

AFTER ATSIIC

CHRIS GRAHAM*

There was one over-riding fear when the Howard government abolished a democratically elected Aboriginal board (ATSIC) and replaced it with a hand picked advisory council - the National Indigenous Council (NIC). Many suspected it would become a rubber stamp for the excesses of a government renowned for its aggressive stance against Aboriginal rights. They weren't disappointed.

In just six months, the NIC served up one of the most divisive, extraordinary pieces of advice imaginable - an all out assault on Aboriginal land. The first shot in John Howard's War on Terra had been well and truly fired.

The NIC's Indigenous Land Tenure Principles were unveiled in June 2005 and called on all governments in Australia to rework land rights legislation to allow for the compulsory acquisition of Aboriginal land where traditional owners "unreasonably" refuse a request for a private lease on communally owned land. If you can find a precedent in world history where an Indigenous advisory body has recommended governments legislate against the rights of traditional owners to decide what happens to their land, you've done a lot better than NIT. We never could.

It's not clear whether individual members of the NIC thought no-one would really care, but that's simply because most NIC members don't return NIT's phone calls. It's one of the great lurks of being hand-picked and not elected - you're accountable to no-one but yourself and your employer. But what is clear is that more than a few members of the NIC actually had no idea what they had advocated or why, and what the broader implications might be of such a policy.

Miriam Rose Baumann - principal of St Francis Xavier Catholic School in Daly River - was asked by NIT why the NIC had called on all Australian governments to compulsorily acquire Aboriginal land.

Ms Baumann provided what is perhaps 'NIT's quote of the year'.

"I'm not sure. We're just whats-i-naming the review...."

Ms Baumann added: "None of this has been finalised. It's not right for me to say anything. The best person to talk to is Sue Gordon."

Ms Baumann also expressed the view that the Indigenous Land Tenure Principles were still draft in nature. Of course, there was nothing draft about them - they were formally adopted at the NIC meeting in June. Given the import and nature of the recommendations, it's more than a little disturbing that Baumann was so mistaken. But she wasn't the only one.

* Chris Graham is the founding editor of the National Indigenous Times. He has won the 2004 Human Rights Award - Print Media Category, the 2005 Walkley Award for Excellence in Indigenous Affairs and a High Commendation at the 2004 Walkley Awards.

Dr Sally Goold, Executive Director of the Congress of Aboriginal and Torres Strait Islander Nurses, was also asked why the NIC had called for compulsory acquisition of Aboriginal land.

"I wasn't aware of that," Dr Goold said. "... but all comments have to go through the chair, which is appropriate with any advisory board."

Professor Mary Ann Bin-Sallik, Dean of Indigenous Research and Education at Charles Darwin University in the Northern Territory, was asked the same question.

"I didn't know it was about that, but I'm only interested in education," she said.

Professor Bin-Sallik also referred NIT to chair Sue Gordon. So that's where we went. The response was similarly under-whelming.

In a phone interview with NIT, Dr Gordon initially denied the NIC had recommended the forcible removal of Aboriginal land from traditional owners.

"We haven't talked about compulsory acquisition," Dr Gordon said.

When NIT noted we were quoting directly from Dr Gordon's own statement, she claimed not to have the document in front of her, and asked NIT to wait while she retrieved it. A minute later, Dr Gordon returned to the phone.

"Yes, I can see what you're saying. Point four we talk about compulsory acquisition," she replied.

Dr Gordon had dug herself quite a hole. Her attempts to climb out only made things worse. The principles adopted by the National Indigenous Council - a government ADVISORY body - weren't really advice at all, Dr Gordon explained.

"We haven't made recommendations. We're just saying these are possible land tenure principles," Dr Gordon said. Rubbish. Not only were the NIC's land tenure principles very clearly recommendations, it was an issue on which the government had specifically asked the NIC to advise. Dr Gordon, however, did concede the NIC had provided some advice from its June 15-16 meeting.

