The schism: Aboriginal self-determination at the crossroads

Mokak Oration transcript, 14 October 2026
Professor Dr Megan Davis AC

Danielle Wood, Chair Productivity Commission

Alright, good evening everyone.

It's always a good sign when the networking is so good that we're not able to start the event.

For those of you that don't know me, I'm Danielle Wood, Chair of the Productivity Commission and really delighted to welcome you all to the 2026 Mokak oration here on the beautiful lands of the Ngunnawal/Ngambri people.

We are beginning this evening's proceedings with a welcome to country from Paul Girrawah House, Ngambri-Kamberri, Walgalu, Ngunnawal and Wiradyuri, Custodian of the Canberra region.

Paul is currently the Cultural and Community Engagement Specialist at the Australian National University and has worked extensively with the National Gallery as a cultural consultant.

Many of you remember Paul gave a wonderful welcome to Country at the very first Mokak oration and we are delighted to have him back here this evening.

Thanks, Paul.

[This event commenced with a welcome to Country to Ngunnawal/Ngambri, which is not included in the recording. We acknowledge and thank you traditional Custodians for their welcome.]

Thank you, Paul, for that powerful welcome and thank you for sharing the story of your mother.

I too want to acknowledge the Ngunnawal and Ngambri people and pay my respects to their elders past and present, and extend that respect to all the Aboriginal and Torres Strait Islander people here with us tonight.

We have so many senior Indigenous leaders joining us here in person and on the live stream.

Welcome to all of you.

I also welcome the many senior government leaders here tonight along with PC commissioners and staff.

And as this is the Mokak oration, I wouldn't to especially acknowledge Rom Mokak, the PC's first Indigenous Policy Commissioner who's here with a number of members of his family as well.

Rom is a proud Djugun man and a member of the Yawuru people.

Rom joined the PC after what was a really long and distinguished career in research and policy. We were lucky to have him for a five-year term and he very much made a lasting impact on the organisation.

He was instrumental in delivering our first review on Closing the Gap. It wasn't an easy review.

There were some hard truths at the centre of the review that we are contemplating again as we now start our second review of that agreement.

Rom also led a broad range of PC projects, from Aboriginal and Torres Strait Islander Arts and Craft inquiry to the review of the Housing and Homelessness Agreement.

But his legacy at the at the PC extends beyond those pieces of work that he oversaw.

He also fundamentally changed how we work.

He championed genuine engagement and partnership with Aboriginal and Torres Strait Islander people and communities.

He challenged us to bring together Aboriginal and First Nations knowledge with Western methodologies.

To honour Rom's legacy, we established the Mokak Oration as an annual celebration of the contributions and achievements of prominent Aboriginal and Torres Strait Islander people in Australian public policy.

The oration has a dedicated artwork that you can see there by the excellent Lani Balzan.

She's a Wiradjuri woman living and working on Gooreng Gooreng Country.

The artwork is designed to reflect from significant contributions and the unity of Aboriginal and Torres Strait Islander people with the broader Australian community.

Really invite you to take a look closely at the piece and we have some of Lani's words describing the piece on our website.

The inaugural Mokak Oration was delivered by Rom himself.

Last year's oration we had the Honourable Ken Wyatt AM.

Both were very powerful and moving addresses and I can think of no better person to follow those class acts than tonight’s Oration speaker, renowned constitutional lawyer and public law expert, Professor Megan Davis AC.

I will do Megan's formal introduction in a moment, but just to let you know the order of proceedings after Megan speaks, I'll invite the Secretary of Department of Prime Minister and Cabinet, Stephen Kennedy to offer some brief reflections on the address.

We'll then have a chance to have a drink and a bite to eat and to continue the conversation.

So with that, let me introduce Megan.

Professor Megan Davis AC is the Pro vice chancellor Society, Scientia Professor … is that the right pronunciation, Professor?

Thank you. Should have done Latin. And Balnaves Chair in Constitutional Law at the UNSW Sydney. During 2025-26 she was also the Bach Visiting International Professor at the University of Pennsylvania Carey Law School.

A leading constitutional lawyer and public law expert, Professor Davis has worked on constitutional recognition of First Nations peoples for more than 2 decades.

She also designed the Referendum Council that led to the Uluru Statement from the Heart.

Professor Davis is a Fellow of Australia's leading academies in law, social sciences and the humanities and an Acting Commissioner of the NSW Land and Environment Court.

She's also a Sydney Peace Prize laureate and was named the Time magazine's 2023 Time Next 100 list of global emerging leaders.

Professor Davis is internationally recognised for her work on human rights and Indigenous peoples rights and has served as an expert member of both the United Nations Expert Mechanism on the Rights of Indigenous Peoples and the United Nations Permanent Forum on Indigenous Issues.

Megan, we are so honoured to have you here with us tonight.

Please join me in welcoming Professor Davis to deliver the 2026 Mokak Oration.

Professor Dr Megan Davis AC

Thank you Danielle, for that kind introduction.

Just 3 caveats before I start speaking.

One is I fractured my toe, which is why I'm limping terribly about four weeks ago after the Cowboys last home game.

