

Unholy alliances: The forces at play against land rights

The referendum of May 1967 was a turning point in the struggle for land rights, and a key factor in shifts in political attitudes towards legislative solutions to the issue of land rights. However there has been a long tradition of hostility to any idea of Aboriginal land rights from politicians—particularly the Country Party (now National Party), willingly aided and abetted by public servants from Commonwealth departments such as Interior. In fact, the first head of the Commonwealth Department of Aboriginal Affairs would complain: “... the Northern Territory has been established as a virtual Country Party State”.

Through their various changes of names, the federal National Party and the Country Liberals in the Northern Territory have consistently opposed land rights; indeed, they've consistently disparaged the very notion of land rights.

Politicians have not been the only active opponents of land rights in the Northern Territory. Until the election of Gough Whitlam in 1972, the Department of the Interior and previously the Department of Territories, which for decades lorded over the Northern Territory as if it was their own fiefdom, had been the permanent preserve of Australian Country Party/National Country Party Ministers.

The Australian Country Party rebadged as the National Country Party in 1975; in 1982 it morphed into the National Party.

The culture of the Department of the Interior was such that it readily and loyally did the bidding of its ministers. Its bureaucrats and Ministers, especially when it came to any suggestion of progressive administration of Aboriginal affairs in the NT, remained wedded to old policies of assimilation even long after they had been officially repudiated.

The tensions between progressive and reactionary forces flared most brightly over the decade preceding the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976*. They were at play immediately after Prime Minister Harold Holt, only weeks before he drowned on 17 December 1967, announced in Parliament that he would establish the Council for Aboriginal Affairs (CAA) to advise him on new directions of Commonwealth policies (see story on opposite page).

One effect of the historic Referendum

of May 1967 was to empower the Commonwealth to legislate for Aboriginal people across the country. In the spirit of the Referendum, Holt established the CAA and an Office of Aboriginal Affairs, headed by a career public servant Barrie Dexter, within his own department.

Hopes that Australia's policies affecting Aboriginal people would improve died with Holt; his successor, Prime Minister John Gorton, would demonstrate scant commitment to any advance of Aboriginal policies, for fear of alienating Country Party Coalition colleagues because of his own precarious hold on the prime ministership.

Duplicity at play

The Minister for Territories whom Gorton inherited from Holt was Charles Barnes (Country Party), a former horse trainer from Queensland who had held the portfolio since 1963; the permanent head of the Department of Territories (its responsibilities for the Northern Territory would mostly be transferred to the Department of the Interior in 1968) was a hardened warhorse, Warwick Smith, who went on to head up Interior.

The animus between the CAA and the Department of Territories, especially relating to land rights in the Northern Territory, was evident from the time the CAA was established.

From its earliest considerations, the CAA was concerned about the impact on Aboriginal people at Yirrkala of a lease of Aboriginal land to Nabalco, (North Australian Bauxite and Alumina Company), which was set up in 1964 to exploit the huge bauxite deposits on the Gove Peninsula.

Further, the CAA was apprehensive about amendments to the Crown Lands Ordinance before the Northern Territory Legislative Council, a partly-

lected body which governed the Territory with limited powers before self-government on 1 July 1978.

The Crown Lands amendments would have enabled Aboriginal people to obtain leases of land on Reserves for pastoral, agricultural and miscellaneous purposes, and, after seven years, sell the leases to non-Aboriginal people.

The CAA viewed the legislation as “merely a device to break up the reserves and give non-Aboriginal interests access to their resources”.

Writing to Minister Barnes on 12 February 1968, the Chairman of the CAA, Dr H C (‘Nugget’) Coombs, asked for the amending legislation to be deferred, because it would radically change the character of the Reserves.

Coombs’ letter led to a meeting between the CAA and Minister Barnes on 22 February 1968. “The meeting was a curious one,” CAA member Barrie Dexter recalls in his book, *Pandora’s Box*.

