NORTHERN EDITION

LAND RIGHTS NEWS

"Our Land, our Sea, our Life"

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Sacred sites: Let AAPA decide

The NLC says a government minister should not have the legal right to override a decision of the Aboriginal Areas Protection Authority (AAPA).

The NLC lays out its case in a wide-ranging submission to a panel of consultants engaged by the government to review the Northern Territory Aboriginal Sacred Sites Act.

The Act provides that a party aggrieved by an AAPA decision relating to a sacred site may apply to the Minister (presently the Minister for Local Government and Community Services, Bess Price) for a review.

The NLC's submission does not take exception to the right of review, but opposes the Minister's ability under the Act then to overturn a decision by AAPA which a developer might not accept.

The submission says the minister's role in a review should be limited to making a request or recommendation to AAPA to reconsider or take into account some matter that has come to light in the minister's review of AAPA's original decision.

The review will provide advice on how the Sacred Sites Act "might be strengthened to reduce red tape and provide certainty and improved processes for economic development in the Northern Territory."

The NLC says it has not identified any unnecessary regulatory provisions or procedures and rejects suggestions that sacred sites clearances are unusually slow or otherwise unacceptably onerous. "The Act operates to assure site custodians that their wishes concerning the protection of sacred sites will be taken into account. The confidence and certainty this provides to custodians translate to certainty for developers through the issue of the Authority certificate relating to a proposed development."

The NLC submission argues for the present level of independence of AAPA to be retained, and for the Authority to be sufficiently funded for it to meet the requirements of its functions.

Meeting at Gulkula late last year, the NLC's Full council put the NT Government on notice that any dilution of the Sacred Sites Act would be strenuously opposed.

"Sacred sites are at the heart of our Aboriginal culture and customary law. Any attempts to put development before the protection of our culture will be condemned absolutely," NLC Chairman Samuel Bush-Blanasi said in a press statement from the Full Council.

"We want to warn the government that Traditional Owners will make this a central issue at the next Territory election if the government would be so unwise as to diminish protection of sacred sites."

Sacred Sites Review-p10-13

The jails are the crime!

Over the 25 years since the report of the Royal Commission into Aboriginal Deaths in Custody was tabled in the Commonwealth Parliament, the percentage of Aboriginal prisoners in Australian jails has doubled. The Northern Territory's record of jailing Aboriginal people is by far the worst.

Inside, Land Rights News (Northern Edition) presents a major feature on the scandal of Aboriginal imprisonment, and reports on the growing number of calls for Australian governments to set Closing the Gap targets in order to mitigate the crisis.

A word from the chair

Welcome, all, to what is a big year ahead for the NLC.

Firstly, 2016 is the 40th anniversary of the Commonwealth Parliament's enacting the Northern Territory Aboriginal Land Rights Act, a powerful piece of legislation which has delivered great benefits to Aboriginal people. It's enabled Aboriginal people over the past four decades to gain freehold title to half the land mass of the Northern Territory and almost 90 per cent of the coast.

I took comfort from the news release of Indigenous Affairs Minister Nigel Scullion after the last Full Council meeting at Gulkula in November, when he said the 40th anniversary would be "a milestone worth celebrating". Nigel committed to work with the NLC to mark the occasion in a meaningful way. We've submitted a supplementary bid for funding from the Aboriginals Benefit Account to fund a program of events, but, as yet, we have not heard the result of that application.

Another big celebration looms this year – the 50th anniversary of the Wave Hill walk-off. The NT Land Councils are planning a joint meeting on country, probably in August, to mark both that occasion and the 40th ALRA anniversary.

Two big land hand-back ceremonies are also on the dry season calendar: the Wickham River (Yarralin) claim, which was actually heard and recommended even before the Land Rights Act became law; and the Kenbi land claim which was lodged in 1979 and recommended by the Aboriginal Land Commissioner in 2000. It's a matter of great sadness that both claims have taken so long to settle, and that so many Traditional Owners have passed away in the meantime.

Mid-year (31 May–3 June), the NLC will co-host, with the Canberra-based Australian Institute of Aboriginal and Torres Strait Islander Studies, the annual National Native Title Conference. The NLC's participation is in recognition of the 40th ALRA anniversary. It'll be a major event for Darwin – around 900 delegates are expected to attend.

Darwin will also play host to the National NAIDOC Awards Ceremony on Friday 8 July.

On our own front, the three-year term of the present Full council of the NLC will expire at the end of this year, which means there'll be elections later this year. The nomination process for new NLC members will formally start in June. Members will hold office for a period of 3 years, and will attend their first meeting in November 2016.

Throughout March to May 2016, we will be running a media campaign and sending letters out inviting traditional Aboriginal owners to nominate. An information kit will include facts on the role of Council Members, who can nominate, how to nominate, nomination forms and closing dates. I encourage nominations from those who are interested in promoting the rights and interests of Aboriginal people and who

are able to represent their community by bringing their views to meetings, speaking up and after meetings provide feedback to the community. In particular, we welcome representation from women and younger people who are endorsed by their community as aspiring leaders.

SAM BUSH-BLANASI
Chairman

Valenti on board as NLC's new CFO

The NLC has appointed a new Chief Financial Officer.

Joe Valenti is a Certified Practising Accountant (CPA) and has a Bachelor of Business, majoring in accounting and a minor in law. He has undertaken additional post- graduate studies in accounting and management through Monash University and Curtin University.

His expertise has been in finance, accounting and senior management in large organisations including Curtin University, Wesfarmers/ Bunnings Limited and the R&I Bank (now Bankwest Limited).