"We've made some recommendations to government on how they can go about talking to people, that's all."

The NIC statement reads: "We have supported the development of a targeted communication and consultation process to minimise misunderstandings regarding land tenure issues and to secure broad ranging feedback. A working group should be established that includes Indigenous experts and other stakeholders, to advise on all issues for effective consultation."

Six months down the track, no communications strategy has ever been unveiled, nor has the working group. Dr Gordon also encouraged feedback from Aboriginal people around the country.

"... that's why we sent out the release. We're trying to make sure it is out there so people can discuss it."

Of course, encouraging feedback on the NIC's land tenure principles AFTER they'd been adopted might, to some, seem a little hollow. But it's even

worse when you consider what the NIC did with the feedback it received BEFORE it adopted the principles.

In early June, two weeks before the NIC endorsed its land tenure principles, five members of the NIC - Dr Gordon, Warren Mundine, Joe Procter, John Moriarty and Joseph Elu - travelled to Coffs Harbour to attend a national native title conference. The reason, they explained, was that many of the nation's native title and land rights stakeholders would all be in one place at the one time.

What better way to "inform the NIC's views" on land tenure issues and seek "feedback" from key stakeholders. In fact, the nation's largest stakeholder - the NSW Aboriginal Land Council - was not represented at the conference.

Regardless, the NIC turned up (virtually unannounced) and gave delegates almost no time to digest the NIC's land tenure principles, which at that stage were headed "Draft". The principles were overwhelmingly rejected by conference delegates, who explicitly warned the NIC to stay away from the issue of land tenure.

In a joint written response, delegates told the NIC they "... reject current proposals to lease Aboriginal land and native title" and added that due to a lack of resources within [native title representative bodies] they wanted more time and a formal consultation process to further consider the NIC's proposal. It wasn't an unreasonable request, and on the surface, the NIC members seemed to agree.

According to the NIC's minutes of the meeting, Aboriginal stakeholders were told: "... that they (the NIC) were [also] limited by resource constraints, but (the NIC) was not contemplating making any final decisions at [the next meeting of the NIC, scheduled for June 16]." In other words, the NIC was happy to consult more widely.

What followed probably best sums up the NIC's contempt for full and informed debate and a proper consultation process.

Two weeks later, Dr Gordon emailed a handful of the delegates asking them to submit their views on the possible land tenure principles in writing, by June 15. Feedback on the 'draft' land tenure principles had suddenly become urgent. A copy of that email, and its numerous attachments, was obtained by NIT. It reads: "Thank you for attending the meeting with the National Indigenous Council (NIC) last week in Coffs Harbour. The meeting provided us with an opportunity to advance our discussions on the issues surrounding Indigenous land tenure.

"Please find attached my opening speech from our joint meeting, the NIC media release and principles, outcomes from the meeting, a newspaper article that was published by The Australian regarding the NIC draft Principles... and the Statement (by the NTRBs) made by Mr John Daly (chairman of the Northern Land Council).

"These documents form part of the continuing dialogue between the NIC and NTRBs/LCs.

"Please send any comments on the draft principles to the NIC email address¹ before 15 June so that we may consider them when we next meet in preparation for our meeting with the Ministerial Taskforce (MTF) on 16 June.

"Your comments do not have to be detailed - dot points would be fine."

Dot point consultation on the most fundamentally important issue to Aboriginal Australia? Surely not?

The NIC has refused to disclose what response it subsequently received, but as history now records, three days later the NIC formally endorsed its 'draft land tenure principles'. That was despite the strong objections of the NTRBs and land councils; despite a demand from stakeholders for more time; despite a promise by the NIC that it was not adopting a position in June; and despite a promise from the NIC that the feedback from the stakeholders would "influence" the NIC's advice to government.

