

# Submission by the Yothu Yindi Foundation to the Productivity Commission's Indigenous Evaluation Strategy

## Executive Summary

It is the view of the Yothu Yindi Foundation (YYF) that the system of government and administration in the Northern Territory is close to breaking point and is likely to have already reached a point of no return.

The system in the Territory is so out of order that it has turned in upon itself such that the low socio-economic conditions of remote Aboriginal Australia have become the means by which the system maintains itself – the higher the disadvantage, the higher the payments to agencies.

Our submission provides a series of recommendations aimed at root and branch reform of this current system that now commodifies the disadvantage of Aboriginal people in favour of government, its agencies and service providers.

Of importance is our submission that the Northern Territory is a special case where poverty in remote areas has become entrenched and special measures are required to break the cycle.

Fixing this broken system is also essential to the future of the Northern Territory as a whole. At some point the disadvantage in the remote areas will overwhelm the administrative centres of Darwin and Alice Springs and, already, that poverty is preventing productive development of the people and economies of those regions, whilst causing enormous hardship and suffering to individuals and their families.

## A. Introduction

YYF represents Yolngu people in North East Arnhem Land in relation to the social, cultural, economic and political life of North East Arnhem Land.

YYF has long argued that the extreme disadvantage faced by Aboriginal people who live in remote & regional areas can be understood by looking to the underspending, misspending, administrative failures and lack of infrastructure spending by Governments in relation to the actual needs of the people who live in these regions. The policy failures & resultant social and economic cost brought about by these failures maintain the disadvantage of remote Aboriginal people to the advantage of those tending to it – in other words, the greater the disadvantage, the bigger the payment to treasury.

There has never been any serious evaluation of these failures, and very rarely, if ever, are there penalties for failure. In fact, there is a perverse reward for maintaining disadvantage - failure to improve conditions results in increased disadvantage and therefore validates increased payments to programs run and administered by government or non-government agencies. The flow on effects of this system whilst *disadvantaging* Aboriginal people in remote places *advantages* non-Aboriginal people who make up more than 90% of employees of government and non-government agencies and

who almost exclusively live in Canberra, Darwin, Katherine or Alice Springs. One of the best indicators<sup>1</sup> of this is the fact that households in Darwin have the highest disposable income in the nation (Darwin has an average of \$3075 per week, per household, whilst second placed Sydney has \$2867), whilst remote Aboriginal people have household incomes that are amongst the lowest.<sup>2</sup> Darwin households have increased total wages by \$18,706 in the past census period years. Recent Australian Bureau of Statistics census data shows that incomes for Aboriginal households have fallen in the same period such that 50% of the Aboriginal population in the Territory is classified as living in income poverty.<sup>3</sup>

YYF's conclusion is that the Northern Territory and Commonwealth government, their agencies and non-government service providers have in effect commodified the disadvantage of Aboriginal people in remote places.

In support of our position YYF has analysed spending patterns and formulas through careful review of Commonwealth Grants Commission data, Northern Territory & Federal budget reports and audits: time & time again it can be shown that the billions of dollars of untied GST funds sent to State and Territory governments, and the billions of dollars of supposedly beneficial programs intended to address Aboriginal needs fail in their purpose; and that neither the Commonwealth nor the States and Territories have the will power or desire to change.<sup>4</sup>

Our assertions were largely summarised in YYF's submission to the Productivity Commissions Inquiry into Horizontal Fiscal Equalisation in 2017/18. That submission is at **Attachment 1**.

We repeat those assertions here.

This submission and its Recommendations are based on the fact that the issues that face the Northern Territory are unique and stand outside the frameworks which many government decision makers are familiar with. Special measures are required to fix this administrative system that entrenches disadvantage and poverty.

This system that operates in the Territory has been put in place over 40 years and now operates to the extreme detriment of Aboriginal people in remote and regional Northern Territory. As it fails these citizens of the Northern Territory it fails the whole of the Northern Territory as, inevitably, the system will reach a breaking point where the disadvantage and its implications overwhelms the rest of the system. That breaking point is fast approaching and we have likely passed a point of no return if reform is not made.

The system that we analyse in this submission resists internal evaluation and we recommend to the Productivity Commission that it look primarily to structural reform.

With proper structural reform then standard evaluation frameworks would be put in place – at the present time any evaluation framework would simply be controlled by the agencies that currently operate and would have little or no impact upon current practices. It is important that the Productivity

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<sup>1</sup> Another indicator is the life expectancy of Aboriginal people in the regions. In the North East Arnhem Region the life expectancy of an Aboriginal person is 53.4 years for men and 57.6 for women (source: Miwatj Health). The average life expectancy in Australia in 2015 – 2017 for men is 84.7 for men and 87.3 for women (Australian Bureau of Statistics).

<sup>2</sup> Australian Bureau of Statistics, Survey of Income and Housing 2016 – 17

<sup>3</sup> The Centre for Aboriginal Economic Policy Research analysis of census data finds that more than 50% of Aboriginal population is in income poverty.

