
ABORIGINAL  
COMMUNITY

LINDY NOLAN

**At the beginning of the 21<sup>st</sup> century, Aboriginal and Torres Strait Islander Peoples were united and one million Australians had marched in support. Corporate reputations were in tatters, after appointing a mining magnate - who'd accused Aboriginal Peoples of 'cannibalism and infanticide' - to head the Business Council of Australia. Now the situation is reversed. Aboriginal Peoples are divided and corporations smell of roses. How did it happen?**

The richest hundred plus corporations on the stock exchange make up the Business Council of Australia. Lindy Nolan's meticulously researched book, blows the lid on a BCA plan to create a more corporate-friendly Aboriginal leadership across the country, and the growing grassroots resistance they are meeting.

**'An incredible book ... such deep and fearless truth.'**

**ROSALIE KUNOTH-MONKS**

**NT Australian of the Year 2015**

**Amatjere Elder, Advocate for Tribal Peoples**

**'This important study highlights destructive strategies in the neo-liberal era that undermine Aboriginal progress through the age old tactic of divide and conquer.'**

**JEFF McMULLEN**

**journalist, author and film maker**



Spirit of Eureka

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<sup>2</sup> Bruce Pasco, 'Bread' in Rosie Scott and Anita Heiss (Eds), *The Intervention, an anthology*, Concerned Australians, 2015, p. 151.

<sup>3</sup> Marcia Langton, Op cit.

<sup>4</sup> Andrew Crook, 'Marcia Langton defends non-disclosure on mining cash before Boyers', *Crikey*, February 22, 2103. <https://www.crikey.com.au/2013/02/22/marcia-langton-defends-mining-money-for-boyer-lectures/>

<sup>5</sup> Marcia Langton, Op cit.

## Two leaders

<sup>1</sup> Inga Clendinnen, *Dancing with Strangers*, Text publishing 2003, p. 101-102.

<sup>2</sup> Ibid. See p. 286. Clendinnen's book explores the role of Baneelon as a leader and diplomat for his people, and the failure of understanding on both sides.

<sup>3</sup> Ibid., p. 110-132

<sup>4</sup> J.L. Kohen, 'Pemulwuy: 1750-1802', *The Australian Dictionary of Biography* MUP 2005 <http://adb.anu.edu.au/biography/pemulwuy-13147> published online

<sup>5</sup> Lesley Muir, 'Aboriginal people of the Cooks River Valley', *Dictionary of Sydney*, 2013 [http://dictionaryofsydney.org/entry/aboriginal\\_people\\_of\\_the\\_cooks\\_river\\_valley](http://dictionaryofsydney.org/entry/aboriginal_people_of_the_cooks_river_valley)

<sup>6</sup> Fergus Robinson and Barry York, Op. cit., document the links between the resistance as the British invasion entered each new ATSI Country.

<sup>7</sup> J.L. Kohen, Op. cit.

<sup>8</sup> Eleanor Dark, 'Bennelong: 1846-1813', *The Australian Dictionary of Biography* MUP 2005, <http://adb.anu.edu.au/biography/bennelong-1769>

## Post Script

<sup>1</sup> <http://nationalunitygovernment.org/content/aboriginal-law-culture-body-calls-cancellation-referendum-council-meeting-uluru>

## Appendix

<sup>1</sup> <http://www.australia.gov.au/about-australia/australian-story/bark-petition-barunga-1988>

# DRIVING DISUNITY

The Business Council

against

Aboriginal community

LINDY NOLAN

SoE

Sydney, Melbourne, Adelaide

## Spirit of Eureka publications

PO Box 612, Port Adelaide D.C., South Australia 5015

Published by Spirit of Eureka 2017

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ISBN: 978-0-6481365-0-7 (paperback)

978-0-6481365-1-4 (e-pdf)

Printed and bound in Australia by Bullprint,  
Unit 5, 175 Briens Road Northmead NSW 2152

spiritofeureka.org.au

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<sup>24</sup> Victorian Meeting for Treaty, quoted by Tony McAvoy

## Singing in chorus

<sup>1</sup> Gary Foley 2004 <https://www.youtube.com/watch?v=LnOHTeyKUIE>

<sup>2</sup> Jennifer Westacott, Op cit.

<sup>3</sup> Michael Rose, Garma Festival 2014, <https://www.youtube.com/watch?v=xKOvn5k4hOs>

<sup>4</sup> David Lindberg, Garma Festival 2016, Key Forum on Corporate Australia and Indigenous Economic Development, published August 7, 2016,  
<https://www.youtube.com/watch?v=I9BG40j-hu0>

<sup>5</sup> Michael Rose, 2014, Op cit.

<sup>6</sup> Mark Smith, Op cit.

<sup>7</sup> Jennifer Westacott, Op cit.

<sup>8</sup> Michael Rose 2014, Op cit.

<sup>9</sup> Jennifer Westacott, Op cit.

<sup>10</sup> Peter Nash, Op cit.

<sup>11</sup> David Lindberg, Op cit.

<sup>12</sup> Jennifer Westacott, Op cit.

<sup>13</sup> Michael Rose, 2014, Op cit.

<sup>14</sup> David Lindberg, Op cit.

<sup>15</sup> Murray Hunter, 'Who owns corporate Australia?' *Independent Australia (IA)*, February 27, 2013, <https://independentaustalia.net/business/business-display/who-owns-corporate-australia,5033>

<sup>16</sup> <http://jawun.org.au/jawun-community/supporters/>

<sup>17</sup> [banjo.com.au](http://banjo.com.au)

<sup>18</sup> <http://ddb.com.au/sydney/about/about-us/>

<sup>19</sup> <http://linnetfoto.com/bio/>

<sup>20</sup> <http://whh.com.au/about-us/clients/>

<sup>21</sup> Jennifer Westacott, Op cit.

<sup>22</sup> Mark Smith, Op cit.

<sup>23</sup> <http://www.abc.net.au/news/2017-04-22/andrew-twiggy-forrest-pushes-for-expansion-of-centrelink-cdc/8463006>

<sup>24</sup> Noel Pearson, Op cit.

<sup>25</sup> Mick Dodson, Op cit.

<sup>26</sup> Tania Hosch, Op cit.

<sup>27</sup> Jawun Partners, <http://jawun.org.au/jawun-community/>

<sup>28</sup> Jawun, Case Study: Darkinjung Local Aboriginal Land Council, op cit. p. 3.

<sup>29</sup> George Williams, Op cit.

<sup>30</sup> Mark Smith, Op cit.

<sup>31</sup> Jennifer Westacott, Op cit.

<sup>32</sup> Peter Nash, Op cit.

<sup>33</sup> Mark Smith, Op cit.

## Awash with money and power

<sup>1</sup> Brenda Croft, Op cit.



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- <sup>17</sup> Megan Davis and George Williams, Op cit., p109
- <sup>18</sup> <http://www.abc.net.au/news/stories/2008/02/08/2157490.htm>
- <sup>19</sup> <http://www.abc.net.au/news/2016-03-09/independent-candidate-for-nhulunbuy-calls-for-indigenous-treaty/7233392>
- <sup>20</sup> STICS, *Men speak out for Treaty* leaflet, March 2014,
- <sup>21</sup> <http://indigenousx.com.au/why-i-am-running-in-the-northern-territory-elections-yingiya-mark-guyula/#.WCVqeCTUySp>
- <sup>22</sup> [http://www.ntec.nt.gov.au/2016%20Territory%20Election/Documents/Media%20Releases/MEDIA%20Release%20-%20Additional%20evidence%20prompts%20application%20dismissal%20FINAL%20\(2\)%20-%20201%20Dec%202016.pdf](http://www.ntec.nt.gov.au/2016%20Territory%20Election/Documents/Media%20Releases/MEDIA%20Release%20-%20Additional%20evidence%20prompts%20application%20dismissal%20FINAL%20(2)%20-%20201%20Dec%202016.pdf)

## We're sitting right here till we get our land

- <sup>1</sup> Robbie Thorpe, Op cit.
- <sup>2</sup> Megan Davis and George Williams, Op cit. p. 49.
- <sup>3</sup> <http://www.kevcarmody.com.au/messages/>
- <sup>4</sup> Fergus Robinson and Barry York, Op cit.
- <sup>5</sup> Gary Foley Speech 2004 <https://www.youtube.com/watch?v=LnOHTeyKUIE>
- <sup>6</sup> Gary Foley, *Steal This Book* Speech, op cit.
- <sup>7</sup> Ibid.
- <sup>8</sup> Jennifer Westacott, Op cit.
- <sup>9</sup> Galarrwuy Yunupingu, Garma Festival 2016, Key forum on Constitutional Recognition, transcription by author, for speech no longer available online. Joe Morrison refers to Galarrwuy Yunupingu's speech in his own speech in the same forum. See Joe Morrison, Op cit. Jennifer Westacott also refers to the speech. See Westacott, Op cit.
- <sup>10</sup> Ibid.
- <sup>11</sup> Ibid.
- <sup>12</sup> Mick Gooda, Op cit.
- <sup>13</sup> Ghillar Michael Anderson Keynote address, *Gathering of Nations* November 21, 2015. <https://vimeo.com/147292770>
- <sup>14</sup> Ibid.
- <sup>15</sup> Tony McAvoy, Op cit.
- <sup>16</sup> Tauto Sansbury, Op cit.
- <sup>17</sup> Sarah Whyte. 'Native land rights should be overhauled, Human Rights Commission Tim Wilson says', *SMH*, February 18, 2015
- <sup>18</sup> Marcia Langton, Op cit.
- <sup>19</sup> Galarrwuy Yunupingu, Op cit.
- <sup>20</sup> Ken Canning, speech March in March, Op cit.
- <sup>21</sup> Brenda Croft, Speech at *Women for Treaty*, organised by STICS March 20, 2015, Redfern Community Centre
- <sup>22</sup> Rosalie Kunoth-Monks, Speech at *Women for Treaty*, organised by STICS March 20, 2015, Redfern Community Centre
- <sup>23</sup> Teresa Monta, speaking from the floor at *Women for Treaty*, organised by STICS March 20, 2015, Redfern Community Centre

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## About the author

Lindy Nolan is a former high school teacher, a union activist and advocate for public education. She served as Custodian and Executive member of the NSW Teachers Federation while remaining a classroom teacher.

# Acknowledgements

I approached researching and writing this booklet using a scientific method, trying to disprove an initial theory that, because profit driven corporations were becoming ever richer and more powerful, and had a terrible track record of tax avoidance, of environmental damage and of running roughshod over Aboriginal and Torres Strait Islander Peoples, they were likely to be up to no good in Aboriginal communities. I failed in this endeavour. The facts supporting the original theory speak for themselves.

Some of the evidence comes from those who stand against the narrative that Aboriginal and Torres Strait Islander Peoples themselves are responsible for the gap between their life expectancy, educational achievement, health and that of others on this continent.

Their voices have grown louder in the decade since the Intervention and its cruelly misnamed replacement, Stronger Futures. I wish to thank them for educating me. Particular thanks go to the mob at Stop the Intervention Collective Sydney, who have never faltered in their determination to amplify those voices at ten years of events, allowing me and others to hear first-hand what Aboriginal and Torres Strait Islander Peoples face day in day out. The names of many speakers at those events grace these pages, and I thank them. All those who read various drafts, corrected mistakes and pointed to omissions were my incredibly generous collective editorial committee: Lidia and Marjorie Thorpe, Marlene Hodder, Deni Liddle Langman, Tauto Sansbury, Ellie Gilbert, Bejam Dennis Walker, Rosalie and Amelia Pangarte Kunoth-Monks, Amala Groom and Jeff McMullen, Michael Willis and my Spirit of Eureka mob, and the crew I never met who checked for legals. I especially thank Cathy Gill for important suggestions and also for contacting people to ensure they had access to drafts. This booklet is far richer because of your input. Thank you too Al, who started me off by telling me to question my preconceptions. Finally, a huge thanks to Spirit of Eureka's Richard Buckdale, without whose help my attempts to publish would have been thwarted. As for errors remaining after this process, the responsibility is mine.

To the Sovereign Peoples on whose land I live my life, thank you. Always was, always will be, Aboriginal Land.

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<sup>7</sup> Amala Groom, Op cit.

<sup>8</sup> Terry Mason, Op cit.

<sup>9</sup> Tauto Sansbury, Op cit.

## Intervention stories

<sup>1</sup> Mayer, Jane, *Dark Money: How a secretive group of billionaires is trying to buy political control in the US*, Scribe, 2016., p. 355.

<sup>2</sup> Yingiya Mark Guyula, Op cit.

<sup>3</sup> Paul Toohey *The Australian* 9/5/14 <http://www.news.com.au/national/bess-nungarrayi-price-has-lost-10-siblings-and-talks-about-life-in-an-aboriginal-town-camp/story-fncynjr2-1226911875908>

<sup>4</sup> <http://sovereignunion.mobi/content/no-winners-blame-game-bess-prices-portfolio>

<sup>5</sup> [http://www.sourcewatch.org/index.php/Western\\_Mining\\_Corporation](http://www.sourcewatch.org/index.php/Western_Mining_Corporation)

<sup>6</sup> Kelly, Dominic, 'How Ray Evans, warrior of the new right, changed Australia', *SMH*, June 23, 2014 <http://www.smh.com.au/comment/how-ray-evans-warrior-of-the-new-right-changed-australia-20140620-zsgf9.html>

<sup>7</sup> Bennelong Society, <http://www.wehaveclosed.com.au/bennelong/>

<sup>8</sup> Inga Clendinnen, Op cit., pp. 146, 148, 161.

## The Intervention Land Grab

<sup>1</sup> Jason De Santolo Speech, Human Rights Day event organised by Stop the Intervention Collective (STICS) Redfern Community Centre, December 9, 2016

<sup>2</sup> Barbara Shaw, *International Human Rights Day Forum*, Chippendale, December 9, 2015

<sup>3</sup> 'Conversation with author, Tent embassy, Canberra, February 16, 2106

<sup>4</sup> AEU South Australia, *Mining Companies Behind Howard's 'Emergency' Action*, July 4, 2007. [www.aeusa.asn.au/4252\\_Mining\\_companies.doc](http://www.aeusa.asn.au/4252_Mining_companies.doc)

<sup>5</sup> <http://www.tangentyere.org.au/about/background/>

<sup>6</sup> Ibid.

<sup>7</sup> Barbara Shaw, Op cit.

<sup>8</sup> Ibid.

<sup>9</sup> Ken Canning, Speech, *Invasion Day Rally, Sydney* January 26, 2016

<sup>10</sup> Jason Santolo, Op cit.

<sup>11</sup> <http://indigenoux.com.au/why-i-am-running-in-the-northern-territory-elections-yingiya-mark-guyula/#.WCVqeCTUySp>

<sup>12</sup> Megan Davis and George Williams, Op cit., p. 107.

<sup>13</sup> Ibid., p. 107.

<sup>14</sup> [http://www.inquiryasaac.nt.gov.au/pdf/bipacsa\\_final\\_report.pdf](http://www.inquiryasaac.nt.gov.au/pdf/bipacsa_final_report.pdf) p. 5.

<sup>15</sup> Chris Graham, *Aboriginal alliance says government plan 'unworkable'*, December 5, 2012 <https://blackwiki.wordpress.com/2012/12/05/aboriginal-alliance-says-government-plan-unworkable/> p. 3.

<sup>16</sup> Patricia Turner, Speech at *The Intervention Ten Years On*, University of Technology, Sydney, June 19, 2017

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## We'll do this Aboriginal way

<sup>1</sup> Tauto Sansbury, Op cit.

<sup>2</sup> Terry Mason, Op cit.

<sup>3</sup> Ibid.

<sup>4</sup> Ghillar Michael Anderson, [www.sovereignunion.mobi/content/indigenous-land-use-agreements-iluas-tri/](http://www.sovereignunion.mobi/content/indigenous-land-use-agreements-iluas-tri/)

<sup>5</sup> Allens-Linklater, *Impact*, 'Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples' p. 3., [http://www.allens.com.au/impact/individual/04Constitutional\\_Recognition\\_story.pdf](http://www.allens.com.au/impact/individual/04Constitutional_Recognition_story.pdf)

<sup>6</sup> Terry Mason, Op cit.

<sup>7</sup> Natalie Cromb, *Women for Treaty*, Redfern Community Centre, Sydney, March 19, 2015

<sup>8</sup> Mick Gooda, Op cit.

<sup>9</sup> Bejam Dennis Walker, conversation with author, Tent Embassy, Canberra, April 25, 2017

<sup>10</sup> Paul Daley, 'The Gweagal shield and the fight to change the British Museum's attitude to seized artefacts', *The Guardian*, September 25, 2016 <https://www.theguardian.com/australia-news/2016/sep/25/the-gweagal-shield-and-the-fight-to-change-the-british-museums-attitude-to-seized-artefacts>

<sup>11</sup> Rodney Kelly, speech at Kamay, April 29, 2017

<sup>12</sup> Paul Daley, Op cit.

<sup>13</sup> Rodney Kelly, Op cit.

<sup>14</sup> Paul Daley, Op cit.

<sup>15</sup> [http://www.foundingdocs.gov.au/resources/transcripts/nsw1\\_doc\\_1768.pdf](http://www.foundingdocs.gov.au/resources/transcripts/nsw1_doc_1768.pdf)

<sup>16</sup> Russel Ward, *Finding Australia: The history of Australia to 1821*, Heineman Educational, 1987 p.162.

<sup>17</sup> Ibid., p. 185 & 189.

<sup>18</sup> Ibid., p. 182

<sup>19</sup> Fergus Robinson and Barry York, *The Black Resistance*, Widescope Press, 1977, p. vii.

<sup>20</sup> Tony McAvoy, Op cit.

<sup>21</sup> Jeff McMullen, *Women for Treaty*, March 20, 2015

<sup>22</sup> Ibid.

<sup>23</sup> Mick Gooda, Op cit.

<sup>24</sup> Tauto Sansbury, Op cit.

<sup>25</sup> Amala Groom, *Women for Treaty*, Redfern Community Centre, Sydney, March 20, 2015

<sup>26</sup> Natalie Cromb, Op cit.

## This is Law

<sup>1</sup> Jeff McMullen, Op cit.

<sup>2</sup> Yingiya Mark Guyula, *Men for Treaty*, Redfern Community Centre, Sydney March 14, 2016

<sup>3</sup> Ibid.

<sup>4</sup> Dr Chris Sarra, *Men for Treaty*, Redfern Community Centre, Sydney March 14, 2016

<sup>5</sup> Ibid.

<sup>6</sup> Tony McAvoy, Op cit.

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# Abbreviations

ATSIC	Aboriginal and Torres Strait Islander Commission
BCA	Business Council of Australia
BCG	Boston Consulting Group
CDEP	Community Development Employment Projects
CFMEU	Construction, Forestry, Mining and Energy Union
CLP	Country Liberal Party
EY	Ernst and Young
ILUA	Indigenous Land Use Agreement
LALC	Local Aboriginal Land Council
Law of the Land	With a capital letter, it indicates traditional First Nations' oral Law
MOU	Memorandum of Understanding
NAB	National Australia Bank
NLC	Northern Land Council
PwC	PricewaterhouseCoopers
RA	Reconciliation Australia
RAP	Reconciliation Action Plan
SMH	Sydney Morning Herald
SOE	Spirit of Eureka
STICS	Stop the Intervention Collective Sydney
Treaty	In this study, 'Treaty' is both plural and singular. It refers to treaties recognising sovereignty between First Nations Peoples themselves, and between First Nations Peoples and other groups, and eventually with government. Without a capital letter, it signifies an agreement that undermines sovereignty
WMC	Western Mining Corporation

<sup>6</sup> Mick Gooda, Op cit.

<sup>7</sup> Tom McLroy, 'Tony Abbott and John Howard warn against treaty with Indigenous Australians' *SMH* September 8, 2016, <http://www.smh.com.au/federal-politics/political-news/tony-abbott-and-john-howard-warn-against-a-treaty-with-indigenous-australians-20160907-grbc5x.html>

<sup>8</sup> Megan Davis & George Williams, Op cit., p. 121

<sup>9</sup> Ibid., p. 121-122.

<sup>10</sup> Anna Henderson & Eliza Borrello, John Howard, Tony Abbott lock in against treaty with Indigenous Australians', September 9, 2016. <http://www.abc.net.au/news/2016-09-08/conservatives-lock-in-against-treaty-with-indigenous-australians/7825298>

<sup>11</sup> Pat Dodson, Op cit.

<sup>12</sup> Megan Davis & George Williams, Op cit. p. 91.

<sup>13</sup> Ken Canning, Speech, *March in March*, Sydney, April 10, 2015

## Fighting to be heard

<sup>1</sup> Robbie Thorpe, *Australia is a Crime Scene* June 5, 2008 Melbourne University <https://www.youtube.com/watch?v=H6V82LD51UA>

<sup>2</sup> Megan Davis & George Williams, p. 124.

<sup>3</sup> Ibid. p. 34.

<sup>4</sup> Joe Morrison, Op cit.

<sup>5</sup> Heather Goodall, *Invasion to Embassy: Land in Aboriginal Politics in NSW 1770-1972*, Allen and Unwin in association with Black Books, 1996., P. 230.

<sup>6</sup> Recognise: Some background, <http://www.recognise.org.au/why/some-background>

<sup>7</sup> [http://dictionaryofsydney.org/entry/day\\_of\\_mourning\\_1938](http://dictionaryofsydney.org/entry/day_of_mourning_1938)

<sup>8</sup> Recognise: Some background, Op cit., quoting Rachel Perkins, 2014

<sup>9</sup> Sovereign Union: First Nations Asserting Sovereignty, 'Constitutional Recognition' *Questions and Answers* <http://nationalunitygovernment.org/content/government-con-constitutional-recognition>

<sup>10</sup> Heather Goodall, Op cit., p. 231.

<sup>11</sup> Tauto Sansbury, *Men for Treaty*, Redfern Community Centre, Sydney March 14, 2016

<sup>12</sup> Terry Mason, Op cit.

<sup>13</sup> Heather Goodall, Op cit., p. 234.

<sup>14</sup> Ghillar Michael Anderson, *Unilateral Declarations of Independence Explained*, <http://nationalunitygovernment.org/content/unilateral-declaration-independence-udi-explained>

<sup>15</sup> Ghillar Michael Anderson, *Overviews of treaty, treaties, UDIs, recognise* Sovereign Union Media Release, September 9, 2016, Op cit.

<sup>16</sup> Tony McAvoy, *Men for Treaty*, Redfern Community Centre, Sydney March 14, 2016

<sup>17</sup> Alice Haines, Op cit.

<sup>18</sup> Ibid.

<sup>19</sup> Megan Davis & George Williams, p. 101.

<sup>20</sup> Allens-Linklater, *Response to Progress Report of the Joint Select Committee Inquiry into Constitutional Recognition of Aboriginal and Torres Strait Islander peoples*, Submission by Allens 30 January 2015, p. 12.

<sup>21</sup> Ibid.

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## Conservative blessings

<sup>1</sup> <https://www.samuelgriffith.org.au/papers/html/volume%201/chap3.htm>

<sup>2</sup> Megan Davis & George Williams, Op cit., p. 113.

<sup>3</sup> Marius Benson, *ABC NewsRadio Breakfast*, Interview with Greg Craven, September 18, 2014 <http://www.abc.net.au/newsradio/content/s4090043.htm>

<sup>4</sup> Megan Davis & George Williams, Op cit., p. 86.

<sup>5</sup> Greg Craven 'Noel Pearson's indigenous recognition plan profound and practical' *The Australian* May 23, 2015 moment. <http://www.theaustralian.com.au/opinion/columnists/greg-craven/noel-pearsons-indigenous-recognition-plan-profound-and-practical/news-story/472ff0238ad4f48cd423fdd9f74a9363?sv=7877a45eb12b21f7ec14bf946150d00b>

<sup>6</sup> Noel Pearson, Garma Festival 2016, Op cit.

<sup>7</sup> Ibid.

<sup>8</sup> <http://www.recognise.org.au/wp-content/uploads/shared/downloads/2a0fdaf6caead34ea2ad.pdf>

<sup>9</sup> Megan Davis & George Williams, Op cit., p. 117.

<sup>10</sup> Noel Pearson, Garma Festival 2016, Op cit.

<sup>11</sup> Ibid.

<sup>12</sup> Mick Dodson, Garma Festival 2016, Key forum on Constitutional Recognition, <https://www.youtube.com/watch?v=6otZNzBGKDU>

<sup>13</sup> Noel Pearson, Garma Festival 2016, Op cit.

<sup>14</sup> Marcia Langton, Op cit.

<sup>15</sup> <http://www.pwc.com.au/indigenous-consulting.html>

<sup>16</sup> Tania Hosch, LinkedIn profile

<sup>17</sup> Tania Hosch, Garma Festival 2016, Key forum on Constitutional Recognition, <https://www.youtube.com/watch?v=ABNR74UghfY>

<sup>18</sup> Ibid.

<sup>19</sup> Mick Gooda, Op cit.

<sup>20</sup> Megan Davis & George Williams, Op cit., p. 78

<sup>21</sup> Ibid., p. 82.

<sup>22</sup> <https://www.reconciliation.org.au/25-years-of-formal-reconciliation-in-australia/>

<sup>23</sup> Joe Morrison, Garma Festival 2016, Key forum on Constitutional Recognition, <https://www.youtube.com/watch?v=ZHBixYQqsKc>

<sup>24</sup> Ghillar Michael Anderson, *Overviews of treaty, treaties, UDIs, recognise*, Sovereign Union Media Release, September 9, 2016 <http://nationalunitygovernment.org/content/overview-treaty-treaties-udis-and-recognise>

<sup>25</sup> Megan Davis & George Williams, Op cit., p. 6.

<sup>26</sup> Terry Mason, Op cit.

## Pigs and lipstick

<sup>1</sup> Megan Davis & George Williams, Op cit., p. 88.

<sup>2</sup> Expert Panel report, 2012, cited in Davis & Williams, p. 9.

<sup>3</sup> Megan Davis & George Williams, Op cit., p. 53-54

<sup>4</sup> Ibid., p. 121.

<sup>5</sup> Ibid.

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## Foreword

From the first days of British invasion Aboriginal and Torres Strait Islander peoples have resisted colonialism, theft and destruction of their cultures and law. The colonial era, up to the time of Federation in 1901, saw protracted frontier warfare over ownership of and access to the lands of the First Nations peoples. At no time was First Nations sovereignty ceded or surrendered to the invaders.

In the post-Federation era, the struggle to retain sovereignty took on an industrial character, as Aboriginal workers confronted the big pastoral companies and Aboriginal communities fought off encroachment by mining companies.