And secondly, I sent my speech to my colleague by PDF but it was like font 14/16 because I'm blind as a bat and unfortunately, it came out at 11. So let's see whether that how that travels.

And thirdly, my niece's little baby is here up the back and when I practised all day he screeched the whole thing, clapping, clapping because he knows a good speech when he hears one.

So if you hear him screeching, I think he might be taken out of the room.

So I'll, I'll start in proper.

I'd like to begin by acknowledging, of course, the Namburi Ngunnawal people.

Thank you to Paul, one of our great supporters of the Uluru Statement from the Heart and also the Voice referendum.

It's so lovely to be welcomed by you.

I've spent a lot of time in Canberra, especially hearing from Matilda [House] doing welcomes from my time as a junior legal cadet for three years at the legal branch of ATSIC, the Aboriginal and Torres Strait Islander Commission.

I used to come here every Christmas holidays, I think when we got the 3-month holiday for your break from university.

When I was studying at UQ, I also did my legal workshop here, my Masters of International Law and my PhD at RegNet at ANU, and also my first job as a public servant as a legal, as a lawyer, legal counsel in the Aboriginal and Torres Strait Islander Commission legal branch as well.

So I've always felt very welcomed by the community here and think very fondly about Canberra.

Well, except for sometime.

I'd like to thank the Productivity Commission for the invitation to deliver the Oration tonight, including Commissioner Selwyn Button, who was also in a previous life, very active in the work that we did towards constitutional recognition, Commissioner Danielle Woods and Dr Stephen Kennedy.

Thank you and I apologise for my paper being so late.

I also want to acknowledge and celebrate Rom.

It's such an honour to deliver the third Romlie Mokak Oration in your name.

I met Rom as a very junior academic.

I don't know if you remember when you were first with the Australian Indigenous Doctors Association and you had such respect for the work that I'd done in international human rights law and the Declaration on the Rights of Indigenous Peoples.

Rom was exceedingly kind to me.

No one knew who I was.

I mean, not that that matters, but he, you know, it was very new in my career, so friendly, so generous.

And I think that your illustrious career is a testament to both this oration, but also your hard work and commitment to your profession, Indigenous leadership, National Health leadership, and to your community.

I actually went back and listened to your oration this week and was so moved by the story of your grandmother and your family and the deep connection of your lifelong work to your culture and your people.

Rom's final Productivity Commission report I really urge everybody to read because it was a phenomenal exercise in showing what a difference a federal representative voice would have made to the Closing the Gap arrangements.

I would also like to acknowledge the second orator, Ken Wyatt, Australia's first federal Indigenous minister.

Ken's Mokak oration, last year I'd watched from Harvard and it was such a powerful speech about Aboriginal and Torres Strait Islander leadership and leaders working hard for structural change over the decades.

To that end, I pay my deepest respects to all the Aboriginal and Torres Strait Islander peoples here and online who are working hard for change and reform across our many communities and sectors and professions, community bodies, organisations, community control, peak bodies, local communities and individuals.

I say this because today is the third anniversary of the referendum in 2023 and I know that it's a difficult day for many.

And I want to express my love for all of the community who supported Indigenous peoples in that endeavour, especially my Aboriginal and Torres Strait Islander brothers and sisters who all felt a deep sense of hurt and devastation by the vote.

I am stopped every day by mob who hug me and want to talk quietly about what we experienced in a country that after the referendum does not seem very interested in how we felt.

Still I'm delivering this oration on this country in this territory, which did vote yes to the Voice to Parliament and I think that's something to celebrate.

Finally, I recognise Pat Anderson AO who's my Co-Director of the Uluru Dialogue sitting up the front which is the entity that is still working to achieve the ends of the Uluru Statement from the Heart.

Pat has been my collaborator and closest confidante since 2015, late 2015 when we met 11 years ago.

We have spent 24/7 from late 2015 to the end of 2017 to deliver the outcome of the Uluru Statement from the Heart for the Referendum Council, which was in our view, we spent a lot of time designing it a very bottom up process that was respectful to free prime informed consent and the right to self-determination.

And then we spent every waking hour pat from May 2017 until October 14 2023 for six years, working the phones, running Zooms and teams, working with community, lobbying, presenting, travelling, educating and fundraising to try and achieve constitutional recognition.

Our friendship has been one of the most enduring and meaningful of my life and we stand resolute in our desire to continue to achieve constitutional recognition of our people, the First Peoples of Australia.

I also want to acknowledge the hard work of Noel Pearson in that work.

He worked closely with us over a decade on constitutional reform and I refer you also to his very powerful words at Garma earlier this year on the Uluru Statement from the Heart, which he calls Australia's great unrequited love letter from the first Australians to Australians.

Recent research that we, the Uluru Dialogue, has commissioned and that we will soon release shows that a majority of No voters have never heard of the Uluru Statement from the Heart.

They do not know that Indigenous Australia supported the Voice.

They do not know that a majority of the NT ballot boxes voted yes to the Voice or remote communities voted yes to the Voice.

