

## **ROYAL COMMISSION: *Fair Go, not Fair Game***



*Warriors of the Aboriginal Resistance (WAR), Australian flag spit mask, Don Dale 2016, synthetic polymer paint on canvas, adhesive tape, 157.0 x 175.0 cm, courtesy Australia Centre for Contemporary Art,*

*Land Rights News*  
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The *Four Corners* program on Don Dale screened on 25 July 2016. It showed Aboriginal boys being beaten, held down, stripped, shackled, hooded and teargassed by NT Corrections Officers. It included vision of what has become a contemporary symbol of Australian justice: Dylan Voller placed in a cell, bound to a chair, hooded and catatonic. It was called, *Australia's Shame*.

It created a massive reaction locally, nationally and internationally. Australians were shocked, appalled and angered. This was much bigger than any previous crises which Chief Minister Adam Giles had managed to successfully navigate. Not only had the images from the program created a tidal wave of outrage and anger, but most of the incidents broadcast were known to Giles and his CLP colleagues. The gassing of the six boys in August 2014 had been widely reported and was the subject of two investigations and public reports.

Four of the six children gassed were suing the NT Government in the Supreme Court for assault, and the Government was pleading that the actions of its officers were, in

the circumstances, “reasonable”. The film of 13-year-old Dylan Voller being grabbed, held down stripped naked and then left in his cell crying had been shown on TV during the subsequent unsuccessful prosecution of one of the Youth Justice officers. Again, the same film was played on TV News when the Director of Public Prosecutions unsuccessfully appealed that acquittal to the Supreme Court.

The Chief Minister reacted like all politicians when caught out – he immediately went into damage control.

At 1:08am the next morning, he issued a media release: “Like all Australians, I was shocked and disgusted by tonight’s *Four Corners* program”; and further, “Tonight questions were raised about what is going on in our juvenile detention system that date back to 2010. I also will seek advice on the establishment of a Royal Commission to investigate the matters raised in the *Four Corners* story. I intend to consult the Leader of the Opposition on the Terms of Reference of this Inquiry”.

Later that day at a press conference, his defence developed. He sacked his Minister for Corrections, John Elferink, and presented a cover up allegation: “I think there’s been a culture of cover up going on for many a long year. The footage we saw last night went back to 2010 – and I predict this has gone on for a long time.”

Clearly his initial aim was to keep the inevitable inquiry “in house” – i.e., within the Territory. However, Prime Minister Malcolm Turnbull had seen the program and was moved. He understood the shock and outrage it had engendered in the Australian community, and the next day he announced a Royal Commission of Inquiry. It would work with the NT Government as regards its administration and costs.

Within days, the Prime Minister announced the Terms of Reference and the proposed Commissioner, former NT Chief Justice Brian Martin. That appointment was met with more anger and opposition, especially from the Aboriginal community. Within a week, Brian Martin withdrew and was replaced by Commissioners White and Gooda.

The Royal Commission commenced in Darwin on 6 September 2016, and sat in October and December, hearing evidence including from two of the juveniles featured in the 2014 gassing incident and the *Four Corners* program, Dylan Voller and “AD”. Following those sittings in December the Royal Commission was adjourned, to recommence in March 2017. The original date for completion in March was extended to early August.

At first, the Royal Commission was welcomed unequivocally by most Australians who had witnessed the existence of a savage regime within the NT juvenile justice system. The country was distressed that this had descended into manhandling, shackling and handcuffing kids, as well as placing them in the infamous Behaviour Management Unit (BMU) isolation cells without air conditioning or fans for up to 16 days at a stretch.

The image of Dylan Voller in that restraint chair appalled most Australians. This was torture, and most agreed with the Prime Minister’s decision to establish a Royal Commission so as to find out not only what practices had been going on, but, more

importantly, how had an Australian legal system descended into such medieval barbarism in the 21st century? Further, who was responsible and to what degree? These were the questions required of such an Inquiry to ensure that recommendations would guarantee no such catastrophe would ever recur.

The Prime Minister said this when asked about the swiftness of his decision: “This Royal Commission is a very appropriate response to what appears to be a systemic failure in the justice system in the NT.” (ABC News, 9.09.2016).

Having a Royal Commission with such Terms of Reference means the whole legal system – its bureaucratic components, relevant members of the legal profession, including the judiciary – are now in the spotlight and subject to scrutiny. This Royal Commission cannot and will not be just about unqualified and inexperienced prison officers, their supervisors and their political masters who oversaw the practices which existed in the Don Dale and Alice Springs youth detention facilities.

As Prime Minister Turnbull correctly called it, this was “systemic failure”. Royal Commissions are the best mechanism to investigate and expose not just incidents and events, but systemic problems which have emerged. That is what this Royal Commission can and will do.

