Countering Populist Policies in the Face of Trauma

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Some of you may recall that I gave the opening plenary address at your 2003 conference in Hobart. On that occasion, 1 April 2003, I said:

A Jesuit lawyer delivering the opening plenary address at a Traumatic Stress Conference seems a sophisticated trick for April Fool’s Day. My perception of psychiatrists and psychologists who work in the area of traumatic stress studies is that you as a group have little sympathy for institutional religion, little faith in the law, little interest in politics, and an abiding suspicion about the interface between psychological well-being and spirituality. This perception may be an unwarranted prejudice - disproved by your according me the signal honour of delivering your opening plenary address on Mind, Body, Soul - an Integrated approach to trauma.

Four years later, I know nothing more about traumatic stress studies so I presume that is not why you have invited me again. It has caused me a touch of trauma trying to think what I could possibly say of any value and interest to you second time around. We have experienced some movement since my last appearance on the policy fronts of Aboriginal affairs and refugee rights. I am delighted to share with you in a cross-disciplinary way on how we might continue to counter populist government policies in the face of the trauma caused to unpopular or powerless minorities.

I note that the Society’s annual media awards have gone to journalists who covered the tragic Garuda crash and its aftermath in March this year. At the time of that accident I was concluding a one month visit to Papua – the west of the island of New Guinea taken over by Indonesia in 1963 and oppressively administered ever since. It took the arrival of 43 Papuan asylum seekers on a boat last year to convince me that it was time to go and see the situation next door. These people have known endless oppression for four decades and they live just 300km from our shores. One Papuan priest looked me in the eye and said, “We are your neighbours.” There is a well known parable about all that. He was prompting me to action.

A woman in Jayapura told me that she was very sad that Australia had taken no notice of her people for more than 40 years and that it took just one boatload of asylum seekers to make Australians curious, if not interested, in the people next door.

When that boat arrived in Australia, our government was anxious that there not be a flow of refugees from Papua. They wanted Parliament to extend the Pacific solution
because it was “necessary to prevent Australia from being used as a staging post for political protests”

Independence for Papua is now virtually inconceivable. Papuan leaders and church groups speak not about independence, but about the need for Papua to be a Land of Peace – *tannah damai*. It was not always preposterous to consider that at some time in the future the people of Papua might be free and independent. Throughout the 1950s, the Menzies government was adamant that Melanesia and Indonesia were distinct entities and that “the people of West New Guinea have little in common, except a past common administration, with the peoples of Indonesia”. Our government joined others at the UN in signing off on a deal which saw sovereignty in Papua transferred to Indonesia on 1 May 1963 with provision for a later “act of free choice” in 1969. By then, there was no choice at all.

When I was flying home from Papua, a Garuda flight attendant sat down next to me. I told her that I was sad because my friend Liz O’Neill, the Jakarta embassy official, was one of the five Australians who had died in that tragic plane accident at Yogyakarta two days before. She then told me that she too had lost a friend who had been a steward on that fateful flight which claimed 22 lives.

We held hands briefly. It was an Easter moment. Liz would have smiled – Liz whose human touch constantly broke through barriers and brought people together in the midst of tragedy - Liz the daughter and sister schooled in faith, the wife and mother nurtured in love, the friend and diplomat dedicated to hope in our shared humanity. She spent her last years dedicated to creating good relations between neighbours, between Australia and Indonesia, especially in the midst of tragedy. Through the trauma of it all, I am inspired with hope when I see the photos of the smiling Liz there on your media awards board.

In the name of border protection, Australians committed to the fair go have in recent years endorsed government policies which included the long term detention of children in places like Woomera and the institution of the temporary protection visa which left proven refugees in a three year limbo unable to get on with the rebuilding of their lives and the reunion of their families. In the name of child protection, the Australian parliament has last month railroaded discriminatory legislation including state intervention on welfare payments and compulsory Aboriginal land acquisition. Traumatised Aboriginal leaders have publicly attacked each other. These minority groups seek fairness in process and outcomes. They wonder how their voices can be heard and respected. In this address, I would like to provide pointers for the inclusion of minorities in the national interest and with greater prospect of fair outcomes.

A. Refugees and Asylum Seekers

1. The Pacific Solution

Thankfully, no more leaky asylum boats have arrived in Australia with an election in the air. But the announcement of refugee status for 72 Sri Lankan asylum seekers detained on Nauru after being intercepted by HMAS Success in the early hours of 20 February en route to Australia throws into relief the policy differences between the major political parties and the differing views of refugee advocates. The issues in contention are the Pacific solution operating out of Nauru and the use of the new
Christmas Island detention centre. Labor is committed to abolishing the Pacific solution, while maintaining Christmas Island. Many refugee advocates want Labor to abandon Christmas Island as well.