“Mr Barnes seemed to consider that the Council was overstepping its responsibilities in wanting to consider matters that he saw as coming within the purview of his Department.” At their meeting, Barnes warned about the dangers of an apartheid policy (a Country Party refrain), and his departmental officers “seemed to evince a hostility towards us that astonished us”.

Only many months later did the three CAA members discover that on the very day they were meeting Minister Barnes and his officers, the Commonwealth had granted Nabalco a renewable 42-year mineral lease at Gove.

“We speculated among ourselves that the action had been taken in such secrecy and haste in order to pre-empt any consideration by the Council in the event that the composition of Mr Gorton’s government, which he was

then selecting and was sworn in six days later, might give us a base from which to play a useful role, including reconsideration of the terms of the draft Nabalco agreement,” Dexter has written.

“... this affair was a foretaste of the difficulties and, we often believed, the duplicity we were to encounter in our efforts to deal with Northern Territory matters over the next five years”.

Dexter and his fellow CAA members need not have bothered speculating that Prime Minister Gorton’s new Cabinet might have been more sympathetic to their causes.

The unilateral Peter Nixon

Gorton moved responsibility for most Northern Territory matters to the Department of the Interior and re-appointed Peter Nixon its minister. Nixon was a grazer from Victoria, and, of course, a Country Party member. He would remain a relentless and ruthless enemy of the CAA.

Gorton also appointed a Minister-in-Charge of Aboriginal Affairs, Mr William Wentworth, putting the CAA and the Office for Aboriginal Affairs a arm’s length from the Prime Minister himself—a clear abrogation of the relationship which Prime Minister Holt had established, but never lived to put into practice.

Wentworth may have been well-intentioned, and professedly sympathetic to Aboriginal needs, but he was a muddled administrator and no match for Nixon.

Evidence of Nixon’s superiority litters the pages of *Pandora’s Box*. One egregious example of his contempt for any advice from Wentworth’s quarter was the award, without reference to the CAA, of extended mining leases to Nabalco in May 1969.

Many months later, belatedly aware of the extensions, Wentworth protested



Council for Aboriginal Affairs members Barrie Dexter (left) and Dr “Nugget” Coombs. Courtesy National Archives of Australia

do-gooders’ going to the Territory and complicating his task.”

“... it was made plain to us by Interior that visits by ourselves or our minions to the Northern Territory were regarded as unnecessary and improper, although tolerable if made in company with Interior or NT Administration officers,” Dexter writes.

“As time went by we found it increasingly difficult to obtain from Interior or the Welfare Branch information to which we believed we had a perfect right, and that was essential to us for the proper performance of our functions. More and more our enquiries and memoranda remained unanswered, or the answers were inadequate or greatly delayed.

But it was on the question of land rights in the Northern Territory that the CAA and Interior remained implacably at loggerheads.