In 1946 more than 800 Aboriginal stockmen walked off 27 cattle stations across the Pilbara to demand equal pay and conditions with white workers. After a three-year strike, they won wage increases but not parity. The Aboriginal workers were ignored by the big corporations and mainstream politicians, but received substantial support from sections of the trade union movement, the Communist Party, some churches and progressive community groups. The Fremantle branch of the Seamen's Union refused to allow ships to be loaded with the squatters' wool.

In 1963, the Yolngu people at Yirrkala in Arnhem Land launched a struggle to prevent the government granting control over part of their lands to the Swiss bauxite mining company, Nabalco. They sent a bark petition to Canberra demanding recognition of their right to control their own lands. The fight was diverted to the courts where it was eventually lost; the mine went ahead.

In the same year, police in Queensland evicted the Mapoon people from their reserve and burnt their houses because the land on which it was placed was rich in bauxite. This time, the giant corporation pushing Aboriginal people off their land was Comalco, a multinational with majority British, French and US capital. The church running Mapoon Mission was complicit in the eviction, but support came from other churches, the Australian Union of Students, Community Aid Abroad and other left and progressive organisations and individuals. In 1974, Mapoon people returned to their lands and demanded control over them.

In 1966, the Gurindji people working on British Lord Vestey's Wave Hill cattle station in the Northern Territory walked off with their families in protest against wages and conditions and set up camp at nearby Daguragu. They stayed on

strike, adding to their demands the return of their traditional lands. No big corporations came to their aid. Again, it was the Communists and the more militant sections of the trade unions which provided food and arranged national protests of support. In 1975, Prime Minister Gough Whitlam poured a handful of sand through Gurindji leader Vincent Lingiari's hands. The Gurindji had won the right to a large section of their traditional lands.

Land rights were placed firmly on the agenda. Whitlam did not make it a matter of national legislation, but established the Woodward Commission to make recommendations applicable to the NT. Woodward proposed procedures for claiming land and conditions of tenure. Aboriginal land should be granted as inalienable freehold title – meaning it could not be acquired, sold, mortgaged or disposed of in any way – and title should be communal. He envisaged the transfer to Aboriginal ownership of the government reserve lands and the hearing by an Aboriginal Land Commissioner of claims to unalienated Crown land and Aboriginal-owned pastoral leases based on traditional affiliation. Smaller areas on pastoral leases and town areas could also be claimed on the basis of need.

Commissioner Woodward said he had 'taken full account of the arguments put forward by sectional vested interests who opposed the granting of land rights. Prominent in this group were those from the mining and resources industry.'<sup>1</sup>

With bipartisan support, the Aboriginal Land Rights (Northern Territory) Act was passed in December 1976, and came into force on 26 January 1977.<sup>2</sup>

As increasing numbers of Aboriginal and Torres Strait Islander Peoples won rights to their lands, the big corporations struck back. There had always been organisations representing various types of industry and commerce, but Conzinc Rio Tinto Chairman wanted something more in the nature of a union, fighting for the corporations as a class. In 1976, he created the Australian Free Enterprise Association, intended to be a high-powered business organisation. This eventually led via the Business Roundtable and the Australian Industry Development Association to the formation of the Business Council of Australia (BCA) in 1983.

Lindy's publication looks at how the BCA has spearheaded an attack on Aboriginal Land Rights and how it is creating an Aboriginal 'leadership' in its own image: politically reactionary, economically profit-driven and determined to open Aboriginal and Torres Strait Islander communities to rampant capitalist exploitation.

<sup>11</sup> 'Howard's constitutional reconciliation a further attack on Aboriginal people' [http://mike-servethepeople.blogspot.com.au/2007\\_10\\_01\\_archive.html](http://mike-servethepeople.blogspot.com.au/2007_10_01_archive.html) quoting John Howard, *Sydney Morning Herald*, 'Former prime minister John Howard's speech', February 8, 2008. p. 1. <http://www.smh.com.au/news/general/pm-john-howards-speech/2008/02/08/1202234143292.html>

<sup>12</sup> Noel Pearson, Garma Festival 2016, Key forum on Constitutional Recognition. <https://www.youtube.com/watch?v=BwOCdJtKOW>

<sup>13</sup> Morgan Brigg & Lyndon Murphy, *SMH*, 'Noel Pearson's hunt for the radical centre is doomed', February 18, 2016 <http://www.smh.com.au/comment/pearsons-hunt-for-the-radical-centre-is-doomed-20160218-gmxcb.html>

<sup>14</sup> Megan Davis & George Williams, *Op cit.*, p. 63.

<sup>15</sup> *Ibid.*, p. 65.

<sup>16</sup> *Ibid.*, p. 75.

<sup>17</sup> *Ibid.*, p. 95.

<sup>18</sup> Ghillar Michael Anderson, <http://nationalunitygovernment.org/content/overview-treaty-treaties-udis-and-recognise>

<sup>19</sup> Megan Davis & George Williams, *Op cit.*, p. 79.

<sup>20</sup> Mick Gooda, *Op cit.*

<sup>21</sup> Megan Davis & George Williams, *Op cit.*, p. 140.

<sup>22</sup> *Ibid.*, p. 60.

<sup>23</sup> *Ibid.*, p. 79

## A Peoples' Movement?

<sup>1</sup> *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, p. 213. <http://www.recognise.org.au/wp-content/uploads/shared/uploads/assets/html-report/9.html>

<sup>2</sup> *Ibid*

<sup>3</sup> [https://www.dss.gov.au/sites/default/files/files/document\\_1\\_0.pdf](https://www.dss.gov.au/sites/default/files/files/document_1_0.pdf) p. 3.

<sup>4</sup> <http://www.recognise.org.au/about/expert-panel/>

<sup>5</sup> <http://www.jacobs.com/about#global-network>

<sup>6</sup> Alice Haines, *The Cons of the Recognise Campaign*

[https://www.youtube.com/watch?v=m5rQ\\_6B\\_yxM](https://www.youtube.com/watch?v=m5rQ_6B_yxM) published December 7, 2015

<sup>7</sup> Megan Davis & George Williams, *Op cit.*, p. 84.

<sup>8</sup> <http://www.recognise.org.au/about/what-is-recognise/>

<sup>9</sup> <http://www.recognise.org.au/about/campaign-partners/>

<sup>10</sup> Megan Davis & George Williams, *Op cit.*, p. 84

<sup>11</sup> Michael Rose, Garma Festival 2016, Key forum on Constitutional Recognition, <https://www.youtube.com/watch?v=qxhNIXRtyTg>

<sup>12</sup> <https://www.gtlaw.com.au/about-us/gt-story>

<sup>13</sup> <http://www.gtcentre.unsw.edu.au/about-us>

<sup>14</sup> <http://www.nswreconciliation.org.au/wp-content/uploads/2015/04/NSWRC-Submission-on-Constitutional-Recognition-2015.pdf>

<sup>15</sup> <http://www.gtcentre.unsw.edu.au/about-us>

<sup>16</sup> *Ibid.*

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<sup>3</sup> <http://trove.nla.gov.au/people/459247?c=people>

<sup>4</sup> Marcia Langton, Co-Chair, Garma Festival 2016, Key Forum on Corporate Australia and Indigenous Economic Development, published August 7, 2016  
<https://www.youtube.com/watch?v=I9BG40j-hu0>

<sup>5</sup> Sarah Everingham, <http://www.abc.net.au/news/2015-07-31/indigenous-businesses-filling-void-after-rio-tinto-exit-in-nt/6661930>

<sup>6</sup> Ibid.

<sup>7</sup> <http://www.lirrwithtourism.com.au/news/2014/7/30/a-new-face-for-indigenous-tourism-in-arnhem-land>

<sup>8</sup> <http://www.lirrwithtourism.com.au/partners/>

<sup>9</sup> Robyn Neasmith, *LinkedIn* profile

<sup>10</sup> <http://mhcarnegie.com>

<sup>11</sup> [http://workers.labor.net.au/311/news4\\_freehills.html](http://workers.labor.net.au/311/news4_freehills.html)

<sup>12</sup> <http://mhcarnegie.com/our-people>

<sup>13</sup> <http://www.lirrwithtourism.com.au/corporate-culture>

<sup>14</sup> <http://www.lirrwithtourism.com.au/advisory-panel/>

<sup>15</sup> <http://www.recognise.org.au/about/expert-panel/>

## A politician's policy

<sup>1</sup> Paul Keating quoted in Troy Bramston, 'Indigenous Treaty More Meaningful, says Paul Keating', *The Australian*, November 14, 2016 <http://www.theaustralian.com.au/national-affairs/indigenous/indigenous-treaty-more-meaningful-says-paul-keating/news-story/a55583593040de9101cd222832854672>

<sup>2</sup> Nick G., 'Federation, the Constitution, Taxes and Our Future', *The Vanguard*, March 24, 2015, <http://vanguard-cpaml.blogspot.com.au/2015/03/federation-constitution-taxes-and-our.html>

<sup>3</sup> Mick Gooda, Garma Festival 2016, Key forum on Constitutional Recognition, <https://www.youtube.com/watch?v=-Op8cVzwJOM>

<sup>4</sup> Megan Davis & George Williams, *Everything you need to know about the referendum to recognise Indigenous Australians*, Newsouth, 2015, p. 98.

<sup>5</sup> Ghillar Michael Anderson, [www.sovereignunion.mobi/content/scholars-paper-points-aboriginal-mineral](http://www.sovereignunion.mobi/content/scholars-paper-points-aboriginal-mineral)

<sup>6</sup> Clive Hamilton interviewed by Geraldine Doogue, *Saturday Extra*, April 21, 2007, described him as a 'political operative' <http://www.abc.net.au/radionational/programs/saturdayextra/clive-hamilton/3238974>

<sup>7</sup> Dominic Kelly, 'How Ray Evans, warrior of the new right, changed Australia', *SMH*, June 23, 2014 <http://www.smh.com.au/comment/how-ray-evans-warrior-of-the-new-right-changed-australia-20140620-zsgf9.html>

<sup>8</sup> <http://www.smh.com.au/articles/2002/08/16/1029114015683.html> The article 'Different shades of Hugh' is archived, and no longer credits the author.

<sup>9</sup> <http://www.smh.com.au/articles/2002/08/16/1029114015683.html>

<sup>10</sup> Clive Hamilton interviewed by Geraldine Doogue, *Saturday Extra*, April 21, 2007, <http://www.abc.net.au/radionational/programs/saturdayextra/clive-hamilton/3238974>

Included in her case studies are Jawun, the Darkinjung Local Aboriginal Land Council (one of Jawun's Indigenous partner organisations), corporate influence in cultural awareness program Wangany Dhukarr and in Lirrwi Tourism. She also looks at the corporate agendas behind the racist NT Intervention and the Constitutional Recognition movement.

Lindy's work is ground-breaking in its content and its coverage. No-one else has examined in such depth the influence and objectives of the 100 biggest foreign and local corporations who together comprise the Business Council of Australia in relation to Aboriginal and Torres Strait Islanders' land rights and Treaty demands.

Producing the booklet required consulting with prominent leaders of the Aboriginal and Torres Strait Islander communities and particularly those who have led the struggles against the Northern Territory Intervention and "Constitutional Recognition". Their positive response to this publication holds out the promise of its wider reception and usefulness as a resource for activists wanting genuine Treaty, to heal the wounds of colonial dispossession and theft of land.

**Michael Willis**, Spirit of Eureka

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- <sup>13</sup> Ibid., p. 2.
- <sup>14</sup> Ibid., p. 3.
- <sup>15</sup> Ibid., p. 2.
- <sup>16</sup> Errol Smith, 'Aboriginal award recognises hard work of Darkinjung Land Council', *Central Coast and Gosford Advocate*, November 14, 2013, republished in <http://www.dailytelegraph.com.au/newslocal/central-coast/aboriginal-award-recognises-hard-work-of-darkinjung-land-council/news-story/01cfd465b9629706ad4609e4802bae8>
- <sup>17</sup> Darkinjung CLBP 2016-2019, Op cit., pp. 5,7.
- <sup>18</sup> Ibid., p. 7.
- <sup>19</sup> Ibid., p. 11.
- <sup>20</sup> Ibid., p. 7.
- <sup>21</sup> *Darkinjung LALC Annual Report 2015*, Op cit. p. 18.
- <sup>22</sup> Darkinjung CLBP 2016-2019, Op cit., p. 7.
- <sup>23</sup> Ibid., p. 9.
- <sup>24</sup> Ibid., p. 6.
- <sup>25</sup> Ibid., p. 7.
- <sup>26</sup> *Darkinjung LALC Annual Report 2015* Op cit. p. 17.
- <sup>27</sup> <http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/Annual%20Reports/DLALC-Annual-Report-2016-final-lowres.pdf> *Darkinjung LALC Annual Report, 2016* p. 15.
- <sup>28</sup> [http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/CEO%20Blogs/Darkinjung%20owned%20land%20is%20open%20for%20\(Community\)%20Business%20-%20Central%20Coast.pdf](http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/CEO%20Blogs/Darkinjung%20owned%20land%20is%20open%20for%20(Community)%20Business%20-%20Central%20Coast.pdf)
- <sup>29</sup> *Darkinjung LALC Annual Report 2015*, Op cit. p. 18.
- <sup>30</sup> *Darkinjung LALC Annual Report, 2016* p. 34.
- <sup>31</sup> Ibid., p. 33.
- <sup>32</sup> *Kuringai Examiner* 'Future of Peat Island and Mooney Mooney in the balance', February 2, 2015 <http://www.kgex.com.au/future-of-peat-island-and-mooney-mooney-in-the-balance/>
- <sup>33</sup> *Darkinjung LALC Annual Report, 2016* p. 32.
- <sup>34</sup> Jawun, *Case Study: Supporting Darkinjung Local Aboriginal Land Council* December 2013, <http://jawun.org.au/wp-content/uploads/2014/06/Central-Coast-case-study-FINAL.pdf> p. 2.
- <sup>35</sup> Darkinjung CLBP 2016-2019, Op cit., pp. 34-35
- <sup>36</sup> *Darkinjung LALC Annual Report, 2016* Op cit., p. 18.
- <sup>37</sup> Ibid., p. 27.
- <sup>38</sup> *Darkinjung LALC Annual Report 2015*, Op cit. p. 35.
- <sup>39</sup> *Darkinjung LALC Annual Report 2015*, Op cit. p. 34.
- <sup>40</sup> *Darkinjung LALC Annual Report, 2016* Op cit., p. 20
- <sup>41</sup> *Darkinjung LALC Annual Report 2015*, Op cit. p. 34-35.

## Corporate culture

<sup>1</sup> <http://www.foe.org.au/history-duress-uranium-mining-mirarr-land>

<sup>2</sup> David Bradbury, *Jabiluka*, Film 1997



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<sup>8</sup> <http://www.yyf.com.au/pages/?ParentPageID=2&PageID=106>

<sup>9</sup> <http://www.bca.com.au/topics/garma>

<sup>10</sup> <https://www.youtube.com/watch?v=xKOvn5k4hOs>

<sup>11</sup> <http://empoweredcommunities.org.au/f.ashx/EC-Report.pdf> p175

<sup>12</sup> <http://empoweredcommunities.org.au/regions.apx>

<sup>13</sup> BCA Indigenous Engagement Survey Report 2014 p21

<sup>14</sup> <https://www.youtube.com/watch?v=xKOvn5k4hOs>

<sup>15</sup> <https://www.youtube.com/watch?v=xKOvn5k4hOs>

<sup>16</sup> <https://www.youtube.com/watch?v=xKOvn5k4hOs>

<sup>17</sup> BCA Indigenous Engagement Survey Report 2014, Op cit.

<sup>18</sup> Peter Nash, Op cit.

<sup>19</sup> Richard I. Trudgen, *Why warriors lie down and die*, Services Inc., 2001 <http://www.whywarriors.com.au/services/why-warriors-lie-down-and-die/>

<sup>20</sup> Mark Smith, Garma Festival Key Forum on Corporate Australia and Indigenous Economic Development, published August 7, 2016 <https://www.youtube.com/watch?v=19BG40j-hu0>

<sup>21</sup> Ibid.

## Darkinjung sells up

<sup>1</sup> <http://jawun.org.au/jawun-community/indigenous-partners/>

<sup>2</sup> <http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/Annual%20Reports/DLALC-Annual-Report-2016-final-lowres.pdf> p6

<sup>3</sup> Daniel Walton, AWU leaflet, *Help Protect Fletcher Jobs*

<sup>4</sup> Terry Collins, *Proposal to expand the Rocla sand mining operation at Calga has been denied by the Land and Environment Court* Central Coast Gosford Express Advocate, November 14, 2015 republished in <http://www.dailytelegraph.com.au/newslocal/central-coast/a-proposal-to-expand-the-rocla-sand-mining-operation-at-calga-has-been-denied-by-the-land-and-environment-court/news-story/ae15eb9873f8d5a1cd898339899e5dc6>

<sup>5</sup> Darkinjung Media Release November 18, 2015 <http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/media%20Release%20docs/Calga%20Sand%20Quarry%20extension%20rejected%20%E2%80%93%20significant%20outcome%20for%20Darkinjung%20LALC.pdf>

<sup>6</sup> *Darkinjung LALC Annual Report 2015* p17 <http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/Annual%20Reports/2015%20Darkinjung-Annual-Report-2015-FINAL-singles.pdf>

<sup>7</sup> <http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/CLBP%202016/DLALC-CLBP-Concept-v11-lowres.pdf> p5

<sup>8</sup> Ben Hills *\$42m land rights dream in ruins* Sydney Morning Herald, March 7, 2005 <http://www.smh.com.au/news/National/42m-land-rights-dream-in-ruins/2005/03/06/1110044260152.html>

<sup>9</sup> Ibid.

<sup>10</sup> Jawun, *Case Study: Supporting Darkinjung Aboriginal Land Council* <http://jawun.org.au/wp-content/uploads/2014/06/Central-Coast-case-study-FINAL.pdf>, p. 1.

<sup>11</sup> Ibid., p. 2.

<sup>12</sup> Ibid., p. 1.

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## Corporations move in

**About 53 per cent of the Northern Territory has been returned to Aboriginal ownership. ‘Across Australia ...between 20-25 per cent of land mass is owned by Indigenous entities in one form or another. That’s an incredible block of assets, massive.’<sup>1</sup> Marcia Langton, Garma Festival 30 July 2016**

It has not gone unnoticed.

The Business Council of Australia (BCA) is the executive body of corporate power in Australia. It sets agendas and systematically applies the vast resources of its corporate members to implement them. ‘The hundred businesses that make the Business Council of Australia, the largest hundred companies in Australia\*, have extraordinary influence in the way in which they have discussions with government, but also in the way in which they have discussions with their employees. They employ millions and millions of people. And they can, if they decide to support, for example, constitutional recognition, start to shift the discussion in relation to recognition, shift the discussion in relation to reform. They also have big influence in the communities that they serve,’ says Michael Rose former Chief Executive Partner and now Senior Partner of corporate law firm Allens, a BCA member.<sup>2</sup>

Rose was not exaggerating. In 2015, Allens’ clients alone included 55 of the world’s top 100 companies, and 75 of Australia’s top public companies, which are part of a ‘global alliance’.<sup>3</sup>

Corporations spend enormous amounts on brand management, and crisis management if something goes wrong. It goes like this. Admit the problem, apologise, state you will take responsibility. Then begin reframing the debate. The BCA has become much better at this with Jennifer Westacott, a highly intelligent, articulate woman, with good people skills, as Chief Executive, and now

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\* Until recently the BCA comprised the CEOs of Australia’s biggest 100 corporations. By 2016 it had 125 members. The increase may have been to ensure continuity, to make up for yearly fluctuations in corporate size, but also to include important economic sectors and wider areas of expertise.

the BCA is well beyond crisis management and is framing a new architecture for Aboriginal affairs.

'Business,' Westacott said at the Key forum on Corporate Australia and Indigenous Economic Development at Garma Festival 2016, 'has not always been on the right side of the land rights' debate, and as Galarwuy\* said this morning we are still not always on the right side of the debate... Land rights have not translated into power for Indigenous people, so because of this we must accept Galarwuy's gracious invitation for business and the Indigenous community,' to meet at Garma.<sup>4</sup>

Multinational corporations are masters at sniffing out advantage, at turning negatives into positives. In Aboriginal communities, that means they need to take their time and listen, and Westacott's comments reflect this. There's a lot at stake. If they had forgotten the massive tracts of land Aboriginal people 'own', Marcia Langton reminded them at the session she co-chaired at Garma with Westacott. The word 'own', is a contested term, with some Aboriginal and Torres Strait Islander Peoples saying they are not owners, but Custodians and Sovereign Peoples.<sup>5</sup> Corporate bosses prefer the former, because in this capitalist system, something owned can be utilised to create a profit.

For the BCA 'Indigenous Engagement' is a priority issue. In the last five years, it has moved from being included in the BCA's 'Policy Agenda' to its 'Topics' section. The planning and fine tuning has been done, the policy set and now it's full steam ahead.

Jennifer Westacott, gave the statistical proof. In 2009, 30 percent of BCA members were involved in some structured Indigenous engagement strategy. In 2016, it was 85 percent. 'We are creating 17,000 jobs, \$1.7 billion in supplier contracts...We can do better,' she says.<sup>6</sup>

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\* Galarwuy Yunupingu, member of Gumatji clan of the Yolngu people of Arnhem Land.

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<sup>7</sup> <http://jawun.org.au/about/>

<sup>8</sup> <http://www.ailec.org.au/our-supporters> The seven BCA companies are Orica, Telstra, Westpac, Citigroup, Commonwealth Bank, Rio Tinto and BHP-Billiton. US-based multinational mining corporation, Newcrest, is also a supporter.

<sup>9</sup> <http://www.reconciliation.org.au/iga/>

<sup>10</sup> <http://jawun.org.au/about/beliefs/>

<sup>11</sup> Ibid.

<sup>12</sup> Noel Pearson: 'Stuck on the welfare pedestal' | *The Australian* February 10, 2007

<sup>13</sup> Noel Pearson, *Jawun, Our patron* 2010

<sup>14</sup> Noel Pearson, <http://capeyorkpartnership.org.au/wp-content/uploads/2014/files/US-consumers-cant-buy-out-of-this-crisis.pdf>

<sup>15</sup> <http://jawun.org.au/about/board/>

<sup>16</sup> <http://jawun.org.au/about/board/>

<sup>17</sup> *The Australian*, December 17, 2015

<sup>18</sup> <http://jawun.org.au/about/board/>

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> <http://jawun.org.au/about/board/>

<sup>22</sup> Ibid. Jawun does not mention that Gary Wingrove's time in South Africa was during the apartheid era, which ended in 1994, two years after Wingrove left the country.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Terri Janke *Indigenous Business and Government Contracts: Understanding the Indigenous Procurement Policy.*, March 4, 2016 [terrijanke.com.au](http://terrijanke.com.au)

## As the BCA sees fit

<sup>1</sup> <http://www.allens.com.au/comm/rap/rap---messages.html>

<sup>2</sup> [https://www.allens.com.au/rap/Report2015/PDFs/RAPReport2015\\_6July.pdf](https://www.allens.com.au/rap/Report2015/PDFs/RAPReport2015_6July.pdf) p19

<sup>3</sup> Noel Pearson, speech to Australian Pipeline Industry Association Convention, [https://www.youtube.com/watch?v=-LKOqynTW\\_I](https://www.youtube.com/watch?v=-LKOqynTW_I), uploaded January 19, 2010.

<sup>4</sup> Gary Foley, *Steal This Book* Speech, Rally Melbourne 2009.

<https://www.youtube.com/watch?v=a-vZcCxbGjY> Foley is one of many vocal in condemning Pearson. Sam Watson & Wayne Wharton spoke at a protest against Pearson,

<https://www.theguardian.com/australia-news/2014/nov/16/noel-pearson-and-warren-mundine-effigies-burned-in-indigenous-g20-rally>

<sup>5</sup> Dr Woollombi Waters, 'Pearson, Langton, Mundine are not our leaders', *The Stringer* November 15, 2014. [http://thestringer.com.au/pearson-langton-mundine-are-not-our-leaders-9078#.WKuXnn\\_5pF4](http://thestringer.com.au/pearson-langton-mundine-are-not-our-leaders-9078#.WKuXnn_5pF4)

<sup>6</sup> Referendum Council, Meet the Council, December 2015, <https://referendumcouncil.org.au/council>

<sup>7</sup> Allens-Linklaters Reconciliation Action Plan and Report on Progress, 2014-2015, p. 12. [https://www.allens.com.au/rap/Report2015/PDFs/RAPReport2015\\_6July.pdf](https://www.allens.com.au/rap/Report2015/PDFs/RAPReport2015_6July.pdf)

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## Corporations move in

<sup>1</sup> Marcia Langton, Co-Chair, Garma Festival 2016, Key Forum on Corporate Australia and Indigenous Economic Development, published August 7, 2016

<https://www.youtube.com/watch?v=I9BG40j-hu0>

<sup>2</sup> [https://www.allens.com.au/rap/Report2015/PDFs/RAPReport2015\\_6July.pdf](https://www.allens.com.au/rap/Report2015/PDFs/RAPReport2015_6July.pdf)

<sup>3</sup> <https://www.allens.com.au/about/index.htm>

<sup>4</sup> Jennifer Westacott, Co-Chair, Garma Festival Key Forum on Corporate Australia and Indigenous Economic Development, published August 7, 2016

<https://www.youtube.com/watch?v=I9BG40j-hu0>

<sup>5</sup> Terry Mason, speech at *Men for Treaty* Redfern Community Centre March 14, 2016

<sup>6</sup> J. Westacott, Op cit.

<sup>7</sup> Business Council of Australia *Indigenous Survey Report Summary 2014*

<http://www.bca.com.au/publications/bca-2014-indigenous-engagement-survey-report>

<sup>8</sup> <https://www.linkedin.com/in/melinda-cilento-133b606a> shows Cilento was on the RA board from 2010 and on the Woodside board from 2008, both until to the time this booklet's publication. Woodside's involvement in the James Price Point dispute began in 2008 and ended in 2013.