On 12 September 2007, Kevin Andrews the Minister for Immigration announced the refugee status for the Sri Lankans and said, “Australia is now exploring resettlement options in other countries for the Sri Lankans that have been assessed as being refugees. They will remain in Nauru while arrangements are made to resettle them elsewhere.”

When he first became minister, Andrews was unaware that his own public servants would continue to process the refugee claims on Nauru, just as they would if the asylum seekers remained on Christmas Island. There are three differences between Nauru and Christmas Island. Failed asylum seekers on Nauru have no right of appeal to any Australian court. Wisely, the government does not make too much of this difference in public because it leads to the inference that decent Australian public servants are likely to make different decisions if their deliberations are made out of the jurisdiction and without the prospect of review. When you are trying to change the culture and the public image of a government department that has had a rough trot with cases like Cornelia Rau and Vivian Solon, this is not a good look – particularly from an earnest lawyer like Andrews. Second, Australian lawyers and do gooders can be more readily kept out of Nauru. Third, refugees on Nauru have never entered Australia and thus other countries may be willing to receive them.

The Howard government’s Pacific solution has been premised on the prediction that even those boat people successfully claiming refugee status will never make it to Australia. But 95% of them have eventually made it to Australia or New Zealand. They have just had to wait up to an extra five years. The justification for the Pacific solution has been the need to deter refugees from engaging in secondary movement by employing people smugglers. This justification came horribly unstuck when the government tried to extend the Pacific solution to Papuan asylum seekers who would be engaged in direct flight without people smugglers. Bruce Baird who led the backbench revolt on the extension of the Pacific Solution in August 2006 told Parliament that the New Zealand government would no longer take refugees from Nauru if Australia tried to apply the Pacific solution to all boat people. The Pacific solution is incoherent and it will go promptly if Kevin Rudd is elected Prime Minister. The Pacific solution is now no solution to any problem other than the Howard government’s problem in eliciting votes from those voters who in the past responded to Hanson policy pleas.

Christmas Island is a different story. In response to David Marr’s claim that the Christmas Island detention centre was established on such a remote island in the Indian Ocean “to keep the cost of investigating these stories very high”, Philip Ruddock, the political architect of both these offshore arrangements, has responded, “The truth of course is that the Christmas Island detention centre sends a very strong message to people smugglers and their clients. The message is that there is no fast-track to the mainland. There is no way to jump the queue.”

Those found to be refugees on Christmas Island will inevitably end up in Australia. Not even New Zealand will take them, and why should it? Though many refugee
advocates are strong opponents of the new Christmas Island facility, I have continually conceded to government the place of such a facility in a border protection strategy aimed at isolating and detaining unvisaed boat arrivals until initial screening can occur, permitting immediate return of those with demonstrably unmeritorious asylum claims, and facilitating health and security checks of those asylum seekers whose claims will take some time to process. Many refugee advocates will continue to argue that failed asylum seekers on Christmas Island should have access to the Refugee Review Tribunal as well as the courts.

It is becoming in civil society, even in an election year, that we give credit where it is due. The Howard government has increased the size of our migration program, including the refugee and humanitarian component. The Rudd Opposition has sustained its opposition to the Pacific solution and the unfortunate consequences of the temporary protection visa. Courageous Coalition backbenchers have heeded the call to end long term detention of children. At this election, there will be some people who will vote against the Howard government because of the appalling Pacific solution and the ongoing effects of the too tough temporary protection visa. Hopefully there will be fewer people voting for the Howard government because of policies like the Pacific solution. The deliberations of civil society might even make a difference in the policy formulation of the political parties and the people’s choice of government, providing a fair go for all refugees, including those who arrive by boat without a visa. Along with many other matters, this election will decide the fate of the 72 proven refugees now required to wait on Nauru.

2. Detention and the Temporary Protection Visa

As health professionals you will recall the controversy and publicity caused by the publication of Sultan and O’Sullivan’s article in the Medical Journal of Australia concluding:¹

It is therefore difficult to avoid the conclusion that the policy of mandatory detention of asylum seekers is leading to serious psychological harm. Even if many of those who spend long periods of time in detention are not deemed by the strict criteria enforced to have proven their refugee claims, this administrative decision should not be grounds for inflicting grave ongoing psychological injury on the applicants.