<sup>4</sup> At **Attachment 5** is copy of a speech given by Mr Barry Hansen to the 2019 Garma Key Forum on 5 August 2019 summarising his work in this area over the past decade.

Commission does not make recommendation that act as window dressing and enable the current system to continue in operation.

### *The Role of the Commonwealth*

Through the *Northern Territory (Self Government) Act 1978*, the Commonwealth has primary responsibility for the fact that Aboriginal people in the Northern Territory endure sub-standard living conditions, poor services and denial of opportunities that are available to other Australians.<sup>5</sup>

The system that is in place is ultimately controlled by the Commonwealth and operates in accordance with Commonwealth dictates.

The Commonwealth has the power to control the way in which the Northern Territory government makes laws and administers those laws and has done so in other areas where the interests of the Commonwealth, corporations or citizens of the Northern Territory have been threatened – for example, in relation to uranium mining<sup>6</sup>, or in the regulation of off-shore petroleum activities. The Commonwealth has intervened to overturn Northern Territory legislation when that Act offended the moral conscience of the Australian Parliament on the subject of euthanasia<sup>7</sup> and in 2007 the Commonwealth intervened in the affairs of the Northern Territory and its Aboriginal citizens by imposing discriminatory measures applicable only to remote regions and Aboriginal people under the Northern Territory Emergency Response<sup>8</sup>. The Commonwealth has continued the NTER adapting it to a program known as Stronger Futures<sup>9</sup> and the *Aboriginal Land Rights (Northern Territory) Act 1976* is legislation that provides for land rights for Aboriginal people in the Northern Territory and applies to about 50% of the land mass and 85% of the coast-line of the Northern Territory.

The Commonwealth is legally responsible for the failures of governance in the Northern Territory government as it has the power to regulate or control the way in which the system of government in the Northern Territory is administered.

Since Self-Government the Commonwealth has stood by whilst the Northern Territory has persistently failed to address or take steps to improve the unacceptable living conditions imposed upon Aboriginal people in remote and regional parts of the Northern Territory. Further:

- The Commonwealth's own agencies have failed in their administration of policies and programmes affecting Aboriginal people in the Northern Territory; and
- The Commonwealth has failed to provide the necessary investment to ensure that the Northern Territory has the capacity to develop infrastructure and provide good government to Aboriginal people who live in remote or regional areas.

As the Commonwealth is ultimately responsible for the current state of affairs in the Northern Territory we call upon the Productivity Commission to advise the Commonwealth that minor

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<sup>5</sup> Section 6 of the *Northern Territory (Self Government) Act 1978*, the Commonwealth mandates that citizens of the Northern Territory should be provided with "laws for the peace, order and good government" which has not happened for Aboriginal people.

<sup>6</sup> See: *Atomic Energy Act (Cth) 1953* – in 2005 the Commonwealth removed regulatory powers over uranium exploration and mining from the Northern Territory government.

<sup>7</sup> Section 50A was added to the *Northern Territory (Self-Government) Act 1978* to prohibit the Northern Territory from making laws in respect of euthanasia.

<sup>8</sup> *Northern Territory National Emergency Response Act 2007*, see Section 5 for Objects of the Act.

<sup>9</sup> *Stronger Futures in the Northern Territory Act 2012 (Cth)*.

adjustments to evaluation practice, as foreshadowed in the Issues Paper will fail, and that what is required is structural change to the way government services are provided for and on behalf of Aboriginal people in the Northern Territory.

The Commonwealth has recognised that the Department of Prime Minister & Cabinet acted ineffectively in its obligation to Aboriginal people through its failed implementation of the Indigenous Advancement Strategy<sup>10</sup> and other programs and has made structural reform to correct the situation by establishing the National Indigenous Australians Agency<sup>11</sup>. It should take a similar approach to the identified failures in the administration of the Northern Territory.

#### **RECOMMENDATION 1**

**All non-GST revenue that is spent by the Commonwealth in relation to the lives of Aboriginal people in the Northern Territory to be managed in the first instance by the National Indigenous Australians Agency.**

**This includes the tied payments that are currently paid by the Commonwealth to the Territory for housing, education and social services, approximating \$1.3 billion a year. The NIAA will be responsible for the review and evaluation of expenditure by the Northern Territory and the outcomes of that expenditure.**

The National Indigenous Australians Agency should decide the terms upon which the funds are provided to service delivery agencies whether a Northern Territory government agency or otherwise. Similarly the NIAA will then be responsible for the audit and evaluation of those funds against standard evaluation formula. The NIAA will also be responsible for taking action for non-compliance with grant agreements, or non-performance in terms of delivery of grant objectives.

#### *GST Revenue*

In November 2017 YYF made a submission to the Productivity Commission concerning the GST revenue sent to the Northern Territory from the Commonwealth, which is at **Attachment 1**. We repeat what was said in that submission and note that no substantive change was made by the Commonwealth following the review, other than to preference Western Australia over other States and Territories.<sup>12</sup> The Territory has received some relief from the Commonwealth for the reduction in its GST but this simply shows the inadequacy of the Horizontal Fiscal Equalisation (**HFE**) formula where expenditure patterns and socio-economic status in affluent eastern States impact upon the averages (or relativities) that apply across the nation.