<sup>9</sup> Sarah Burnside, *Arena*, 'James Price Point: Victory or loss?', July 2013

<http://arena.org.au/james-price-point-victory-or-loss/>

<sup>10</sup> Peter Nash, Garma Festival Key Forum on Corporate Australia and Indigenous Economic Development, published August 7, 2016 <https://www.youtube.com/watch?v=I9BG40j-hu0>

<sup>11</sup> <https://www.reconciliation.org.au/25-years-of-formal-reconciliation-in-australia/>

<sup>12</sup> Gary Foley 'For Aboriginal Sovereignty' A speech to the Rainbow Alliance Conference, Melbourne March 1988, published in *Arena* (#83, 1988)

<sup>13</sup> BCA Indigenous Engagement Survey Report 2014 Op cit. <http://www.bca.com.au/publications/bca-2014-indigenous-engagement-survey-report>

<sup>14</sup> <http://www.bca.com.au/topics/bca-business-indigenous-network>

<sup>15</sup> BCA Indigenous Engagement Survey Report 2014, Op cit.

<sup>16</sup> Tangentyere Council, History, *Historical overview, 2000 to present*, <http://www.tangentyere.org.au/about/background/>

<sup>17</sup> BCA Indigenous Engagement Survey Report 2014, op cit.

## The Jawun Story

<sup>1</sup> <http://jawun.org.au/>

<sup>2</sup> <http://jawun.org.au/jawun-community/>

<sup>3</sup> <http://jawun.org.au/>

<sup>4</sup> <http://jawun.org.au/about/patrons/>

<sup>5</sup> <https://www.bcg.com/>

<sup>6</sup> <https://www.nswtf.org.au/files/advice.pdf> & NSWTF *Putting Students First*, e- Bulletin: Issue #1, <https://www.nswtf.org.au/campaigns/salaries-staffing-security/news/putting-students-first-e-bulletin-issue-1.html>

## Reconciliation Australia - full steam ahead

In 2014, BCA companies or their personnel were most commonly involved in Reconciliation Australia, had supply contracts with Supply Nation (the certifying body for Indigenous businesses which had grown 500 per cent in the previous year) and Career Trackers.<sup>7</sup>

Corporations are integral to Reconciliation Australia (RA), where the BCA made its first consistent public relations foray into Aboriginal and Torres Strait Islander affairs. Melinda Cilento (a former BCA Deputy Chief Executive), was simultaneously co-chair of RA<sup>8</sup> and Woodside Petroleum's board through the entire Walmadany (James Price Point) dispute that left the Broome region's Jabirr Jabirr and Goolarabooloo<sup>9</sup> peoples bitterly divided. An attempt to remove the name of the original Goolarabooloo applicant from a joint Goolarabooloo-Jabbir Jabbir claim lodged in the 1970s originally failed, but is ongoing. Former Native Title lawyer, Sarah Burnside, wrote, 'The *Native Title Act* contains no right of veto and ... the incentive to reach an agreement is compelling.'<sup>9</sup> The people were alternately bribed and threatened that they would get a bonanza to ensure their peoples' futures, but that the Woodside Gas Hub would go ahead with or without their agreement. They'd get nothing if they didn't agree. Bribes and threats are nothing new in corporate relations with Aboriginal and Torres Strait Islander Peoples<sup>+</sup>. The struggle also highlights the contradiction between the capitalist approach of quick & binding decisions, and the traditional Indigenous collective approach of wide consultation with extensive discussion leading to consensus. The capitalist approach is cheaper & quicker in the short term, but many Aboriginal and Torres Strait Islander Peoples say the consensus building approach is always better in the long run because people own the decisions.

Meanwhile, both Ms Cilento and Peter Nash from giant accounting firm KPMG remain on RA's board. Nash says, 'We got together with Reconciliation Australia as they rolled out RAPs (Reconciliation Action Plans) which give business a model for planning their engagement with Indigenous communities.'<sup>10</sup> RAPs

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<sup>9</sup> The Goolarabooloo a family group of Jabirr Jabirr by adoption, two generations earlier.

<sup>+</sup> Gurindji people were first bribed, then threatened. Kev Carmody, commenting on his song *From Little Things Big Things Grow* Yabun Festival, Sydney January 26, 2107

now have a far wider reach than business, but they formed a critical early role guiding corporations into Aboriginal and Torres Strait Islander communities. That a representative of KPMG, one of the world's Big Four accounting firms which organises 'tax minimisation' schemes for the world's biggest multinationals, remains a government appointee on **any** organisation, while politicians bemoan tax avoidance, speaks volumes. What a great way to blackwash their filthy linen. Indigenous involvement gives them feel-good news for their websites, tweets and Facebook pages.

RA's 'Key Events in Australia's Reconciliation History' co-opts events from 1932 onwards into their story, like the longest strike in Australia's history, the Wave Hill walk-off, where Aboriginal people asserted their independence against a British corporation in league with government.<sup>11</sup> RA also lists the Aboriginal Tent Embassy, despite all living founders opposing Reconciliation Australia. They totally ignore the largest gathering of First Nations Peoples in their 60,000 plus year history, in Sydney on January 26, 1988, the 200<sup>th</sup> anniversary of British invasion, marked around the country as Day of Mourning, Invasion Day or Survival Day. It's an inconvenient fact, ignored by RA, but one that shook corporations to their foundations.

Two months after that anniversary, Aboriginal leader Gary Foley said 'Politically, we're doing brilliantly. There's a lot of room for improvement, but we have a strong united national political movement which not only attempts to bring about political change, but, parallel with that, is actually overcoming specific problems that confront our community. It's not something that's separate from helping people take control of their own lives. It's something that happens with people in conjunction with each other, not apart and separate.'<sup>12</sup>

## Some companies lukewarm as BCA moves to action

While Sovereign Peoples were united as never before in 1988, aggressive policies, especially from the mining sector, had isolated corporations threatening to undermine their profits. The BCA, founded just five years earlier, knew they had to do something, fast.

Their plan and its implementation is multi-pronged, focussing on 'reconciliation' and constitutional recognition and through that to land tenure, business contracts with Aboriginal organisations, direct employment and creating a sympathetic new leadership amongst Aboriginal and Torres Strait Islander Peoples.

- *A national system of land rights;*
- *A police and justice system which recognises our customary laws and frees us from discrimination and any activity which may threaten our identity or security, interfere with our freedom of expression or association, or otherwise prevent our full enjoyment and exercise of universally recognised human rights and fundamental freedoms.*

*We call on the Australian Government to support Aborigines in the development of an international declaration of principles for indigenous rights, leading to an international covenant.*

*And we call on the Commonwealth Parliament to negotiate with us a Treaty recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedom.<sup>1</sup>*

## Chapter Notes

### Foreword

<sup>1</sup> <http://www.clc.org.au/articles/info/the-history-of-the-land-rights-act/>

<sup>2</sup> Ibid.

# Appendix

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## The Barunga Statement

The 1988 Barunga statement, handed to Prime Minister Hawke has been claimed by Reconciliation Australia and Recognise as a precursor to their organisations and ideals. What it calls for is very clear, and it is not what either of those two organisations are offering:

*We, the Indigenous owners and occupiers of Australia, call on the Australian Government and people to recognise our rights:*

- *to self-determination and self-management, including the freedom to pursue our own economic, social, religious and cultural development;*
- *to permanent control and enjoyment of our ancestral lands;*
- *to compensation for the loss of use of our lands, there having been no extinction of original title;*
- *to protection of and control of access to our sacred sites, sacred objects, artefacts, designs, knowledge and works of art;*
- *to the return of the remains of our ancestors for burial in accordance with our traditions;*
- *to respect for and promotion of our Aboriginal identity, including the cultural, linguistic, religious and historical aspects, and including the right to be educated in our own languages and in our own culture and history;*
- *in accordance with the universal declaration of human rights, the international covenant on economic, social and cultural rights, the international covenant on civil and political rights, and the international convention on the elimination of all forms of racial discrimination, rights to life, liberty, security of person, food, clothing, housing, medical care, education and employment opportunities, necessary social services and other basic rights.*

*We call on the Commonwealth to pass laws providing:*

- *A national elected Aboriginal and Islander organisation to oversee Aboriginal and Islander affairs;*

The BCA's Business Indigenous Network meets at least four times a year and in 2014 had 80 members.<sup>13</sup> By August 29 2016, that number had nearly halved to 44.<sup>14</sup> This doesn't mean members are not active, rather their efforts are spread more widely as policy is implemented.

It hasn't all been smooth sailing. In 2014, the BCA reported a significant decrease in employment of Aboriginal people in its member companies, to 15,000 from 17-20,000. The rubbery give-or-take 3000 workers of the high point in 2013, is massaged away by fewer responses from member companies, and 41 per cent of companies not knowing how many Indigenous employees they had. Progress was slower and more 'resource intensive' than expected, and money was a 'problem'.<sup>15</sup> This from the 100 plus richest corporations, most of whom pay little or no tax!\* It emphasises a self-focussed, 'What's in it for me' mentality among corporations.

Further 'barriers' to corporate involvement included engagement not being 'in line with business objectives' (that is, increasing profits), 'lack of a compelling business case' and 'poor co-ordination and engagement in government programs'. It also cited a slowdown in mining, which more truthfully was simply the entirely predictable end of the construction phase of the mining boom. Yet had not the Community Development Employment Projects (CDEP) been scrapped, the report said, the picture would have been reversed, showing a sustained increase. CDEP was introduced by the Fraser administration and scrapped by Howard, Hockey & Brough. If the BCA had mounted a strong case to the Federal Coalition administration for extending CDEP, given their influence, the BCA might have got their way. In Alice Springs Aboriginal-run Tangentyere CDEP was closed despite having placed 85 people into employment in the five months prior to its closure<sup>16</sup>. This was replicated across the territory, and exposes the deep contradiction between the 'liberal' and 'conservative' approaches even to the point of policy reversal of a major practical initiative providing significant benefit for Indigenous development.

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\* In 2014 retail, finance/insurance, media/information/telecommunications, tourism, aviation and hospitality sectors were the biggest employers, with mining still topping the list of direct employment.

Despite this, there were over 50 Indigenous partner organisations working with BCA companies in 2014<sup>17</sup>.

There must be reparations for invasion and devastation. Those who want sovereignty in action, do not ask for much because as, Lynda-June Coe stated they were ‘taught to live out of love, not hate.’

A banner at the Tent Embassy sums up what Treaty embodying Sovereignty means. It says, ‘Land. Life. Language. Liberation.’ Aboriginal and Torres Strait Islander Peoples want enough to walk their lands, to live safely, to regain what they can of their languages and culture, and - as Sovereign Peoples - to throw off the chains of invasion and build a future full of opportunity for their children.

None of this has been given, so they will fight for sovereignty and for unity, against all like the BCA who, under the guise of empowerment, try to divide them.

The media coverage both built on and reflected strong emotion, and social media lit up. Of course, people feel strongly when they talk of Treaty, of sovereignty and of the criminality of incarcerating such immense numbers of Aboriginal and Torres Strait Islander Peoples, and of history like the 1967 Referendum. But decisions and road maps need to be seen in the cold light of day, and be subjected to intense scrutiny.

Just days before that meeting, Murray George, Chairperson of Pitjantjatjara Yankunytjatjara Law and Culture, called for the cancellation of the Referendum Council meeting, stating, 'As Chairperson of APY Law and Culture, I have written to the Referendum Council to say the Tjilpis are insulted that the Referendum Council did not respect protocol and procedure before they called a meeting for discussion on having Anangu/Aboriginal people all over Australia included in Australia's Constitution.

'We, the Traditional Owners for Uluru and Anangu Pitjantjatjara Yankunytjatjara country argue that our Law is the Law of the Land in this part of the world and not the whiteman law...

'We are only just learning about how to talk about sovereignty and the fact that the High Court of Australia in the Mabo case said our Law and Culture survived British sovereignty. So us Tjilpis are asking ourselves if the colonial power agrees that our Law and culture survived British sovereignty - well then what does that truly mean for us?

'This is what they should be talking about not trying to put us in their constitution so that they get power over us to pass laws for us without us really knowing what the real outcome will be for Anangu Pitjantjatjara Yankunytjatjara Law and culture.

'We don't want this meeting called by the Referendum Council to take place on our Country,' he concluded.<sup>1</sup> In the media's euphoric maelstrom it went almost unnoticed. Other Anangu supported the Referendum Council. Division remains.

Sovereignty has never been ceded, but the exercise of that sovereignty has been consistently denied by those who invaded, robbed, murdered and covered this continent with gaols for Aboriginal and Torres Strait Islander Peoples.

## The Jawun story

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Jawun is the embodiment of this in the BCA's activities in the Aboriginal and Torres Strait Islander communities.

Jawun, with Noel Pearson its Patron, describes its mission to 'Form partnerships to benefit corporate, government and Indigenous Australia'.<sup>1</sup> Tellingly, corporate Australia comes first in that list. It is organised and supported by Partners, Secondment Partners, Indigenous Partners, Trusts and Foundations and Supporters. It operates through 'Indigenous leaders' in various regions Australia-wide.<sup>2</sup> Jawun says it is 'a place where corporate, government and philanthropic organisations come together with Indigenous leaders to affect real change...It is about **people** [Author's emphasis] helping each other.'<sup>3</sup> The corporate hand, re-framing debate, couldn't be clearer. Corporations are now people, who help other people. A critical BCA strategy is person to person links. Logos are not their mastheads in this battle. Their representatives are working in lock-step with a unified, overarching corporate plan.

Jawun was established in 2000 after a meeting between Noel Pearson and 'senior corporate leaders' from the Boston Consulting Group (BCG) and Westpac.<sup>4</sup> US multinational BCG is one of the world's big three management, strategy and consulting firms, with offices in 48 countries, advising governments and the world's biggest companies.<sup>5</sup> An indication of the kind of 'help' BCG offers comes from NSW in March 2011. For the NSW Labor Government, before it was voted out, BCG developed a divide and conquer strategy to break up the state school system into stand-alone schools, and sell the plan with the offer of extra funding for a set period. The incoming Coalition Government's 'Local Schools Local Decisions', followed the BCG's strategy against which the NSW Teachers Federation, overwhelmingly supported by teachers state-wide, went on strike under the battle cry 'Putting Students First'. In NSW dismembering TAFE into stand-alone institutes had already seen funding slashed year after year, and individual institutes blamed for the cuts they implemented.<sup>6</sup>

Jawun says it 'places skilled people from Australia's leading companies and government agencies into Indigenous organisations. These secondees share their expertise and support Indigenous leaders to achieve their own development goals.'<sup>7</sup> This focus on leaders with individual goals also runs like a thread

through everything corporations touch in Jawun. It's in stark contrast to the collective spirit of First Nations Peoples so often expressed in the past.

Seven BCA companies are part also of the Australian Indigenous Leadership Centre, including three big banks and two giant mining companies,<sup>8+</sup> while BHP Billiton partnered Reconciliation Australia to create the Indigenous Governance Awards, 'to celebrate and promote effective Indigenous governance.'<sup>9</sup> But this is just scratching the surface. Building a new Aboriginal leadership that the BCA deems fit is paramount.

Unsurprisingly, as its website states, 'Jawun does not believe in passive welfare economy. We believe in programs that promote self-reliance, entrepreneurial activity and business planning among Indigenous people. We are about real, practical change.'<sup>10</sup> It speaks of 'Indigenous Australians', a hotly contested title among those Aboriginal and Torres Strait Islander Peoples who say their sovereignty has never been ceded, and that Australia is built on genocide and theft.

Noel Pearson writes that leaders must be 'as forthright and unequivocal about our responsibilities as we are about our people, otherwise our society will fall apart while we are still fighting for our rights. We do not have a right to passive welfare – indeed, we can no longer accept it...We have a right to build a real economy.'<sup>11</sup> There was nothing passive about the CDEP, yet Pearson vigorously opposed it as not about 'real jobs'<sup>12</sup> until it was dumped, and the livelihoods and worthwhile projects that Aboriginal Peoples were working on were shredded.

'When you have people in their normal lives who are about enterprise and wealth creation, you are working with a group who are in a frame of mind you need when you are trying to think of solutions', Pearson stated<sup>13</sup> He's an intelligent man, familiar with Karl Marx's arguments,<sup>14</sup> but didn't ask, 'Enterprise and wealth creation for whom, and at whose expense?' He has seen the economic reach and power of corporations, greater than that of governments, and has de-

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<sup>+</sup> The seven BCA companies are Orica, Telstra, Westpac, Citigroup, Commonwealth Bank, Rio Tinto and BHP-Billiton. US-based multinational mining corporation, Newcrest, is also a supporter.

## Post Script

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In the six months since finishing the research for this book, there have been substantial developments, till just days before publication.

On January 26, 2017 tens of thousands of people led by Warriors of the Aboriginal Resistance, Fighting in Solidarity Towards Treaty (FISTT) and other groups, marched against invasion and for sovereignty.

Young Wiradjuri woman, Lynda-June Coe, a representative of FISTT, spoke for sovereignty and Treaty at a STICS event on March 22. She described the earlier meeting in Dubbo, one of the Referendum Council's two NSW lead-up meetings as 'a set-up from the very start', by invitation only with unrepresentative facilitators. Despite this, those talking sovereignty and Treaty made their voices heard, even in these forums.

Lidia Thorpe told the STICS gathering that while Aboriginal and Torres Strait Islander Peoples are still divided, unity comes first. 'Our old people are starting to feel empowered' because the rising struggle to assert sovereignty, that has never been ceded, has lit 'a fire in our bellies'.

Amelia Pangarte Kunoth-Monks said, 'I do not wish to see us fighting. It is time for us to stand up. Nobody will be able to outweigh sovereignty.' Neither she nor her grandmother, Rosalie Kunoth-Monks, attended the Uluru gathering.

On May 27, the 50th anniversary of the 1967 Referendum, the final stage of the Referendum Council meetings outlined by Noel Pearson at Garma in 2016, was held at Uluru. The pushback against constitutional recognition had become so powerful that even Noel Pearson, his mentor Mark Leibler from Arnold Block Leibler, and Bill Shorten started talking of treaty in the month or so leading up. The closing statement reflects the huge desire of Aboriginal and Torres Strait Islander Peoples for sovereignty and Treaty.

Yet in that statement, inclusion of First Nations Peoples in the invaders' constitution remains centre stage. Though Howard's minimalism has been rejected, any inclusion of Aboriginal Peoples in the constitution entails danger. As the delegates who walked out the day before point out, Aboriginal and Torres Strait Islander Peoples could endanger their sovereignty without realising it.



The path chosen by Aboriginal leaders like Noel Pearson, Marcia Langton and Bess Nungarriyi Price will have some positive results, for all things contain contradictions, positives and negatives. But while small numbers may benefit and do their best for their communities, reliance on giant corporations can never solve the basic problems facing the majority of Aboriginal and Torres Strait Islander Peoples. Foreign corporations and their collaborators like Gina Rinehart, form the core of the well-organised corporate inheritors of the British invasion. This is true irrespective of which parties superficially administer Australia's state and federal parliaments.

During the US-led war on Vietnam, many Vietnamese people fought for the invader. At night, when it was safe to do so, members of the National Liberation Front would call to them to join the resistance. In the day they might shoot at each other, but at night the NLF fighters reminded them that they were brothers and sisters. Aboriginal and Torres Strait Islander peoples will deal with their own people, will find their own unity and their own way forward. Corporations will never help them do that.

cided that individuals and small groups of F Peoples can enter hallowed corporate halls, and let others in later. It's a deeply flawed analysis of the way capitalism works.

## Jawun's board

Jawun's ten board members and two advisors have prodigious corporate and government links. Just two are indigenous, Dr Sue Gordon and lawyer Terri Janke. Between them, the others are current directors, CEOs, Senior Advisors or board members of nine BCA companies – ANZ, Coca Cola Amatil, Westfield, Westpac, Bluescope Steel, BCG, KPMG, Seek and Lend Lease<sup>15</sup>, and previously with six more – Optus, Iag, Qantas, King Wood Mallesons, Allens and Minter Ellison<sup>16</sup>. They also cover some of the largest non-BCA companies operating here, including the world's largest cruise ship company, Carnival, Gresham Partners (a 'corporate advisory house'<sup>17</sup>), investment management company Amcil, plus the front runner in Australia-wide hospital privatisation, Healthscope, various Ing incarnations (Ing Direct Australia, Ing Australia, Ing Bank Australia) and Bank of Melbourne.<sup>18</sup> There are interlocking directorships or client bases in other BCA companies, like NAB, BHP Billiton, and Wesfarmers, and with GMH. Unsurprisingly there are memberships or fellowships in the Institute of Company Directors, and the Corporations Committee of the Law Council of Australia.<sup>19</sup>

Then come the board members' close current or former links with state and federal governments and those at the top of government run entities: NSW State Rail Authority, Treasury Corp NSW, Commonwealth Remuneration Tribunal, Takeovers Panel, Department of Social Security, Centrelink, Work Safe Australia, Department of Housing, Sydney University Senate and a string of not-for-profit organisations, particularly of major arts organisations.<sup>20</sup> Finn Pratt's background is particularly notable, having headed reviews of Australia's welfare systems and 'reforms' in disability services, 'set strategic, corporate courses' taken by government departments and 'given senior policy advice' to ministers. He is also a member of corporate think tank, the Melbourne Institute and Chair of the Australia and New Zealand School of Government Board.<sup>21</sup>

KPMG's CEO, Gary Wingrove, has a most unusual addition to his CV. He also worked for another Big 4 accounting firm (either Deloitte, PwC or EY) in apartheid South Africa in 1988, while Nelson Mandela was still in gaol.<sup>22</sup>

With all these resources, it's hardly surprising the results include positives for those involved. The question is: do the negatives outweigh them, and if so, in what way, why and by how much?

Dr Sue Gordon is one of the Stolen Generations, and a former soldier. She has decades of experience in WA, as Commissioner of Aboriginal Planning, WA's first Aboriginal magistrate, chair of the 'Gordon Inquiry' into the 'Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities'. She then chaired the National Indigenous Council set up by John Howard, and in June 2007 chaired the Prime Minister's Northern Territory Emergency Task Force – the Intervention – for 12 months<sup>23</sup>. She was an obvious choice for a military solution to human problems.

The other Indigenous board member is Wuthathi/Merriam woman from Cairns, Terry Janke, a solicitor and graduate from the Australian Institute of Company Directors.\* Terri Janke is a board member of NAB's Aboriginal Advisory Group, the National Centre for Indigenous Excellence (a Jawun Indigenous Partner), Scots Indigenous Advisory Committee. She heads Terri Janke and Company, which specialises in commercial law, focussing particularly on Indigenous cultural and intellectual property.<sup>24</sup>

Terri Janke explained that the 2015 Indigenous Procurement Policy (IPP), introduced by Tony Abbott's Department of Prime Minister and Cabinet, sets targets for Australian Government contracts to be awarded to Indigenous businesses. This follows in lockstep from the BCA's Supplier Nation concept, of awarding contracts to Indigenous businesses. 'Policy requires Commonwealth Departments to award a target number of contracts to Indigenous businesses...with a value for money approach. The goal is for 3% of Commonwealth contracts to be awarded to Indigenous businesses by 2020'.

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\* Terri Janke's brother, John Paul Janke, is a director of the Australian Indigenous Leadership Centre (and of the Australian Institute of Aboriginal and Torres Strait Islander Studies). This is a common feature in BCA-Indigenous links, with the involvement of family members, both nuclear and extended, in various BCA-Indigenous ventures. They mirror the interlocking directorships of corporate leaders. <http://ailc.org.au/john-paul-janke>, <http://www.terrijanke.com.au/single-post/2016/04/11/Another-successful-True-Tracks-event-in-Canberra>

## Two leaders

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Think of two leaders – one used his skills as a negotiator to work with the invaders, to try to find a place for his people. This Wangal man Baneelon, now misremembered as Bennelong,<sup>1</sup> died a lonely, broken man, shattered by the impossibility of tens of thousands of years of Law negotiations and dispute settlement between groups of Aboriginal Peoples, to deal with those whose *raison d'être* was invasion and domination. Baneelon chose collaboration with the invaders who first kidnapped and then flattered him.<sup>2</sup>

Bidjigal man Pemulwuy chose a different path, and kept to Law. Those who broke Law would be punished, and far more finally than Bennelong's involvement in the customary law spearing of the British Governor, which met no retaliation.<sup>3</sup> For Pemulwuy invasion would be resisted.

In 1790, at what is now called Pattmore Swamp in Monterey near Botany Bay, Pemulwuy sent a spear with a death tip into Governor Phillip's gamekeeper.<sup>4</sup> It was not the first resistance to the invaders, but it was the first to target an important representative of them, John McIntyre, a man 'feared and hated by the Eora people'.<sup>5</sup> So began this continent's first true battle for independence from foreign colonialist invasion, and later imperialist control and domination. Pemulwuy led a ten-year guerrilla resistance, the first spark in a spiritual and physical fire of struggle, that engulfed each new area invaded, across the Aboriginal and Torres Strait Islander lands and waters in succession.<sup>6</sup>

True, Pemulwuy was finally killed, his severed head supposedly a symbol of Britain's supremacy.<sup>7</sup> Meanwhile the invaders condescended to let Baneelon live on a tiny piece of his land, where the Sydney Opera House stands on the place that bears his bastardised name, Bennelong Point.<sup>8</sup>

These two men illustrate an overarching reality that runs counter to Pearson, Langton or Price's rationale. Ruling classes have employed the strategy of divide and conquer, since the father of Alexander the Great, Phillip of Macedon, developed it even before the ancient Romans made it the centrepiece of their 1500-year empire. They co-opted small groups of people from those they conquered, to cement their rule in far-flung regions. The rest of the population gained little benefit from this, and for some their lives were short and painful, in slavery in the worst of conditions.

Marcia Langton stated, 'We will have a much greater efficiency...Most governments have historically locked us into a protection model...We've got to stop the naivety and the vanity about Aboriginal affairs. People's lives depend upon it. Thank god the corporate sector's here doing their marvellous work with Reconciliation Action Plans, their employment targets and their parity initiatives, their willingness to get in and do the hard yards on building the Indigenous supply chain.'<sup>5</sup>

Spirit of Eureka understands the importance of jobs, and has no argument with anyone who wants to help Aboriginal and Torres Strait Islander communities gain skills and finance to set up and run small or even large businesses without being ripped off, or other critically important things on which lives depend. But for the BCA and its multinational corporations, overwhelmingly foreign owned, there's an ulterior motive here. It comes back to those 'priceless lands' that Mark Smith spoke of at Garma, it comes back to divide and conquer, and to black-washing their tattered reputations, so they can go on avoiding tax, destroying the environment, ripping off ordinary people, and demanding government subsidies to keep doing it.