Mr Ruddock then Minister for Immigration alleged that the authors were guilty of a distortion and half-truth. He claimed that the authors had claimed that detention was arbitrary. He retorted: “Detention is not arbitrary. It is humane and is not designed to be punitive.” This was in the days when unvisaed asylum seekers including children were being held in hell holes like Woomera. Sultan and O’Sullivan replied modestly that “prolonged detention of asylum seekers appears to cause serious psychological harm”.² Though they had not claimed detention was arbitrary in their original article, they then invoked the earlier 1998 observation of the Human Rights and Equal Opportunity Commission that “In some instances, individuals…have been held for more than five years. This is arbitrary detention and cannot be justified on any

¹ “Psychological Disturbances in asylum seekers held in long term detention”, Medical Journal of Australia 2001, 175: 593 at p. 596
² Aamer Sultan and Kevin O’Sullivan, “In reply: Asylum seekers and health care”, Medical Journal of Australia 2002; 176 (2) 85
grounds.” One health professional Debra Graves wrote objecting to the appearance of such political articles in the Medical Journal. She said:

Like most healthcare professionals, I consider access to basic medical care, including care for those with mental illness, is a human right. However, I do not support the use of a peer-reviewed journal such as the MJA for political purposes. The right of freedom of speech is fundamental in a democratic society; however, if the AMA wishes to push a political issue then such articles should be published not in the MJA but in Australian Medicine, with appropriate recognition that the issue is medico political and not scientific.

The Palmer review placed immigration detention in the public spotlight. A handful of Coalition backbenchers led by Petro Georgiou finally convinced the Prime Minister that children should be detained only as a matter of last resort, and that there was a need for some review mechanism to ensure that persons held in long term immigration detention were not being wrongly or unduly detained. On 17 June 2005, John Howard relented and four days later the Migration Amendment (Detention Arrangements) Bill 2005 was rushed into Parliament. The government backbencher Bruce Baird echoed much of the community outrage at mandatory detention of children when he told Parliament:

I am sure that all members from both sides of this chamber would absolutely endorse this as fundamental. Let us never again see children in detention in this country. They should not be behind barbed wire or razor wire. It is an indictment that we have let it happen. Both sides of the House have been involved in that but we are changing this process through the bill. I really stress the importance of these changes.

There were good grounds for thinking that the time had passed for government to use the detention of children as part of a comprehensive strategy designed to send a double signal, with the first signal being directed to people smugglers and their clients to deter them, and the second to voters concerned for strict border security so as to attract their electoral support. The long term detention of persons without a court order and without regular supervision was seen to be problematic. The Commonwealth Ombudsman is now required to assess the appropriateness of ongoing detention for all persons held in immigration detention for more than two years.

Recently, health professionals have made a useful contribution to the case against the retention of the temporary protection visa. Last year the Medical Journal of Australia carried an article: “A comparison of the mental health of refugees with temporary versus permanent protection visas”. This study “provides consistent evidence that the migration trajectory experienced by TPV holders, particularly adversity in detention and ongoing living difficulties, is accompanied by persisting and wide-ranging mental health problems and associated disability.”

The authors note:

3 HREOC, Those who have come across the seas, Canberra, HREOC, 1998, 182
5 2005 CPD (HorR) 91; 21 June 2005
TPV holders exceeded PPV holders on all measures of psychiatric disturbance and mental disability. Consistent with the body of refugee literature, regression analyses showed that trauma was a predictor of all mental health indices. Nevertheless, TPV status made a substantial additional contribution, being by far the greatest predictor of PTSD symptoms, accounting for 68% of the variance.

The professional opinion of competent health professionals prepared to research the trauma effects of populist government policies can greatly assist those who agitate for more humane laws and policies. We have finally reached the stage in the lead up to an election when one major political party is prepared to campaign on a policy which includes abolition of the temporary protection visa.

A. Indigenous Affairs

1. Looking Back to look forward

Contemplating the future of indigenous affairs at this crossroads in our national journey, I look back on my own involvement with these questions, mainly between 1981 and 1998, and most often in my state of origin, Queensland.

In 1981, I was junior counsel for Alwyn Peter in one of those many horrific murder/manslaughter cases coming out of reserves in far north Queensland. I was stopped in my tracks from celebrating our forensic win when a woman anthropologist/librarian at AITSS put it to me that we had simply succeeded in withdrawing the last line of support and defence from Aboriginal women who faced such violence on remote communities. Marcia Langton’s report *Too Much Sorry Business* for the Royal Commission into Aboriginal Deaths in Custody ten years later supported the anthropologist’s claims. There was a plea for stronger police presence and greater deterrence in the operation of the criminal law.