The GST formula needs to directly pick up the socio-economic disadvantage of Aboriginal people in remote areas of the Territory and then ensure that the funds are spent directly on that socio-economic

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<sup>10</sup> Auditor-General, Australian National Audit Office Report No.35 2016-17

<sup>11</sup> The National Indigenous Australians Agency is an Executive Agency of the Commonwealth's Department of Prime Minister and Cabinet, responsible to the Minister for Indigenous Australians.

<sup>12</sup> There was a minor change made to relativities in relation to persons identifying as Aboriginal as the increased identification of people in non-remote areas as Aboriginal has reduced the Territory's share of the payments based on Aboriginality under the CGC formula. The CGC made changes to better reflect socio-economic disadvantage.

need. At the present time neither is happening, to the detriment of Aboriginal people who suffer extreme socio-economic need.

It remains our view that the GST Revenue that is sent to the Northern Territory should be tied to need. That is, the calculations that underpin the revenue should be clearly stated so that the additional funds that are sent on the basis of Aboriginal disadvantage can be identified and then spent on that disadvantage rather than diverted to other needs.

## RECOMMENDATION 2

**That the Productivity Commission advise the Commonwealth of the inequities of the Commonwealth Grants Commission's system of Horizontal Fiscal Equalisation as it applies to the Northern Territory advising that:**

- a. The Commonwealth Grants Commission GST formula fails to properly recognise the needs of Aboriginal people experiencing high socio-economic disadvantage by its process of equalisation.**
- b. A new system should be developed that correctly identifies the socio-economic need of remote regions and ties those funds so that the money is spent directly on addressing that need.**

We emphasise that since November 2017 the Northern Territory's position in relation to GST revenue has worsened, thereby placing extreme stress on the Northern Territory's finances leading to the publication of a high-level Plan for Budget Repair<sup>13</sup> (the **Langoulant Report**). Whilst this has not stopped wages rising in Darwin and other urban centres, there is no doubt that the reduction of GST funding will impact upon the funding that is made available to remote areas whilst ever GST funding is untied and subject to discretionary decisions made by the NT Government.

The Langoulant Report is at **Attachment 2**.

The Langoulant Report is difficult reading for Aboriginal people who live in remote regions of the NT as it lays bare 40 years of maladministration in the Northern Territory. It says that the NT is in a structural deficit that has been *evident for more than a decade*.<sup>14</sup> It points to failures of policy and administration that confirm Aboriginal people's advocacy for some time now. It says that the NT must reduce spending by \$11.2B over 10 years and that if it does not it will have an interest expenses of \$2B a year by 2030. It points out that there are no internal management systems and that Departments rely on spread-sheets for budgeting purposes. There is no commercial asset management framework and no government services pricing framework and the Territory lacks a robust whole of government program evaluation framework.

The Langoulant Report urges structural change saying:

*The package of reforms proposed in this report represents the largest structural and cultural change to the Northern Territory Public Service since self-government in 1978 and will require*

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<sup>13</sup> Fiscal Strategy Panel (Langoulant, Silver, Graham and Ryan) *A Plan for Budget Repair*, March 2019.

<sup>14</sup> Chairman's Foreword.

*a sustained commitment by all stakeholders and decision-makers to be effective. Fundamentally agencies must operate within their budgets...*<sup>15</sup>

Almost 9 months after Mr Langoulant's first interim report there is no evidence that this structural or cultural change has taken place.

Rather, and for example, in the last 6 weeks alone the Northern Territory government has announced:

- A new grandstand for the Fannie Bay Racecourse costing \$12M<sup>16</sup>;
- An upgrade to the Cullen Bay precinct, one of the wealthiest in the Northern Territory, costing \$10M<sup>17</sup>; and
- A Ship Lift development costing \$400M which has been promised without any cost benefit analysis and without Commonwealth support.<sup>18</sup>

At the same time the NT government has failed to adopt the key recommendations of the Langoulant Report concerning savings and cuts with the NTPS and appears incapable of making the hard disciplined decisions required to address the situation. A minor reform being a proposed executive wages freeze has struggled to be implemented.

We note an additional matter of importance to this Productivity Commission inquiry. That is the finding by the Langoulant Report that 99% of funds spent by Northern Territory government agencies is unevaluated. In this respect we note the Langoulant Report found that:

*...up to 99% of Territory government spending is unscrutinised outside of any internal agency reviews. As a result almost all expenditure is simply rolled over from one year to another with little external assessment of effectiveness, efficiency and alignment to government priorities.*<sup>19</sup>

The bulk of these funds come from Commonwealth government sources with 47% of Territory revenue being in the form of untied GST funds and 22% in tied Commonwealth grants totalling \$4.2 billion. 31% of Territory revenue is from own-source revenue.<sup>20</sup>

### **RECOMMENDATION 3**

**Due to systemic failures in the Northern Territory we recommend that the National Indigenous Australians Agency have its powers expanded so that it can evaluate the GST revenue received by the Northern Territory.**

**These additional powers should include the power to control and direct any additional revenue provided by the Commonwealth to (a) balance the inequities in the GST formula, as pointed out by Mr Langoulant at p.32-33 of his report; (b) address the backlog in need; and (c) address the infrastructure backlog in the NT.**

<sup>15</sup> At p.64.