Janke observes, 'We have completed more than 3000 matters and work for a range of clients including; organisations, councils, business owners and government. My business is growing and more than half the team are Indigenous. The Indigenous Procurement Policy is a fantastic opportunity to promote our legal services to government departments, quote on work and secure new clients.'<sup>25</sup>

## As the BCA sees fit

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Giant legal firm, Allens and its Senior Partner Michael Rose, have been at the cutting edge of BCA Indigenous policy. In 2013 Allens was, with Arnold Bloch Leibler, coordinator of the Legal Profession Reconciliation Network<sup>1</sup>. By 2015, 78 students had done legal internships with Allens Linklaters which offers on-going mentoring. One intern wrote, 'My internship was basically my first major insight into what I could achieve in this industry. Prior to that, I had very little concept of what was involved in being a lawyer at a top-tier firm and the process that I would have to follow to achieve that.'<sup>2</sup>

Allens' marketing of individual aspirations to work in 'top-tier firms' as a solution to Aboriginal and Torres Strait Islander problems ignores the role of those firms in defending the giant corporations they represent. While it's racist paternalism to believe First Nations graduates should feel obligated to work in the community sector rather than the corporate one, to have no individual ambitions, many First Nations Peoples profoundly disagree with Noel Pearson who most consistently and thoroughly articulates the BCA line that individuals and their ambitions to create wealth are the way to close the gap between the lives of Aboriginal people and other Australians.<sup>3</sup> Numerous Aboriginal Peoples see this as a dead end, a betrayal, benefiting a small number of people.<sup>4</sup> Dr Woolombi Waters wrote, 'Noel was talking about how our peoples need to stop thinking collectively, to take on the attributes of self-interest and become motivated in material possession and introduce greed and jealousy into our communities... Yes, Noel said all that. He said he "wants jealous mothers" in our community. He wants people jealous of homeowners and those with possessions. This is Noel's answer to our lack of agency and privilege.' Waters stated, 'The very ideology of our custodial obligation and responsibility to look after one another as Aboriginal people was coming under threat.'<sup>5</sup>

Allens has also been a key BCA player in moves towards Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, and in December 2015 PM Malcolm Turnbull and Opposition leader Bill Shorten jointly appointed Michael Rose to the Referendum Council on Constitutional Recognition.<sup>6</sup> Allens has lawyers engaged in pro bono work for Aboriginal and Torres Strait Islander organisations, with 4000 hours in the last year, as well as 1100 for Jawun and Empowered Communities in the previous 18 months. \$1.22 million was spent on procurement through Supply Nation in the five years from 2009.<sup>7</sup>

## Awash with money and power

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Gurindji Brenda Croft told a Women for Treaty event, 'The older I get, the angrier I get. I am in a privileged position, able to come and go from my own land, but there's people living on their own country with governments telling them what to do. The lack of engagement with Indigenous people, it still shocks and floors me...What we already have is continually stripped away. It's theft upon theft upon theft!'<sup>1</sup>

Some Aboriginal leaders became enraged by the failure to address the horror their communities were facing. They felt governments, of all persuasions, had let communities fall into dysfunction. The staggering murder rate of Aboriginal Women is testament to this.

Bunurong author, Bruce Pascoe, wrote, 'Even sympathisers of the Aboriginal cause tut tut about Marcia Langton's stern demeanour and seething anger. But imagine that the culture so wilfully ignored was your own. Try and describe the magnitude of your anger, and don't hold back, because anger and sorrow of themselves are not criminal acts. Neither is deliberate ignorance, but it is both regrettable and repairable.'<sup>2</sup>

Facing despair, it's small wonder that when corporations, awash with money and power, with governments at their beck and call, promise order imposed on chaos, employment, education, high order skills, ways to get money and training to solve problems, unlike Brenda Croft, some choose to collaborate.

Marcia Langton is one of those. Noel Pearson is another.

Co-chairing the Garma's Key forum on Corporate Australia and Indigenous Economic Development, Marcia Langton said, 'We need fast injections of capital...We need the government to step aside, and actually become more efficient and less interfering and stop holding us back with these ridiculous rules. And we need the private sector to move in!'<sup>3</sup>

In 2013, Crikey exposed Langton's failure to disclose significant funding from Woodside, Santos and Rio Tinto in her four pro-mining Boyer Lectures on the ABC the same year, in which she specifically praised Rio Tinto.<sup>4</sup>

wanted to claim, and that the manuals Westpac helped create showing how to do this were shared with every land council in the state.<sup>28</sup> George Williams explained how the Gilbert+Tobin Centre of Public Law 'directly engages with government', 'plays a leading role in public debate through parliamentary...inquiries, but also via contributions through the media'.<sup>29</sup>

Mark Smith said, 'There's a real opportunity...for government to actually get out of the way'.<sup>30</sup> Jennifer Westacott was more polite, 'From my experience in government, I can make these suggestions to the public service and governments. Please make it much easier. Please move to an investment model and not a paternalistic program model. Get rid of some of the rules, because they don't work...and they can't be adapted to local communities'.<sup>31</sup> Peter Nash agreed, 'Economic empowerment is something business...has a fundamental role to play, far more so than government'.<sup>32</sup>

While they want 'governments out of the way in decision making', they still want them to help foot the bill. Governments' roles are to provide funding. Mark Smith says government's 'role is not to take risk,' but they are 'supportive of tax incentivisation' for poverty stricken corporations, and should be systematically pressured to fund worthy business initiatives.<sup>33</sup>

## Garma Festival

Garma is an annual festival run by the Yothu Yindi Foundation on Yolngu land at Gulkula near Gove in north east Arnhem Land. Major sponsors are the Gumatj Corporation, three BCA companies – Rio Tinto, Qantas, Telstra – the Australian and Northern Territory Governments, another multinational corporation, Sodexo, and Sky News.<sup>8</sup> When the Business Council helped host a group of 50 Business Council representatives and Indigenous leaders to the Garma Festival in 2016, the second year they'd sent a delegation,<sup>9</sup> Michael Rose had already beaten them to it, presenting a keynote address in 2014, and attending in 2013. His 2014 address made clear how far the BCA had moved beyond plans to implementation. Rose described it as the 'heavy lifting' when policy becomes realised.<sup>10</sup>

Jawun established the Empowered Communities model in 2012, with Michael Rose as chair of its Steering Committee, along with fellow BCA's Indigenous Engagement Task Force member and incoming Westpac CEO Brian Hartzer.<sup>11</sup> It operates in eight regions across Australia: Cape York; Murray Goulburn; East Kimberly, West Kimberly; Inner Sydney; NSW Central Coast; Lower Murray Lakes and Coorong; North East Arnhem Lands and NPY Lands.<sup>12</sup>

The BCA says 'a group of BCA companies has been working closely with Aboriginal leaders across eight regions to develop an innovative new model for the administration of Indigenous affairs. The Empowered Communities model proposes restructuring current arrangements to give Indigenous communities with proven and legitimate governance more power to determine priorities and funding. The leaders argue that the existing model is limiting social and economic progress and preventing local communities from driving their own solutions.'<sup>13</sup> This 'innovative new model' was originally described in an earlier draft as 'a new architecture of Indigenous affairs', probably ditched because it too clearly illustrated the hands of the BCA designers. The BCA now deliberately frames the Aboriginal leaders as initiating the concept, intimating that it was someone else's plan, not the BCA's. It emphasises change from the top down, from enlightened leaders, a thread that winds its way through all BCA activities in Aboriginal communities, and that First Nations Peoples have to prove themselves to organisations like the BCA to be anointed with power over their own lives.

Though the BCA try to hide it, this approach is paternalistic. They believe in 'From the BCA to the people through the BCA chosen Aboriginal leaders'. The BCA's plan may be more sophisticated than earlier plans but paternalism is paternalism, and that is an important reason why these approaches can never have more than partial success at best.

Through Empowered Communities, BCA corporations have spread their activities across the continent.

When Darkinjung Aboriginal Land Council CEO, Sean Gordon, introduced Michael Rose at Garma Festival in 2014, he said, 'I have absolute love and respect for this man. I've had time to sit down with this gentleman and clearly start to understand how the corporate sector works, what their thinking is, and **how they're driving change** [Author's emphasis] from a corporate sector environment and how they see they're going to work with the Empowered Communities group and continue to drive change into the future.'<sup>14</sup> It's clear who's in control. Gordon and other Aboriginal and Torres Strait Islander Peoples might be in the car, but someone owns the road and controls the steering wheel.

Michael Rose said, "The role of Empowered Communities falls into five categories:

1. 'businesses creating jobs' – 'There are many big national businesses, the big mining companies, the big banks, businesses that reach right across urban, rural and regional Australia' and, mentioning Sean Gordon, 'small'. The latter create training, 'allow families to consolidate wealth and ensure their children are moving forward'
2. 'investing in community' – he referred to Rio Tinto's 'investment into mining training here' [in Arnhem land<sup>a</sup>]

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<sup>a</sup> Klaus Helms, a non-Indigenous long term resident in Nhulunbuy and CEO of the Gumatj Corporation, of which Galarrwuy Yunupingu is a prominent member, addressed Garma's 2016 Key Forum on Economic Development in Arnhem Land. After Rio Tinto closed its alumina refinery in early 2014, the Gumatj Corporation bought many of the company run businesses; a cattle station with 900 head, an abattoir, butchers shop, a concrete block plant, sawmill and have since take over other business like, mechanics, garden maintenance and local construction, for which they've been awarded government contracts. 'The changes' Helms said, 'bring us hope' and jobs. The businesses are for community benefit, 'not market driven'. The people are thinking how to survive when the bauxite and mining royalties run out, or Helms says, there will be 'about 2000 people

As it is in the US, 'getting government out of the way' has become a constant theme, particularly noticeable at Garma in 2016. Noel Pearson, in the Constitutional Recognition Forum roared, 'Don't think for a minute these bureaucrats and their governments are going to save us! We have to look to ourselves and we have to hold the government to account.' Pearson was not the only one to give governments a serve with his later metaphor of the elephant that needed shifting.<sup>24</sup> Just before he was elected to federal parliament, Mick Dodson blamed politicians for 'the fatigue, the wearing down of Indigenous Peoples... bureaucracies and governments can do that. They have the energy, they have time, they can gloat in the forms of their conservatism, and frustrate the energies of leaders that seek to make things better for Indigenous people, people who talk in terms of thousands of years, talk in terms of battles that have been fought, only to see the victory overturned the next day...The games go on as if the spoils of office are theirs.'<sup>25</sup>

Recognition Council Member, Tania Hosch, who led Recognise for four years also spoke of fatigue, and her implication was that lack of government agreement was one cause of the difficulties. 'So many reasons to lose faith, to lose hope, to feel defeated, to be pushed and pulled and try to protect some basic rights, yet we've asked people to come together in a magnanimous debate, to work with every side of politics in Australia, because that's what's required, to find something we can all agree on, and that's a lot to ask of a small population boxing above its weight on this particular issue.'<sup>26</sup>

Of course, politicians and governments are very worthy of blame. They have failed to move towards land rights or treaties, they have pulled the plug on program after program. In doing so, in almost every case, they have served corporate interests to mining, property development and the like. Stymieing change for the better has become their first response.

Corporations and people like Craven want a shift away from government decision making, while governments still retain the appearance of running the country. Jawun's mission includes government, coming second to corporations,<sup>27</sup> in its list of partnerships. It also works directly with numerous powerful and ostensibly government run organisations, without government mediation. Secondees from the Public Service Commission work directly with Empowered Communities. The chapter on Darkinjung Aboriginal Land Council shows how Westpac secondees 'collated' the North Wyong Structure Plan, leading the NSW government to remove environmental protection caveats from land Darkinjung

and creative staff. Alongside is Canberra based Wilton Hanford Hanover, primarily a public-sector consulting firm, responsible for major projects with 18 key federal government departments, and 25 federal agencies and organisations. It also specialises in organisational learning and development including strategic planning, plus communications and publishing, especially digital publishing, describing this brief as 'How do you get your story to the people you want to reach?'<sup>20</sup> These companies help ensure the media spotlight on Aboriginal and Torres Strait Islander issues is focused on BCA-sanctioned organisations and people.

Smith intimated that there would be less largesse from the mining industry, but there were \$3 trillion in superannuation funds 'looking for a home', with the member base more and more demanding ethical investments. So people saving for retirement should take an investment cut, rather than giant corporations. Sounds fair.

Westacott stated, the BCA's approach 'is not corporate social responsibility, it's not philanthropy, it's not charity.'<sup>21</sup> The BCA does not want us to think of the home of corporate philanthropy, the USA, where many people with jobs full time are homeless, and the unemployed are hungry. The longest boom in capitalist history, that ended in 2008 in the US, could not even provide basics to their people. So much evidence is now emerging – of the secret manipulation of so-called philanthropic trusts, to undermine basic human rights and engineer policies to further enrich a small group of utterly reactionary billionaires – that Westacott's reticence is understandable. Jane Mayer's brilliant 2016 book, *Dark Money*, is just one of a growing number exposing this.

Yet Smith mentioned 'philanthropy' a number of times.<sup>22</sup> An accident? Definitely not. The BCA corporations want philanthropy, just not from their companies, not unless they can profit by it or someone else is paying for it. The huge flurry of publicity surrounding Twiggy Forrest's \$400M donation, announced as Driving Disunity was being published, needs interrogation. The ABC's Dan Conifer pointed out weeks earlier that Forrest's private charity, the Minderoo Foundation, had paid for trials of a cashless welfare card, plus a prime-time 'advertising blitz' and online petition supporting its imposition on all recipients apart from those on aged and veterans' pensions<sup>23</sup>. Its NT intervention forerunner, the Basics Card, saw queues of blackfellas at supermarket checkouts, their humiliation palpable and public, separated from whitefellas, apartheid-style.

3. 'development of products and services' such as financial services
4. 'direct engagement' – providing education for children, developing leadership skills
5. 'using their influence, and businesses have a lot of influence... They can use that', he said, 'to assist **those** leaders with **their** vision for reform and their vision for the future of their communities'." [Author's emphasis]<sup>15</sup>

He makes it clear that only those leaders who collaborate with corporations will be assisted.

Through Jawun, Rose said, the business community had contributed 40 secondees for three months each, providing three years of advice to Empowered Communities in the past year. Business 'had capabilities they could direct into the design of the Empowered Communities initiative'. 'Design' is the key word here. A 'partnership' it may be on some levels, but the intensity of BCA involvement at the design phase of this new 'model for Indigenous affairs' shows how much influence they wield. ...'that collaboration between business and these leaders', he said, indicating those present on the stage with him, including Sean Gordon, was 'really significant', he continued.<sup>16</sup> Fifty-three skilled secondees from corporate Australia and the Australian Public Service Commission have been deployed to support Empowered Communities, amounting to 124 months of work and around \$5 million of in-kind contribution.<sup>17</sup> You bet it's significant. When public servants are seconded, there's no talk of 'budget repair', that despicable term now used instead of budget cuts.

Peter Nash told Garma 2016 that KPMG will 'deliver' 'skills in how to run, how to set up and govern a business'. 'Through RAPs and partnership with Jawun we found ways to deliver that capability into a whole range of Indigenous communities across Australia from the Shepparton area, to La Perouse, to Cape York, to the Kimberly. Through our RAP we are placing our people and their abilities into these communities to support local businesses, to support local initiatives

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going back to the welfare offices'. Gumatj signed MOUs with Sodexo and NT marine transport group, Seaswift, at Garma 2016. [https://www.youtube.com/watch?v=x-gj2YkDkXw\\_](https://www.youtube.com/watch?v=x-gj2YkDkXw_) While Rio Tinto trained significant numbers of mineworkers in recent years, it waited 44 years, till the refinery's closure to sell its local businesses. (<http://www.ncl.net.au/welcome-to-nhulunbuy/local-history/>)



and provide for long-term skills' transfer' for Indigenous peoples 'to strike out independently'. In Shepparton, KPMG worked closely with the Yorta Yorta people with the design of Empowered Communities. 'It's not a matter of, "we'll leave you to it, off you go" but being there for the long run,' he said.<sup>18</sup>

For forty years, government after government backed corporations who wanted to exploit the riches of Aboriginal lands, while abrogating responsibility for helping to repair the human holocaust of invasion. Now those governments take all the blame, while corporations ride to the rescue on their white horses. The BCA has certainly analysed some of the problems voiced by Aboriginal and Torres Strait Islander Peoples. After land rights were granted they expected to run businesses effectively, when they had been systematically denied any education or experience except at ground level. Peter Nash is right, they were essentially told, 'We'll leave you to it, off you go.' Richard Trudgen in *Why Warriors Lie Down and Die*,<sup>19</sup> laid the effects of this approach bare on the Yolngu people in 2001, but, contrary to the BCA, he detailed a collective, not a top down, approach, working closely with Elders, with Indigenous languages at its heart. No BCA member has partnered with the Why Warriors project.

Perpetual Unity's Mark Smith, also at Garma 2016, spoke about three basic principles in Perpetual's work with 19 communities, **with \$1billion in assets, and 'priceless lands'**: [author's emphasis] to help 'bridge the gap'; 'beginning with the end in mind'; and 'building product'.<sup>20</sup> With the last two principles, Smith may as well have been talking about the way the BCA itself has operated in the Aboriginal and Torres Strait Islander community – it knows the end it wants, and is hand-picking people and creating organisations who will help it achieve that end.

Smith said Perpetual worked with one trustee business a year ago, and were quickly able to look through their supply chain, a simple concept. Soon, rather than a drain on finances, it was paying dividends into its future fund. He spoke of building 'a sense of autonomous culture over time' with good governance and things like internships in finance and accounting, to match the huge increase in Indigenous law graduates, so there are enough community members with tertiary qualifications for the community to take complete control.<sup>21</sup>

None of this means that the BCA people are all malicious and have no concern for First Nations Peoples and the horrific conditions many of them face. Smith clearly takes some pleasure in being able to assist a small Aboriginal business. But whatever his or others' individual concerns and beliefs, they are in essence

perhaps she could tell it to the communities that have been forced off their mineral rich remote homelands as mining giants like Garma sponsor, Rio Tinto, waited for the unencumbered profits to roll in. Naturally, history like invasion and corporate profits at the expense of Indigenous Peoples is best forgotten too.

## Footing the BCA bill

The BCA, despite the immense wealth of its members, and their failure in many cases to pay tax, want to enlist others to help pay for their vision. Michael Rose mentioned the role smaller businesses can play.<sup>13</sup> Lindberg expanded, 'Corporates are actually quite a small sliver of the economic activity in Australia...The heartland of business, going down from commercial businesses to small businesses of five to 25 people and staff, and micro-businesses, one to five people...The amazing growth story of the past twelve months has been that small and medium sized businesses are carrying the majority of the growth for our country. Over the last year, small businesses are growing four times the pace in terms of credit growth.'<sup>14</sup> A small number of foreign corporate payers control the commanding heights of the Australian economy, including its most profitable sectors.<sup>15</sup> Much of the growth in small business here is simply giant companies subcontracting out their risk. The subbies pay all the on costs like insurance, get saddled with the court case if someone is injured, most of their workers are casual, and corporations only have to pay when they are on site.\* Meanwhile Lindberg's much lauded 'credit growth' actually means small business debts are growing at four times the rate of big business's.

The BCA has enlisted advertising companies to support its strategic plan.<sup>16</sup> The branding, websites and advertising campaigns of Empowered Community groups, as well as Jawun Indigenous Supporters, have been radically made over by Banjo<sup>17</sup> and DDB<sup>18</sup>, with the assistance of Linnet Foto<sup>19</sup>. While nowhere near the BCA league, these companies have very talented and experienced analysers

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\* *Tough Jobs, The Rise of an Australian Working Underclass*, a research analysis led Dr Kristy Jones for the CFMEU, points out 3,700,000 Australians are now either unemployed, casually employed or working as 'independent' contractors. August 15, 2016. <https://www.cfmeu.org.au/policy-research/tough-jobs-rise-australian-working-underclass>



point...is that if done properly, economic activity, by that I mean jobs, wealth creation, is essential for social progress. It creates choice, it creates a capacity to invest in improving living standards and I would argue it is absolutely essential to the restoration, the creation and protection of dignity for individuals, and families, communities and for nations themselves. I believe business is essential to achieve this...business should be the natural ally in overcoming some of the issues that we've discussed today.'<sup>7</sup>

The rhythm was set out by Rose, 'Our future depends upon the success of the communities in which we operate.'<sup>8</sup> Westacott was the first to echo this, 'Failure to invest in the potential of people will result in failure of the company... Investors put their money at risk. But to create enduring success, we need to create a shared value, while at the same time having real positive and measurable benefit to communities, to society and to the environment... It's core business...we can deepen employment relationships, we can create more real long-term jobs, we can deepen supplier relationships.'<sup>9</sup> Tell that to the Brazilian villagers buried under BHP Billiton's tailings' dam landslide. Corporations could have shared the bounty of technological change. Instead we have growing unemployment and under-employment, alongside people working dangerously long hours, Rio Tinto's driverless trains, CUB's sackings of skilled workers, offered their jobs back for 35% of the wages. This is normal corporate practise, not the Garma nursery rhyme.

Peter Nash's performance was breathtaking. Representing KPMG, a key organiser of corporate tax evasion, he said without a note of irony, 'Business cannot prosper unless communities in which it operates prosper as well.' He called this 'strong alignment that hasn't always been well understood...There is no difference between our prosperity and the prosperity of the communities in which we operate.'<sup>10</sup> And to ensure we remembered the tune, Westpac's David Lindberg warbled, 'We survive because businesses thrive. Our economics are aligned with the success of the businesses we serve.'<sup>11</sup>

In 2016, the message was still the same as Michael Rose's hymn to the BCA's reach and power, but more nuanced. Jennifer Westacott talked of business 'advocacy on things like education, over things like constitutional recognition. We can build capacity and skills and unleash the digital economy. There is enormous potential, and it's blind to remoteness, it's blind to history.'<sup>12</sup> That's hardly surprising with 85 per cent of the Northern Territory under mining lease, but

serving corporate plans and policies, and have already divided Aboriginal and Torres Strait Islander Peoples. For all Smith's pretty words, it's the irresistible 'priceless lands' that have always called to invaders, whatever their tactics. Such well-planned and concentrated action is bearing dividends, and like anything in life, there is positive alongside the negative in the process.

## Darkinjung sells up

Darkinjung Aboriginal Local Land Council, founded in 1984, is one of Jawun's 44 Indigenous Partners.<sup>1</sup> It now plays a key role in Empowered Communities on the NSW Central Coast. Darkinjung's 2016 Annual Report, took up the BCA's language under the heading 'Management Structure' - the first sub-heading is 'Organisational Architecture'.<sup>2</sup>

The land council is doing some good things.

After a ten-year battle, characterised by numerous protests involving Darkinjung, Australian Walkabout Wildlife Park, environmentalists and other community members, an extension of Rocla's Calga Sand Quarry was refused in the Land and Environment Court in November 2015. Rocla is a subsidiary of BCA member Fletcher Building, which tried to cut wages at its Dandenong insulation plant, by 50 per cent<sup>3</sup>. The Rocla extension had threatened to destroy aquifers and the cultural landscape surrounding an Aboriginal Women's site.<sup>4</sup> Commenting on the victory, Darkinjung CEO Sean Gordon stated, 'We have been able to identify that this area is immensely important to Aboriginal people.'<sup>5</sup> Darkinjung continues to fight the proposed Wallarah 2 Coal Mine, after a win in the Land and Environment Court gave no final resolution.<sup>6</sup>

A mapping system of its lands has been developed, along with partnerships developed with National Parks and Wildlife Service and the NSW Forestry Corporation to preserve and sometimes co-manage Aboriginal sites. It inspected over 90% of its landholdings, a suitable location for a cultural camp has been found, and a further grant will help preserve Aboriginal heritage sites. Darkinjung received grants of nearly \$70,000 from several sources to clean up land in Wyong, and remove illegal tracks in Wyee. 2500 tonnes of illegal dumping were cleared in 12 months. They have a well-managed funeral fund for members. Darkinjung has contributed over \$235,000 to support less advantaged Aboriginal Land Councils.<sup>7</sup>

Things have not always gone so smoothly.

In 2004, according to investigative journalist Ben Hills, 'after a decade of negotiation, the 800 members of the Darkinjung community agreed to sell 41 hectares of their heritage beachfront land on the Central Coast to a developer for \$42 million. The money was to be secured in a watertight trust and invested in

## Singing in chorus

**'Change comes from mass action. None of these wishy-washy negotiations ... behind closed doors amongst elite groups.'**<sup>1</sup> *Gary Foley, 2004*

At Garma 2016, Jennifer Westacott said the Business Council members got together in the morning, and talked about 'more ambitious targets', but there were probably more than a few words about staying on message, because they were all singing from a similar song-sheet, despite their large numbers.<sup>2</sup>

Westpac's David Lindberg said 21 people from Westpac were there 'to listen and learn'. He echoed Michael Roses' words, at Garma 2014, when Rose described the beginning of his 'journey', as Allens was preparing for its first RAP. Rose was told by a Wiradjuri friend, to 'calm down and listen...Reconciliation is not something you are going to do for me...it's something we are going to do for each other.'<sup>3</sup> Lindberg's bank started with targets, he said, but learned targets only follow from a 'culture of inclusion'. He talked about bringing the 'whole bank to bear' dealing with issues like cash flow management, corporate governance and the notion of trust built over years.<sup>4</sup>

In 2014, quietly spoken Rose had replied to his own question, 'What's in it for business? ...Some of the mining clients I've worked with in my career... say we're not doing this necessarily to be nice people. We're doing this from enlightened self-interest.' He talked of 'transformational change...It allows them to start thinking about Australia, and their place in Australia in a different way.'<sup>5</sup> It does much more than that. As BCA member presentations at Garma show, it allows them to talk about it as well, to use all the pretty words on that critical platform from which the BCA message spreads more deeply and widely, not only amongst Aboriginal Peoples.

Perpetual's Mark Smith was blunter, 'Indigenous corporations are very asset rich and cash flow poor and that's going to be the greatest challenge for them over the next ten years...' He spoke of three basic principles in Perpetual's work with 19 communities, '**\$1 billion in assets**', and '**priceless lands**' [Author's emphasis] to help 'bridge the gap'; 'beginning with the end in mind'; and 'building product'.<sup>6</sup> This could just as easily have enunciated the BCA's well planned path into the Aboriginal communities.