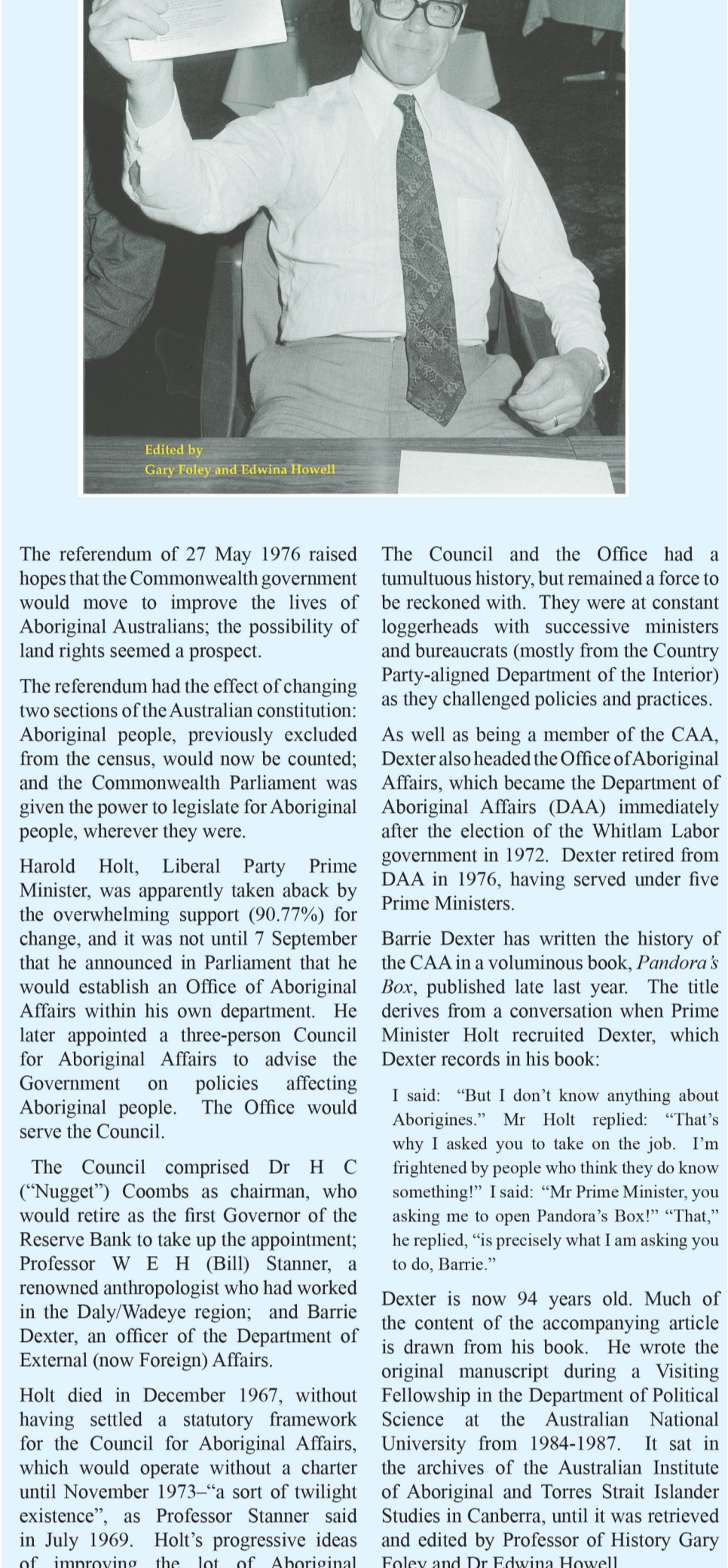
The rise of land rights

In its first draft Cabinet submission early in 1968, the CAA had recommended the establishment of a court or tribunal to determine land claims by Aboriginal communities “on the grounds of traditional occupancy”.

“In our earliest days as a Council ... we were greatly impressed by the attitudes of the tradition-oriented Aborigines we consulted. They clearly desired increased scope to retain and develop at least elements of their traditional social structure, way of life and beliefs. It was evident to us that this could be so only if they were assured continuing access to and rights over their traditional land—in effect land rights”, Dexter recalls in his book.

“It was in large part this that made us determined to go on fighting for land rights. Our first fight was initially concentrated inevitably in the Northern Territory, for the majority of tradition-oriented Aborigines were located there; it was the Commonwealth’s own backyard, and hence an area where the Commonwealth could – and should – set an example; there were numerous developments there that filled us with concern for the future of these Aborigines and their reserves; and we had been treated by the authorities to a display of dishonesty – over the signature of the Nabalco agreement on the very day we thought we were discussing it, which left us with no confidence in the probity of those responsible for administering of the Territory”.

But the CAA was tenacious in the conduct of its cause. In its first year, it was able to head off successfully the attempt by the Northern Territory’s Legislative Council to transfer leases on Reserve land to a non-Aboriginal person, after seven years. “We had exposed so much duplicity,” Dexter recalls.



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to Nixon in February 1970, but was brushed off.