<sup>16</sup> "New \$12 million grandstand to boost Darwin horse racing" *NT News*, 4 July 2019.

<sup>17</sup> "Greenery, accessibility part of plans for a revitalised Cullen Bay" *NT News*, 7 August 2019

<sup>18</sup> "Territory Government's \$400 million pledge for ship lift despite NAIF application" *ABC On-Line*, 9 August 2019.

<sup>19</sup> At p.20.

<sup>20</sup> From Department of Treasury NT, Background Brief, 2017. The Langoulant Report states that untied GST revenue in 2017 was \$3.2 billion. It is likely that own source revenue has declined since these figures were produced by Treasury due to the down turn in the property market. Also of importance is that three of the major drivers of own source revenue – the Ranger Uranium Mine, the Gove Bauxite Mine and the Groote Eylandt Manganese Mine are either closed or heading toward the end of their life spans.

**In other words, any funds sent by the Commonwealth to bail out the Northern Territory, or address the infrastructure backlog, should not be sent to NT Treasury but should be directed through the National Indigenous Australians Agency, or a similar Commonwealth agency.**

**Note: if additional funds were sent direct to NT Treasury then GST revenue would be further reduced by the principle of Horizontal Fiscal Equalisation: see p.23 Langoulant Report.**

**Note: when established the new structure must be informed by appropriate Aboriginal community leaders.**

We emphasise that *not* transferring the funds directly to the Northern Territory is important not just for evaluation purposes but due to the fact that under the GST formula any additional investment by the Commonwealth in the NT to address these deficits must be ***excluded*** from the Commonwealth Grants Commission process ***to avoid offsetting further reduction in the NT's GST revenues.***<sup>21</sup>

#### **RECOMMENDATION 4**

**The Northern Territory requires a multi-billion dollar Infrastructure Fund to bring basic economic and municipal infrastructure up to national standards.**

**The Commonwealth should either use the National Indigenous Australians Agency or a similar Commonwealth agency as this Infrastructure Fund.**

**The Infrastructure Fund should have as its focus:**

- 1. The upgrade to national standards of the arterial road network that links the 73 major Aboriginal communities and their regions to established arterial routes, including the Central Arnhem Highway, the Daly River-Port Keats Highway, the Tanami Highway, the Buntine Highway, the Plenty Highway, the Sandover Highway, the Mereenie Loop Road and similar.**
- 2. The upgrade to national standards of the municipal and civic infrastructure in the 73 prescribed Aboriginal townships in the Northern Territory, including power, water, sewerage, roads, kerbs, gutters; sporting facilities, libraries, community centres and play grounds; parks and gardens infrastructure.**

We understand that any government of the Territory will oppose any move to reduce its control over the GST discretionary funds and that this submission will be fiercely resisted by the Northern Territory government which will seek to protect its control of funds and its employment of over 20,500 public servants (of which over 11,000 are employed in general purpose administrative or clerical jobs: see Langoulant Report p.99) and the standard of living which these employees enjoy (see above). We understand that in any event electoral considerations mean that the NT will be unable to implement the required reforms due to the electoral consequences that would flow.

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<sup>21</sup> At p.23.

We also acknowledge that the Commonwealth will be hesitant about implementing such root and branch reform due to the federal principles that operate in the Australian political system that prefers State and Territory government providing services.

We submit that the Northern Territory is a special case, that the *Self Government Act* provides the power to act, and that Aboriginal lives and future well-being are more important than the above considerations.

We submit that if its expanded role is properly designed and implemented the workings of the National Indigenous Australians Agency, which is a Commonwealth agency subject to *Public Service Act* and *PGPA Act* controls, would not offend those principles as its key role will be to ensure that the funds are spent effectively by Northern Territory agencies.

The NIAA will also provide the sought after mechanism for the Commonwealth to provide much needed funding to the Northern Territory so that the funds can be properly targeted and will not lead to a further reduction in GST revenues.

We submit that an Infrastructure Fund is not just required by the remote regions of the Territory but to the whole of the Territory to stabilise living conditions and to create the environment for productive development of the economies of those regions. The INPEX project has shown that mega-projects will not ground the future economy of the Territory but that what is required is whole-of-Territory development, which in turn requires effective infrastructure.

We submit that in the case of the Northern Territory the federal system in operation has proven incapable of providing for “the peace, order and good government of the Territory”.

### *Summary*

The primary focus of the Productivity Commission current referral is to ensure that there is a principles-based framework for the evaluation of policies and programs affecting Aboriginal people.

In the Northern Territory a new evaluation framework would simply be window-dressing. A new evaluation framework imposed on agencies in the Northern Territory would simply cause more problems and create more red (or *beige*) tape. What is required is structural reform to the way in which the Self Government operates in the Northern Territory.