They know nothing about the regional dialogues that led to the Uluru Statement from the Heart and they think that the Voice was a politician's proposal.

They called it Albo’s Voice.

Alongside the 6.2 million Yes voters in Australia this kind of paucity of knowledge, this lack of knowledge about the Uluru Statement and where the Voice came from has actually become a really useful way to discuss the referendum in a really constructive way with no voters.

If Romlie's first oration was about the history of closing the gap, the importance of closing the gap in the multitude of ways in which the state never delivers, and Ken's second Mokak Oration spoke about leadership and the work that needs to be done and has been done on structural reform at a federal level.

This third oration, I think, is about reflecting on what the state of affairs is in Indigenous policy in 2026, 3 years after the referendum, which I have observed as Aboriginal self-determination at the crossroads.

Ken in his oration said: ‘When I stand here and speak of releasing the shackles, I speak not in the metaphor alone. I speak of iron and chains. I speak of laws and policies. I speak of invisible restraints that bind opportunity, silence voices, and hold back futures.’

Ken's metaphor stands and not metaphor stands in my view.

I named this third Romlie Mokak Oration, ‘The schism: Aboriginal self-determination at the crossroads’.

And a schism means a division, a separation, discord, disharmony.

And some of the tensions I raise here tonight are because of the shackles Ken refers to, some of which were intended to be improved and address addressed by the referendum.

I should be clear that I don't think it is anyone government's fault, but it speaks to the structural problems we have and unfortunately the referendum result may delay grappling with some of those policy challenges.

I think in the Uluru Statement we referred to them as the torment of our powerlessness.

The material conditions in the lives of most Indigenous peoples that animated the Voice as a solution remain.

The post referendum state has merely shone a light on the structural challenges that persist or have become exacerbated in an environment.

The federal government. Sorry, this is my 11 font thing.

The post referendum state has merely shone a light on the structural challenges that persist or have been exacerbated in the post referendum environment, that the federal government may be understandably hesitant to execute change.

Since the referendum in 2023, I've been monitoring closely the news and the developments in federal, state and territory Indigenous policy, from budget papers to policies to new laws and other legal reforms.

Two years of the post referendum environment I've been overseas at Harvard University as the Gough Whitlam and Malcolm Fraser Chair in Australian Studies and also at the University of Pennsylvania Law School.

As a legal scholar I have devoted for over 2 decades of my life to working on Aboriginal women's participation or political participation in representative bodies or entities and constitutional recognition.

For 12 years prior to the referendum, I was a leading constitutional lawyer working on the technicalities of constitutional change and engaging the First Nations communities and people and representatives on what that recognition should be prior to being a part of successive formal executive mechanisms relating to constitutional recognition.

My public law research has been about the importance of constitutional recognition for Indigenous peoples and liberal democracies as a way of providing structural support to their polities and aspirations and as a way of manufacturing, inclusion and belonging in the narrative of who we are as Australians.

My doctoral thesis in particular looked at the limitations of the right to self-determination as understood in public international law and more specifically the statutory representative body, the Aboriginal and Torres Strait Islander Commission, who I argued needed to evolve as an institution if it were to allow Aboriginal women to flourish and for all Aboriginal women to meet the threshold of the material requirements required for a dignified human life.

I argued then, and still believed, that the constitutional guarantee of rights is more likely to enable Aboriginal women to reach a minimum threshold of capabilities required to achieve self-determination.

In this work I adopted the capabilities approach of Amartya Sen, but in particular Martha Nussbaum.

As a possible way for us to better understand what it is that First Nations women need and require as a way of achieving what they want to be and to do.

Similarly, in my work on the design of the National Congress of Australia's First Peoples, I worked with Tom Calma to ensure that the corporate Constitution of the National Congress allowed for equal representation of men and women, the first constitution of its kind.

For me, although it was an incorporated entity and not a statutory body within the machinery of government, I felt it was an important progression in the design of Indigenous representative entities.

Although representation alone does not ensure that institutions take serious the gendered nature or gendered impact of policies and laws.

Similarly, the design principles of the Voice to Parliament, I felt, was a progression in the design of Indigenous representative bodies.

It was adopted by the Referendum Committee and placed on the website of the National Indigenous Australians Agency website and stated that it was to be elected by individuals at a ballot box and that it has equal gender representation in its membership too.

A thorough understanding of the right to self-determination cannot be solely concerned with what is best for the collective or the community.

Why do I say that?

I say that because often advocacy for rights as collectives means that the interests and the issues of the individuals that make up the collective are treated in a very reductionist way.

And in any event, it's very difficult to elicit in an era where the corporate form, so incorporation is being conflated with collectively, with the collective or the community.

So the question then we need to ask ourselves is how are individuals within the group faring based on capability and functioning?

The question is: what is she actually able to do and to be?

We felt that the Voice proposal was an opportunity to return Aboriginal women's representation to the national stage, so politicians and taxpayers and bureaucrats understood that these women were endorsed by their own communities through the ballot box, with authority and power to speak and to make a difference.