***The Media and Criticism; “The lady doth protest too much, methinks” – Hamlet (III.2.240)***

From the beginning, the Royal Commission has had its nay-sayers and critics. Political commentators and certain sections of the media have written and reported consistently in a negative and critical way about the very need for a Royal Commission and the way it’s conducting its business.

Tony Abbott (of “there will be no undermining and no sniping” fame) criticised PM Turnbull for his “knee-jerk reaction” in establishing the Royal Commission. His political ally, Warren Mundine who claims to represent Aboriginal people, joined in. Warren Mundine regularly appears on Sky News, often with the virulent, rightwing commentator Andrew Bolt, tearing into the Royal Commission.

Within a week of the *Four Corners* program, Mr Mundine had made this contribution via *The Australian*: “A Royal Commission is a costly exercise that has been shown to achieve little, while making a whole lot of lawyers rich”. Of course, hanging it on lawyers is an easy way to criticise the Royal Commission. That same line of attack came from *Bushranger* in the *Sunday Territorian*: “in any case, the real winners of the Royal Commission will inevitably be the PORSCHE DEALERS of Sydney.”

*Sky News* is a Murdoch concern, as is *The Australian* and *The NT News*. All have been consistently hostile to the Royal Commission – consider, for example, their stories after the live public screening of Dylan Voller’s evidence to the Royal Commission on 12 December 2016. Unsurprisingly, his evidence reignited shock and anger.

The political editor of *The Age*, Michael Gordon, reported Mr Voller’s evidence on 13 December: “The first hour of dripping testimony alone by Dylan Voller vindicated Malcolm Turnbull’s snap decision to call the child detention Royal Commission and

put a human face to a national scandal. In clear, succinct and mostly detached responses, the 19-year-old has painted a horrid picture of institutionalised cruelty in a system hopelessly ill-equipped to deal with those supposedly in its care". And, "There is no doubt that many things Voller described will be contested by those in positions of responsibility, but it is difficult to consider him as anything but a credible witness".

Contrast that with *The Australian's* Amos Aikman, who wrote a clearly negative story on 14 December, headlined, "Dylan Voller social media posts contrast with scripted Court appearance". His report of Voller's evidence consisted of Facebook entries from 2014 – according to Mr Aikman, "seemingly by Voller, Although that cannot be confirmed" – which were aimed solely at trying to sully Voller's character. Brave journalism that.

The *NT News*, through regular stories and opinion pieces by Sky's Darwin-based journalist, Matt Cunningham, has consistently criticised and undermined the Royal Commission on various fronts. Mr Cunningham wrote an opinion piece in *The Sunday Territorian* on 4 December 2016 which took the well-worn line of portraying staff of the Royal Commission as southerners from the café societies of Fitzroy and Double Bay with preconceptions that we Territorians are just "wannabe Ku Klux Klansmen". He went on to comment: "It's little wonder many Indigenous leaders [unnamed of course] have said the Royal Commission risks becoming another gab fest that will deliver very few real outcomes".

The next week, his opinion piece (11 December) was headlined: "The Royal Commission has become a farce, and we're footing the bill". He called it a "dysfunctional Inquiry". His hostility was again apparent in the *NT News* on 26 December 2016, when he brought out a Mr Ken Parish, a law lecturer at Charles Darwin University. The article described Mr Parish as "a prominent legal academic".

Mr Parish's view was: "The Royal Commission is a silly idea from the beginning. It will boost the cash flow of the legal profession"; he was then quoted by Mr Cunningham as stating: "The Royal Commission should be abandoned now to prevent \$100 million being urinated down a legal gutter". I must say, in over 30 years in the law, I have never before come across such language from any "prominent academic", but that's Mr Parish's unedifying contribution. His language not only sullies the reputation of CDU, it reflects the calibre and standard of his view.

The *NT News's* latest contribution came from its senior journalist Ben Smee, who on 4 February 2017 concluded that the Royal Commission was "a disaster" and "just about the most outrageous waste of public money in Territory history". His judgement backed that of the independent MLA and former CLP Chief Minister Mr Terry Mills, who in the same week had called for the Royal Commission to be abandoned forthwith.

All this hostility towards the Royal Commission is clearly aimed at undermining its progress and diluting its potential effect on the subject matter of its Inquiry, namely previous Governments and the legal establishment. The Royal Commission ended 2016 with evidence on 15 December. It was first adjourned until the end of January 2017; however, in the interim, an extension of time was granted, and so the resumption date is now 13 March 2017. That delay was criticised by the same

sections of the media.