In this Submission we use three case studies to emphasise our argument that immediate structural reform is required. We then present a more detailed proposal for that structural reform.

## **B. Three Case Studies**

There are three case studies YYF wish to bring to the attention of the Productivity Commission:

- The first being the way in which the Northern Territory administers itself and has forced itself into structural deficit whilst, on the one hand, increasing incomes in Darwin and yet, on the other hand, increasing Aboriginal disadvantage.
- The second being the way in which the Commonwealth operated the Indigenous Advancement Strategy as reported on by the Australian National Audit office, and now acted on by the Minister for Indigenous Australians. Both studies shine a light on the way in which



the bulk of the funds intended to address Aboriginal disadvantage in the Northern Territory are spent.

- The third case study concerns the failure of Commonwealth and Territory governments over more than a decade to deliver an Aged Care facility to North East Arnhem Land.

As a package, these case studies draw a direct line to the continuing disadvantage and impoverishment experienced by Aboriginal people in remote regions of the Northern Territory and the failures of the Australian government to successfully meet the Closing the Gap targets. They also indicate the way in which governments and their agencies have commodified Aboriginal disadvantage.

When the three case studies below are considered, we trust the Productivity Commission will see the futility of making recommendations that window-dress the situation with another level of “evaluation policy” or that reform can be generated by “building evaluation into policy and program design” without government making structural reform to the current system. The current system, as the case studies indicate, is all-but immune from evaluation policy.

### **CASE STUDY 1: The Northern Territory Government**

The Langoulant Report was commissioned as a result of a budget crisis in the Northern Territory and is an impartial exercise by a highly respected Australian economist. It is an indictment on the way in which the Northern Territory has been administered since self-government. The Report exposes an array of historical errors, inconsistencies, duplications, maladministration and failures of governance.

For example it says:

- The NT Budget is in structural deficit. What the NT receives is less than what it spends and this is a set piece that is not subject to year on year change (p.4) such that “the Territory’s finances are now in the unsustainable position of needing borrowings to pay for recurrent activities including interest expenses” (p.31).
- On its current trajectory the NT will by 2030 (in 11 years’ time) have an interest bill of \$2 billion a year; if the NT population remains at 245,000 that is about \$8,000 per person per year in interest alone (p.4);
- The NT Public Service requires structural reform that is unprecedented across the States and Territories. For example:
  - NT Departments are unable to stay within annual budgets and rely annually on variations outside the normal budget processes;
  - Between 2011/12 and 2017/18 expenditure increased by 5% per annum whilst budgeted to *reduce* by 0.9% per annum, with efficiency dividends of 3% forecast that were not achieved. This recurrent growth in spending “has become embedded”. (at 33).
  - NT Departments self-evaluate and there is no central reporting mechanism. *99% of government spending is unscrutinised outside of any internal agency reviews and as a result almost all expenditure is simply rolled over from one year to the next with little assessment of effectiveness, efficiency, and alignment to government programs.* (pp. 20 and 113).
  - There is no single management system for managing budgets and some agencies rely on *unsophisticated spread-sheets, or manual monthly cash-flow reports* (p.24).

- There is a culture of out-of-control public service employee costs and executive costs – the report notes that most employees are paid over the normal wages framework established in other Australian jurisdictions and that as a result public service wages are now de-linked from private sector wages; there are **970 different allowances** paid to NTPS employees; there are executives who do the same tasks but one group is paid about \$60,000 more per annum than the other; annual leave is standard at 6 weeks and many NTPS workers have 7 weeks annual leave; there are 9,515 front line NTPS employees and 11,025 who are in the “General” or administrative category.
- NT Departments, Local Government and Commonwealth and community organisations are *not sufficiently co-ordinated in delivering services, particularly in remote communities, resulting in duplication and inefficiency.* (p.21).

YYF has lamented that Aboriginal people have been “prisoners to this maladministration and incompetence” and that it has a direct impact upon the lives of Aboriginal people.<sup>22</sup>

We have noted that a similar report by a regulator would be grounds for any trading company to be placed in administration. A director in an Aboriginal Corporation established under the *Companies (Aboriginal & Torres Strait Islanders) Act* would almost certainly be investigated and at risk of prosecution under the terms of that legislation.

Nevertheless the NT Government has taken no firm steps to deal with the matters raised in the Langoulant Report.

Here is a practical example of our frustration: since 2006 the NT Government has spent hundreds of millions of dollars, presumably from its untied GST payments, creating a Waterfront precinct in Darwin, which in large part has been turned over to property developers and business. In addition to the sunk costs, every year the NT Government grants up to \$20M to the Darwin Waterfront Corporation to run the conference centre, the tourist facilities (a wave pool & an artificial beach) and events like fireworks, concerts and driverless cars. Forgetting the hundreds of millions in capital costs, that's an annual payment equivalent to 40 remote houses a year so local Darwinians and people visiting Darwin can find entertainment.