That is to say, Aboriginal women who live and participate in Aboriginal communities would be chosen by those communities to be the best representative of them and the collective.

The constitutional element of the Voice was also a progression in institutional design since 1967.

All federal governments since 1967 have required a representative entity to ensure that the work they do is informed by community.

The normative principle that you will have better quality policies and laws if you have direct input from the Indigenous community.

And we know from other jurisdictions with Indigenous constitutional recognition, entrenchment of rights should compel the state to provide the material and political support required to deliver citizens the minimum threshold of a dignified human life.

And such a such an approach is more likely than an institutional, non-constitutional approach to self-determination to marshal the combined capabilities that are vital to enabling Aboriginal women to realise the right to self-determination.

I want to put that up first on this day, 3 years since the referendum, a day that we reflect on the lost opportunity of the Voice for Aboriginal women and the flourishing of the of women's voices.

It is also a loss for gender equality more broadly in Australia.

The post referendum political consensus was that the Australian people had made a judicious decision in voting no to recognising Aboriginal and Torres Strait Islander people in the constitution and move on. There was nothing to see.

And despite the preponderance of bots, political lies, disinformation and the torrent of unimaginable racism passed over in silence by our elected representatives, the nation swiftly moved on.

Over the past 3 years, academic scholars have provided qualitative and quantitative analysis of the dynamics of the referendum that have now validated many of the concerns that First Nations peoples raised about the campaign.

Legitimate concerns about disinformation campaign funding, legislation for truth in political advertising and racism were generally dismissed at the time as sour grapes, as legitimate political contestation.

But we argue that those matters raise really important questions about disinformation in Australian democracy, and whether the dismissal of political lies and disinformation in the referendum is merely legitimate political contestation, and whether that means that Indigenous peoples are in fact fenced out of the growing concerns about misinformation and disinformation and campaign funding in terms of democratic integrity in Australia's democracy.

I argue that the asymmetrical application of the criteria of disinformation in Australian politics raises critical questions for our democracy.

More broadly, the blowback from the failed referendum for Aboriginal people has been severe and relentless.

Unlike all referenda in Australia's history, this result has been viewed by some as a mandate to roll back Indigenous rights and recognition.

Some politicians at a local, state and federal level have argued that an unsuccessful amendment to the text of the Australian Constitution is somehow a mandate to disavow and abandoned non-constitutional matters that were not on the ballot.

Flying the Aboriginal and Torres Strait Islander flags, both official flags of the Commonwealth, is one and the practises of acknowledgement of country and welcome to country.

That some elected officials in this country can claim a negative amendment result is somehow extending to the cessation of Indigenous rights and recognition at a national and sub national level is deeply worrying.

The post referendum civics implications of elected officials not understanding how the legal and political system in Australia works is one thing.

The broader implications of the political loss in 2023 for Indigenous policy is another.

Sticking with representation and voice, the exigency or the urgency of a representative entity or voice has not changed. At least not for the majority of Aboriginal and Torres Strait Islander people who live in communities who do not have what we call ‘in the room privilege’ of those who purport to represent community through the architecture of the corporation, the Federal Government's preferred mode of consultation.

This, to me, is a schism.

Having in the room privilege speaks to the access some have to government and government resources without any real clear mapping or understanding of the accountability of such entities back to the communities for whom they speak.

The result of this is what economic development theorists call ‘elite capture’.

Elite capture happens when the advantage few steer resources and institutions that could serve the many toward their own narrow, narrower interests and aims.

These groups and individuals are able to influence the transfer of funds and resources disproportionately, and public goods and resources such as knowledge, attention and values, which are unfairly distributed just as much as material wealth and political power are.

This observation is not to ascribe any negative intent to anyone, but to describe a phenomenon that occurs in public policy.

The issue is that governments assume such entities are unequivocally representative because it's convenient and need to do so.

This observation is not questioning things like indigeneity, although most mob would say the issue of who is and isn't indigenous is a major integrity issue now in public policy across the Federation.

Nor is it questioning the legitimacy of representative entities that are elected.

But in terms of the right to self-determination and federal policy, it is not the same as hearing from representatives of communities who have been elected by those individuals in that community at a ballot box.

I'm a public lawyer, a constitutional lawyer. My focus in my work is on structures of the state and how the relationship between individuals and the government in our example, collectives and the state proceed.

I focus on the powers and responsibilities of government institutions and government branches, the legislature, the executive and the judicial branch.

So my analysis comes from that public law perspective or small C constitutional law.

And so these comments are about structure, who has a seat at the table.

It is one of the growing tensions and divisions in the community, the question of who gets access, who gets to talk to government and how they galvanised resources.

Michael Dillon, a former bureaucrat who works for three federal ministers for Indigenous affairs, has raised this point too from his experience from inside the machinery of government.

Dillon says that:

> Engaging in private discussions is a favoured tactic of governments and powerful interest groups as it allows deals to be done without scrutiny and accompanying pressure.

I'm going to repeat that quote:

> Engaging in private discussions is a favoured tactic of government as it precludes critical commentary and the exploration of more wide-ranging options.
>
> Secrecy is the preferred modus operandi of governments and powerful interest groups as it allows deals to be done without scrutiny and accompanying pressure.