Social progress through business involvement formed the BCA melody. Westacott said, 'If we talk about economic activity as a context, my starting

Amatjere Elder Rosalie Kunoth-Monks sees Treaty as a way to protect land rights. Without Treaty, 'at the stroke of a pen they can do anything they want. I am nothing when I am off my ancestral land. I am rendered voiceless...I am nothing.' She speaks of 'ill intent' that has to be fought. 'I believe people power can be reached by us reaching out to each other. Don't wait to be compliant to policy...don't be angry, reach out. It is the people and the spirit that make a beautiful country,' she said.<sup>22</sup>

Teresa Monta of La Perouse a few hundred metres across Botany Bay from Kamay, which James Cook and Sir Joseph Banks decided was a suitable place for a British colony, echoed this sentiment for unity. 'We're up against it and we all should be able to stick together.' She spoke about 'these forums on the east coast that need to keep going, and of the need to make compacts with each other. Forget about governments. We need each other.'<sup>23</sup>

The call for unity grows. 'When we as Aboriginal people stand together on our own land, with our ancestors, there is a truth in our existence and our condition which is undeniable...We were here and subjected to the worst forms of genocide and dispossession, and we're still here. When we come together with our collective voice, that is when we are strongest.'<sup>24</sup>

businesses. The proceeds would provide low-cost housing loans, aged-care facilities and funeral costs for the needy community.<sup>8</sup>

Hills wrote, 'The trouble has been simmering since Darkinjung became Australia's wealthiest land council in February last year [2004] when the developer [and BCA member] Mirvac agreed to pay \$42 million for the land, on which it is building the luxury Magenta Shores resort and golf-course. The first instalment, \$18.5 million, has been handed over, with the balance due over the next three years.'

Then huge anger erupted around the actions of a small group in the Council, and became so bad, according to Hills, 'two independent directors of the company established to act as trustee for the money, Darkinjung Pty Ltd, [Kathryn] Greiner\* and the land rights lawyer Stephen Goddard, quit.' Ms Greiner described the actions of a small group of Darkinjung directors as 'nefarious'. 'John Basten, QC, produced an opinion for the NSW Aboriginal Land Council that transfer of money to the trust was unlawful,' Hills continued.

By June 2004, the council 'had spent \$1.1 million, almost its entire income of \$1.4 million for that period, on legal and consultancy costs. As at June 30 it had a \$645,000 deficit.' NSW Aboriginal Affairs Minister, Andrew Refshauge, appointed an accountant from another multinational BCA firm, Deloitte, to investigate. Hills reported that Bob Graham, deputy mayor of Wyong, told him, 'A few years ago there were 80 members of the council, now there are 800 - they even invited me to join, and I have no Aboriginal blood [sic].'<sup>9</sup>

Mirvac and Deloitte's dealings may have alerted the Business Council to Darkinjung's potential wealth, though Jawun had a very different take on the affair to Ben Hills, describing it as 'historic'. 'It took immense vision and strength from Darkinjung members to reach this significant decision. The managed cash reserve of \$30 million from the sale has enabled the organisation to explore economic development, and established Darkinjung as one of the leading organisations for the Central Coast Aboriginal community.'<sup>10</sup>

Jawun stated, 'Darkinjung's systematic approach and strong leadership resulted in community consensus on the historic sale of a parcel of land to Mirvac in

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\* Former Sydney City Councillor, with numerous company and not-for-profit directorships. She was married to former Liberal Premier Nick Greiner.

2001. However, the tension and complexity between economic and cultural lands required ongoing, careful management. Darkinjung used technology to map over 7000 registered Aboriginal heritage sites, putting them in a powerful and well-informed position during land negotiations' but 'were reliant on the operational cash flow from interest earned on \$30 million of cash reserves.' A finance professional from Westpac was sourced to work closely with both the Darkinjung CEO and accountant to review their investment strategies.<sup>11</sup>

'Environmental lobbying resulting in lands being 'locked up' is also a common problem land councils contend with,' continued Jawun. 'When the North Wyong Structure Plan was released, despite Darkinjung's two years of lobbying, several of their assets had been classed as environmental land only. A team of three Westpac secondees were deployed to develop a strategic response for Darkinjung based on an economic business case, which also articulated the benefits to the Shire if the lands were open to economic development.'<sup>12</sup> The NSW Government removed the environmental caveats over several Darkinjung assets due, in part, to the strong political response to the North Wyong Structure Plan collated by three Westpac secondees. Environmental concerns are not important when there's a buck to be made.<sup>13</sup>

Each of the seven secondees who had worked with Darkinjung contributed to documenting Darkinjung's 'economic development framework'. 'This was a manual which addressed the various common challenges and opportunities encountered by LALCs [Local Aboriginal Land Councils] and the unique manner in which Darkinjung had navigated a way forward. To finalise the manual, a legal professional from the Department of Foreign Affairs and Trade was sourced to outline the key areas of importance in relation to the legislation.'<sup>14</sup>

According to Jawun, Darkinjung CEO Sean Gordon was keen to share this resource with other LALCs. This may well have been true, but the BCA consistently tries to convey the idea that Indigenous people are the source of decisions. Gordon's repetition at Garma in 2014 that corporations were 'driving change into the future', means it's likely the resource sharing idea came from them. A Westpac seconded was sourced to review the effectiveness of the present system and develop a section of the manual relating to technology best practice, cost options and management. An 'economic development framework' and training manual was produced and shared with all 119 other NSW LALCs. Darkinjung has engaged in training numerous LALCs where requested. According to Sean Gordon: 'It is nice to have someone as an expert in their profession to come in

a foreign power, unless it's by way of treaty or conquest.'<sup>14</sup> Anderson also cautions about the treaty being formulated as a response to the Victorian meeting, on which Terry Mason reported. (*See 'We'll do this Aboriginal Way'*)

Tony McAvoy made it clear, 'The quality of Indigenous land use agreement you get has nothing to do with the strength of your lawyer...or your case, but the political bargaining power you have at the time the deal is done, how badly they want your land at that time...Small groups get steamrollered.'<sup>15</sup> In South Australia, according to Tauto Sansbury, they have 'an indigenous land use agreement that's worth absolutely nothing,' and the Labor State Government is 'looking to turn South Australia into a nuclear dumping ground for the world.' The Minister, Sansbury said, speaking of Kyam Maher, South Australia's Minister for Aboriginal Affairs and Reconciliation, 'says he's an Aboriginal, but is ripping our Aboriginal heritage to pieces' with an open door to the mining industry, where 'damages to our sites' are decriminalised<sup>16</sup>.

When people like Gary Foley speak of 'Micky Mouse Native Title bullshit' they're in unusual company. Almost everyone agrees that Native Title is no good. Federal MP Tim Wilson, who worked with the right-wing Institute of Public Affairs, rubbished it at the National Press Club in early 2015, when he was still the Abbott-appointed Human Rights Commissioner. 'It's not enough for Aboriginal Australians to simply have property rights; they must also have the freedom to exercise them.'<sup>17</sup> Marcia Langton pointed out 'many of these titles are fragile...There are layers of bureaucracy, and you [First Nations Peoples] can't often get what you want.'<sup>18</sup> What the BCA and Wilson want is the abolition of communal title and its replacement by individual or family title.

'Aboriginal people had no idea how to make money out of our land,' Galarwuy Yunupingu said.<sup>19</sup> The BCA has heard this. Its solution involves claiming, selling, leasing or welcoming corporate partnerships, turning land into commodities.

The current land grab is Australia wide. In the Territory 99-year leases are forced on Aboriginal Peoples, and elsewhere 400 communities were being kicked off their homelands – 150 in South Australia, and 250 in WA.<sup>20</sup> Gurindji Elder Brenda Croft said, 'Assimilation is to make us disappear...Where will they send those people who are taken off their land? Will they send us offshore as well? Those places,' she continued, 'are not remote to the people who live there. I don't want to hear "sorry" again! I want action!'<sup>21</sup> Meanwhile Darkinjung were claiming and selling land in NSW, without a whimper of protest about what was happening to the west and north.

years and hassle that same mob over and over again?' He describes land rights as 'very rights to Aboriginal heart. Aboriginal people think that the land is ours, and ours only. There's no shareholders like the mining companies.'<sup>9</sup>

'That land has been like that when Captain Cook arrived...he come and raise a flag up and say Australia is his country, and disregard who was watching him raising the flag. What a crap! How can he lie so upfront...without no shame, saying the flag gives him the right to own Australia? What a lie! While the black man was standing right in front of him...That's what happened in the first place to land rights.'<sup>10</sup>

'We have to make sure the Land Rights Act is not only temporary act, but it is permanent act...Aborigines have lived and died for it.' Strangely, this speech is no longer available on the Garma website.<sup>11</sup>

## In white man's law

At the same forum, Mick Gooda repeated the words told him by a Federal Court Judge, 'I'm not here to give you native title, because you've had native title for twenty or thirty thousand years. I cannot give you something you already have. What I'm going to do is recognise your native title in white man's law.'<sup>12</sup>

Lakota-funded US lawyers were travelling round Australia for Sovereign Union, looking at Native Title Agreements. Michael Anderson asked them, 'How in the world can anyone enter into Indigenous Land Use Agreements (ILUAs) and agreements that the courts are throwing at Aboriginal people and these determinations for Native Title?' Anderson said, 'Their view is that all of those are illegal, those agreements, simply because...the people have no idea what they've given away. ... Just ask those who have already signed ILUAs.'<sup>13</sup>

Anderson said, 'Our Law is the Land, is the Law of the Land. We all belong to Sovereign Nations and Peoples. Our Law is the Continental Common Law of land, our Mother, now known as Australia...Continental Common Law cannot be erased unless you've ceded, and of course the great danger of ceding ...is that we give it away, which is what some people are doing with the agreements with the government, these consent determinations, because...they mean you forgo all other claims to Country and to your land...You will have given away everything that is sacred to you. The Continental Common Law cannot be erased by

and endorse current strategies we are working towards... Fresh input is always welcomed, and this resource (Jawun) allowed us to share our learning faster and more thoroughly.'<sup>15</sup>

In 2013, Darkinjung was named Aboriginal Organisation of the Year.<sup>16</sup> By 2016, Darkinjung had five times more land than in 2013. Darkinjung remains the biggest private landholder on the NSW Central Coast, holding 3,500 hectares.<sup>17</sup> The 'nefarious' behaviour that has plagued many organisations servicing Aboriginal and Torres Strait Islander Peoples had ended at Darkinjung, but it continued making land claims and selling some of that land.

## 'Our land is our asset base'

A powerful 1970s land rights poster encapsulated land custodianship in one short sentence, 'The land is mine, because I came in spirit from the land.' Elders constantly referred to the land as their 'mother'. No reparations for violent theft have been paid. None is offered. But Aboriginal people have been told that they can sell their land to provide their economic future. This is the Darkinjung path, mapped by the BCA.

They describe it in these words, 'Our land is our asset base. Our land is our cultural connection. Our land is our wealth. Our land creates responsibility. Our land creates opportunity!'<sup>18</sup>

Darkinjung Business Plan's 22 'strategic success measures' include, 'purchase, lease or sell lands where necessary', 'identify and successfully deliver high value development projects' and 'establishing a diverse asset portfolio to support Darkinjung's strategic objectives.' Darkinjung has diversified 'to minimise investment risk' and 'identified commercial development opportunities.'<sup>19</sup>

'The Aboriginal Land Rights Act enables Aboriginal Land Councils to recover freehold ownership of vacant Crown Lands'.<sup>20</sup> Its 2015 Annual Report stated, Darkinjung made 372 land claims that year, of which it withdrew eight claims.<sup>21</sup> It speaks of 'objectives' like 'understanding the local markets' [for land] and 'management of a well-prepared, detailed budget for every **parcel** [Author's emphasis] of land held',<sup>22</sup> and of investing its accounts 'prudently' in Australian and international equities, term deposits and government backed securities, various forms of real property and property trusts, based on 'independent professional advice'.<sup>23</sup> What is the title of its 'Operational Achievements' section of the

Community Land Business Plan? '\$', in big bold font, inside a little box,<sup>24</sup> to give it emphasis and importance.

These sentiments would be unrecognisable to those old women and men, now long gone, those land rights pioneers, who were prepared to give up everything to fight for their lands. It's clear Aboriginal and Torres Strait Islander Peoples have been denied the right to make a living, and Galarrwuy Yunupingu and Gary Foley are just two to point this out, though each seek very different solutions.

The report goes on to speak of its 'housing portfolio'. 'Darkinjung's asset base is the landholding granted under the Aboriginal Land Rights Act. The provision of housing to its Membership is an important part of Darkinjung's responsibilities... Darkinjung has, over time, purchased and built residential properties to meet these responsibilities.' By June 2016, it had 'a portfolio' of 22 residential properties and eight under construction to house Darkinjung members and their families. It aims to increase its portfolio over the next 20 years 'as development of residential housing estates increase', and members agree under the 'Rent to Buy Housing Policy'.<sup>25</sup> In other words, individual, rather than collective, ownership, land and housing to buy, and sell.

Darkinjung's Blue Haven Estate on Menindee Ridge was the first residential land release in Wyong Shire in many years. With 109 housing lots in stage one, all were sold by October 2016.<sup>26</sup> The Halekulani-Gurawarang Waters Development proposal, originally proposed for 251 lots, but scaled back to 99 over 3.5 hectares after over 2000 submissions and council mediation, was lodged in 2012 and approved in March 2016.<sup>27</sup> Then there's the \$14M motoring complex at Bushells Ridge, where Darkinjung is fighting the Wallarah 2 Coal mine, leased for 60 years to developer CASAR Motorsports. It's generously predicted to generate \$17M and 500 direct or indirect jobs.<sup>28</sup>

So 30 homes, some of them mobile homes, will come from selling two housing developments comprising 208 lots, and none from the \$30 million already held in 2013.

Its 2015 Annual Report identified more potential development sites – two at Somersby (a rural/residential subdivision and a commercial/retail development), residential subdivisions or aged accommodation at Kariong and Norah Head, plus two retail developments in Kincumber.<sup>29</sup> By 2016, negotiations had begun for a petrol station and several fast food outlets at one of the Somersby sites, and archaeological and ecological surveys had been commissioned.<sup>30</sup> By 2016, a

In 2004 Gary Foley said, 'Land rights was important...because it could provide a means by which the Aboriginal people could go through the process of reconstruction and strive towards economic independence, the only form of freedom you will get in a society like this. Until Aboriginal communities have economic independence, they have no freedom.' He emphasised that change would come about as the result of 'mass action'.<sup>5</sup>

'A lot of Noel Pearson's ideas,' he said, 'are based on the false premise that the ideas of the Land Rights movement 40 years ago ... [and] the Black Power movement...are somehow discredited, and somehow those ideas failed. This is a false reading of history. Those ideas have never failed for the simple reason, they were never implemented. There was never an opportunity to test out whether what we said worked or not...Instead...the Land Rights movement, the struggle for land rights, economic independence and self-determination, that was the dominant part of the political movement in Australia throughout the 20th century, was in fact destroyed under the Hawke-Keating government. Let's never forget this. A man [Paul Keating] ...who Noel Pearson claims is one of the greatest prime ministers ever, don't forget that he and Bob Hawke, and the ALP did a corrupt deal with the mining companies in Australia to destroy land rights.'<sup>6</sup>

'Bob Hawke came to power claiming he would deliver Aboriginal people uniform land rights' legislation, freehold title, ownership of land. Brian Burke, [Former WA Labor Premier, gaoled for corruption] one meeting with Bob Hawke behind closed doors - end of land rights. Thirteen years later, when the Labor Government left power, what did we have? We had Native Title, the most inferior form of land ownership under British Law. Meaningless! Bullshit! Native Title is **not** land rights!'<sup>7</sup>

Yolngu Elder Galarrwuy Yunupingu cooperates closely with corporations, sharing the Constitutional Recognition stage with Michael Rose and Noel Pearson, and being thanked profusely by Jennifer Westacott at Garma 2016.<sup>8</sup> Yet he's clear on one thing. 'The land right is asleep, fast asleep...Aboriginal people haven't woken up to be active enough...Land Right Act is a big thing. When it first came to the Aboriginal people it is so new, so big...but it has done little to the land owner, because it's being merely shared through whitefellas, through mining companies mainly...Every five years that mining company came back to that mob to talk about the mining development on their land, and so it went, on and on and on. What rights did the mining company (have) to come back in five



# We're sitting right here till we get our land

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**‘This is our land. It should be up to the non-Aboriginal people to prove their title here, and prove their connections to this country, not the other way round’<sup>1</sup>. Robbie Thorpe, *Australia is a crime scene***

The 1966 Gurindji Walk Off's focus on land was the counterpoint of the '67 Referendum's constitutional focus. Joe McGuinness, a Kungarakman man and President of the Council for the Advancement of Aboriginal and Torres Strait Islanders, told its 1968 Annual Conference, 'You can't have a people without land.'<sup>2</sup> Neither Joe McGuinness or his comrades countenanced begging from the bosses' table. He saw unity and struggle as the way forward.\* For the Gurindji, jobs and even equal wages were not enough. When bribed with doubled wages, Kev Carmody and Paul Kelly's song gave the answer, 'We're not talking about wages/We're sitting right here till we get our land.'<sup>3</sup> The Wave Hill struggle marked the re-emergence, in a new form, of the struggle for land symbolised by those to whom Robinson and York dedicated *The Black Resistance*, 'those brave men and women who died defending their country'.<sup>4</sup>

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\* His retelling of the Hope Vale case, from Noel Pearson's own country, is just one example. The mission's Lutheran pastor struck a young man 'six to twelve times on his bare back' with 'a loya cane about three feet long and three-eighths of an inch in diameter' for running away with his 'sweet-heart'. 'The lad ... was also sentenced to exile on Palm Island.' When he managed to get word to the Cairns Aborigines and Torres Strait Islander League, of which McGuinness was a leading member, they rescued and hid him for weeks, in the face of searches and questioning by police. Publicity grew as the League distributed leaflets, held public meetings, interviewed influential people, petitioned parliament and sent reports to other organisations including the Anti-Slavery Society in England. Unions rallied around, and a contingent of influential supporters, including Tom Uren, MHR from Sydney, accompanied the youth to the inquiry that their actions brought about. The youth was represented by a barrister, former Queensland MLA, and communist, Fred Patterson. The result? Victory. (Joe McGuinness, *Son of Alyandabu: My Fight for Aboriginal Rights* UQP, 1991, p. 41-42)

memorandum of understanding had been signed with Waste Enterprises to develop a business plan for a Resource Recovery Facility on Darkinjung land. Another MOU with the NSW Government will develop a proposal for Peat Island and Mooney Mooney.<sup>31</sup>

## Creating a strong brand

In early 2013, the Kuringai Examiner reported, that Peat Island and Mooney Mooney had been rezoned to allow 450 new homes, a 250-berth marina and a retail precinct, with 26,000 square metres of open land. The article stated, 'Many of the locals who wanted to see some development are now concerned that the plans involve too much space for residential housing and mixed uses, with little space left for the public to enjoy.'

This is a stunningly beautiful area, The Kuringai Examiner calls it 'a scenic gateway to the Central Coast,' saying it 'hoped that any eventual development would reflect the natural beauty of the waterways and be sympathetic to the unique position the area occupies in the Hawkesbury River and along the national motorway. It's no wonder the idea of 450 new homes (some in clusters of four and five-storey apartments) around this waterway causes concern for locals and other citizens, even if the development means a boost to the local economy... The new "township" would dwarf nearby Brooklyn, which currently has around 350 dwellings which are spread out over a larger area of land to the east of the M1. A development on this scale would necessitate the clearing of Tank Hill, construction of sound barriers for the housing, more sewerage into the Hawkesbury, minimal public waterfront access and loss of views and amenity. Nearest infrastructure services are located at Hornsby Shire, which would see an influx of upwards of 1000 people residing on Peat Island and Mooney Mooney.'<sup>32</sup> It remains to be seen if Darkinjung get the land.

That its 2016 Annual Report speaks of 'creating a strong brand in Darkinjung'<sup>33</sup> is not accidental. Darkinjung is selling itself.

A senior associate from Allens worked with the Darkinjung, along with secondees from other corporations, including KPMG, BCG, CBA and NAB to design and implement a new governance model for the regions. Through Jawun, over two years to June 2013, 14 secondees were deployed from Westpac, Commonwealth Bank, the Department of Foreign Affairs and Trade, the Department of Defence, KPMG, and Telstra.<sup>34</sup> That has significantly increased, in four years

to March 2016, Jawun placed 109 corporate and other secondees, 'worth \$3.1 million with Aboriginal organisations on the Central Coast'.<sup>35</sup>

A number of smaller companies sponsor or operate with Darkinjung. It has links with Bendigo Bank and PKF Lawler (a mid-sized company providing accounting and business advice in 13 centres round Australia, especially in NSW and Queensland).<sup>36</sup> Darkinjung states it 'has been the masthead for the establishment of a Jawun corporates partnership on the Central Coast with six other Aboriginal controlled organisations'.<sup>37</sup>

In November 2014 and March 2015, Jawun Executive brought leading representatives from seven BCA companies, from the BCA itself, and Woolworths Liquor Group plus representatives from the Departments of Human Resources, the Environment, Australian Public Service Commission, South Australian Government, NSW Treasury, as well as other Indigenous Partners to meet with Darkinjung leaders.<sup>38</sup>

Three other Jawun Indigenous partners also have joint programs with Darkinjung – Bungree Aboriginal Corporation, Bara Barang Co Ltd and The Glen. The Glen provides male specific drug and alcohol rehabilitation in the Hunter Region near Newcastle. The irony of Woolworths Liquor Group's potential links with Darkinjung goes unremarked, though in places like Fitzroy Crossing in WA, Aboriginal groups own pubs, and keep strict control over drinking, with community blessing. Allen's Linklater and KPMG have had particularly close pro bono links with Darkinjung and its Jawun partners, but Bunnings, AIG, QBE, Westpac, Suncorp, CBA, ANZ and Wesfarmers also provided pro bono work.<sup>39</sup>

Darkinjung also lists a Memorandum of Understanding with Lendlease for procurement and to train and employ 3-5% of Aboriginal people in the rebuilding the privatised Gosford Hospital, while the Commonwealth Bank offered 13 Aboriginal traineeships at CBA Central Coast for 1-2 years.<sup>40</sup>

From 2012 to June 2015, Darkinjung had 23 secondees, and the six other Barang Empowered Community members (NAISDA, The Glen, Bungree, Mingaletta, Bara Barang and Yerin) had a total of 45. The process is intensifying. In the year to June 2015 there were 35 – from thirteen different organisations, mostly BCA members, but also including federal government departments of Defence, Taxation, Infrastructure, Finance, plus Foreign Affairs and Trade.<sup>41</sup>

indigenous language interpreter, cross cultural educator, trained aircraft maintenance worker, the first Yolngu pilot and, most importantly in his people's eyes, is the Djirrikaymirr-judge in the Yolngu law, the Madayin.<sup>20</sup>

'Our communities need real infrastructure, bilingual programs back on communities and on homelands. Not "small schools", not "learning centres" and visiting teachers, but equality in education, with permanent qualified teachers. Health centres improved, renal patients back home with family and country. Medical facilities improved. Small businesses and CDEP back on communities and homelands. Remove this CDP "work for dole" business. Our people must exit this 'mainstream' we're currently in. Our community leaders and our old people need to have that power back to think and make decisions for the community,' he said. Guyula was loud and clear. His leaflet stated 'We Yolngu in Arnhem Land and across the country need to break the silence and call out loud for sovereignty of our nations and say TREATY NOW!!!!!!'<sup>21</sup>

The election was declared on September 12. Despite a huge state-wide swing to Labor, Guyula defeated the sitting ALP candidate on preferences, 1648 to 1640, achieving Antony Green's 14 per cent swing. The Electoral Commission referred the election to the Court of Disputed Returns, saying that Guyula was ineligible to be a candidate, as there was evidence he was a member of Milngimby Local Authority. No evidence that he had ever been a member was forthcoming, and the referral was dismissed just over a month later.<sup>22</sup>



tures, its bastard child, remains above all a cynical and divisive land grab designed by government to benefit corporations, without consultation, dressed up as concern for children.

## Election story

**'Since the first NT legislative council in 1947, we Yolngu have been voting for ALP and CLP politicians to speak on our behalf, but their policy is governed according to the Monarch of the Commonwealth of England, created by a King, 800 years ago or more. That's why our voices through politicians, (both Yolngu and Balanda) have never been listened to, because that law is not ours.** *Yingiya Mark Guyula, 2016*

The 2016 NT election had implications for Treaty. Its results can be read on a number of levels, firstly as the regular and increasingly intense see-saw of disgust by voters with the lies, inaction or incapacity to serve the people of first one of the major parliamentary parties, and then the other – in this case, the Country Liberal Party (CLP): secondly, as a rejection of the Intervention and its policies, despite the Intervention's imposition by the Federal, not the state government; and finally, at least in part, as a message on sovereignty and Treaty. The main story is not the overwhelming defeat of CLP sitting member Bess Nungarrayi Price by an ALP candidate in Stuart electorate, though it spells rejection of her policies.<sup>+</sup>

In Nhulunbuy, ABC election analyst Antony Green estimated sitting ALP member Lynne Walker's previous margin of 19 per cent would still be nearly 14 per cent, even with boundary changes and closure of the Rio Tinto refinery.<sup>19</sup>

Yingiya Mark Guyula was the endorsed candidate for the Yolngu Nations Assembly, a group of Arnhem Land Aboriginal leaders, for the seat. He is an In-

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<sup>+</sup> Price received just 590 primary votes. At 31.4 per cent, the swing against Bess was the largest in the state, and far bigger than the swing towards her in the last election. Now her daughter Jacinta Price continues the policies her mother espoused, regularly speaking at engagements round the country.

## 'Corporate Culture'

The Yolngu peoples have long been seen in the wider community as leaders of land rights struggles more widely known and remembered than those around Aurukun in Cape York, Noonkanbah in WA or elsewhere, partly because they spanned three decades and two mines. Galarrwuy Yunupingu was court interpreter in a failed land rights case led by his father in the late 60s. Galarrwuy was seen across the continent as the leader of the struggle against the Ranger mine in the 1970s, but this view of him was not held by Custodians. In 1977, the Land Rights Act exempted certain mining projects from the need to gain consent from Custodians, and threats were made to shut down the whole Land Rights Act. Galarrwuy, as head of the Northern Lands Council (NLC) was made Australian of the Year in 1978, after his role in getting people to sign, often against their will.<sup>1</sup>

The second mine, at Jabiluka, stopped after massive anti-uranium struggles of the late 1970s and early 80s. A moratorium on the expansion of uranium export licences was imposed, and not lifted until John Howard became prime minister. Mirarr women custodians called for protests, after the NLC signed the agreement, which continued after huge works began on the mine under Canadian corporation, ERA.<sup>2</sup> In 1995 the Australian and British Rio Tinto companies were unified under a single management. Following this, in 1997, CRA became Rio Tinto Limited.<sup>3</sup> Rio Tinto took over the lease, and postponed operations until Ranger, which it still operates, is mined out. The British queen was rumoured to be the biggest single shareholder in Rio Tinto, though the author was unable to confirm this.