Further, in the interim, the *NT News* and Darwin's *Channel 9 News* have delivered a carpet bombing of media hyperbole on the issue of rising youth crime in the Northern Territory, which was claimed to be linked to Territory judges' reluctance to detain juvenile offenders because of the opprobrium associated with the Don Dale Detention Centre. The *NT News* and *Channel 9* campaigns have been relentless, and even led to the Chief Justice of the Supreme Court on 20 January issuing an 11-page statement explaining there was no link in this period between any perceived drop in detention numbers and reports of rising crime.

This extreme and obsessive coverage attacking and demonising children goes on unabated. The description of children as "Dirtbags" in front page headlines reflects the basis of this approach. A society which so labels any of its children is going nowhere, but the media do not care. Of course, the media assert that they are reflecting the concerns and views of the community; but the truth is, they are creating and encouraging such views. The effect is obvious and deliberate: community hostility towards child offenders, thereby lessening interest and support in the Royal Commission's work.

All of this raises several questions: Why?; and what are the real reasons and motives behind the attacks, and by whom? To answer these questions, a couple of points can be made.

Compare this media hostility towards the Royal Commission with the McLellan Royal Commission into Institutional Responses to Child Sexual Abuse. That Royal Commission is a five-year concern which has cost more than \$430 million to date. It enjoys extensive reportage. How does the media coverage of that compare?

Another question to ask now is this: Looking back to what was discovered and what we objectively now know about the inhumane juvenile justice regime that had been in existence for years, why wouldn't the Australian community want this Royal Commission to get to the bottom of it, discover exactly what was happening to these children, why and who was responsible? What level of savagery is necessary for this nation to hold a proper, thorough (à la McLellan) Royal Commission into such infamy? Are restraint chairs, solitary confinement, shackles and spit hoods not enough?

I represent the juvenile now described as "AD". I represent him, and his direct family in Darwin, Borroloola and Tennant Creek. That boy told his story to *Four Corners* and he gave evidence to the Royal Commission on 9 December 2016. Unlike Voller's evidence, his evidence wasn't published at the time, as a consequence of objections made by the NT Government about some of his evidence. AD's evidence, with minor redactions, was eventually placed on the Royal Commission website on 19 January 2017, and was basically not reported by any news agency, other than *ABC Darwin Online*.

AD is an Aboriginal boy from Tennant Creek. He was 14 when he was locked in an isolation cell in the BMU in August 2014. That cell and its dimensions were shown on *Four Corners*. The cell was approximately 2 by 3 metres, with a toilet bowl and nothing else therein.

No fan, no air conditioning. It was hot. He was kept in there alone for 23 ½ out of 24 hours every day. He received his meals in that cell. He was kept in there for 16 days in a row. This was the same boy who, on the sixteenth day, went off and found that his cell door was in fact unlocked. He got out and, in a clear outburst of anger, went off in the confined holding area adjacent to his and the other cells. The *Four Corners* program begins with this very incident. You see and hear him screaming, “How long have I been in here brus?”

These actions led to the prison guards gassing him and the other five boys confined in their locked cells. They were all overwhelmed, cuffed, hosed down, spit-hooded, and placed in the adult prison. AD told the Royal Commission, just as he explained in his *Four Corners* interview, that he was telling his story in order to prevent this kind of thing happening again to other children.

AD and his Nanna whom he lives with, as well as other family members, have all been watching this Royal Commission with great interest. They discuss it regularly with me. Several of his family members came up on the bus from Tennant Creek to attend some of it. They have also been watching the negative reporting and criticism of the Royal Commission. This reporting has made them angry and unimpressed.

But, make no mistake, they see right through it for what it is. They want this Royal Commission to work, to make a difference. They want it to do its job, just like the McLellan Royal Commission.

Is that too much to expect in Australia in 2017? The day after the *Four Corners* program, Aboriginal journalist Stan Grant wrote a moving column for *The Guardian*. He talked about his tearful anger and rage watching “those images”. Like many Australians, he said he couldn’t watch all of it. He called for “this Royal Commission to do its job. That it look at systemic failure and responsibility and retribution.”

He also wrote: “Things once seen, cannot be unseen; the images of those boys, teargassed, beaten, held down, locked up, hooded. Those boys that look like my boys.” “Cannot be unseen” – I only wish he was right, but I fear not. In Australia 2017, things once seen can be unseen. Australian society lives in a 24/7 news cycle.

The sad and dangerous reality is that most Australians can’t remember what was in the news, including what was seen, two weeks ago. The critics of the Royal Commission are relying on that very fact as they continue to bombard the community with stories which demonise children.

Nevertheless, Stan Grant and the rest of Australia can rest assured on this: AD does remember. All of it. And AD’s Nanna, his other family and his Aboriginal community all remember it. What’s more, they are resolute that they will not allow the media and the interests they represent to prevent Australia having the proper Royal Commission it so badly needs.

They believe that this Royal Commission will be the breakthrough moment in Indigenous relations that this country desperately requires.

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