In 1982, I had commenced work as legal adviser to the Queensland Aboriginal Coordinating Council. I was making my first trip to the Yarrabah Reserve. I was on the public bus from Cairns. I sat next to an Aboriginal man who was a teacher. He came from Yarrabah and still had family there. I asked him if he was returning home, if he worked there, and then, if he would ever consider returning to Yarrabah to teach. He answered “No” to each question, telling me that it was “a big shame job” to return to these communities. This was my first encounter with the brain drain from Aboriginal reserve communities. How could any self-determining community survive and thrive if its best members left with no intention to return?

In the late 80s, I was making periodic visits to the Pitjantjatjara lands during the Bonner Review on the delivery of services. I needed to attend the health clinic one day, and there I met a nurse who came from Palm Island. I asked her why she preferred to work on a South Australian community rather than back home. She explained that it was very difficult to work as a professional in your own community. There are strong kinship demands which you could avoid if you worked elsewhere.

In 1991, during the consultations on the Goss government’s *Aboriginal Land Bill*, I was sitting around a camp fire outside Hopevale, and the anthropologist John Von Sturmer was joking with Noel Pearson: “I don’t know why you bother about all this land rights stuff. Within another generation all the white fellas are going to have left Cape York and you will have it to yourselves once again.”
In 1995, I made my first visit to the US. I went first to St Mary’s on the mouth of the Yukon River in Alaska. On the afternoon of my arrival, a resident took me to the cemetery and told me the story of the deaths of the three young men who had passed away in recent months. Later I appreciated the insight of her move. While respecting the confidences of the living, she was able to paint the picture of social and human misery in her community, describing the social circumstances that had contributed to these deaths. I was devastated because here was an indigenous community with their land rights, with a modicum of self-determination (more than enjoyed by communities in Australia) and a secure economic base from mining and fisheries. And still, life was dreadful.

Early this year I made my first visit to Indonesian West Papua. In places like Jayapura, Merauke and Wamena, I saw the indigenous people carrying their vegetables to town, sitting down on the footpath, and selling their produce. This was their only participation in the market. The main stores were all owned by non-indigenous persons. I reflected that in some of our Aboriginal communities, the indigenous residents do not even enjoy that degree of participation in the market.

2. Looking around us now

My NAIDOC celebrations this year commenced with attendance at the 60th birthday of an old friend in Brisbane. At the party was a table of those women who had shared the dormitory days with her at Cherbourg. They were retelling the old stories with plenty of humour and a touch of sorrow. At the end of the night, the birthday girl’s 17 year old son made a speech. He is attending one of the leading private schools in Queensland, preparing to graduate this year.

The week ended with a NAIDOC dinner in Townsville where the community has been doing it very tough in the wake of the Hurley trial following the death of Doomadgee in the Palm Island Police Station. There is now evidence from Mr Hurley that he must have fallen on top of Mr Doomadgee. On the balance of probabilities, did he deliberately elbow or knee Doomadgee in the chest? Did he wantonly use excessive force in trying to get Doomadgee to the cells? These are the unanswered questions. His acquittal following a tainted investigation, an open coronial inquiry and the recommendation of prosecution by a retired judge does not provide the answers. Sir Lawrence Street has said that Hurley’s prior, inconsistent statements about the fall “could be considered by a jury to be untruths told out of a consciousness of guilt and fear of the truth.”

Seeking answers in court, the family and their supporters will further guarantee that never again will the police engage in such a tainted investigation of a death in custody. Such an investigation serves no one’s interests any longer. It works injustice on those detained and their loved ones, and it creates havoc and public odium for the police, especially those suspected of an excessive application of force in making an arrest. There is no doubt that Mr Hurley caused the death of Mr Doomadgee. Hurley was, as his barrister told the jury, the “instrument of another young man dying and that is a cross he will carry for the rest of his life”. Mr Doomadgee’s family and loved ones are entitled to use the civil law to establish whether the deadly elbowing or kneeing by Hurley was accidental or warranted. If it
was deliberate and unwarranted, the family is entitled to compensation. Today’s *Weekend Australian* reports that Hurley is now taking legal action to set aside the coroner’s adverse references to his behaviour.

While respecting the jury’s verdict, we need to acknowledge Gracelyn Smallwood’s remark which reflected the thinking of many Aboriginal people in Townsville and Palm Island: “This has not ended the way we wanted it to, but it has been a win on our slow climb up the Everest of justice.” That slow climb will continue over many peaks in communities throughout Australia for some years to come.