Yet for the general Australian public it was the band Yothu Yindi led by Galarrwuy's brother, and its anthem 'Treaty' that fixed the fighting spirit of the Yolngu in their minds. This brand recognition coinciding with the Yunupingu name, made this country the perfect place for a BCA ideological beachhead both in the Aboriginal and Torres Strait Islander and wider communities. The Garma Festival, held on Yolngu land since 2001, a year after Noel Pearson's meeting with Boston Consulting Group and Westpac, (in facilities that Marcia Langton pointed out were paid for by mining royalties<sup>4</sup>) has been a perfect platform.

In 2015 Galarrwuy Yunupingu said, 'The Gumatj have signed an agreement with the Commonwealth to develop a new type of 99-year township lease over

their home community of Gunyangara', and said the lease 'would help establish new housing and businesses.' The Northern Land Council stood firmly against the leases, saying they 'effectively hand over control of land to the Federal Government.'<sup>5</sup> While Galarwuy Yunupingu had been convinced by those pushing for it, 99 year leases mean it will be four generations before it is back in Yolngu hands\*. Minister for Indigenous Affairs Nigel Scullion addressed the 2015 Garma Festival, saying the lease could be a model for other Indigenous communities.<sup>6</sup> Shades of Darkinjung.

Another Gumatj board member, Timmy Djarwa Burarrawanga, heads Lirrwi Tourism, operating since 2010. He addressed Garma about developing tourism in 2005.<sup>7</sup>

## Lirrwi Tourism

Lirrwi Partners include: the Australian Government; AHL which owns Rydges and QT Hotels; Commonwealth Bank (which organises three to four corporate visits each year, while 'Former and current CEOs have taken a personal interest in Lirrwi' and helped develop other corporate relationships; Gilbert + Tobin (which provides pro bono legal assistance); Jawun Indigenous Corporate Partnerships; public relations company MG Media; MH Carnegie and Co (a major finance corporation); NT Government; Qantas (which provides flights to attend meetings, secure partners, and promotes Arnhem Land a tourist destination); Rio Tinto (assists with staff costs, regional travel to engage with communities and homelands); Rirratjunga Aboriginal Group (part of Bunawal Group from Yirrkala, and 'beneficiaries' of Gove Agreement Mining Royalties) and finally Tourism Australia.<sup>8</sup>

Some smaller companies have rallied around the four BCA companies, but you don't have to scratch deeply to find links to Australia's biggest corporations. Ethics Matters, 'a leading risk management specialist' is led by Robyn Neasmith,

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\* In NSW the Baird administration said before the 2014 state election that 99 year leases of electrical poles and wires did not mean privatisation. Those opposing it, particularly the Electrical Trades Union challenged this, saying the children and grandchildren of those voting would be dead by the time the infrastructure was in public hands again.

time' to even read them 'let alone debate them properly.'<sup>13</sup> They ignored the report's **first** recommendation, which has just two sentences, one of which says, 'It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.'<sup>14</sup> They failed to state that both the report's authors condemn the Intervention.

Arrernte Gurdanji woman Patricia Turner was in Alice Springs, as founding CEO of NITV, when the Intervention was announced. An influential activist and public servant, she called the Intervention 'a Trojan Horse concealing a land grab.'<sup>15</sup> By the time Davis and Williams' book was published eight years after the Intervention, being interrogated by police outside supermarkets, forced into Aboriginal only queues to pay with the Basics Card and other indignities, had brought humiliation and distress to Aboriginal children and their families. Pat Turner states that no evidence of paedophile rings operating, the allegation that sparked the Intervention, has ever been found. NSW has higher rates of child sexual abuse than the Northern Territory.<sup>16</sup>

Would constitutional change have been 'a significant check' on the Intervention, as Davis and Williams suggest? Could a failed High Court challenge have succeeded? 'The Intervention,' they state, 'would be a difficult case... because High Court judges\* would be reluctant to second-guess judgements made by Parliament about how best to address a major problem of sexual abuse.'<sup>17</sup> Answer? Probably not.

Marcia Langton and Bess Price continue to support the Intervention and Stronger Futures. Both consistently target what they label 'the left', with Price blaming Aboriginal feminists for problems, while Langton praised, 'The combined effect of the righteous media campaign for action and the Emergency Intervention' which 'has been a metaphorical dagger, sunk deep into the heart of the powerful, wrong-headed Aboriginal male ideology that has prevailed in Indigenous affairs policies and practices for decades.'<sup>18</sup>

Time has shown reality. Aboriginal women have for decades led a fight to stop violence and protect their communities. But the Intervention and Stronger Fu-

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\* High Court judges are appointments by politicians. A Chief Justice 1975 gave advice about how to sack an elected government, headed by Gough Whitlam, much loved by Noel Pearson. Australian democracy at work.

She said the main funding body had been shut down, and organisations delivering services had been closed. 'We've lost hard working people that were supporting our people. Housing is ridiculous. They've renovated some homes, and built some new ones – finally! But rents are too high, because there's middlemen taking a cut.' Shaw's home was inspected, but 'my front door has been broken for a year. I can't lock it. It's safety! There's no cupboards, so no place to store chemicals like disinfectants and bleach from children. If something goes wrong with your plumbing, you have to wait for more than one home to have a problem before they fix it. It's worse on remote places – they have to wait six months or a year, without a tap or with a broken toilet. And overcrowding is terrible!' she said. She asked the obvious question, 'Why are people paying rent on their own country?'<sup>8</sup>

Ken Canning said Borooloola, in the Gulf is surrounded by mines and mining companies. Sulphur from one mine is leaching into the Macarthur River, and children as young as eight have suicided. There's been a 500 per cent increase in suicides.<sup>9</sup>

Jason De Santolo, Senior Researcher with Jumbunna Indigenous House of Knowledge at University of Technology in Sydney comes from Borooloola. In saying his people are not ready for Treaty, he gave a graphic description of the Intervention, 'It's hard to Treaty with those whose boot is on your neck.'<sup>10</sup>

Yingiya Mark Guyula slammed the Intervention, 'I will speak for my people, what the voices are saying; 'Give us our power back, give us our freedom back, give us our life back...The Intervention,' he said 'also coincided with a raft of NT government actions: the stealing of assets away from community-controlled associations to create new regional councils; the destruction of bilingual or 'two-way' education policies for 'English Only policies'... and the 'Growth Towns' policy which diverted almost all funding from homelands.'<sup>11</sup>

By 2015 the stench of the Intervention had spread countrywide. Davis and Williams' discussion of the effect of Constitutional change in the light of the Northern Territory Intervention reflects this.

They stated, 'Because potentially discriminatory laws could be scrutinised by the High Court...It could act as a significant check upon the rushing of legislation through Parliament' like the Intervention.<sup>12</sup> Despite clear evidence to the contrary, they said the Intervention was a response to *'The Little Children are Sacred'* report, where House of Representative members 'did not have enough

a former Risk Advisory Partner with both PwC and Deloitte.<sup>9</sup> MH Carnegie describes itself as 'a venture capital, private equity and advisory firm' whose people are 'some of the most influential (and vocal) in the region, with \$400 million equity investments across four continents.'<sup>10</sup> Its founder Mark Carnegie has advised Qantas, Coles Myer and Westfield on strategic matters, including mergers. Partner Kate Thompson, is a former director of Lazard Australia, a subsidiary of Wall Street bank, Lazard, and also worked for law firm Freehills, which was identified with Howard's WorkChoices policy.<sup>11</sup> She is a specialist in mergers and acquisitions.<sup>12</sup>

In a program titled 'Corporate Culture - Wangany Dhukarr' Lirrwi Tourism hosts visits by corporate executives including from Commonwealth Bank of Australia, Rio Tinto, Telstra, News Ltd, BP and Westpac to Bawaka, which 'translates to "unknown heaven" for good reason. Set on a stunning beach in the Port Bradshaw area, roughly two hours south of Nhulunbuy... Bawaka is the homeland of the Burarrwanga family, who specialise in cultural awareness programs for both travellers and corporate groups.' 'Participants ... get to spend time with and learn from people of the world's oldest culture', and 'the single most often used comment is "life- changing"'.<sup>13</sup>

Lirrwi's Advisory Panel includes former Qantas CEO Geoff Dixon, who is now chairman of Tourism Australia and Garvan Medical Research Foundation. He's also on the boards of Crown Limited and Adslot Ltd. Jane Madden is head of investment for the Australian Trade Commission and previously headed the Tourism Division in the former Department of Resources, Energy and Tourism (RET), while Bill Wright is founding chairman of ID Events Australia and has served on industry boards including Tourism Australia, Tourism NT, Tourism NSW and as chair of Sydney Attractions Ltd (owner of Sydney Aquarium).<sup>14</sup>

Yet the BCA is not only restructuring the Aboriginal and Torres Strait Islander Peoples' involvement in businesses, but on an ideological and legal front too. Focus has moved from Reconciliation Australia to its offshoot, Recognise. Lirrwi's Timmy Djarwa Burarrwanga is also on the Expert Panel of Recognise.<sup>15</sup>

## A politician's policy?

**'Why would any one of you want or need that document to acknowledge you? ... If my forebears had been here 60,000 years, there is no way I would be fobbed off with some weasel words in this country's horse-and-buggy utilitarian Constitution.'**<sup>1</sup> *Former PM Paul Keating on a request for his endorsement of a book supporting Recognition, edited by Marcia Langton and Megan Davis*

Writing for *The Vanguard*, Nick G. wryly summed up the emergence of the Australian Constitution 'as the result of a three-way tussle for power between the British and the colonial elites on the one hand, neither of whom wanted to surrender influence and power, and the proponents of a federated parliament with the power and influence required for a new central authority. The end product was a weak three-way compromise with some powers retained by the Crown, some by the governments of the colonies and some being passed to the Commonwealth.'

'It was, and remains, inherently reactionary, recognising neither the existence of Aboriginal and Torres Strait Islander First Nations nor any definition of the rights and freedoms of Australian citizens. It is, instead, a tedious and cumbersome set of procedural rules for government at state and federal levels with a focus on trade, commerce, and fiscal relations. It is noted only for its complete unfamiliarity to the vast majority of those whose lives are governed and regulated by it,' Nick G.<sup>2</sup> wrote.

Gangulu man Mick Gooda is a former Australian Human Rights Commissioner, and a lifelong Aboriginal activist. No wonder he says, 'I'd like to attempt rubbing out this Constitution and starting again, but I doubt there's appetite for that with the politicians.'<sup>3</sup> Even without the two vile race powers references, which fit seamlessly, it's a profoundly disempowering document. Australia is the only nation in the world with a Constitution incorporating racial discrimination.<sup>4</sup>

But there are those who use defence of 'Australia's constitutional heritage' to drive disunity. The Samuel Griffith Society leads this charge. Though the society uses pretty words about defending democratic institutions, a shallow scratch beneath the surface also reveals a mining company serving its own interests.

Barbara Shaw, like Bess, is resident in Alice Springs (in Shaw's case, north of the town, in Mount Nancy Town Camp one of 16 settled by dispossessed Aboriginal people in 1935). Over 1000 Aboriginal people from the area died resisting invasion between 1881 and 1891. In 1928 Aboriginal peoples were banished from Alice itself. During World War Two, they were banished again to permanent camps up to 150 kilometres away, but returned to some of the beautiful 'sweet water' Larapinta country close to Alice. Efforts to evict the Aboriginal fringe dwellers between 1961 and 1971 failed, but further pressure was put on the camps when pastoralists reacted to equal pay for Aboriginal workers by mass sackings.<sup>5</sup>

Tangentyere Council's website details the continuation of the Town Camps' history up to the current period. Tangentyere gets substantial funding and support from several BCA corporations – NAB, Telstra Foundation and Australian Unity, but at the time of writing no ongoing funding, instead having to use valuable time and resources applying for and reporting on up to 100 programs operating in any given year. Its site lays out the systematic community attempts to declare their camps dry areas, which so easily could have been granted with none of the storm, fury, theft of rights and land that was the 2007 election eve Intervention.<sup>6</sup>

## When their boot is on your neck

Barbara Shaw opposed the Intervention from the outset and challenged its legality in the Federal Court, but even when she could get the money together to speak in Sydney, she gained a minuscule fraction of Price's media coverage. On International Human Rights Day 2015, she spoke about eight years under the NT Intervention.

'The Territory has turned into a police state. They're not policing the black-market sale of drugs. Ice is worse on the streets than before', she said. 'And domestic violence? I clearly see it every day. It hasn't gone down. Like the rest of the country, more kids are being stolen from their extended families and communities than at any other time in the Territory's history. You've got two years to sort your family out, then the kids are in the system till they're 18. You can't speak to them even if you see them walking down the street. In remote areas they're taking children to the nearest big town or city. Police raid our homes over nothing,' she said.<sup>7</sup>

# The Intervention land grab

## '85 per cent of the Northern Territory is under mining lease.'

Jason De Santolo<sup>1</sup>

Few would disagree with Bess Price that unemployment is a scourge. Barbara Shaw certainly doesn't. Her parents are Kaytetye-Arrernte and Warlpiri-Warlamungu People. Shaw has been active on housing, child protection, family safety and other issues, as well as representing her Peoples at international conferences and on peak Aboriginal bodies.

Barbara Shaw says that Aboriginal Peoples in the Northern Territory 'want real jobs', and that Centrelink makes people work 25 hours 'for peanuts'. 'Productivity,' she says, 'doesn't come from Centrelink. It comes from your hands!' But Shaw says, 'We want to have a say. Human rights are for everyone, everywhere, every day. We have to walk side by side. We cannot walk behind.'<sup>2</sup>

The corporate solution to unemployment espoused by Price includes projects run by giant corporations. Deni Liddle Langman, a Luritja Elder of Watarrka (Kings Canyon) and stolen child of the 20<sup>th</sup> century whose birth mother died before she could meet her, is less understanding of Price than McQuire. 'Bess Price wants fracking on our land! She says that's the only way we'll be able to solve our problems! Destroying our land? How will that solve our problems?' Langman had her own plans and suggestions to bring jobs and economic benefit to her people, but no political party or corporation rushed to support her. Like many others, she knows the Intervention is a land grab.<sup>3</sup>

The Australian Education Union pointed to the key elements that make this a land grab: 'scrapping the entry permit system, the seizure of indigenous land for five years, the empty promise of "compensation" (more flour, sugar and tea?) for lands not returned after the expiry of that five years, replacing communal title to land with individual title, to homes on 99-year leases, or renting at market rates – were signalled in 2006 in Mal Brough's Department of Families, Community Services and Indigenous Affairs discussion paper *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change*'.<sup>4</sup>

These land tenure and access proposals 'coincidentally' became part of the Intervention almost a year later, making a mockery of the claim that they were a response to the 'Little Children Are Sacred Report'.

## Reconciliation, Western Mining Corp's way

According to the Sovereign Union website, the current campaign for the recognition of Aboriginal and Torres Strait Islanders as the original inhabitants of Australia first took the form of a proposal for a Constitutional Preamble on Reconciliation, proposed by Prime Minister John Howard, after the Samuel Griffith Society advised him in 1998 that Australia's sovereignty, particularly over mineral resources, was under threat from Aboriginal Nations and their Peoples.<sup>5</sup>

The Samuel Griffith Society is one of four single issue advocacy groups set up with the close involvement of now deceased Western Mining Corporation (WMC) political operative, Ray Evans<sup>6</sup>. WMC was an active BCA member, and Evans' boss, Hugh Morgan, was its President for several years, until the takeover of WMC by BHP Billiton in 2005. The other groups are the anti-union H.R. Nicholls Society, the climate change denialist Lavoisier Group and the Benelong Society, which opposed land rights and Mabo, and supported assimilation.<sup>7</sup>

At the time of its founding in 1992, WMC and Morgan were battling Aboriginal and Torres Strait Islander Peoples over mining rights to their land. In 1984, as President of the Mining Industry Council, Morgan stated in a speech opposing land rights, 'For a Christian Aborigine, land rights or the proposed Heritage Protection Act is a symbolic step back to the world of paganism, superstition, fear and darkness.' According to the Sydney Morning Herald, 'He then equated mining with godliness (which sparked a war of words with the Anglican church) and suggested that any Aboriginal rights to land had been forfeited by past practices of "infanticide, cannibalism and cruel initiation". Aborigines, he said, had shown a preference for "the particular flavour of the Chinese, who were killed and eaten in large numbers".<sup>8</sup> While Morgan has for some time behaved as a convert to the new soft and cuddly BCA approach<sup>9</sup>, this early expression of his views ought not be forgotten.

The flak from his statement saw Morgan depart from the Board of the Reserve Bank, to which his close friend, John Howard had appointed him. Morgan remained a 'close confidant'<sup>10</sup> of John Howard, who became a willing vehicle for the society's message on the danger Aboriginal and Torres Strait Islander sovereignty. Constitutional change was Howard's solution.

In 2007, a Marxist-Leninist blogger had this to say, ‘Howard was not a recent convert to reconciliation. He is a creature of imperialism and a racist, or, as he has expressed it, a person who seeks to “retain those cherished values, beliefs and customs that have served us so well in the past.” The past comprises British invasion, colonial dispossession of the original inhabitants by force and the threat of force, the imposition of a belief and value system shaped by and serving colonialism first and later organised corporate power.’

‘The past,’ he continues, ‘comprises the suppression of an Indigenous collective culture and the oppression of the collective organisation and culture of the working class. Corporate representatives, like their counterparts in all other capitalist countries, raise the rights of the individual and the rights of the body corporate - the nation – to a position of precedence over Aboriginal and Torres Strait Islander and working class collective rights. Howard trumpets this as a “new paradigm”: “This new Reconciliation I’m talking about starts from the premise that individual rights and national sovereignty prevail over group rights. That group rights are, and ought to be, subordinate to both the citizenship rights of the individual and the sovereignty of the nation.”’<sup>11</sup>

The most prominent Aboriginal promoter of corporate connections and constitutional recognition, When Pearson speaks of ‘hunting on the right’<sup>12</sup> (or ‘hunting on the radical centre’<sup>13</sup> depending on his audience) these individual and national, or corporate, rights are what he means. Many First Nations Peoples say, instead of the hunter, he’s swallowed the bait, hook, line and sinker.

## A power of adverse operation

Most rational people, on reading the constitution would instantly agree with Paul Keating’s assessment of it at the beginning of this chapter. The Samuel Griffith Society and its corporate backers know very well that few Australians have any idea what the constitution states. Presenting themselves as defenders of ‘Australia’s founding document’ is an easy way to divide many of these people from those who know fundamental change is the only way to go.

*Everything you need to know about the referendum to Recognise Indigenous Australians*, by Megan Davis and George Williams, is currently the most thorough and informative argument for constitutional recognition available, but it

‘cranky Kooris and Murrus from down south who know nothing about Aboriginal people and who hate whitefellas’, as reason for the award.<sup>7</sup> That they awarded Price, precisely for such a bitter and divisive attack on other Aboriginal Peoples, shows their undisguised motivation to divide those Peoples.

There’s tragic irony in Price’s acceptance of the award. She knew too little about the behaviour of Bennelong when she accepted the award. Although he was a man with many talents, who was seen by the British as a leader of his people, Bennelong’s regular, brutal violence towards his wife, Barrangaroo, was well-documented.<sup>8</sup> Given the sudden holocaust visited on his People by invasion, perhaps his behaviour had more complex causes than a simplistic ‘culture of violence’. Perhaps so too do Bess Nungarrayi Price’s beliefs and actions, which filled with anger, overwhelmingly blame her own people for the horrors they suffer. Neither Bennelong nor Bess Nungarrayi Price have caused the problem, but have been used by the invaders and their corporate inheritors to serve their purposes.



superficial analysis of individual blame suits the corporate worldview, and she had no trouble attracting a whirlwind of publicity.

Amy McQuire is a Darumbal and South Sea Islander journalist and editor of Tracker Magazine. She wrote of Price, 'You certainly could never discount her experience and the depth of pain within her words...She suggests left-leaning Aboriginal leaders, especially those in the southern states, do not care about the women who are filling the hospitals of the Northern Territory, and are instead only interested in promoting ideology at the expense of lives... Aboriginal women who identify on all sides of the political spectrum are concerned about this problem. We're not talking about violence against unknown women. We are talking about violence against our sisters, mothers, cousins and friends. I don't believe any Aboriginal woman has ever sought to elevate concerns over culture above the safety of our women.'<sup>14</sup>

In December 2009, Price delivered the inaugural Peter Howson lecture for the Bennelong Society, a now defunct right wing think tank, on the topic of indigenous violence.

She also received the society's Bennelong Medal. According to Source Watch, the Centre for Media Democracy, 'Former Western Mining Corporation executives Hugh Morgan and Ray Evans, founded and contributed to the Bennelong Society.'<sup>15</sup> The WMC CEO was a BCA member, and Morgan was BCA President until the company was taken over by BHP Billiton in 2005.

According to Dominic Kelly, 'Evans argued that the central issue in Aboriginal policy has always been "exclusion versus inclusion"'. The neo-assimilationist organisation, which disbanded in 2011, argued that self-determination policies from the 1970s onwards were a disaster for Indigenous Peoples, and that integration into the wider community was the only acceptable solution to their problems. They were also hostile to land rights. Evans argued that the High Court's Mabo judgment "delegitimises the British settlement of Australia" and "brings into question the authority and legitimacy of the Australian nation and consequently of the High Court itself".<sup>16</sup>

The Society and its Medal draw inspiration from Wangal man Bennelong, who was first kidnapped by and then worked with the first wave of British invaders. For the Bennelong Society, this collaboration marked Bennelong out for their support and praise. The Bennelong Society cited Price's statement attacking

was silent on the Samuel Griffith Society's role in warning John Howard, whom they cite as the source of moves to recognise Aboriginal and Torres Strait Islander Peoples in the constitution. The book included two examples of Howard's open attacks on Aboriginal rights. First, in his reaction to the 1996 High Court Wik decision 'that pastoral leases do not necessarily extinguish native title', Howard amended the Native Title Act with (in his words) 'bucket-loads of extinguishment'. The Racial Discrimination Act was suspended to allow 'the law to adversely discriminate against Aboriginal native title holders by reducing their rights in favour of the rights of others',<sup>14</sup> (i.e. corporations).

Davis and Williams also point out that Howard's administration had already legally restricted the operation of the Heritage Protection Act, so that it applied everywhere in Australia except the Hindmarsh Bridge area, in order to allow a bridge construction on a Ngarrindjeri women's sacred site. A high court challenge failed, because as the Commonwealth's lawyer said there are no limits on the races power section of the Constitution to make laws on race. The lawyer said, 'the power is infused with a power of adverse operation,' acknowledging its 'direct racist content.'<sup>15</sup> Given this, it is perhaps surprising that, unlike many First Nations' leaders, Davis and Williams didn't ask the obvious question: what was John Howard up to in pushing for constitutional recognition?

Howard's determination to represent corporate interests is clear. His Constitutional Convention, first raised the introduction of a recognition preamble, via delegate Malcolm Turnbull. Davis and Williams describe Howard's agenda of so-called practical reconciliation focusing on 'socio-economic disadvantage in such areas as housing, education, employment and health. Howard reinforced his long-held rejection of symbolic reconciliation when he said that [it] over-emphasised issues such as Indigenous rights, a treaty, stolen generations and deaths in custody.'<sup>16</sup> He could have been quoting Noel Pearson and Marcia Langton...or vice versa.

Davis and Williams continued, 'No attempt was made in 1999 to alter this preamble to the British Act. This was because it was, and remains, unclear whether the Australian people can change these words via a referendum, or whether any such change must be made by the British Parliament.'<sup>17</sup> Howard's 1999 failed new preamble was a pre-preamble. The old preamble, inspiringly titled 'Covering Clauses' remained unchallenged, and a foreign parliament was in charge of it. So much for Australian sovereignty, let alone the sovereignty of Aboriginal and Torres Strait Islander Peoples.



Almost all First Nations Peoples in this constitutional debate agree that sovereignty was never ceded. But many grassroot Peoples believe that this made subsequent claims of ownership by either Britain or Australia illegal under international law. It follows that First Nations Peoples still maintain legal sovereignty as treaties with Britain were never signed.

Gamilaroi man Michael Anderson states, 'The fact that Australia does not have its own sovereignty is illustrated in all Australian laws. The legislations that are created by the Australian Parliament and/or the State and Territory governments are not law, nor are they legal, if the Queen's proxies in Australia, that is, the Governor-General and the State Governors, fail to assent to the legislation by way of signature representing the Queen's authorisation. The Australian State, Territory and Federal governments are colonial caretakers of the Crown's property now known as the island continent of Australia. Elected governments and each politician must swear their allegiance to the British Crown. Now let's ask ourselves is this a process of an independent Nation?'

He continues, 'Mabo (No. 2) totally dispensed with the past notion that the land that they occupied was terra nullius (land belonging to no-one) ... the High Court held that there were inhabitants here with Laws and customs of their own. The Mabo (No. 2) judgment clarified this point by ruling that Aboriginal Law and custom is not a construct of the British common law, but now the British common law recognises it. This means that all and sundry living within this continent cannot overlook the rights of First Nations Peoples to be governed by their own Law and culture within their own respective Nations' boundaries.'<sup>18</sup>

Just three days before the 2007 election, John Howard announced that his government would legislate for a new preamble, followed by a referendum recognising Australia's Indigenous Peoples and their 'special' (though not separate) place in a reconciled, indivisible nation. He'd consulted with just one Aboriginal leader.<sup>19</sup> Part of his proposal simply rehashed the failed referendum of 1999.

## Breaking unity

Until recently Aboriginal and Torres Strait Islander Peoples have made clear that decisions made about their futures must be made by blackfellas. Yet there's plenty of whitefellas, and corporations fronted by them, talking about Constitutional Recognition.

## Intervention stories

**'Who are we? We're the "money guys"... You want to win? Start fighting for people! ...Lead with vulnerable people. Lead with fairness! ...By telling stories, we can soften people. Talk about people, not things.'** *Arthur Brooks, President of the American Enterprise Institute, at the Conservative Political Action Conference, which brings together heads of US corporate-funded think tanks, March 16, 2013.*<sup>1</sup>

Bess Nungarrayi Price is a Walpiri woman who, from 2012 to 2016, was Country Liberal Party state member for Stuart, covering south western NT and part of Alice Springs. In 2016, she lost her seat as resoundingly as she had won it. She was the NT Intervention's most vocal supporter, and held high hopes of it. By 2016 the Intervention had spanned nine years and five prime ministers of both major political parties. And, for all its financial, political and military firepower, it had not achieved its publicly stated aims.