On the latter, the only alterations between the draft principles shown to stakeholders and the principles formally adopted were the removal of the word 'Possible' from the title, and 'Draft Working Document' from the top of the paper. Despite all the rhetoric from the NIC about 'consultation', not one single syllable of the draft land tenure principles had been altered.

Not surprisingly, the release of the land tenure principles sparked widespread outrage among Aboriginal leaders.

Sam Watson, a Murri activist, Queensland-based academic and one of the founding members of the Aboriginal Tent Embassy in Canberra, perhaps best summed up a growing contempt for the NIC. Watson commented that the NIC were a bunch of "concrete Aboriginals" that the Prime Minister had acquired as "little statues" for the lawns of The Lodge, the PM's residence in Canberra. He accused the NIC of 'rubber-stamping' a government proposal.

"This current group Howard relies on for advice are hand-picked for that sole reason," Mr Watson said.

"They were sent in as head kickers, the little rubber stamps to place the seal of approval over John Howard's racist lunacy."

"They will agree with Howard and walk with him on this journey of disempowerment of the Aboriginal community."

"Howard is a child of the colonial period. He essentially sees himself as being the person who can deliver the final solution, which began with day one of the invasion."

"The NIC is an element of that plan. They are delivering Howard's final solution by incinerating the Aboriginal body politik."

With outrage growing, the NIC adopted the only response available, the one alluded to initially by Dr Gordon but made famous by cartoon character Bart Simpson - the 'I didn't do it' defence. In a bizarre twist, the NIC claimed it had never called for compulsory acquisition of Aboriginal land.

Dr Gordon wrote to NIT on July 13: "Your recent article (Whodunnit, *NIT*, 7 July 2005) claiming that the National Indigenous Council (NIC) has "called for" and "recommended" that governments should legislate to

¹ See: <nic@oipc.gov.au>.

compulsorily acquire Aboriginal land is mischievous nonsense. The NIC has not and never would suggest such a position."

The initial advice was provocative enough, but denying it had ever happened further angered some in the Aboriginal leadership. Professor Mick Dodson, based at the Australian National University in Canberra was particularly concerned at the lack of apparent understanding by NIC members about what they had advocated.

"It really is dangerous stuff. Where [are they] getting their legal advice from? [Are they] getting legal advice?" Prof Dodson said.

"It really worries me because I think they don't fully understand this stuff and I've said that from the very beginning."

But things looked even worse for the NIC when a copy of an email written by Dr Gordon and distributed to some delegates from the native title conference was leaked to NIT. It contained an attachment of an article written by *The Australian* newspaper about the NIC's land tenure principles.

Even *The Australian* - the NIC's greatest public advocate - was acknowledging that the NIC had recommended compulsory acquisition.

The article Dr Gordon distributed read: "Traditional owners would be forced to surrender part of their land to Aborigines who wanted to buy their own homes under a radical proposal being pushed by the National Indigenous Council. John Howard's handpicked council has drafted the compulsory acquisition plan but insists it should only occur as a "last resort" and that traditional owners would receive compensation."

Why would Dr Gordon distribute a story which portrayed the NIC's position as a "radical proposal" pushing compulsory acquisition? Asked to explain why, Dr Gordon went silent. In a written statement, she said: "I have already advised the NIT of the NIC's position and I have nothing further to add. We, the NIC, communicate the outcomes of our work through the media statements released at the completion of our meetings."

You can't blame the NIC for trying to remain unaccountable to anyone for anything you do or say, except via a media release. It's certainly something that every government organisation should aspire to, but it is perhaps a little unrealistic. Australian media outlets have a propensity to ask questions and test statements. Even so, the silent approach remains today.

The NIC has refused to answer a long list of questions from NIT about how the advice came to life, why it gave it and why it then denied having done so. NIC Chair, Dr Gordon has also declined repeated requests by NIT for an interview. Ironically, when the Howard government eventually unveiled its plan to amend the *Land Rights Act (Northern Territory)* in October to allow Aboriginal people to lease their communally held land, it rejected the NIC's advice for compulsory acquisition, opting instead for a voluntary scheme.