3. Looking at the Howard Government’s NT proposals

The Commonwealth Parliament has now passed five bills described as the national emergency response to child sexual abuse on Aboriginal communities in the Northern Territory. It was law making at Canberra’s worst. The 600 page bills were introduced and passed through the House of Representatives in less than a day. They were subject to just a one day committee review process in the Senate. When government does not have recourse to an elected Aboriginal consultative body, when the government controls the Senate, and when there is an election in the air with an Opposition that refuses to be wedged on non-economic policy issues, there is little prospect of close parliamentary scrutiny of bold new policy proposals for Aboriginal well being emanating from Canberra.

The new laws herald three changes:

1. A comprehensive, compulsory intervention in 73 Northern Territory Aboriginal communities whose town lands will be leased by the Commonwealth for five years, with CDEP being abolished, with unemployed community members having to join mainstream job searching and job training, and with all community members having 50% of their welfare payments quarantined.
2. A $48 million funded experiment in welfare reform, education, training and employment on four Cape York communities overseen by Noel Pearson’s Cape York Institute.
3. The quarantining of welfare payments to all neglectful parents throughout Australia (regardless of race, State or Territory), ensuring better primary school attendance by 2009 and better secondary school attendance by 2010.

I will focus only on the first of these changes. A central plank of the original proposal was “compulsory health checks for all Aboriginal children to identify and treat health problems and any effects of abuse.” The initial announcement of the government initiative was so rushed that it took only the most rudimentary consultation with the medical profession to highlight how unethical, unworkable and harmful compulsory health checks would be. The government claimed to be acting urgently, without consultation with the NT government and NT Aboriginal leaders, in response to the NT report *Little Children are Sacred*. And yet the authors of that report had said, “In the first recommendation, we have specifically referred to the critical importance of governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.” The authors of the report were not invited to give evidence to the Senate committee even though they traveled to Canberra and
were in Parliament House. Today’s *Weekend Australian* reports that Minister Brough and Aboriginal leader Galarrwuy Yunupingu have reached an agreement on local land leases. Yunupingu was willing to negotiate once Brough came to him and indicated a willingness to consult.

Those concerned for the well being of abused children, but not prepared to take the Commonwealth government’s intervention on trust, asked for credible explanations why it was necessary for the Commonwealth to acquire land leases over Aboriginal community lands for five years. Everyone knew that compulsory acquisition of Aboriginal land without reason and without consultation would engender mistrust in those local Aboriginal leaders whose co-operation would be essential if any Canberra initiative were to succeed. Minister Mal Brough told Parliament:7

Our response in the Northern Territory means making important changes which simply cannot happen under current policy settings. The living conditions in some of these communities are appalling. We cannot allow the improvements that have to occur to the physical state of these places to be delayed through red tape and vested interests in this emergency period. Under normal circumstances in remote communities, just providing for the clean-up and repair of houses on the scale that we are confronted with could well take years if not decades. The children cannot wait that long. To deal with overcrowding we need to remove all the artificial barriers preventing change for the better. Without an across-the-board intervention we would only be applying a band-aid yet again to the critical situation facing Aboriginal children in the Northern Territory, when what is needed is emergency surgery.

But what does any of this mean? Mr Brough concedes that under normal circumstances, the clean up and repair of houses could take years if not decades. How will this be achieved any more quickly by taking out five year leases over all town areas of the 73 targeted Northern Territory Aboriginal communities? The Commonwealth needs carpenters, not new landlords. They need building resources, not new laws. There are only two classes of persons in Aboriginal houses – those who want their houses repaired and those who don’t. There is no need for the Commonwealth to become landlord of those who want their houses repaired. What is the point of repairing a house for people who do not want it repaired, regardless of who their landlord is? The Commonwealth has a bigger agenda than doing the “clean-up and repair of houses” for the well being of abused children. Despite the $550 million price tag for the first year of the Commonwealth’s intervention, there is no extra allocation for new Aboriginal houses.

We are now entering a new phase in Aboriginal policy. It is not just about protecting the children. Canberra has decided to try a new way of involving Aborigines in remote communities in the real economy and of delivering health, education and law and order services. The real policy work for this new era will commence in earnest in 2008, no matter which party is in power in Canberra.