Nixon’s high-handed dismissal led Dexter to write to Wentworth: “The council has concluded that there was a definite—and successful—attempt to conceal from it, and hence from you, the intention to grant the leases (to Nabalco) until it was too late to do anything about it.”

Dexter writes: “The Minister for the Interior (Nixon) and his Department went on their merry way making unilateral decisions involving very important issues of policy without consulting or even informing us, confident that the Minister-in-Charge (Wentworth) was a paper tiger and the Council therefore impotent”.

CAA member Professor Bill Stanner would write in July 1972: “Mr Wentworth frequently identified his worst opposition as coming from the Country Party ... he accepted the risk to the Aborigines as more important than his own ambitions.”

Hostility in evidence

Dexter, in *Pandora’s Box*, writes: “... we soon came to understand that what we were up against in the Northern Territory was, in effect, a Coalition between the Country Party and the administration, the latter comprising the Department of the Interior and its Northern Territory Administration, and that this Coalition was inherently hostile to our approach, even to our existence”.

Commonwealth bureaucrats in Canberra and Darwin went out of their way to noble the work of the CAA. In conversation with Barrie Dexter, Mr Harry Giese, who headed the Northern Territory Administration’s Welfare Branch in Darwin, “condemned outright ‘southern bludgers, stirrers and

prospect of the government’s establishing a form of Aboriginal land tenure based on traditional association.

By the end of May 1971, there was even less chance of that achievement. Prime Minister McMahon replaced Wentworth with Peter Howson, an English-born and educated Liberal Party MP from Victoria.

McMahon gave him the portfolio of Environment, Aborigines and the Arts, and as he left the Prime Minister’s office, a colleague asked him what he had got. According to journalist Mungo MacCallum, Howson snarled back, “The little bastard gave me trees, boongs and poofers.”

Howson would sideline the CAA and the Office of Aboriginal Affairs, accept cuts to their budgets, and yield to the Department of Interior on matters affecting the Northern Territory. Professor Stanner put it this way in a note on 19 July 1971: “The situation with which the Council will have to deal over the remaining life of the Government promises to be one in which policy towards the Aborigines ... will virtually be Country Party Aboriginal policy”.

The next day, Dexter lamented similarly in a note to Dr Coombs and Professor Stanner, his two colleagues on the CAA: “... the Northern Territory has been established as a virtual Country Party State and our own scope for effective activity there has been severely reduced. The problem is intractable ...there is little or no possibility of the situation improving this side of the elections, if then.”

The McMahon government would finally turn its back on any prospect of real land rights in the Northern Territory in a statement by the Prime Minister on Australia Day 1972. He proposed a new form of lease on Aboriginal Reserves, for economic and social purposes, “rather than attempt simply to translate the Aboriginal affinity with the land into some form of legal right under the Australian system, such as that claimed before the (Blackburn) decision of the Supreme Court of the Northern Territory”.

McMahon’s statement immediately provoked Aboriginal protesters to establish the Tent Embassy on the lawns outside Parliament House in Canberra.

The promise of Whitlam

Promise of real land rights came with Labor leader Gough Whitlam’s policy speech on 13 November 1972: “We will legislate to give Aborigines land rights – not just because their case is beyond argument, but because all of us as Australians are diminished while the Aborigines are denied their rightful place in this nation.

“We will establish once and for all

The referendum of 27 May 1976 raised hopes that the Commonwealth government would move to improve the lives of Aboriginal Australians; the possibility of land rights seemed a prospect.

The referendum had the effect of changing two sections of the Australian constitution: Aboriginal people, previously excluded from the census, would now be counted; and the Commonwealth Parliament was given the power to legislate for Aboriginal people, wherever they were.

Harold Holt, Liberal Party Prime Minister, was apparently taken aback by the overwhelming support (90.77%) for change, and it was not until 7 September that he announced in Parliament that he would establish an Office of Aboriginal Affairs within his own department. He later appointed a three-person Council for Aboriginal Affairs to advise the Government on policies affecting Aboriginal people. The Office would serve the Council.