I am not the first person to remark that the policy settings today across the Federation are or feel the worst in a generation.

Indigenous affairs is fragmented. It's incoherent and segmented.

There is a palpable frustration across the sectors about those who have the in the room privilege who are inside the tent, particularly with what many regard as a close as a failing closing the gap framework.

But it's fair and true to say also that those who do have in the room privilege, who are at the table, they are equally frustrated as those outside the tent in terms of broken promises, skewed funding priorities, poorly executed policy and implementation, access to govern and bureaucracy and the resistance that they feel and hear to progressing, Closing the Gap by governments and bureaucrats across the Federation.

And the Productivity Commission made this point recently.

Everything in federal Indigenous policy these days is viewed through the lens of Closing the Gap, an often incomprehensible, labyrinthine policy that has engulfed everything.

And unsurprising for an elephantine – I'm sorry for all these mixed metaphors, they're fun, aren't they? – clumsy and lumbering, few understand the framework.

It is not easy for lay people, community people, to understand the framework, which I think is a problem for the success of any public policy.

Although I have to say that I think that this year's Productivity Commission review, and I said this to Selwyn, was one of the most comprehensible I've read.

And when I talk about lay people, I include me.

It is difficult to understand and I thought this year's report was perhaps intended to write for a broader audience so that they can understand what it is about.

Michael Dillon, to quote him again, argues that:

> the current crisis for the Closing the Gap failure emerges from the design choices built into the National Agreement. The current architecture has 9 jurisdictions, 19 Targets, 4 Priority Reforms, hundreds of programmes, more than 600 pages of implementation plans each year and almost constant review. No single person can grasp the whole of it and no single institution can be held to account for any particular outcome.

He says: ‘Closing the gap has become everyone's priority and no one's responsibility’.

And I think that observation is a fair observation to make in the past few weeks in terms of news coverage relating to child welfare and child protection and hunger and food sovereignty.

For weeks, the crisis has involved back passing and accountability avoidance across levels of government. And in the absence of a federal Voice, community members that community members can reach out to and contact in a time of crisis, the women involved chose to talk to the media, to The Australian newspaper, to have their voices heard, to garner attention, to put pressure on for help and resources.

Again, everyone's priority and no one's responsibility.

There are voluminous examples of why I and others say the current policy settings are problematic, not least the succession of reports showing that the gap in disadvantage is not closing, including this year's Productivity Commission review.

And there is a lot of taxpayer funding that goes into social media communications and messaging about the effectiveness of closing the gap.

The Co-design place-based partnerships that run through this framework.

But these do not really function in the true sense of the word because the power imbalance is so acute.

Aboriginal leaders are resigning from key Closing the Gap committees and government roles nationally and sub nationally. This is not a good development.

In the NT, 5 senior Indigenous leaders in recent weeks quit senior roles, citing their inability to have a voice as the reason why they quit.

At a Commonwealth level, Professor Eddie Cubillo resigned from the Commonwealth Justice Policy Partnership, citing that the justice elements of the Closing the Gap framework have failed. He said:

> Despite the rhetoric, they have not led to meaningful change or improved outcomes for our communities. Instead, the process continues to occupy and exhaust Indigenous voices, while governments as signatories to the agreement, show little genuine intention to fulfil their commitments.

He said: 'We cannot keep pretending that this is working'.

He said, 'I can no longer be part of a process that has become a vehicle for delay, not justice'.

With this in mind, he said: 'I am formally stepping away from the JPP and calling on other Indigenous members to reflect on whether this forum continues to serve our people or merely give the illusion of progress while harm continues unabated.'

In speaking with many people involved across the sectors at the table, not at the table, it's overwhelming the consensus that people feel that governments and bureaucrats still hold all the power.

And people are reluctant to say so. They're reluctant to say what they really think because of fear of jeopardising their funding.

The concept of unfreedom comes to mind.

It reminds me of something that the Royal Commission into Aboriginal deaths in custody said over 30 years ago.

Government can transform the picture of Aboriginal affairs, but not so much by doing things, more by letting go of the controls, letting Aboriginal people make the decisions.

Sorry, letting Aboriginal people make the decisions which government now pretends they do make.

Government would be doing non-aboriginal society a service.

The resolution of the Aboriginal problem has been beyond the capacity of non-aboriginal policy makers and bureaucrats.

It is about time they left the stage to those who collectively know the problems at national and local levels.

They know the solutions because they live with the problems.

The only discreet new policy one can discern at a federal level is the economic empowerment policy announced by the Prime Minister at Garma, following the referendum, building presumably upon the decades of work and taxpayer funded economic development policies in communities.

Economic empowerment is, according to the literature, the next iteration of the pursuit of economic opportunities to provide communities with self-determination.

Proponents of the economic empowerment agenda declared social policy and welfare policy is dead, barely months after the referendum.

Although it doesn't have any specialised meaning in mainstream economic or financial history, presumably the word development has welfare connotations, and the word empowerment infers agency.