Before the 1960’s, Aborigines participated in the north Australian economy without land rights, without self-determination, and without equal wages. The second phase was built upon equal wages with welfare taking up the shortfall, and land rights with remote communities and outstations being established without a real economy or access to the usual government services. With the Community Development Employment Program (CDEP), 8,000 Aborigines on these NT communities have been

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7 CPD (HofR) 7 August 2007, p. 8
paid the equivalent of the dole for working a few days a week. In this new third
phase, 2,000 of these people will be paid real wages for real work. And the rest?
They will have to seek employment and job training like other Australians. Where?
How? There will be two classes of Aborigines in remote Australia – those with jobs
and those with no prospect of employment or training in their home communities.

At the beginning of the second phase, the Commonwealth Conciliation and
Arbitration Commission was asked by the Australian Workers’ Union to grant equal
pay to Aborigines in the pastoral industry. Sir John Kerr was counsel for the
pastoralists. He submitted:8

It seems to the pastoralists to be nonsense to say that men are better off, unemployed in thousands, but
maintained in settlements in growing degrees of comfort when they could work in the real world with
growing degrees of efficiency and growing economic reward.

In its decision the Commission noted:9

(If) aborigines are to be paid the same as whites, then employers would prefer to employ whites
because they could employ far fewer with the same results. We accept the employers’ evidence that as
at present advised many of them expect to change over to white labour if aborigines are to be paid at
award rates”. We do not flinch from the results of this decision which we consider is the only proper
one to be made at this point in Australia’s history. There must be one industrial law, similarly applied to
all Australians, aboriginal or not. If any problems of native welfare whether of employees or their
dependants, arise as a result of this decision, the Commonwealth Government has made clear its
intention to deal with them.

In the 1970’s the Bjelke-Petersen government was the most eloquent in its opposition
to land rights and the development of outstations. At the time of the Aurukun and
Mornington Island standoff in 1978-9, Joh Bjelke Petersen told the Queensland
Parliament:10

My own concept of social alienation can be illustrated by actions of the Uniting Church in establishing
‘outstations’ many miles from conventional facilities such as hospital, schools, etc, where reversion to
the ‘tribal’ pattern of life was encouraged.

School attendances dropped 40% and we cannot accept or tolerate a situation in this State where the
young people of a Community are thrust into an isolated situation where, by denial of fundamental
education and health care services, and by an ideological indoctrination of Aboriginal separation and
separate development, they would by contrast with all other Queenslanders, be seriously impaired in
choosing to pursue broader horizons of life in future should they wish to do so. That Aborigines may
be socially and educationally equipped to make such a choice in life is the fundamental aim of our
Aboriginal Advancement policy.

In the last twenty years, the Aboriginal population in NT remote communities has
grown by approximately 40%. 72% of the Territory’s Aboriginal population lives on
Aboriginal land outside major towns. 54% of these communities do not have a local
health clinic and 94% are without preschools.

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8 J. Kerr, "Reflections on the Northern Territory Cattle Station Industry Award Case of 1965 and the O'Shea case
of 1969", Address to H R Nicholls Society, 28 February 1986
9 The Northern Territory Cattle Industry Case (1965) 113 CAR 651 (Cth), followed up elsewhere in Australia in
Australian Workers Union v Graziers Association of New South Wales and Others (1967) 121 CAR 454 (Cth)
10-14
Here now is the problem which has been escalating since land rights were first granted and recognised. No matter what the politicians say at a time of emergency, it is not cost effective to deliver the full panoply of human services to small remote communities. People cannot live on outstations or in very small remote communities and expect to have the full panoply of government services delivered to them. The acute problem now is that the children in such communities cannot be guaranteed protection from sexual predators by either the State or by their own community members unaided. It is not an option to have community outsiders living in small, unsustainable communities to protect the children from their own.

The real purpose of the Commonwealth’s lease acquisition proposal in the Northern Territory was revealed by Mr Brough in *The Australian* when he was speaking of the need for the Commonwealth to decide which communities would be offered 99 year leases once the first phase of the emergency intervention was complete. He said, “Some communities are going to be very challenged to remain as they are and we are going to have to have honest conversations with people...If you don’t have these basic amenities then you really don’t have a viable long-term option. If you want to live there that’s OK but not expecting the Government to somehow build a clinic and put a school in for kids or whatever it may be, and knowing there’s no jobs there.”

Once the dust settles on the present political flurry, there will have to be a negotiated process for determining the viability of outstations and small remote communities. The taxpayers will not stand for delivering the full panoply of services to every community, no matter how small. There will be a need for detailed government co-operation with groups like the Coalition of Aboriginal Organisations. Public servants can be sent to remote communities to deliver services; police can be sent to enforce the law; but there will be no long term satisfaction for anyone in commissioning outsiders to live in communities simply to monitor family obligations before quarantining welfare payments. This third phase will cost big money and will entail significant relocation of the Aboriginal population in northern Australia. Real jobs and real services don’t come cheap in remote Australia, regardless of the community’s racial identity.