Yingiya Mark Guyula, who became the independent member for Nhulunbuy in 2016, pointed out that the Intervention has accompanied the highest rate of imprisonment and suicide ever, 'six times that of black men in Apartheid South Africa.' He spoke of increased domestic violence, suicide, self-harm and child malnutrition, while child removals 'are again destroying our communities'.<sup>2</sup>

When Price came to office in her mid-fifties, only two of her twelve siblings were alive. Then her sister was murdered by another woman in 2014. A former victim of domestic violence, Price told powerful stories of violence against Aboriginal women. 'It's not just me who has these stories,' she said. She did not see invasion, compounded by 230 years of traumatic stress brought about by horrific injustice, as the root cause of the layers of problems facing many Aboriginal Peoples. Instead she talked of 'violence in our people's culture', lack of work and the freedom of Aboriginal individuals to roam from place to place and 'party'.<sup>3</sup> Her stories, embedded into a world view that change should be imposed upon recalcitrant Aboriginal and Torres Strait Islander Peoples and of individual, not collective responsibility, has been a powerful weapon for corporations.

Feminists set up Australia's first women's refuges providing safety from domestic violence. Many Aboriginal women benefited, yet Price's favourite targets for blame are 'Left' feminists, including Aboriginal women, from down 'South'. This

is necessary, but that each nation would negotiate its own treaty. This mightn't happen in his own lifetime, he said, but it will happen in his kids or grandkids' time, 'We've got a fight on our hands, but if we all stick together and know what we're fighting for, we'll win at the end of the day.'<sup>9</sup>

Mick Gooda's comment, that politicians lack 'appetite' for fundamental change, makes clear their power to block Aboriginal and Torres Strait Islander Peoples' aspirations. 'There has to be a resettling of the relationship,' Mick Gooda says. 'It has to be done by Aboriginal and Torres Strait Islander people... Every party says they won't proceed unless it accords with the wishes of those peoples.'<sup>20</sup>

In one section of their book, Davis and Williams pose a key problem, before outlining its 'solution'. 'The referendum,' they say, 'is not likely to pass if people view it as being a politician's proposal...To counter this, the process leading to the referendum must emphasise the role that people can play in pushing for the vote, and in determining what changes need to be made.'<sup>21</sup>

The problem for those promoting recognition, is that - from its inception - it has been even worse than that, a politician's response to the mining lobby's warning, designed to organise against growing unity and power for change by Aboriginal and Torres Strait Islander Peoples. That unity has been severely damaged, and one group of Aboriginal Peoples have been targeted and funded as leaders acceptable to corporations.

The Government response to the massive show of Aboriginal and Torres Strait Islander unity on January 26, 1988 remarked on by Gary Foley, was to establish the Council for Aboriginal Reconciliation by an Act of Federal Parliament in 1991. Davis and Williams state, 'Many Indigenous people were dismayed... including Aboriginal poet Kevin Gilbert,\* who felt the reconciliation process can achieve nothing because it does not at the end of the day promise justice.'<sup>22</sup>

Despite this, the Council was far more representative of Aboriginal Peoples than its replacement ten years later, Reconciliation Australia. Eight years after its first meeting, the Council organised the 1,000,000-strong Corroboree 2000 marches around the country. Prime Minister Howard refused to take part in the walks, as the Council had called for a treaty. Not for the last time he said, 'a nation does not make a treaty with itself'<sup>23</sup> but the call for fundamental change, including Treaty, had demonstrated its ability to mobilise mainstream Australia.

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\* Ironically, Noel Pearson misrepresents the views of the late Kevin Gilbert in a reference at 2016 Garma Festival. Pearson quoted the title of Gilbert's book, 'Because a white man will never do it', when white men (and women) from corporations are precisely who are orchestrating the promotion of Pearson and the agenda they share with him.

It is no coincidence, either, that just over a year after Corroboree 2000, the meeting between corporate representatives and Noel Pearson countered these voices for change by establishing Jawun, a movement under corporate control.

## A peoples' movement?

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Howard lost his job as PM, but the proposal marched onwards. The same restrictions that Howard sought to place on the Preamble were adopted by those charged with drawing up the proposal for Constitutional Recognition. This meant the exclusion of the core issue of sovereignty. The Expert Panel appointed by Prime Minister Gillard to report on Constitutional recognition determined that sovereignty not be considered.

The panel stated, 'Any proposal relating to constitutional recognition of the sovereign status of Aboriginal and Torres Strait Islander peoples would be highly contested by many Australians, and likely to jeopardise broad public support for the Panel's recommendations. Such a proposal would not therefore satisfy at least two of the Panel's principles for assessment of proposals, namely "contribute to a more unified and reconciled nation", and "be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums"'.<sup>1</sup>

'While questions relating to sovereignty are likely to continue to be the subject of debate in the community, including among Aboriginal and Torres Strait Islander Australians, the Panel does not consider that these questions can be resolved or advanced at this time by inclusion in a constitutional referendum proposal.'<sup>2</sup> Also excluded from the Expert Panel's Discussion Paper were definitions of Aboriginal and Torres Strait Islander Peoples' rights. Minutes of the Expert Committee reveal an early agreement to replace the term 'rights' with 'values'.<sup>3</sup> Doing this represents a massive capitulation to a reactionary agenda to undermine the struggles of First Nations Peoples.

The result is unsurprising, given the Panel's corporate connections. The Panel was initially headed by now ALP federal parliamentarian, Professor Pat Dodson, and former Chairman of the Council for Reconciliation, the vocal Zionist Mark Leibler, Senior Partner with Arnold Bloch Leibler (which was coordinator with

Peoples, giving Parliaments the right to decide what is of 'benefit' is a major concern.

Agreeing with Tony McAvoy's earlier speech, Dr Sarra said, 'It's naïve to think we can establish a republic without establishing a treaty with Australia's First Peoples...Treaty,' he says, 'is even better for white people because they can move beyond the lie they've been living for 200 years, and then all of us can move into a relationship that is honourable and honest.'<sup>5</sup>

Tony McAvoy said the movement to Treaty happens first between Aboriginal and Torres Strait Islander Peoples. As in the Barunga Statement, the Sovereign peoples of South East Australia, call for an Assembly of First Nations.

For McAvoy, Treaty requires:

- acknowledgement of invasion
- some autonomous areas, taking account of the range of circumstances for Sovereign Peoples across the country
- land reform, including acquisition so there is enough into the future
- reparations and equitable benefit sharing
- structural reform
- guaranteed parliamentary representation
- changes to land tenure equal in power to freehold, not fragile native title
- a proper place in environmental planning processes to protect sites.

'Treaty is the framework' that will help Aboriginal people to 'put ourselves in position where we can overcome the injustices and atrocities of the past, where we are able to live happy and fulfilled lives, with capacity to make decisions about our own existence', McAvoy said.<sup>6</sup>

Amala Groom said Treaty, whether it's one or a plethora, will need to deal with the vastly different situations that the 'disease of colonialism' has left. It's critical she says for Aboriginal people to regain control of their own affairs, and cites the experience of the Sami people of Scandinavia whose treaty led to a Sami parliament being established in 1989, with responsibilities increasing progressively. They now have equal life expectancy with the rest of the population.<sup>7</sup> That equal life expectancy for Indigenous people is remarkable, shows the scale of the injustice.

Terry Mason said, 'If it takes 25 years, well so be it...We are not "owners"'.<sup>8</sup> We are Sovereign People.' Sansbury agreed. He said a national framework of Treaty

# This is Law

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When Chairperson Jeff McMullen introduced Yinging Mark Guyula at Men for Treaty, McMullen said, 'There is a Law in this land that is much older than a law written on paper.'<sup>1</sup>

Yinging began singing that Law in Yolngu language. Then he spoke quietly, 'We have not been conquered. We declare today that we are Sovereign People subject to our own Madayin system of law, equal of any other system of law. Madayin Assembly speaks for Treaty, [and calls for] a space of our own...freedom from interference from colonial government to live, think and develop in a way that suits ourselves', for the 'Australian government to recognise Madayin rule of law' and for Arnhem Land to be 'a state within Federation'. 'It can be done now,' he declared, 'without constitutional change.'<sup>2</sup>

Since the Intervention, he said, law and governance have been pushed aside. Guyula referred to a film of Madayin 'parliament' known as Narra. 'The Balanda [colonisers] say that this is just a piece of ceremony...just a bit of entertainment...And I say "No. This [Balanda law] is just a piece of paper. That,"' he said referring to Narra, "is Law". '

'The process of colonisation must be halted. We need Treaty!' Guyula said.<sup>3</sup>

The presence of Dr Chris Sarra, educator and head of the Stronger Smarter Institute, at the Men for Treaty event in Redfern is proof that contending views are heard by those who organise for Treaty. 'We are not at a place where our humanity is acknowledged,' said Dr Sarra. 'It's not one or the other (recognition or treaty), we can have both.' but Dr Sarra framed them differently saying, 'Recognition speaks to the management of the 'Indigenous issue', where Treaty speaks for the need for leadership.'<sup>4</sup>

As the struggle for Treaty has regained a public voice, a number of high profile Aboriginal and Torres Strait Islanders have said that recognition and Treaty are compatible, their statements given prominence by Recognise. Alice Haines and many others challenge this supposed compatibility. Even if the most minimal proposal is implemented – Howard's earth shattering one recognising that Aboriginal Peoples were here before the British – it's clear that Federal governments will expressly be able to make laws to 'benefit' First Nations Peoples. Given that the NT Intervention supposedly benefited Aboriginal and Torres Strait Islander

Allens Linklater of the Legal Profession Reconciliation Network). The hand-picked Indigenous and non-Indigenous members, plus parliamentary representatives included two major BCA players, including Graham Bradley, whose directorships included HSBC, Stockland Australia and two other multinational corporations, mining giant Anglo American Australia and Singapore Telecommunications. Bill Lawson is a former Principal of Sinclair Knight Merz<sup>4</sup> (a BCA company taken over by US head-quartered Jacobs, a current BCA member listed on Fortune 500, having taken over 70 other companies<sup>5</sup>). Of the eight Indigenous members, four including Noel Pearson and Marcia Langton, have significant BCA connections.

No expense has been spared. Gomeroi woman, Alice Haines alleges the moves to recognition had cost in excess of \$700 million by July 2013, when she 'black-tracked it through ANTaR' (Australians for Native Title and Reconciliation).<sup>6</sup> The first stage of the Panel's deliberations included 250 meetings at 84 remote, regional and metropolitan areas, and 3500 submissions received.<sup>7</sup>

## Recognise

Recognise was established in 2012 after the Panel made its recommendations, to create a 'people's movement' beyond the massively-funded confines of politicians and government instituted enquiries and councils, that continued to roll on beside it.\*

Recognise is governed by Reconciliation Australia's board<sup>8</sup>, but has twenty BCA members, Allens-Linklaters, Australian Unity, BHP Billiton, BUPA, Commonwealth Bank, Foxtel, Gilbert + Tobin, Herbert Smith Freehills, IAG, Lend Lease, Macquarie Bank, NAB, News Ltd, Perpetual, Qantas, Rio Tinto, Telstra, Westpac, Woodside, sprinkled amongst hundreds of community organisations on its Campaign Partners Network. Organised for united action through

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\* In November 2012, Prime Minister Tony Abbott set up a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, handing down its report in June 2015. That December, Prime Minister Malcolm Turnbull and Opposition Leader Bill Shorten announced the establishment of the Referendum Council. The proposals for change have continued to shift, but acknowledgement that politicians would have to agree in order for a referendum to pass has remained.

the BCA, they have a far greater capacity to take the lead, compared to the hundreds of smaller and often disparate community partners like Girl Guides Australia, NRL, SBS, the City of Ballarat and the Wayside Chapel.<sup>9</sup>

Reconciliation Australia received added funding, and its offshoot Recognise 'initiated a Journey of Recognition, launching in May 2013. By late 2014 had travelled 28,000 kilometres, passing through 188 communities and holding 238 events engaging with over 17,500 people.'<sup>10</sup> If Alice Haines' earlier cost estimates are correct, the cost of the Recognise's incredibly sophisticated juggernaut can only be guessed at. Its over 300,000 supporters are the measurable result of the process Davis and Williams were hoping for, when they called for countering the 'politician's proposal' with one that emphasises (and, by funding, creates) 'the role the people can play'. By January 2016, Recognise had covered nearly 40,000 kilometres with meetings in hundreds of places countrywide. None of it comes cheap.

Corporate representatives were part of it. Michael Rose certainly hit the waters and roads of the Torres Strait with Recognise, and shared a few well-crafted words at the 'Constitutional Recognition' platform at Garma in 2016. He emphasised his role as a listener and responder, not a driver of change, 'Much of what needs to happen must happen outside the Constitution' but 'recognition in the constitution is a necessary first step.' He told of two old men on Maitak Island in the Torres Strait. One said, 'Look, I feel pretty recognised in my community. We've been here forever. We know who we are. We've never gone anywhere else. We fought for recognition in the Second World War and we got it. We fought for recognition in the Maritime Strike in 1949 and we got it. We did it again in 1967 and we did it again when the border was set between Australia and Papua New Guinea. We know who we are. You don't recognise us, and if recognising us would make the country a better place, and we think it would, we're all in favour of that.'<sup>11</sup> It was very different to his less publicised words of two years earlier, when he emphasised the great power of corporations to influence and drive change, and in particular to do so in support of the Recognise campaign.

Despite the expense, many Aboriginal and Torres Strait Islander Peoples had been locked out by a roadshow with a predetermined outcome, and weren't buying what was on offer. Corporate law firm and BCA member, Gilbert + Tobin describes itself as 'a key player in the Australian legal market' providing 'com-

Truth is important, but without action to back it, it means little. In South Africa when apartheid ended, a Truth and Justice Commission heard horrific truths, but no handing over of land, no reparations, and except for a relatively small group, South African people's lives have changed little.

Tony McAvoy, Australia's first Indigenous senior counsel, in speaking of Barunga said, 'The truth has to be discovered in all of us. We need to be who we are and what we are.'<sup>20</sup>

## Other voices

Jeff McMullen is a whitefella who stands in contrast to the manipulation of the BCA. He pointed out that Australia has signed 200 treaties with other countries, but is the 'only Commonwealth country that has never reached this compact' with those whose country they invaded. 'The omission of a legally binding treaty,' he said 'contrasts with the 350 treaties in the USA, and the treaty that was the foundation to Aotearoa - New Zealand's bicultural society. There are still great inequities that treaties haven't alleviated, but a sovereign relationship, with local community is key to bringing control of Aboriginal people over their own destinies.'<sup>21</sup>

McMullen asked why we have ignored 30 years of evidence of improved outcomes for Indigenous people that 'the key is sovereignty'.<sup>22</sup>

Mick Gooda spoke of the 'overarching question of where Aboriginal and Torres Strait Islanders fit in this country'.<sup>23</sup> When Tauto Sansbury expressed this, just two words change, 'It's about time we settle all the arguments between Aboriginal and non-Aboriginal people about exactly where we fit in our own country.'<sup>24</sup> Gooda's words are about coming to terms with 'Australia'. Sansbury's express sovereignty. Tauto Sansbury says Treaty is 'well overdue'. He was among the Elders who called a Summit in Alice Springs on Treaty.

Wiradjuri woman, Amala Groom said, 'We are continually struggling just to survive' and that Aboriginal and Torres Strait Islander Peoples must be proactive, not reactive to bring about change.<sup>25</sup> Natalie Cromb stated constitutional change is merely symbolic and that Treaty is 'an insurance policy'. For Cromb, Treaty is 'not a cure-all' but 'holds a sense of obligation' that will empower Aboriginal people, and bring dignity and pride, 'We need to ensure the government keeps its word after 227 years of broken promises.'<sup>26</sup>

Cook's secret 'additional instructions' from the Lord High Admiral of Great Britain led to this incident. Bejam Dennis Walker pointed out they were illegal even under British law, which required parliamentary and regal approval. They included looking for 'a continent or Land of great extent' that the British had 'reason to imagine' existed based on previous explorations. They also ordered Cook 'with the Consent of the Natives to take Possession of Convenient Situations in the Country in the Name of the King of Great Britain: Or: if you find the Country uninhabited take Possession for his Majesty by setting up Proper Marks and Inscriptions, as first discoverers and possessors'. Cook was told to make 'them presents of such Trifles as they may Value inviting them to Traffick, and Shewing them every kind of Civility and Regard; taking Care however not to suffer yourself to be surprized by them, but to be always upon your guard against any Accidents'<sup>15</sup>. It's clear that Britain was intent on setting up a colony if possible, and a major trading and military base if not, in competition and possible conflict with the French, with whom the British had recently been at war<sup>16</sup>, with the 'Dutch in the East Indies and with the Spanish in the Philippines and on the west coast of North and South America'<sup>17</sup>. The need to find a place for Britain's convicts had not arisen in 1770, as it was only 13 years later that the newly independent USA refused to accept British convicts.<sup>18</sup> The instructions to report upon such things as navigable ports, available food and water sources, are twice as long as those regarding behaviour towards the Peoples of the land, also adding evidence to British intentions behind Cook's actions. Only one tenth of the instructions related to those Peoples.

After 1788, the British were careful to ensure war remained undeclared on Aboriginal peoples. Fergus Robinson and Barry York's 1977 book *The Black Resistance* was the first attempt to systemically document in English the Aboriginal guerrilla warfare that swept across the continent from 1788 as each new area was invaded. They quote Colonial Secretary Lord Glenelg's letter to NSW Governor Burke in 1837, 'all the natives inhabiting these territories must be considered as subjects of the Queen and as within Her Majesty's allegiance. To regard them as aliens with whom a war can exist, and against whom Her Majesty's troops may exercise belligerent rights is to deny the protection to which they derive the highest possible claim from the sovereignty which has been assumed over the whole of their ancient protections.'<sup>19</sup> Some 'protection', their sovereignty denied, under occupation, facing undeclared war!

mercial legal solutions to major corporate and government clients across Australia and internationally, particularly in the Asia-Pacific region'. It deals with 'industry leaders who value our entrepreneurial culture and determination to succeed' and it provides 'expert advice' in areas including: 'banking and finance; corporate advisory funds, mergers and acquisitions, private equity, capital markets, tax and stamp duty; communications and technology; competition and regulation; energy and resources; intellectual property; media; litigation and dispute resolution; and real estate and projects.'<sup>12</sup> In other words, it deals with those who control the commanding heights of Australia's economy.

Constitutional lawyer, Professor George Williams, as well as co-authoring 'Everything you need to know about the Referendum to Recognise Indigenous Australians' is Foundation Director of the Gilbert + Tobin Centre of Public Law, funded by the firm at NSW University. The Centre describes itself as an organisation where 'The Centre's Members, Postgraduate Students and Visitors seek to actively engage with government, the legal profession and broader community through research, teaching, submissions, media, consultancy work and events including conferences, workshops and seminars. Generating opportunities, particularly for emerging talent, by maintaining an inclusive and supportive environment has been a high priority since the Centre's inception.'<sup>13</sup>

Constitutional recognition falls within its ambit.

The NSW Reconciliation Council stated, 'In order to achieve a successful outcome in this referendum, it must be made unequivocally clear that these proposals do not preclude sovereignty or treaty-based options in the future. Although this is not a politically palatable option, it may be necessary in order to secure the success of a referendum. George Williams is an invaluable member of the Recognise Campaign and articulates the argument succinctly. He explains that while it may seem revisionist to campaign for inclusion in a document that does not appear to represent Indigenous people or their interests, this could actually prove to be a powerful foundation from which to establish a campaign for sovereignty and treaty-based recognition.'<sup>14</sup> Sovereignty and treaties are cynically reduced to a bargaining chip to ensure Aboriginal and Torres Strait Islander support, despite the bad tastes they leave in corporate mouths. It's clear there's no appetite or intention to act on them.

Danny Gilbert, Gilbert + Tobin's Managing Partner wrote, 'A corporate law firm operating in accordance with the best traditions of the law has the opportunity each day to apply and support the rule of law. Opportunities to help refurbish

and invigorate it are less obvious...To be able to fund an organisation devoted to informed public debate about laws vital to Australia's future as an open and democratic society is a great privilege.<sup>15</sup> Gilbert + Tobin represents multinationals in Australia's most profitable sectors, where the biggest investors routinely hide behind nominee companies and their profits are disguised and moved to tax havens. Talk of 'democracy and openness' and 'the rule of law' must be taken with a big grain of salt.

Professor Williams is clear that he wants the Centre to 'play a leading role' in 'policy debates about Australia's future...through parliamentary and other inquiries' and 'international standard' research, 'but also via contributions through the media'. The Centre has clear, strategic importance.

'I also sought to locate the Centre as a meeting point for the wide range of people interested in public law, including those from government, the judiciary and profession,' states Williams.<sup>16</sup>

It seems the corporatisation of knowledge and intellectual debate under BCA leadership proceeds apace. It underpins Gilbert + Tobin's ideology and practise, including the Centre they fund.

mass murderers, that coincidentally occurred again and again and again and again across the country, as each new area was occupied, from the time Governor Phillip sent troops under Watkin Tench, to kill Eora people of Botany Bay and bring back their heads in bags. Let's talk the truth. It was invasion, pure and simple.

The beginnings of invasion, and resistance to it, go even further back, to April 29, 1770, the date Lieutenant James Cook stepped ashore on what is now Kurnell, on the south-eastern shore of Kamay which he named Botany Bay. With good reason, Noonukal Elder Bejam Dennis Walker, a Tent Embassy founder, called the attack and the secret orders which preceded it 'a black operation under the maritime laws of piracy'.<sup>9</sup> Gweagal and Yuin man, Rodney Kelly, is a sixth generation descendent of Cooman, a warrior shot by Cook's marines.<sup>10</sup> In 2017 Kelly organised a commemoration at Kamay. Like Walker, Kelly called April 29 the 'real Invasion Day'. He spoke of 'the old stories, what the old aunties used to say, when they seen the two boats coming in with Cook, the armed marines and Banks [Sir Joseph Banks]...On that day, the mobs were all here, all camped, fishing. You know, doing their ordinary business, when the big tall ship came in.' Kelly said his ancestor and another warrior tried to take the women and children to safety, while shouting and gesturing to Cook's party to go away. 'They [Cook and the marines] didn't like that. So the first thing that happened was, "Let's scare them with muskets!" From the water! From the boats! Musket fire upon the two warriors standing here!' When Cook, Banks and the armed marines came ashore, they stole the two shields from the warriors, one with a musket hole, as well as numerous spears and a boomerang.<sup>11</sup> These were essential tools for hunting, without which the Gweagal would go hungry.

Kelly went to England in October 2016 with Roxley Foley, after a crowdfunding campaign, to try to reclaim Cooman's Gweagal shield and other artefacts.<sup>12</sup> Kelly said, 'How could you own something you stole? Especially back then! They were sending convicts here for stealing a loaf of bread!'<sup>13</sup>

The Guardian's Paul Daley wrote, 'Rodney Kelly and other activists say the shield is the most significant and potent symbol of imperial aggression – and subsequent Indigenous self-protection and resistance – in existence.' Roxley Foley, son of Gary Foley, is firekeeper and custodian of the Tent Embassy. He told Daley 'The shield is so important because it is still linked to today's resistance ... it's a shield – a call for defence and protection.'<sup>14</sup>



nities. They do so through exploiting the effects of poverty and oppression. Psychologically they play the game of being generous on the one hand and making certain chosen ones feel important by entertaining their ego and vanity, and thereby set them apart for the media to promote as being the Aboriginal 'leaders', never mind whether they do have a true leadership position, or not, with the grassroots Peoples, who are constantly living on the edge in a siege mentality,' Anderson said.<sup>4</sup> For grassroots Peoples, sovereignty is the key.

In contrast, BCA top guns like Allens' Partner Ian McGill invariably use the word 'settlement' not 'invasion'. McGill speaks of 'explicit recognition ... of Aboriginal and Torres Strait Islander peoples' occupation of this continent before European settlement.'<sup>5</sup> Terry Mason said, 'We are asked to accept that people were here, but that Australia was settled. It's a myth, a knife in the guts.'<sup>6</sup> Kamillaroi woman Natalie Cromb also spoke of the illegality of the conquest by the British crown, in contrast to the lie of settlement and sovereignty ceded.<sup>7</sup>

Mick Gooda saw it somewhat differently, 'I'd love to see a day where we don't have to care if we were invaded, colonised or settled. All I know is one day about 230 years ago something happened. I'm not interested in semantic argument about it.' He calls for 'truth telling'. 'Our people were part of the Hornet Bay Massacre. After our people were poisoned, they came out and killed a family. The reprisals for those killings went on for something like 25 years. That's my people being lined up and killed indiscriminately. We talk about the worst mass murderer in this country, they talk about Martin Bryant. Well, I'll tell you up in Queensland there's another bloke getting around who probably killed a whole lot more than Martin Bryant did. This is the truth we've got to come to. It's the truth that will guide us through this process as a people, as an Australian people.'<sup>8</sup>

Evading the truth of invasion, which the corporate inheritors of that invasion and their organisations like the Samuel Griffith Society promote, isn't a good place to start. Yes, it was mass murder and some individuals have more blood on their hands than others\*, but it was not the action of an unconnected series of

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\* Don Watson, *A Single Tree*, Penguin, 2016, contains a number of graphic eyewitness accounts of individuals who played particularly brutal roles in the massacres of Aboriginal peoples. ATSI Peoples, including Mick Gooda's family, know how these massacres played out.

## Conservative blessings

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Davis and Williams document the ever changing proposals for constitutional change, first to reserve seats in the federal Parliament, then set up yet another new body of Aboriginal and Torres Strait Islander Peoples to advise the federal Government, the latter from Noel Pearson and Greg Craven<sup>1</sup> President and Vice-Chancellor of the Australian Catholic University.\* Craven and Pearson's other suggestions were that race clauses be dumped, and recognition be done by statutes in state and federal parliaments at the same moment in time.<sup>2</sup> When asked who would make up the advisory body and how they would be chosen, Craven was non-committal, but said that it would be small and 'not the son of ATSIC'. It would have the 'power of symbolism' with 'consequences in the court of public opinion'. Clearly, non-Indigenous people were being wooed.<sup>3</sup> Craven's contempt for Aboriginal and Torres Strait Islander Peoples is embodied in 'son of ATSIC' metaphor. The Aboriginal and Torres Strait Islander Commission (ATSIC), despite shortcomings and criticisms from First Nations Peoples, had some real power and was directly elected by Aboriginal and Torres Strait Islander Peoples with representatives from every corner of the country, until it was abolished by John Howard.