It also appears from the information that's available that the policy is very much connected or anchored to those with successful native title determinations and land tenure.

The policy, particularly when it's espoused to be anchored in native title entities, has raised eyebrows for it's non-application to the urban dispossessed whose native was native title was extinguished with the High Court's judgement in Mabo and the subsequent statutory framework of native title, and who are told repeatedly that a reparations fund was created for them via an Indigenous land fund for which that reparation has not really eventuated.

It's like 4 glasses with names. It's very intimidating to drink water here.

In the post referendum environment, it does raise questions about the segmentation of public policy as it pertains to Indigenous Australia, between what I call the haves and have nots.

Wangkumarra and Barkindji man Sean Gordon said of the policy:

> There is an ever-increasing gap between Aboriginal people themselves. Those who have capability, capacity, influence are doing quite well out of these types of announcements, whilst many of our people are being left behind.

I have written something similar in The Monthly that it risks opening up a gap, a schism amongst Aboriginal people in terms of social cohesion and inequality.

Michael Dillon, who I've quoted multiple times who led the Indigenous Affairs portfolio and successive federal governments, was blunter than me.

He called it a 'deeper, flawed policy' that will 'enrich a minority of commercially and politically connected Indigenous entrepreneurs while leaving the rest of the community facing the same entrenched disadvantage'.

While I call this schism, the haves and haves have nots. Dillon talks about winners and losers and the problem of governments picking winners.

'Picking winners is fine', he says, 'until you begin picking losers … The pivot will steal oxygen from the real policy conversations we need to have, the hard ones, with the states and territories that actually control many of the levers of economic scrutiny, sorry, economic security.'

'This is an economic policy in name only', he said, 'Like Rumpelstiltskin, it promises to spin straw into gold'.

So the government's economic empowerment policy has raised eyebrows in communities.

But how would the government know? It has doubled down on the very dynamics the Voice sought to disrupt.

Not only do grassroots communities know that elite capture locks the amount of decisions made in their name, but the privileging of white of wealth creation as a flagship policy when their jarjums are being turned into youth detention and child protection is repugnant.

I don't wish to be simplistic and understate the importance of economic self-determination because economic self-determination is a part of the framework of the right to self-determination.

But it does highlight how the government's flagship policy and wealth creation talk kind of matters little when kids are starving and have no food.

So what's the way forward?

The Voice discussion and design came from communities on the ground. Their experience with engaging with bureaucrats, their experience with engaging with governments.

The executive ministers across the Federation community know more than most about decisions that are made about them and where accountability may or may lie across the various accountability mechanisms of the federal state.

These include Question Time, Estimates, the Productivity Commission, to the Australian National Audit Office.

They also know that there's a degree of executive decision making and executive discretion that sits outside of those integrity mechanisms where decisions are made that have an acute impact on their communities and lives.

But it seems to me the one thing that has been or has become acutely challenging and problematic is the post 2020 Closing the Gap Agreement, which saw the federal government devolve far too much responsibility to the states and territories.

Of course, the Peaks are there too, but the acute power imbalance is so profound and the impact of ideology and the changing political landscapes at a state and level, state and territory level and at a federal level amplify the difficulty of these matters, where Aboriginal Australia just continues to be a 'political football game with no rules', to quote Aunty Pat.

It seems to me a profound misreading of the Australian Constitution and of the High Court's interpretation of federalism to imagine that the states and territories can adequately discharge responsibility for Indigenous affairs in the absence of a coherent national framework, in the absence of a federal Voice and in the absence of federal leadership.

One of the central political impulses behind the 1967 referendum was the manifest failure of the states to protect the rights and welfare of Aboriginal people.

As the reserve and mission system was dismantled, the poverty, exclusion and deprivation experienced by our people became increasingly visible to the Australian polity.

The referendum reflected, in part, a recognition that Commonwealth responsibility was absolutely critical. It was indispensable.

In the decades since Federation and the decades since 1967, the High Court's interpretation of the Constitution has further consolidated the legislative reach of the Commonwealth.

While Australia's system of fiscal federalism has entrenched the state's dependence on national funding.

Most communities and First Nations leaders have felt acutely the absence of the federal government's leadership.

No wonder the federal government sees itself as being able to announce bespoke policy for the haves when it regards states and territories, and Peaks is carrying the can for the have nots.

Returning to Michael Dillon. I hope he's not in the audience. He'll be like 'I should have delivered the speech'.

So he agrees with me about the 1967 Covenant, right, the Australian people voted for the Commonwealth for the Federal government to take a leadership role in Aboriginal affairs.

He says Closing the gap is not solely a policy framework directed to the benefit of Aboriginal and Torres Strait Islander Australians, as a discreet group.

He says it's mainstream national policy built on widespread concerns since 1967 that action on Indigenous disadvantage was necessary, designed and sustained to reassure mainstream Australia that action is being taken and as a direct consequence it will stand or fall on mainstream Australia's confidence that the policy is working. He says, 'The confidence is waning'.

I also say the policy is not working.