Still we defend the Northern Territory on other fronts. Other States have benefitted from 150 years of continual expenditure on roads, bridges, railways, airports, municipal services, schools, hospitals, police & military institutions & the like - the infrastructure of regional Victoria or NSW looks nothing like the regional infrastructure of the NT. In 1978 the Commonwealth walked away from the NT handing an inexperienced Darwin-based administration an infrastructure backlog that can never be met under the current system's principle of Horizontal Fiscal Equalisation (**HFE**). HFE means keeping you "as you are." HFE has failed to operate effectively for remote Aboriginal people and of late is creating outcomes which are contrary to the stated intention of HFE and which disadvantage the Northern Territory and remote Aboriginal people specifically.

For example HFE “relativities” provide that as other States improve their socio-economic conditions that improvement is included in the average, which means a reduction in the average need across the nation, therefore reducing the pool of funds for specific areas. Examples are given by Mr Langoulant at p.32 of his report:

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<sup>22</sup> Denise Bowden, Speech to Garma Key Forum, 3 August 2019.

*GST relativities are designed to enable each state and territory to provide the national average level of government services, taking into consideration their population and geographic considerations, ability to raise own-source revenue and contributions from the Commonwealth government. They are **not** designed to close the gap between Aboriginal and non-Aboriginal disadvantage. (emphasis in original).*

The Territory receives high relativities not because extra money is coming to the Territory to close the gap but because:

- It costs more to deliver services in the Territory due to isolation, remoteness and sparseness
- Territorians on average are higher users of government services due to low socio-economic status of many Territorians, particularly in remote communities;
- The Territory has a below average ability to generate own-source revenue to off-set costs of service provision.

As mentioned HFE leaves the disadvantage of the Territory's remote Aboriginal citizens in a holding pattern, with conditions actually worsening due to the structural and administration issues mentioned above.

Astoundingly, HFE now means that deficits in other States (such as the issues with urban infrastructure) feed through to the Territory in higher relativity payments such as in the area of urban infrastructure when the Territory does not have an urban infrastructure problem. Rather, the Territory has a remote infrastructure problem. However, due to the spending patterns in major south eastern States declining in areas such as rural and local roads and utilities, the Territory is also assumed to need less GST for this purpose.

As Mr Langoulant says:

*Expenditure patterns in the larger states, which drive the calculation of average policy, have shifted towards urban activities (for example, urban transport investment), where the Territory has below average need and away from remote activities (for example rural and remote roads) where the Territory has above average need.<sup>23</sup>*

In other words the payments to the Territory under the HFE formula for remote infrastructure are down due to expenditure patterns in other States and Territories: Sydney and Melbourne get new sports stadiums and arterial freeways and the remote Northern Territory suffers under the way the current system works.

To make things worse, the Territory has followed the south eastern states and over the last decade and spent up to \$200M on upgrades to the Tiger Brennan Highway which connects Palmerston to Darwin. The roads to Wadeye and Nhulunbuy, which are critical economic infrastructure, remain impassable for many months of the year with the resultant drag on productivity<sup>24</sup> and the resultant increase in the costs of living for the residents of those regions.<sup>25</sup> This is an area where the Territory government should have diverted its untied funds to remote needs but did not do so.

So: the current funding formula is designed to leave the NT as it was in 1978 – the infrastructure deficit was there in 1978 and it remains there today and it is financially impossible for the NT to address this backlog – even if the Territory did away with its urban spending habits, the HFE simply maintains the

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<sup>23</sup> Emphasis added.

<sup>24</sup> Regional airfares, if not travelling via road to Nhulunbuy ex-Darwin now cost travellers up to \$800 one way.

<sup>25</sup> See also Garma Festival 2019 booklet at pp. 15 – 16.

status quo, or works against the Territory as south eastern states ramp up spending on urban infrastructure.

### *Summary*

At p 32 and 33 of the Langoulant Report a number of factors are identified that indicate that the structural deficit facing the Northern Territory will worsen due to the operation of the GST formula. For instance, Territory's relativity average has reduced from \$5.12 per capita in 2016 to \$4.26 in 2018 and is destined to fall further when the next four year cycle starts. Meanwhile over-spending of budgets in agencies and the focus on urban priorities continues.

YF's is concerned that the Northern Territory is now trapped in a cycle that will see diminished capacity and an already failing system will fail further, with the result that disadvantage in Aboriginal people in remote areas increases further. In the next 5 – 10 years the system as a whole will reach a breaking point and it is likely we have already passed a point of no return.

No evaluation framework will resolve these issues. The system needs to be subject to root and branch reform and an evaluation framework then properly applied to a new administrative structure.

A new way of doing business is required.

We repeat Recommendations 2, 3 & 4 and say that any bail out funds, or additional infrastructure funds should not be sent to NT Treasury but by way of a system controlled by the Commonwealth in consultation with Aboriginal people, and worked in conjunction with Territory agencies. We repeat our submission from November 2017 that the system of HFE that guides GST revenue must be reformed to provide for the needs of remote Aboriginal people in the Northern Territory.