Having provided the government with the 'advice it wanted to hear', the NIC had now well and truly been hung out to dry. It had positioned itself even further to the right of Howard, a position from which you might expect it would be impossible for an Aboriginal group to recover. But lucky for the NIC, *The Australian* newspaper was still 'on board'.

On October 6, under the headline, 'Call for national land plan', the Australian reported: "While the NIC had originally put out a plan for the compulsory acquisition of indigenous land, it later revised that position, calling for a voluntary scheme."

As TV host Rove McManus might say: 'What the?'

When, exactly, did the NIC abandon the position it has consistently claimed it never held? Why didn't the NIC let everyone know? And why does the NIC's website still - to this very day - contain the communiqué that advises compulsory acquisition? The truth is, The Oz was simply re-writing history.

The NIC never revised its position and never adopted a voluntary scheme. In fact, a spokesperson for Dr Gordon told NIT shortly after The Australian article appeared that the NIC never advocated compulsory acquisition in the first place. One message for mainstream Australians, a different message for readers of NIT.

The NIC can get away with this for two simple reasons:

1. *The Australian* won't report what really occurred because it was part of the story from day one. It broke details of the compulsory acquisition plan, praised it as the way forward and continued to back the NIC throughout the whole debate.
2. Most Australians don't even take a passing interest in the issue, let alone seek out the truth.

The NIC, by its very nature, does not answer to Aboriginal people. Its members are accountable to no-one but themselves and their employer, the Howard government. Asked to justify their actions, NIC members either don't return phone calls, refuse to comment or deflect the blame.

Professor Bin-Sallik, for example, claims she's only interested in education. Dr Goold says 'it's not for her to comment'. NIC members seem to be of the view that they are in no way accountable for the collective decisions of the group. So the fact they adopt such extreme positions should surprise no-one, particularly if you understand a little bit about group dynamics.

A well-established scientific theory on group dynamics shows that a gathering of people will often adopt a position far more extreme than the views held by individual members. That goes part way to describing the NIC. But not all the way.

The NIC also suffers from a phenomenon known as 'groupthink', which occurs when consensus-seeking overrides critical analysis. The symptoms of 'groupthink' include close-mindedness and increased pressure to conform, a bill that fits the insular NIC perfectly.

'Groupthink' is why all members of the NIC refuse to comment publicly and instead refer media to the chair, Dr Gordon. It's why the NIC believes it must be seen as a united voice with one position, regardless of how dangerous or nonsensical that position may turn out to be. And it's why the NIC advocated for the compulsory acquisition of Aboriginal land when any impassive and

logical analysis of the issue would never arrive at such an extreme position. And 'groupthink' is also why the NIC has no future.

Having replaced a democratically-elected 'group' in the form of ATSIC, the NIC was never going to be acceptable to the vast majority of Indigenous Australians. It is only acceptable to the Howard government, and only then because it has, thus far, given the government the advice it wants to hear.

If the NIC ever decides to fight for the rights of Aboriginal people, rather than undermine them, it can expect the same treatment meted out to so many Aboriginal leaders and groups - a vicious government campaign of destabilisation, trial by media and, ultimately, destruction. This writer, however, is not holding his breath.

There's one final chapter of the NIC debacle that bears closer scrutiny and that is how the NIC came to tackle the issue of land tenure in the first place. Publicly, most people think it was all Warren Mundine's idea. That's certainly how it was reported by mainstream media, particularly *The Australian*.

The *Australian* "broke" the story of the NIC's push for land tenure reform on February 18, 2005: "Governments should change native title laws to give Aboriginal families private ownership of communal land through an expanded lease system, according to a confidential paper prepared for the National Indigenous Council. The 14-member council yesterday debated the paper presented by incoming ALP president Warren Mundine - and obtained by *The Australian*."