To that end, Dillon foreshadow is something I think is really important to speak about in concluding this oration, and that is he foreshadows the Productivity Commission's review of the National Agreement is actually a critical turning point for our people, in what many regard as pretty bleak days.

He says: 'The current review, the second triannual review of the National Agreement (which Danielle referred to), is a real and possibly the last opportunity to arrest that decline before a future government decides to abolish the framework in whole or in part. Not because the underlying reform was misconceived, but because its implementation is widely perceived to have failed. Apart from the enormous cost of reverting to a zero-policy base, the larger risk, he says, is that the potential consequences on the ground and within policy and political domains are unknown and unknowable.'

The schisms I've raised from gender incorporation and corporations versus communities, incorporation versus individual agency, the haves and the have nots, the winners and the losers, are tensions and divisions made more acute, in my view, by the federal withdrawal from leadership in a space that was mandated to them by the Australian people in 1967.

This is not an Albanese problem or an Albanese Government problem.

It is the problem or the fact of how our federalism has developed and how the states and territories carriage of Indigenous affairs has amplified the fault lines, and as Ken Wyatt would put it, the shackles since colonisation.

As Ken reminded us last year:

> These are the soft shackles, polished, polite but powerful. They exist not in not just in laws but in habits, not just in prejudice but in process. They remind us that colonisation was never just an event, it is a system that must continually be redesigned out of existence. They are the legacy of well-meaning reform without enduring architecture, and they will persist until we embed Indigenous design into the institutions of the state. If William Cooper's petition was the moral beginning, the unfinished business of our time is the structural completion.

It's very important for our people, our communities, our Peaks, our collectives and individuals living in community to submit to the review. It seems a very watershed moment for Indigenous policy.

By way of conclusion, I wanted to end, I guess, the same way as Ken did, which is to say the Uluru Statement from the Heart remains our blueprint.

However, states and territories may be implementing it in this era, we can't change the reality that without a federal Voice, the gap will not close.

And without a federal voice, so that people can be assured that the people who are giving advice to government are chosen from their own communities, Aboriginal people and Torres Strait Islander people will never be able to achieve the right to self-determination.

Thank you.

Danielle Wood, Chair Productivity Commission

Huge thank you, Megan, for a very bold address.

We didn't realise when we set the date for this evening that it was 3 years exactly since the referendum, but I think that provided a very powerful backdrop for your comments.

I'm now going to welcome Dr Stephen Kennedy to provide some reflections on the address, but he needs no introduction.

But Stephen has more than 30 years' experience in the Australian public service.

He became Secretary of the Department of Prime Minister and Cabinet in June 2025. Before that he was Secretary of the Treasury.

He was awarded the Public Service Medal in 2016 for outstanding public service in the area of climate change policy and was appointed as a Fellow for the Academy of Social Science in October 2025.

He brings a breadth of experience and insight to public policy, and I'm delighted that he could join us tonight.

Please join me in welcoming Stephen.

Dr Stephen Kennedy PSM, Secretary Department of Prime Minister and Cabinet

We do have our own glasses. Megan, you are right.

Thank you, thank you, Dani.

I, I also want to thank you Paul for the welcome, welcome to Country.

And I also want to acknowledge all of the Aboriginal and Torres Strait Islander people here today and online.

And I also want to acknowledge First Nations public servants who work incredibly hard in the Australian Public Service in their directly in their jobs, but more broadly across the Service.

I very much welcome their contribution and the public service is a much better place.

And for those of you interested, please think about working with us where we're we are a good place to work.

Megan, Professor Davis, I prefer to think of us as public servants rather than bureaucrats because I sometimes don't like that tone that bureaucrats represents. But I accept what it is.

But we are genuinely here to serve the public, and we are particularly interested in serving the needs of our First Nations people and improving their outcomes.

Thank you, Dani, also for the opportunity to speak.

I want to also acknowledge Rom, we've had a bit to do with each other in the past. His contribution was profound.

And I'll just make a couple of reflections on the role of Productivity Commission is making, and now through Selwyn.

Something Rom said in his first oration was at the heart of it: 'At the heart of it all must be the people, Aboriginal and Torres Strait Islander people, and we must be at the centre of policy, decision making, programme design and implementation. It's as simple as that.'

Hence my call out for those First Nations people who might want to come and work with us in the public service.

It's both simple and it's also very complicated.

A couple. I'll make a couple of quick reflections, maybe a couple on the Federation and a couple on economic empowerment and self-determination on the federation and the complexity that it presents.

In closing the gap, I think we have to acknowledge that it does present enormous complexity with the web of delivery of services across both the federal and the state level.

I've got some bad news for you though. It's not going away.

The, the long history that I observe in the Federation over the last 125 years, is 125 years of a march of the Commonwealth into actually what under the Constitution are primarily state responsibilities.

And it creates, it creates genuine complexity.

But I do agree with Megan, that there is a real opportunity for us to work more effectively.

However, one thing that that an organisation like the Productivity Commission does extremely well is hold all levels of government to account through its high-quality evidence collection and publication.