### **CASE STUDY 2: The Department of Prime Minister & Cabinet - Indigenous Advancement Strategy**

Until recently the Commonwealth has turned a blind eye to its own failures in relation to policies and programs affecting Aboriginal people in the Northern Territory, with the best example being the Auditor-General's Australian National Audit Office Report No.35 2016-17 in relation to the Indigenous Advancement Strategy (see further analysis below). As with the Langoulant Plan for Budget Repair<sup>26</sup> (**Langoulant Report**) ANAO Report No.35 2016-17 (which is **Attachment 3**) is mandatory reading as it provides a window into failures in administration that would be subject to harsh and immediate sanctions if it were found in either the corporate world, or in an Aboriginal corporation.

In its Auditor-General's ANAO Report No.35 2016-17 in relation to the Indigenous Advancement Strategy the ANAO noted a series of extraordinary failures of the Department including:

- The Department did not effectively implement the Strategy and could give limited assurances to the ANAO that its negotiations with providers were fair and transparent<sup>27</sup>;
- The Department's grants administration processes fell short of the standard required to manage a billion dollars of Commonwealth resources<sup>28</sup>;

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<sup>26</sup> Fiscal Strategy Panel (Langoulant, Silver, Graham and Ryan) *A Plan for Budget Repair*, March 2019.

<sup>27</sup> In relation to probity issues the ANAO found that the Department retained inadequate records of information provided to the Minister for decisions; did not maintain adequate records of grants approved by the Minister meaning the terms of Ministerial approvals were unclear which conflicts with S 71 of the *PGPA Act*.

<sup>28</sup> The ANAO found that PM&C moved funds totalling \$6.3M between separate projects for an organisation without the approval of the Department's executive or the Minister; that the Department reallocated funding

- The Department did not:
  - Address or manage applications in a manner that was consistent with the guidelines and the Departments public statements<sup>29</sup>;
  - Meet some of its obligations under the *Commonwealth Grants Rules and Guidelines* and the *Public Governance Performance and Accountability Act 2013*<sup>30</sup>;
  - Keep records of key decisions<sup>31</sup>;
  - Establish performance targets for all funded projects.<sup>32</sup>

The Commonwealth responded to these failures by accepting that further internal evaluation would be ineffective and established a new Executive Agency to manage the Indigenous Advancement Strategy funds and other Commonwealth funds dedicated to the economic, social and cultural needs of Aboriginal and Islander people. The new Executive Agency is the above mentioned National Indigenous Australians Agency and its core functions are as follows:

- i. to lead and coordinate Commonwealth policy development, program design and implementation and service delivery for Aboriginal and Torres Strait Islander people;
- ii. to provide advice to the Prime Minister and the Minister for Indigenous Australians on whole-of-government priorities for Aboriginal and Torres Strait Islander people;
- iii. to lead and coordinate the development and implementation of Australia's Closing the Gap targets in partnership with Indigenous Australians;
- iv. to lead Commonwealth activities to promote reconciliation;
- v. to build and maintain effective partnerships with Aboriginal and Torres Strait Islander people, state and territory governments and other relevant stakeholders to inform whole-of-government priorities for Aboriginal and Torres Strait Islander people, and enable policies, programs and services to be tailored to the unique needs of communities;
- vi. to design, consult on and coordinate the delivery of community development employment projects;
- vii. to analyse and monitor the effectiveness of programs and services for Aboriginal and Torres Strait Islander people, including programs and services delivered by bodies other than the Agency;
- viii. to coordinate Indigenous portfolio agencies and advance a whole-of-government approach to improving the lives of Aboriginal and Torres Strait Islander people; and
- ix. to undertake other tasks the Prime Minister and the Minister require from time to time.

These functions are well suited to the recommendations made by YYF in this submission.

The Commonwealth recognised that the Department of Prime Minister & Cabinet had failed in its obligation to Aboriginal people through its implementation of the Indigenous Advancement Strategy and made structural reform to correct these errors. We support the Commonwealth and the Minister for Indigenous Australians in this reform initiative. We note that the new Agency is subject to the

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from projects approved by the Minister to 92 projects that were not approved: see pp.52 & 53 ANAO report No.35 2016-17.

<sup>29</sup> ANAO identified 300 missing applications that the Department had received but not registered for assessment (at p.47) and that the Department created false ABN numbers for 20 applicants so that the application could be assessed (at p.47).

<sup>30</sup> See specific reference at p.49 ANAO Report No.35 2016-17.

<sup>31</sup> The ANAO noted at 4.41 of its report that it was provided with two different spreadsheets that recorded funding recommendations and that neither spread sheet matched with the value of funding recommendations recorded on the brief signed by the funding Committee Chair to recommend approvals to the Minister.

<sup>32</sup> See p.8 ANAO Report No.35 2016-17.

*Public Service Act*, the *PGPA Act* and established evaluation frameworks (it already has an Evaluation Committee) and that it has the necessary functions to operate as recommended in this submission.

### **CASE STUDY 3. An Aged Care Facility in East Arnhem Land?**

For decades an aged care facility and service has been a high priority in East Arnhem Land.