Then this from *The Australian* on February 19: "A row erupted among the ALP national executive yesterday over incoming party president Warren Mundine's plan to give Aborigines private ownership of communal land."

And on October 6: "The man who devised the indigenous home ownership plan wants it to be implemented across the nation. Warren Mundine, who put his land privatisation plan to the Government's National Indigenous Council, said Aboriginal communities in the Northern Territory could now prosper."

And on October 8: "The architect of a plan to allow the sale of indigenous land says it's a step towards true self-determination but others fear 100 years of litigation."

These are just a few samples of the countless stories *The Australian* filed promoting land tenure reform the 'Warren Mundine way'.

The ABC Radio National program 'Speaking Out', headed by Indigenous broadcaster Karen Dorante, adopted a far more cautious, and as it turned out accurate, approach when it promoted an upcoming interview with Mundine on 'his' home ownership plan.

"Speaking Out [interviews] Warren Mundine, a member of the government's hand-picked Indigenous advisory body, the National Indigenous Council, and someone who's considered the architect of the government's proposal."

Mundine was not the architect of the scheme at all. He wasn't the brain-child. He didn't even write 'the paper' referred to by *The Australian*. It

emanated from the office of a senior Howard government bureaucrat. Mundine simply added a few paragraphs to the final version, then presented the paper to the NIC.

That Mundine has since accepted credit for the scheme is curious. He knows - and has admitted to NIT - that the paper was written by someone else, although his response was to note that Ministers don't write their own papers either, they're prepared by staffers. That's right Warren, but last time we checked, you weren't a Minister. In fact, you're the soon-to-be president of the ALP, the political party in opposition.

Why Mundine might think it appropriate to put his name to a Howard government policy and then present it as his considered view is perhaps something he can explain to the rank and file members of the ALP. But why the NIC subsequently advocated compulsory acquisition, when 'Warren's' paper didn't, is even more perplexing.

The 'Mundine' paper warns: "... Taking steps to require native title holders to assign their rights to another party (an individual leasehold applicant) would give rise to... great concern".

"It could amount to the compulsory acquisition of private property and thus invoke the "just terms" compensation provisions of the constitution; ie the Australian government would then need to provide financial compensation to the native title holders who were required to surrender (for the term of the lease) part of their land to another party.

"It could weaken the negotiating position of native title holders and reduce their ability to achieve good economic outcomes for their communities.

"For example, if developers could use the Native Title Act to compel the grant of a leasehold interest, there would be no incentive for them to negotiate with native title holders.

"This would undermine the native title holders "seat at the table" and limit their ability to negotiate financial benefits and employment opportunities in exchange for consent to undertake a particular development."

So having recommended against compulsory acquisition, how does Mundine justify his position on an advisory board that subsequently endorsed it? And given his role as CEO of Native Title Services NSW, how does Mundine justify providing advice to a government that is clearly against the best interests of the people he represents? Mundine doesn't see a problem. He doesn't even concede the existence of the enormous and numerous 'conflicts of interest' staring him in the face. Fortunately for him, neither does the ALP, a party that has been left looking foolish and complicit on the issue of Aboriginal land rights. But luckily for Mundine and his party, this is Aboriginal affairs.

No-one but a small minority of the country really cares, and in any case the Murdoch press will get to write the history that most Australians read. On a broad scale, the damage to the ALP - and Mundine personally - will be minimal. Mundine, however, does concede one point. The way the compulsory acquisition advice was adopted was a little "odd".

He says that the NIC had discussed the issue on the first day of its June meeting and that later that night he flew to Sydney to attend the NRL State of

Origin match. When he returned the following morning, the NIC had "adopted the draft principles".

Mundine told NIT that he asked NIC members if they understood what they were advocating. Did they realise they were calling for compulsory acquisition? He was left with the impression they didn't.

The only member of the NIC who ever appeared to understand the implications of the compulsory acquisition provision in the land tenure principles was, at least privately, opposed to it.