### 4. Looking to the future

In the last 20 years, the number of Australians identifying in the census as Aboriginal or Torres Strait islander has doubled from 227,433 in 1986 to 455,031 in 2006. There are many factors at play. But we cannot dispute that the self identifying indigenous population is now increasingly urbanised, and for the first time we now have an Aboriginal middle class in this country. We now have more than the token handful of Aboriginal professors, doctors, lawyers, and business executives. Some middle class people do much to help those in their society less well off than themselves; some do not – they tend to look after their own immediate family and concerns.

A generation ago, remote communities were denied their land rights and self-determination. These are no longer the primary issues. In the north of Australia, there is now an abundance of Aboriginal land. Generally, relations with mining companies have improved. Miners know they need to negotiate with the local

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11 *The Australian*, 9 August 2007
Aboriginal community. Now the issue is the delivery of services to remote communities.

There is still no treaty or apology. But the next Prime Minister, whoever he is, and whatever party he is from, will apologise. Now that Victoria has a bill of rights, it is inevitable that all states and territories will have some form of statutory bill of rights in the next generation. We will become a republic in the lifetime of most of us here in this room. After this election, hopefully we will return to the more normal pattern with the government of the day not controlling the Senate. It would be great to see a return to indigenous representation in the minor parties in the Senate, amplifying the indigenous voice inside the legislative chambers of the nation.

Given the diversity of Aboriginal voices and lifestyles now in Australia, we need a national indigenous representative body which is democratic, which is sensitive to local concerns, and which has a mandate to negotiate with government. To face the big issues of the future, government needs a negotiating partner which has legitimacy with the indigenous populace of the country.

As well as finding the balance between the permissive construction of small, remote outstations and communities and the delivery of basic services to those communities, there are two other major items of unfinished business on the road ahead are:

1. The conflict between individual and collective rights
2. The need to enhance indigenous spirituality so that persons caught between the worlds of the Market and the Dreaming can make sense of the vortex in which they find themselves.

I will comment on each of these items.

1. *Individual and Collective Rights:* Even if a bill of rights is to address the collective right of indigenous communities to self-determination, individuals who are members of these communities will still need to be guaranteed the full panoply of individual rights accorded any citizen regardless of their race. From now on, individual rights will trump collective rights at the instigation of the wronged individual.

2. Without a secure economic base and without assured *cultural and spiritual identity*, we all know that Aborigines living in remote communities will continue to suffer acute alienation and despair. I have always thought that the work for land rights and self-determination was worthwhile because such laws and policies could provide the time and space for Aboriginal Australians to find and make their place in modern Australia, and on terms that are not dictated solely by the descendants of their colonisers. I have always regarded the next part of the task as the far more difficult. It is not political or national in character; it is spiritual and individual. Many indigenous Australians keep calling for a return to the sacred. The secularism, materialism and individualism of Australian society are now more the cause of the problems of identity and well being rather than the wellsprings of any solution. This spiritual challenge is something which is never spoken about publicly by our politicians or the media.
Talk of the spiritual challenge from a token white male cleric like myself has previously upset Noel Pearson who hears me as claiming “that unless Aboriginal people can find a way other than ‘secularism, materialism and individualism’ then we are buggered.” In 2004, he had cause to say:  

No matter that Frank Brennan’s siblings and nephews and nieces are successful and high-earning lawyers and professionals - this is impliedly not the way for our people because it involves materialism etc. This is the social justice lobby’s equivalent prescription to that of the unthinking sections of the green movement: indigenous people should not engage in capitalist society unless they have found solutions to all of the dilemmas and problems of materialism, individualism and secularism. But white fellas, including presumably those near and dear to Brennan, should continue to enjoy the privileges in the meantime.

In our work in Cape York Peninsula we have many strategies that superficially resemble the romantic environmental and spiritual notions about the development of Aboriginal society. We are working for environmental goals and we seek a spiritual and cultural revival of our communities. But our fundamental goal is complete and equal social and economic inclusion in the Australian mainstream and in the global economy. We do not see it as our main mission to be an environmental conscience or a custodian of spiritual values in a materialistic world.