The Council comprised Dr H C (‘Nugget’) Coombs as chairman, who would retire as the first Governor of the Reserve Bank to take up the appointment; Professor W E H (Bill) Stanner, a renowned anthropologist who had worked in the Daly/Wadeye region; and Barrie Dexter, an officer of the Department of External (now Foreign) Affairs.

Holt died in December 1967, without having settled a statutory framework for the Council for Aboriginal Affairs, which would operate without a charter until November 1973—“a sort of twilight existence”, as Professor Stanner said in July 1969. Holt’s progressive ideas of improving the lot of Aboriginal people were not matched by his Liberal Party successors, John Gorton and Bill McMahon.

problem and the problems associated with justice and reasonable treatment of Australian Aborigines”.

Within hours, CAA chairman Nugget Coombs had drafted a Cabinet submission, initiated by the Prime Minister, the Minister-in-Charge of Aboriginal Affairs, Bill Wentworth and the new Minister for the Interior, Ralph Hunt, which set a course “to give the protection of Commonwealth legislation to lands reserved for the use and benefit of Aborigines, and within such lands both to ensure to continuing groups of Aborigines the use of land for ceremonial, religious and recreational purposes, and to

make available on appropriate tenure to individual Aborigines and groups of Aborigines land necessary for the conduct of commercial purposes; second, to set up an Aboriginal Land Fund ... to acquire land coming on the market for Aboriginal groups ...”

But, before it reached Cabinet that evening, Hunt, a Country Party grazer from New South Wales, had withdrawn his agreement.

And so began a renewed counter-offensive by Interior against any

Aborigines’ rights to land and insist that a tribe and the law of George III says, whatever the race with an identity of centuries—millennia—is as much entitled to our land as even a proprietary company.”

Soon after winning government on 2 December 1972, Whitlam abolished the Department of the Interior and created a Department of the Northern Territory which seemingly inherited the old guard culture of Interior, and would remain intransigently opposed to land rights in its domain.

Whitlam also established the first stand-alone Department of Aboriginal Affairs, headed by Barrie Dexter, and appointed Justice Edward Woodward as a Commissioner to advise how land rights should be implemented in the Northern Territory.

One week after the legislation resulting from the lengthy Woodward inquiry had been introduced, the Whitlam government was dismissed by the Governor General on 11 November 1975.

Liberal Prime Minister Malcolm Fraser, elected on 13 December 1975, displayed an early hostility to the Department of Aboriginal Affairs, but stayed true to its party’s pre-election commitment to introduce land rights.

Fraser’s biographer, Margaret Simons, has written that negotiating new legislation faced “bitter opposition of the Country Liberal Party Territory government, the Minister for the Northern Territory Evan Adermann (Country Party, a dairy farmer from Kingaroy, Queensland) and the federal Department of the Northern Territory.”

Fraser’s first Minister for Aboriginal Affairs, Ian Viner, recalls on pages 6&7 of the struggle to introduce the *Aboriginal Land Rights (Northern Territory) Act 1976*.

The CLP on attack

Barrie Dexter recalls that the Department of the Northern Territory wanted responsibility for the detailed legislation to rest with the Northern Territory. “This, of course, was totally unacceptable to the Council (for Aboriginal Affairs) and Department (of Aboriginal Affairs), for we knew there could be no effective legislation if the (NT) Legislative Assembly were responsible”.

The Country Liberal Party, which in 1976 held all but two seats in the 20-member NT Legislative Assembly, “resorted to an early stage to what seemed to Mr Viner and me to be rough tactics”.

CLP Leader Dr Goff Letts wrote to Mr Viner on 6 February 1976, “with regret and only after a great deal of consideration”, that the pursuit of land rights legislation would cause: “loss of confidence in the move towards ‘Statehood’; creation of deep internal

divisions within our Party in the Territory; a serious rift between us and our Federal colleagues; difficulty in attracting and holding capable people to serve on the right side of politics here; and, wider problems in the Territory community in the future that our Government will have to answer for and I for one will not be prepared to live with.”