And Rom, of course you are a huge part of that and your review goes to that I, but I do think the, that's just an, an absolute basic starting point. It allows, for example, the Commonwealth government, if it's disappointed in the money that this might be provided to a jurisdiction for housing or whatever the case may be as a recent example of this, to then approach that jurisdiction and say, what are we getting for our return for this distribution of funds?

It's, it's crucial.

The second thing I provide.

So, so is there always the opportunity for leadership as Megan spoke about?

I think of course there is, but the federation must work together. They really must come together.

When I work with jurisdictions, they have different capabilities, they have vastly different capabilities.

They need different things from a federal government.

It is not a one size fits all and we have to be able to be able to be nuanced and effective enough to work across those different jurisdictions.

The second thing I wanted to perhaps just provide a brief reflection upon is economic empowerment.

By way of background, before I became, oh well, I don't, I suppose I don't need to do my full history.

I was born and grew up in Moolenbar, Bundjalung country.

But before I became an economist, I worked in the health sector as a nurse and then I trained as, worked as a registered nurse and then later I became an economist. But it gave me a perspective on understanding how, for example, institutional healthcare works and then looking at it from the other side of the, the, the desk and thinking about how invest, how our investments are made and, and what our returns look like.

I probably have a have a slightly different perspective to Megan on this.

I don't see it as an elitist wealth creation mechanism. I'm more in the: I think what a shared perspective we would have.

I'm much more in the Amartya Sen camp of it gives us an opportunity for people to make the most of their capabilities and things like racism, gender inequality, these are all things that economists like me think are drawn.

Not only do they mean the community is less than what it could be, it also directly affects the opportunities that those people face.

So I don't see this as a one as one thing or the other.

You will never generate economic empowerment unless you address disadvantage.

But I'm a big fan of democratic capitalist economies.

We happen to live and work in one.

And I think it can be a really powerful tool, not just to raise the circumstances of the anointed, you know, narrow opportunity, but of all.

But of course, to do that, one must address the basic type of disadvantage that Megan spoke about.

So I guess from my perspective, the only reflection I, I would make, I have been involved in this somewhat.

So now I have to slightly declare a conflict.

The government came and spoke to me about this when I was in the Treasury portfolio and some of it has followed me across to Prime Minister and Cabinet and I remain very interested in assisting the government to pursue that agenda because I see genuine, I see genuine real opportunity in it.

I don't see it as something that then means that other many of the legal and constitutional aspects which Megan is much more expert than me that need to be addressed. I don't see it as in conflict with those.

I see it as a powerful way to improve the circumstances of all First Nations people.

And that is the intent that the Government asked me to work on and I work on when I when I see the opportunity and hear about the opportunity for First Nations people and to give them an opportunity to access capital or to do the things that they need to do to generate the opportunities for them and their children.

I personally think it's potentially a very powerful tool, but I wouldn't want to leave you with the sense that somehow that means I think, well then let's just not worry about the abject disadvantage that Megan spoke about.

Our programmes clearly must address that.

Accountabilities must be crisp and we must know who was held responsible and for why.

Look, I'll just close with a couple. I found.

Now admittedly, Megan, I did read your address 25 minutes ago. I'm sorry about that, but so I didn't get quite the chance to get into it as I hoped, but I found it incredibly insightful.

Thank you.

Let me join with Dani and thanking you for your oration.

And Rom, thanks for the great honour and being able to provide some reflections at your Oration.

For those of you more broadly, as the Head of Prime Minister and Cabinet and in the role I play across the public service, I guess I just want to reinforce amongst First Nations people here and online that we are a service committed to reconciliation, committed to improving the lot of First Nations people, and absolutely committed to doing it with you.

Thanks for the opportunity to make some remarks.

Danielle Wood, Chair Productivity Commission

Thank you, Stephen for your characteristically thoughtful observations.

And I wanted to thank Megan again for her very thought-provoking address. You've covered some challenging terrain. You've certainly given us a lot to reflect on as we undertake our second review of the Agreement and Closing the Gap.

Your words have very much focused my mind on the importance of that review and the way that we engage with community as part of that review.

And most of all, I think you've reminded me that we must always keep that sort of laser focus on what matters most, which is the outcomes for Aboriginal and Torres Strait Islander people.

As a token of our thanks for this evening, I'd like to present you with this gift. I don't know what it is, but I know it's a lovely brand.

Oh, and sorry for making you get up. I'll deliver it to you.

But thank you very much.

Before we close proceedings, I just want to say a very big thank you to Michelle Cross and all the other staff that helped pull this together. It is no small feat and the team worked extremely well right down to naming the waters in front of us. That's the sort of level of attention to detail we're talking about.

Thank you as well to the National Library of Australia for hosting us. It is such an iconic venue.

I am hoping the canapes are as good as the food at Bookplate.

And most of all, thank you all for joining us to those online, to those in the room. It really makes the Mokak Oration having so many of you here and I hope you'll join us again next year.

So with that, we will say goodbye to the people on the live stream.

For those in the room, please stay and join us for some canapes and drinks in the foyer and continue the conversation.

Thank you.