Today, despite numerous promises, a major announcement in 2008, a visit by the Prime Minister of Australia in September 2014 (when the issue was raised directly), numerous consultations by a number of Departments and both Governments, the Aged Care facility has still not started construction.

Due to the passing of responsibility between governments and agencies it is difficult to determine who is precisely responsible for this fiasco that has directly impacted the lives of many senior Yolngu elders. YYF has received different advice from different agencies, the latest being advice from the Department of Health that construction can commence in 2020 and practical completion is anticipated for mid-late 2021. Other information indicates that this may not be the case.

In 2015 the matter was reported on by the ABC.

[https://www.abc.net.au/news/2015-05-27/government-looks-to-rectify-aged-care-gap-in-nhulunbuy/6490962?WT.ac=localnews\\_darwin](https://www.abc.net.au/news/2015-05-27/government-looks-to-rectify-aged-care-gap-in-nhulunbuy/6490962?WT.ac=localnews_darwin)

It has subsequently been reported on in 2019:

<https://www.abc.net.au/news/2019-07-07/royal-commission-aged-care-new-facility-east-arnhem-land-nt/11285462>

On 9 August 2019 YYF received a letter from the Department of Health providing some information about the process and saying that the practical completion should be by mid to late 2021 and that “extensive community consultation to date will continue”.

We repeat that this issue was raised directly by YYF (and by two senior Yolngu ladies who are now deceased) as the main priority for elderly people in the East Arnhem Region with Prime Minister Tony Abbott and a Deputy Secretary PM&C in September 2014. Our Chairman Mr Galarrwuy Yunupingu wrote to Prime Minister Abbott on 29 September 2014 and submitted that he wanted a partnership with the Prime Minister that focused on:

*The care and protection of the weak, the vulnerable, the sick, the aged and infirm in Aboriginal families and communities – delivered through a partnership with Aboriginal people.*

At that time funds had been appropriated for the purpose of an aged care facility.

No formal response was received to that letter, though PM&C did provide information in November 2014 and the Department of Health has provided information on 9 August 2019 after the issue was raised in a speech at the Garma Key Forum on 3 August 2019.<sup>33</sup>

YYF is not a provider of health or aged care facilities and acknowledges that it is not a lead agency in this area but YYF has not been consulted about this project. The lead agency Miwatj Health has been

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<sup>33</sup> Denise Bowden, Speech to Garma Key Forum, 3 August 2019.

consulted and has raised these issues publicly – YYF has a close working relationship with Miwatj Health and recognises the exemplary work done by Miwatj Health.

Lastly, some community members tell us that the site for the proposed facility, which has been consulted on in different ways by different people, is in an area that is prone to mosquito infestation and is not suitable for an aged care facility.

If the funds had been under local control we are confident that construction would have commenced in 12 months rather than 12 years and that it would be in an appropriate site and would be built and operating – we advised PM&C as much in 2014. As it stands we have watched our aged and infirm die early and suffer unnecessary deaths, well before their time, and in undignified manners unbefitting their senior cultural status in the community.

### **C. CONCLUSION**

We submit to the Productivity Commission that there is a lack of appropriate evaluation of Indigenous programs and we note the background provided by the Commission that “less than 10% of Indigenous-specific programs are evaluated” and where evaluations have been conducted many “have lacked a suitable measure of rigour and independence”.<sup>34</sup>

We are confident that the Commission understands the limitations of its review if it just focuses on programme based evaluation. The objectives of the Inquiry are to improve outcomes for Aboriginal & Torres Strait Islander people in line with the Close the Gap measures which requires a deeper inquiry.

Our submission is based on the principle that there can be no effective evaluation in relation to programs for Aboriginal people in the Northern Territory as the system of government and administration that has developed in the Northern Territory requires root and branch reform.

The establishment of the National Indigenous Australians Agency provides an opportunity for the Commonwealth to focus and reform the system of government and non-government service delivery in the Northern Territory and to tackle the infrastructure deficits in the Territory’s regions.

These reforms may not be appropriate for other States or Territories but due to the status of the Northern Territory under the *Self-Government Act*, the historical failures of government administration, the way in which the HFE formula fails in relation to the Territory and the extreme socio-economic disadvantage suffered by Aboriginal people in the jurisdiction this reform is needed.

In making this submission and our Recommendations we have relied on the Langoulant Report that lays bare the financial state of the Northern Territory and its’ failing administrative system.

We have also relied upon the ANAO report into the Indigenous Advancement Strategy which found that the Commonwealth’s premier agency, Prime Minister & Cabinet, failed to effectively implement the strategy with internal administrative processes not meeting the standard required to manage Commonwealth resources, not complying with probity requirements and with PM&C only able to provide limited assurance that its negotiations with providers were fair and transparent.

At the end of the day though what you see on the ground in remote Aboriginal Australia speaks for itself. It is a terrible situation that is unacceptable in a First World country that has the resources and

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<sup>34</sup> Issues Paper, p.1.

the know-how to fix the situation - we urge the Productivity Commission to be bold in its recommendations.

ENDS.