Dr Letts was even more agitated when he telegraphed Prime Minister Fraser and Deputy Prime Minister Doug Anthony on 19 March: “The government appears to have failed to appreciate the depth of concern in the CLP and the whole NT community on this major policy matter ... designed to satisfy a minority but very vocal view.”

Gotts threatened to resign “with all associations with the Country and Liberal parties at all levels”, unless his views on the legislation were heard and taken into account.

In reply, Prime Minister Fraser gave Letts short shrift.

The mining industry also maintained a strong campaign against the proposed land rights legislation, and Dexter records that in late 1976 “stories started to circulate that the Prime Minister’s resolution to legislate on land rights was weakening in the face of substantial opposition from within the governing Coalition, the mining industry and other areas.

“According to whispers around

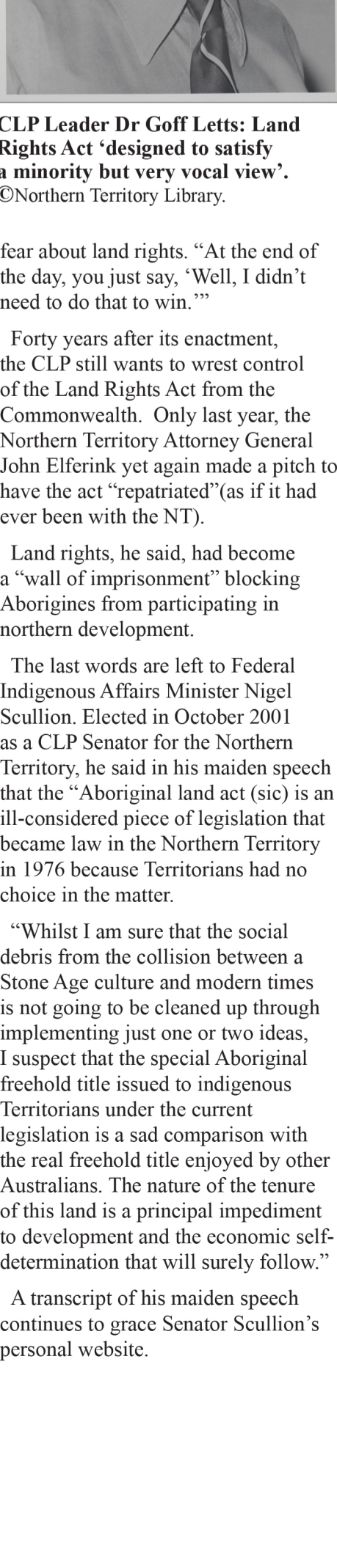
Parliament House, succor came in the form of insistence by a group of backbenchers led by (Senator) Fred Chaney, that the legislation proceed, or they would cross the floor. The Prime Minister was said to have responded positively to this unexpected display of support for the course he had previously been pursuing.”

Prime Minister Fraser held to his course, and the Land Rights Act finally passed through Parliament on 14 December 1976, and received Vice-Regal assent on 16 December.

In the Northern Territory, the Country Liberal Party government would use every ruse within its power – and beyond – to thwart claims under the Act, and would spend tens of millions of dollars in legal fees to sustain its relentless opposition to every claim that it could challenge.

A search of Cabinet records reveals that only weeks after self-government in 1978, the CLP Cabinet discussed vesting unalienated Crown lands in the Territory Development Corporation – a ploy to put the land beyond the reach of claim under the Land Rights Act.

Exploiting fears about land rights helped to keep the CLP in power for successive elections after self-government. The pollster Mark Textor admitted to the Sydney Morning Herald two years ago “things I deeply regret doing now” – particularly the way he advised the CLP to whip up



CLP Leader Dr Goff Letts: Land Rights Act ‘designed to satisfy a minority but very vocal view’. ©Northern Territory Library.