By 2015, Pearson had moved on, or back, to something he and Craven had ignored in the Expert Panel's recommendations. These recommended a new Section 51A ending with 'the parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples.'<sup>4</sup>

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\* Craven has the distinction of announcing one result of an Abbott-instituted inquiry into school teacher education before he began it – that there should be no required university entry mark to become a school teacher. (As a constitutional lawyer and university Vice Chancellor, he is obviously an expert in the field.) Matthew Knott, *SMH*, 'Education union criticises appointment of Greg Craven to chair Coalition's teacher training review', February 19, 2014 <http://www.smh.com.au/federal-politics/political-news/education-union-criticises-appointment-of-greg-craven-to-chair-coalitions-teacher-training-review-20140219-33018.html>

Craven's praise overflowed about Pearson's 'profound', 'practical' and 'brilliant' plan<sup>Ω</sup>, which while supposedly removing the Constitution's discriminatory 'races powers', 'put some power to make laws about Aboriginal and Torres Strait Islander peoples in its place. Without such power we will never be able to amend the Native Title Act.' After nauseous praise for 'conservatives' as psychological 'worker bees of constitutional improvement', with 'a particular duty to test and query', 'who expose folly and danger mercilessly', Craven says, 'But conservatives have to know what success looks like: when our concerns have been heard, our imperatives adopted and our fears allayed. The truth is, in Noel Pearson's proposals...we have reached this point of conservative confidence.' There was, he continued, 'Nothing radical here, nothing frightening. Just Australian democracy working in its usual way.'<sup>5</sup> That is, conservatives not blackfellas would be making decisions over blackfella lives.

## Speaking in metaphors

Perhaps he thought he'd already said it all, but just 15 minutes of Noel Pearson's 35-minute keynote address on Constitutional Recognition at Garma 2016, referred to recognition, and he didn't actually say what his proposal was. He spoke with diagrams and metaphors, not concrete proposals. Sharing the platform with Michael Rose and before an audience awash with BCA company reps, he cautioned against trying to do everything through the Constitution, and of the 'need to synthesize Treaty and Constitutional Reform' and 'the Yunupingu brothers' concept of Makarrata<sup>+Ω</sup>.<sup>6</sup>

Pearson spoke in terms of a pyramid, with the Constitutional changes at the top, 'cascading down through legislation, agreements, policies and programs, with a 'strong and sharp' hook hanging off it from which reforms can be hung'. Recognition, he argues, cannot be a 'plaque at the top of the pyramid' acknowledging prior occupation. He called this 'minimalist' approach 'unacceptable'.<sup>7</sup> Despite

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<sup>Ω</sup> Commentators queue to praise Pearson, including Alan Jones who called him 'a revered figure'. <https://www.youtube.com/watch?v=vi9rqxg51KY>

<sup>+</sup> Yolngu word 'Makarrata', meaning 'things are alright after a conflict', or 'coming together after a struggle'. Prominent Yunupingu brothers are Gallarwuy Yunupingu, and the now deceased educator and front man of Yothu Yindi.

## We'll do this Aboriginal way

**A Maori representative once told Tauto Sansbury, 'If you're not at the table, you're the menu.' Sansbury says Aboriginal and Torres Strait Islander Peoples are not at the table, not at the discussions. 'Right now,' Sansbury said, 'we're being chopped up into little pieces.'**<sup>1</sup>

Terry Mason, speaking with Sansbury and others at a 'Men for Treaty' event in Sydney described the 500 Aboriginal people who descended on a Victorian Government meeting, and voted unanimously for Treaty. The meeting, representing 39 clans, was live-streamed to Shepparton and Geelong, with people typing in responses 'because they didn't want to miss out'. Mason said south eastern Australia was not his country, 'so I kept my mouth shut and listened...They wanted to break us into four groups and give us focus questions set by the government,' he said. It took just five minutes to reject this.<sup>2</sup>

The participants took over. 'We'll do this Aboriginal way. Focus groups mean you have us heading somewhere you want us to head. We'll stay together and we will talk about what we want to talk about. It'll be open and everyone will hear it, and when we come to a conclusion, it'll be our conclusion,' Mason reported. While there are many Aboriginal people and groups that support Recognise, the conclusion arrived at by the Victorian meeting was unanimously for Treaty.\*<sup>3</sup> Sovereign Peoples across the continent echo this call.

Like countless others, Michael Anderson has spoken for Treaty for more than forty years. He sounds a warning. 'The proposed Victorian Treaty will domesticate our Victorian brothers and sisters because, if the Treaty is ultimately sanctioned by the Victorian parliament, it will be done so in right of the British Crown. So they need to ask themselves: do they have unfinished business with England, or are they entering into an arrangement with the illegal colonial occupiers of our lands and territories. It is important to understand who the real authority and head of power is in the case of Australia... We are under occupation by a foreign power, which keeps us in our place by superior force, perpetuating poverty, and establishing a platform for dysfunction within our commu-

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\* One person voted against Treaty, but he was not from that Country, and was not entitled to vote.

Alice Haines particularly warned that Section 51(xxvi), which was amended in the 1967 referendum to remove Aboriginal and Torres Strait Islander Peoples, is the section 'the government really wants changed ...The government want to join our sovereignty to their incomplete sovereignty...and we're all bound up in legislation...bringing First Nations under the absolute control of the Commonwealth.' Aboriginal sovereignty is then 'void', she said because 'it is entwined in the legislation that surrounds it...Where does it say in the Constitution that we have the right to self-determination, to our cultural interests, to our cultural law? ...There's no legislation that has cultural protocols or even acknowledges cultural law...We can have laws aimed specifically at us, but not at white people...As a targeted race! This is a red flag!'<sup>21</sup>

Without a doubt, the promotion of constitutional recognition has created the most bitter division in the 60,000-year history of Aboriginal and Torres Strait Islander Peoples. For those wanting to exploit the wealth of their lands, this division is very handy indeed.

this, he reckoned Aboriginal peoples need support from people like John Howard.<sup>8</sup> You can't get much more minimalist than that!

Davis and Williams state, 'In contrast to the much broader aspirations for Aboriginal people, the proposals for this referendum are modest and narrow.'<sup>9</sup> Yet Pearson's constitutional proposal is more minimalist than the one suggested by the Expert Panel of which he was a member. To be fair, Pearson said it's not just about recognition, but also 'about a destination, closing the gap, and how to get there, first through a moment in time, the referendum, followed by ongoing processes and development.'<sup>10</sup>

But picture his next diagram, a sky blue triangular pediment sitting on top of sky blue walls, labelled 'Australia's British Institutions', with lots of multi-coloured dots inside called 'Australia's Multicultural Achievement', with an orangey brown slab, 'Australia's Aboriginal Heritage' right down the bottom, bearing the weight of the whole edifice. This was grandly titled 'Philosophical concept' 'Articulating the Foundations of Australia'.<sup>11</sup>

Mick Dodson later agreed, speaking of 'our nation, coming to terms with its dark, desperate and miserable history', but seemed distinctly uncomfortable having to respond to Pearson's framework of celebrating the British tradition<sup>12</sup> perhaps because the British tradition of invading others, is absolutely the cause of this history.

Pearson's ideology is conflicted on this point. He loves English language and cultural achievements, yet they've arrived on this continent via British invasion. In his Gough Whitlam eulogy, the one moment of humour is a reference to the 'What have the Romans done for us?' skit, from Monty Python's *Life of Brian*, which lists numerous innovations brought to invaded Palestine by the Romans. This reference is an attack on ideology which questions corporate rule. It ridicules warring left grouplets, who supposedly hate each other more than they hate the capitalist class.

Pearson then powerfully lists the positive changes, which he attributes to Whitlam, 'this old man', an allusion to Gurindji leader, Vincent Lingiari. This is a misreading of history. What Pearson fails to realise is that Whitlam rode to government on huge waves of peoples' struggles. The laws Whitlam enacted resulted from those mass struggles, not from one big man. Just ten years old when Whitlam was sacked, Pearson did not experience those mass struggles, but he would certainly have learned of the esteem, often verging on hero worship, of

many working people towards Whitlam. This failure to understand the potential in ordinary people, united to bring fundamental change, underpins Pearson's individualist, top down approach. It sees him negatively categorised by many Aboriginal and Torres Strait Islander Peoples who have a collective, grassroots approach.

Pearson continued, 'We think we need liberal development and cultural determination, married with economic strength, but at the moment we are on a trajectory of slowly becoming culturally pauperised, because we're not economically strong,' and went on to describe ATSI Peoples as 'the three per cent mouse' against the elephant of government, saying the fulcrum of change must move to create a level playing field.<sup>13</sup> He didn't mention, that the three per cent mouse owns 20-25 per cent of Australia's land<sup>14</sup>, and that this may be why multinationals are backing his section of Aboriginal and Torres Strait Islander Peoples.

Tania Hosch was Chair of PwC Indigenous Consulting<sup>15</sup>, Member of NAB Indigenous Advisory Group, and formerly Joint Campaign Director of Recognise (which she left to work for the AFL) and Director of Rio Tinto Aboriginal Fund,<sup>16</sup> so her connections to BCA companies are clear. At Garma 2016 she describes 'this one window of opportunity to get this constitutional work done. The longer it takes, the harder it gets.'<sup>17</sup>

Ms Hosch was gung-ho, 'We've got to be resourced, and in the Referendum Council work we are finally getting to a place where we can bring to conclusion the very important conversations that have to be had about the detail of the model of change in the Constitution. Then we've all got to back it in, have the vote, vote yes. Then we can get on with all the other important things that, frankly, people are doing at the same time. If we walk away now, I think we lose a significant opportunity to set things right in this country.'<sup>18</sup>

But on the same platform Mick Gooda showed his understanding of the concern many Aboriginal Peoples feel, and urged caution. 'We've got to concentrate on getting it done right. We can't concentrate on getting it done right now.'<sup>19</sup>

## Tactical merry-go-round

The key tactic has been the development of Recognise to give a mass face to the Howard's plan, but other tactics are also clear.

'What is the Australian Constitution?' she asked, 'The 1986 Australia Act is a British Act from British Parliament known as Act of the 'Australia Act 1986 (UK)'. It is a Statute Authority which holds power within British Law to make its own laws. It relies on the British Queen, whose royal family did not treaty with First Nations People in our lands known as Australia, to acquire rightful jurisdiction...Tony Abbott wants it [constitutional change] because he says the Australian Constitution 'is not complete', incomplete sovereignty. They have been usurping sovereignty, our sovereignty, via Native Title.'<sup>18</sup> But Haines sees even more danger coming the way of First Nations Peoples.

Constitutional experts Davis and Williams stated, 'The race power not only incorporates the possibility of laws that discriminate against Aboriginal and Torres Strait Islander people. It has also been used by the federal Parliament to enact laws that benefit that group. This includes legislation recognising their interests in land in the form of native title and preventing development so as to protect their sacred sites. The power also provides a source of authority for the making of direct federal payments in areas such as Indigenous education, employment and housing.'<sup>19</sup>

Strangely all sorts of groups are able to have money directed towards them, without being included in the Constitution. For example, the minimum resource standard funding model for students, legislated after the Gonski Report, gave financial loadings for students from low socio-economic backgrounds, as well as for Aboriginal students, while elitist schools have copped bucket loads of our tax dollars for decades. In 2015, multinational corporate law firm Allens-Linklater, a major BCA bridgehead into the Aboriginal communities, kyboshed the need for constitutional recognition to make laws supporting Aboriginal and Torres Strait Islander Peoples, 'If there are issues of health, social dislocation, special employment needs in relation to Aboriginal and Torres Strait Islander youth, then all of those critical and important matters can be dealt with under existing Commonwealth and State programs, without special legislation focussed on a sub-group of Aboriginal and Torres Strait Islander peoples.'<sup>20</sup> Yet by 2016, former Allens' boss, Michael Rose, was silent on the issue, when Noel Pearson was centre stage at Garma's Key forum on Constitutional Recognition, and Rose was cheerleader. Aboriginal and Torres Strait Islander Peoples are dead right to say a new, allegedly non-discriminatory constitutional replacement of the Race Powers is the most dangerous aspect of the Recognise campaign.

been killing us...Who did they consult with? Who's self-determining for us? Which organisations do they listen to?'<sup>12</sup>

Unlike the whole reconciliation and recognise push, the Day of Mourning was open only to Aboriginal Peoples.<sup>13</sup> At the time, their appeal for equality and citizenship was powerful and radical. Putting the same call forward 78 years later, without acknowledging invasion is seen by many as too little too late.

Many First Nations Peoples, like Alice Haines, say their real interests are with Treaty recognising sovereignty, not constitutional recognition. Some have declared their sovereignty through Unilateral Declarations of Independence (UDIs).<sup>14</sup>

Sovereign Union states, 'Through decolonisation, Treaty/Treaties are necessary because it will define our relationships into the future. It will also define the terms and conditions on which we agree to enter into that dominant oppressive system of governance. It will define our rights as First Nations and Peoples. It will define our laws and customs and how they relate to us and the rest of society. It will define our sacred lands and territories. It will recognise our ceremonial religious practices. It will recognise these sacred places as open spaces and not confined to the interior of a temple or monastery. It will define our totemism (heraldry) and thereby establish laws of protection against the destruction of ecosystems and waterways. It will embrace our languages. It will define an education system that will be inclusive of our historical teachings of the Dreaming and our understandings of our monuments and icons, such as the rock engravings, carved and scarred trees and their relationship to our society as First Nations. It will define our nationalities under our First Nations' identities... It will define how we shall share, through development, equitable arrangements for royalties and royalty disbursements of the various Nations natural resources.'<sup>15</sup>

Tony McAvoy, Australia's first Indigenous barrister, said the Recognise campaign 'says to non-indigenous Australians, "We can recognise Aboriginal people under this notion of a settled nation" ... It's based on the idea that the British were a higher class of species than us.'<sup>16</sup>

Alice Haines said of Constitutional Recognition, 'It's all bad news for my people, great, great gains for the government. In the bush...Elders talk about drawing this line in the sand...with Australian claims to sovereignty [on one side] and this is our Sovereignty. We're separated.'<sup>17</sup>

Recognition in state constitutions first seen as a way to convince a 'misinformed' electorate that constitutional change is nothing to fear, began in Victoria, followed by Queensland, New South Wales and South Australia. All have, like Howard's failed 1999 Referendum, a 'non-justiciability' clause, meaning that parliaments do 'not intend this section to have any legal force or effect'<sup>20</sup>, a kind of Clayton's recognition.

Particular emphasis has been placed on getting the peoples of Arnhem Land to support recognition. In 2008, the Yolngu and Bininj clans handed to Prime Minister Rudd a communique developed over 18 months, a period covering approximately six months before and 12 months after the beginning of the Intervention. It stated that they had been 'marginalised and demeaned over the past decade [John Howard's administration] and been denied real opportunity to have a say about [their] aspirations and futures.' They 'argued for the preconditions of economic and community development in remote communities, including the right to be recognised as maintaining their culture and identity, and protection of their land and sea estates. They also argued for the importance of recognising their right to live on their land and practise their culture, and requested that the Australian government "work towards constitutional recognition of our prior ownership and rights".'<sup>21</sup>

It's unlikely they knew that in January 2016, RA's 'Reconciliation Timeline' included just nine 'reconciliation milestones' since 2000, noting: 'This timeline does not contain all reconciliation milestones. It has been designed to mark key events.' Included is this: '2007, June: The Australian Government, led by Prime Minister John Howard, begins an intervention into Northern Territory Aboriginal communities.'<sup>22</sup> This imposed military response, bypassing all consultation with Aboriginal and Torres Strait Islander Peoples, originally garnered some support amongst those communities alongside fierce opposition. That support is in tatters. That the governing body of Recognise would celebrate the Intervention must give pause to those so happily supporting an organisation it governs. Joe Morrison, Northern Lands Council CEO, also supports constitutional change, while complaining about the Intervention, yet their source is the same, John Howard.<sup>23</sup>

Michael Anderson states, 'Now more than ever the Australian Government and their State counterparts are focusing so many resources into side-tracking the Australian mindset, including being absolutely deceitful with their Aboriginal

collaborators by suggesting that it is time now for Aboriginal people to be recognised in the constitution of Australia.<sup>124</sup>

Among the experts supporting recognition is the Royal Australian and New Zealand College of Psychiatrists: 'Recognition ...would have a positive effect on the self-esteem of Indigenous Australians' and that 'examples from other countries such as Canada, New Zealand and the United States highlight how the right legal settings can help to produce comparatively better health outcomes.'<sup>25</sup> Who did the College ask about this form of recognition? How closely did they look at what's on offer? All of the countries cited had declared wars, recognition of sovereignty and treaties, at the end of those wars, but if inheritors of an undeclared war of invasion still hold state power, how much will change?

In contrast, the NSW Aboriginal Medical Service opposed recognition in the constitution, and their funding was cut the next day.<sup>26</sup>

To sell recognition, Noel Pearson proposed another costly series of Indigenous conferences 'at the centre and the compass points' of Australia, with three in both WA and QLD, two in NT, and just one each in South Australia, Victoria and NSW. Interestingly, the largest number of Aboriginal and Torres Strait Islanders live in NSW, though Pearson did not mention this, and of course South-Eastern peoples around Victoria are already organising against recognition. While there are more isolated communities in the Northern Territory, NSW for nearly four times the population, has half the conferences. It seemed a lot of voices would not be heard.\*

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\* At June 2011, according to the Australian Bureau of Statistics, order of ATSI population size, NSW, including the ACT, had approximately 214,500 Queensland -189,000 WA – 88,000 NT – 69,000 Vic and Tas – 71,000 and SA – 37,000. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Previousproducts/3101.0Feature%20Article1Mar%202012?opendocument&tabname=Summary&prodno=3101.0&issue=Mar%202012&num=&view=>

Eventually more meetings were held, with two in NSW, one in Sydney and another in Dubbo.

were fighting, but by ordinary people putting their hands in their pockets. Without this support, the Gurindji would have starved.

The Day of Mourning, which brought three major Aboriginal organisations together<sup>5</sup> is also claimed as a recognition forerunner.<sup>6</sup> The statement on that day read, 'The 26th of January, 1938 is not a day of rejoicing for Australia's Aborigines; it is a day of mourning. This festival of 150 years of so-called 'progress' in Australia commemorates also 150 years of misery and degradation imposed upon the original native inhabitants by the white invaders of this country.'<sup>7</sup> While some First Nations Peoples shy away from the term 78 years later, in 1938, they called it what it was – invasion.

The Day of Mourning statement united all Aboriginal and Torres Strait Islander Peoples. In contrast to unity, Recognise highlights Rachel Perkins' statement, 'I say that we must not wait for Aboriginal and Torres Strait Islander people to agree on this. And that's important because I don't think we will have absolute unity for it. And that's actually ok. Because we don't all have to agree. Aboriginal people and Torres Strait Islanders have the right to a different view.'<sup>8</sup> Sovereign Union makes clear that if a referendum on constitutional recognition goes ahead, whitefellas will make the decision for blackfellas, because whitefellas make up 97 per cent of the population.<sup>9</sup>

And only one side is being massively funded and promoted.

As it is for many Aboriginal Peoples today, it was difficult to organise in 1938. 'The members were scattered across two states, and the distances between them were made all the more formidable because of the poverty they shared, which made travel and telephone communication often impossible.'<sup>10</sup>

Those supporting Treaty and sovereignty today, are in the same boat. Narungga Elder Tauto Sansbury said, 'We are a grass roots campaign. We don't get dollars or cents for this. Some of us borrow money to fly over here...Recognise is a multimillion dollar campaign...In South Australia we've been recognised in the Constitution, but it's just a feel-good statement...' For Jay Wetherill it's all 'recognise, recognise' but 'there's nothing attached to it.'<sup>11</sup>

Terry Mason, Awabakal Elder and NTEU representative added, 'It shouldn't be those who can afford to go, those with a vested interest, who represent certain organisations.' An Elder told him that 'self-determination' offered by governments was dishonest, saying, 'Self-determination has been a poison to us. It's



## Fighting to be heard

**‘Australia is a crime scene, and that crime scene is a premeditated, criminal act of genocide, and that means the people living in Australia are living off the proceeds of that crime, and I think people should do something about it. And the way forward is to do that treaty business... No consent, and no end of hostilities have been proclaimed, no peace treaty was ever sought. This war, declared or undeclared, continues to this day.’<sup>1</sup>**

*Robbie Thorpe, Melbourne University, 2008*

Davis and Williams stated, ‘Aboriginal people have argued for many decades a treaty needs to be negotiated,’ but huge resources are mobilised to push for constitutional recognition instead, and an issue that would unite Aboriginal and Torres Strait Islander Peoples is thrown aside. Davis and Williams argue that a replacement for the Constitution's races power would allow a treaty.<sup>2</sup>

Davis and Williams only referred to Aboriginal and Torres Strait Islander Peoples' concerns in a few paragraphs of 146 pages and name only two, Gary Foley and Michael Mansel, ignoring the huge grassroots' push for sovereignty and Treaty. The authors rightly say the 1967 Referendum ‘emboldened Indigenous groups’<sup>3</sup>, but this time it's not the case. Only one side has been funded. Many Indigenous peoples have to fight to be heard.

Aboriginal and Torres Strait Islander struggles are massaged to present an often inaccurate historical through-line to recognition. Joe Morrison at Garma 2016 said support for recognition has been ‘expressed many times by Aboriginal people, by the Wave Hill Walk Off, the Barunga Statement\*, the Eva Valley Statement and the Bark Petition. They may in fact have been talking about land rights, but the background agenda to a lot of those movements and discussions have been about settling with the nation, ensuring the lives and cultures are protected as First Australians.’<sup>4</sup> Not so. Barunga demanded sovereignty and Treaty, while Wave Hill was a bitter battle, not a ‘settling’. It was against corporations and government, the same groups that are now funding Recognise. When Vincent Lingiari came to Sydney, he represented a people locked in struggle, and his fares were paid, not by government or corporations, the very groups the Gurindji

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\* See Appendix A for full text of the Barunga Statement.

## Pigs and lipstick

**‘We have to acknowledge that pre-1788 this land was Aboriginal then as it is Australian now. Until we have acknowledged that, we will be an incomplete nation and a torn people.’ Tony Abbott 2013<sup>1</sup>**

Two things that are not on offer in constitutional recognition are Aboriginal and Torres Strait Islander sovereignty or acknowledgement of invasion. Invasion is not mentioned and sovereignty is excluded.

Davis and Williams quote the Expert Panel, ‘It follows that ultimately the basis of settlement in Australia is and always has been the exertion of force by and on behalf of the British Crown. No-one asked permission to settle. No-one consented, no-one ceded. Sovereignty was not passed from the Aboriginal peoples by any actions of legal significance voluntarily taken by or on behalf of them.’<sup>2</sup> In short, it was an invasion, misnamed a settlement.

Their book catalogues the decades long failure of politicians and parliament after Whitlam and Fraser (and even their actions were circumscribed) to move anywhere towards Treaty or stronger land rights. While it describes the National Aboriginal Conference (NAC) call for a Treaty of Commitment, later replaced by the Yolngu word ‘Makarrata’, Davis and Williams state the process was held back by problems like a lack of funding and tensions within the Aboriginal and Torres Strait Islander community and with the non-Indigenous Aboriginal Treaty Committee.<sup>3</sup>

In the 1992 Mabo case, the High Court ‘said that native title is recognised by Australian law only because it can be accommodated within the common law brought to Australia by the British **settlers** [Author’s emphasis] in 1788. As a result, Australian courts do not recognise that Aboriginal and Torres Strait Islanders possess a sovereign law-making power.’<sup>4</sup>

‘Underlying the High Court's reasoning is the view that the sovereignty of Australia's First Peoples was displaced by British settlement [sic] and the introduction of their law. This was brought about by the assertion by the British of their sovereignty over the Australian continent. All this occurred before the Australian Constitution came into force in 1901. The document created a new nation upon a continent that the British already regarded as theirs. Changing the Constitution did not alter this, nor would changing the Constitution again today.’<sup>5</sup> The legal case is clear. Sovereignty of Aboriginal and Torres Strait Islander



Peoples is not recognised now by British or Australian law, and won't be in an amended constitution.

When Gooda said, 'We're talking about settlements between different nations and other nations. In any other country, you'd call that agreement with the Noon-gar people in south west WA a treaty.'<sup>6</sup> John Howard, with legal force behind him, disagreed. 'Treaties can be made only between sovereign peoples.'<sup>7</sup> Sovereign Union agreed with Howard, but stated that it is Australia that lacks sovereignty in international law and cannot sign, rather than Aboriginal and Torres Strait Islander Peoples. Davis and Williams consistently stated that 'none of the changes proposed to the Constitution will in any way touch on anything to do with sovereignty.'<sup>8</sup>

Of course, 'It does not affect how Aboriginal people view their own sovereignty. As a result it does not prevent them from asserting their own independence and the continuing validity of their laws and customs...It remains possible that the Australian legal system might recognise Aboriginal sovereignty in the future.'<sup>9</sup> Never mind the paternalism of that statement, when the police or (in the NT Intervention's case the army) arrive, which set of laws will they enforce? Six First Nations have made Unilateral Declarations of Independence. They say Law is on their side.

The Referendum Council has acknowledged a building campaign for the Government to consider a series of treaties, alongside or instead of the referendum. Tony Abbott and John Howard are locked in against it.

Abbott said, 'A treaty is something that two nations make with each other, and obviously Aboriginal people are the first Australians, but in the end we're all Australians together, so I don't support a treaty,' and Mr Howard agreed 'I'm appalled at talk about treaty, that will be so divisive and will fail'.<sup>10</sup>

Pat Dodson said, 'The simplicity of constitutional recognition, and the set of words will pre-occupy us',<sup>11</sup> while Davis and Williams described 'This vague concept' that 'takes us little further in understanding what changes might be involved'.<sup>12</sup> Dodson is right to express reservations. Holding pigs still enough to put lipstick on them has always been difficult. So has making silk purses from sows' ears. And pigs will fly before the Constitution serves anyone but the invaders and their offspring in corporate clothes.

A web of laws enmeshes the peoples of this continent, denying real sovereignty to anyone other than corporations. What is clear though, is that the developing

organisation of the people to defy such laws, rather than accommodate and water down their demands to something that is acceptable, is the key determinate of change.

Kunja man, Ken Canning spoke for many Aboriginal and Torres Strait Islander Peoples when he said governments 'will not let this into our constitution if it didn't take away our rights...we do not need recognition from you. You need to be begging us for recognition!'<sup>13</sup>