I still think it best to leave my siblings, nephews and nieces out of my public deliberations on the relationship between spirituality and contemporary secularism, materialism and individualism. I continue to assert that without strong spiritual values, Aborigines unable to take up the limited education and work opportunities available to them will continue to find it all but impossible to live in the two worlds of Aboriginal and non-Aboriginal Australia. More recently Noel Pearson has opined, “Aboriginal law, properly understood, is not the problem, it is the solution. When I say Aboriginal law, I just do not mean the laws that prevailed in our pre-colonial classical culture; I mean our contemporary values and expectations about behaviour.” Those values and expectations which are distinctly Aboriginal will for many Aborigines continue to be informed by the spiritual relationship to land, kin and the Dreaming.

Fifty years ago, the great anthropologist W E H Stanner wrote his essay “Continuity and Change” theorising about the “quite marked disinterest the Aborigines have shown and still show in so many kinds of European activity”. He invited his non-indigenous readers to consider a few of the contrasts:

We are deeply interested in futurity. We try to foresee, forestall and control it by every means from astrology and saving to investment and insurance: the Aborigines are scarcely concerned with it at all; it is not a problem for them. Their ‘future’ differentiates itself only as a kind of extended present, whose principle is to be continuously at one with the past. This is the essence of the set of doctrines I have called the Dreaming. Our society is organised by specialised functions which cut across groups; theirs on a basis of segmentary groups….Their is a self-regulating society knowing nothing of our vast apparatus of state instrumentalities for authority, leadership and justice. Ours is a market civilisation, theirs not. Indeed there is a sense in which The Dreaming and The Market are mutually exclusive. What is the Market? In its most general sense it is a variable locus in space and time at which values – the values of anything – are re-determined as human needs make themselves felt from time to time. The Dreaming is a set of doctrines about values – the values of everything – which were determined once and for all in the past. The things of the Market – money, prices, exchange values, saving, the maintenance and building of capital – which so sharply characterise our civilisation, are precisely those

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12 N. Pearson, 2004 Castan Lecture, Monash University
13 Weekend Australian, 23 June 2007
14 W E H Stanner, White Man Got No Dreaming, ANU Press, 1979, p. 58
which the Aborigines are least able to grasp and handle. They remain incomprehensible for a long time. And they are among the foremost means of social disintegration and personal demoralisation.

Stanner concludes:15

If we tried to invent two styles of life, as unlike each other as could be, while still following the rules which are necessary if people are to live together at all, one might well end up with something like the Aboriginal and the European traditions.

It remains my opinion that it is impossible for most human beings to straddle two such different worlds without a deep, nurtured and nurturing spirituality. Those of us who have never had to straddle two such diverse worlds are not those best placed to advise how to overcome the “social disintegration and personal demoralisation”. Governments which place a deep faith in the Market and in “law and order” policies enforced by instrumentalities of the State may be well intentioned, but unless they consult and work collaboratively with local Aboriginal leaders, they will be sure to make big mistakes, wasting precious resources and forfeiting trust. Now that land rights are assured in the north of Australia, it is time for a negotiated arrangement assuring service delivery to sustainable communities, involving all levels of government and indigenous organisations able to strike a balance between living on country and living securely and productively for the future.

Conclusion

Three weeks ago, I was privileged to attend the funeral of a prominent Aboriginal artist (Paddy Bedford) at Bow River station in the East Kimberley. That old man’s work now adorns the new Musée du Quai Branly in Paris. One of his relatives wept by his coffin and proclaimed, “With his death, there are no more old people behind us.” The local community art adviser, Tony Oliver, introduced Sir William Deane who gave a eulogy at the funeral. He described the meeting of these two noble, humble men some years before at Wyndham when Sir William was Governor-General. These two men had embraced as brothers, holding hands while the old man observed that though Sir William was a white man, they were brothers. In his eulogy, Sir William recalled the story of the massacres which the old man had told him about. During our culture wars, some conservative commentators have been critical of Sir William for peddling a black armband view of history describing massacres in terms not fully consistent with the written historical accounts. Unlike his critics, Sir William had actually heard the oral history of those like the old man who knew what they were talking about.

The New South Wales governor and psychiatrist Marie Bashir wrote a remembrance of the old man: “What shall always remain in my memory about this noble man was his great dignity and spiritual strength. There was also his ability to make the best of things despite adversity. In this way, his life became remarkable. …My life has been enriched by knowing him.” The national trauma occasioned by populist policies will be minimised when our laws and practices reflect the reverence for the other displayed by Sir William Deane and Her Excellency Marie Bashir. I commend the Australasian Society for Traumatic Stress Studies for your willingness to investigate

15 Ibid., 59
professionally the consequences and responses to trauma in community settings even in fields charged with political repercussions at election time.