He has experience in Indigenous affairs through his involvement with the Centre for Aboriginal Studies at Curtin University.

Joe has recently moved to Darwin from Western Australia.

JOE VALENTI, NLC CFO

He has a wife and two children, aged 12 and 10. He is a keen runner and cyclist; however, football is his passion (an avid West Coast Eagles supporter).

He is focussed on introducing major reforms within the corporate management of the NLC, and sees the next couple of years as an exciting challenge in the transformation of the NLC.

Wauchope settles into new role deputy chair

Wayne Wauchope is the NLC's new deputy chairman, succeeding John Daly who retired last year because of personal and professional commitments.

Mr Wauchope, from the West Arnhem region, was elected at the last meeting of the NLC Full Council at Gulkula.

He was brought up at Croker Island.

"I grew up the hard way," he says.

At 17 he joined the Army and signed up to 7 Independent Rifle Company, which grew into Norforce in 1981.

"The Army gave me my first serious education," Wayne says.

He later attended Batchelor College for three years but, for cultural reasons, had to give up his studies towards an associate diploma in community management.

He has served as a member of local government councils in West Arnhem, and was elected to the ATSIC West Arnhem regional council in 2003.

"The position of Deputy Chair provides me the opportunity to support the Chairman and to represent Traditional Owners and the Aboriginal community," he said.

"We work for the people; that's why we've been elected."

WAYNE WAUCHOPE, NLC DEPUTY CHAIR

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Giles disappointed

The outcome of an investigation into Indigenous land administration and use, ordered by the Australian Council for Australian Governments (COAG) in October 2014, will have disappointed its champion, NT Chief Minister Adam Giles.

A communiqué issued after the COAG meeting said the investigation would "enable traditional owners to readily attract private sector investment and finance to develop their own land with new industries and businesses to provide jobs and economic advancement for Indigenous people".

Mr Giles was the driving force behind the investigation, and the NT's two mainland Land Councils feared the worst after he characterised it as an opportunity "to talk about the Aboriginal Land Rights Act and the ownership or the management of land tenure of 50 per cent of the jurisdiction.

"It also gives us an opportunity to talk about the ownership of National parks in the Northern Territory, something that is really important to Territorians in how we move forward progressively in an economic sense," Mr Giles said.

Further, he said, the (Northern Territory) Land Rights Act had held Aboriginal people back: "We continue to hear negative statistics about it. If we are going to be serious about Aboriginal reform in COAG we have to address these fundamental issues."

In an address to the National Press Club on 11 February last year, NLC CEO Joe Morrison said the exercise was an "ambush … promulgated without any prior involvement or consent by Aboriginal Traditional Owners or affected people.

"Nor have Traditional Owners been consulted about the terms of reference," Mr Morrison said.

Nine days after Mr Morrison's address, Indigenous Affairs Minister Nigel Scullion appointed an Expert Indigenous Working Group, to "work with the Commonwealth, state and territory governments on the investigation and ensure that policy directions and proposals are developed with the involvement of Indigenous stakeholders".

The Northern and Central Land Councils were not impressed: "For the sake of the most disadvantaged indigenous Australians we call on the Abbott government to rise above its demonstrated dislike of evidence-based policy development," CLC Director, David Ross, and Joe Morrison said in a joint statement.

"We hope the Indigenous Working Group announced today will challenge the myths being peddled by NT Country Liberal Party ideologues about hard-won Aboriginal land rights supposedly holding up development in remote communities. We are certainly keen to work constructively to develop solutions to real barriers to economic development."

The Expert Indigenous Working Group recognised those apprehensions. In a statement included in the final report of the investigation to COAG in December last year, the group said: "Throughout consultations, the Expert Indigenous Working Group have been cautioned by Indigenous people and organisations that there is potential for the COAG Investigation to represent nothing more than a 'Trojan horse' through which governments and industry would seek to further weaken Indigenous land rights legislation in the interest of promoting Indigenous economic development through more efficient 'processing' of land use proposals for third party interests".

But the group said it was "adamant that the time has come for a very different conversation. The outdated 'traditional' approach to making land administration and use more efficient through weakening and mandating time limits for procedural rights afforded to Indigenous land holders has been shown not to work.

"The Expert Indigenous Working Group would argue that any approach on Indigenous land and waters that does not properly recognise and respect traditional ownership of that land (whether or not that ownership is fully recognised at law) will only lead to

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COAG from an Indigenous perspective

The report to COAG about Indigenous land administration and use took more than a year to materialise.

COAG ordered the "urgent investigation" in October 2014, at the behest of NT Chief Minister Adam Giles. The report was meant to have been delivered to the COAG meeting in May last year; it was not delivered until December.

Initially, the investigation was to have been done by the Northern Territory, Queensland and Commonwealth governments; the New South Wales, Victoria and South Australian governments signed up later, and officials from all six governments led the investigation.

Indigenous Affairs Minister Nigel Scullion in February last year appointed an Expert Indigenous Working Group to provide guidance and input, and to lead consultations with Indigenous stakeholders (the NLC was among those consulted). The group comprised: Mr Wayne Bergmann (Chair), Mr Brian Wyatt (Deputy Chair), Dr Valerie Cooms, Mr Craig Cromelin, Mr Maluwap Nona, Ms Shirley McPherson, Mr Murrandoo Yanner and Mr Djawa Yunupingu.

Mr Wyatt died before the report was received by COAG (obituary p21).

The Expert Working Group delivered its own chapter to the final report to COAG, "to convey their thinking and some of the general themes of their deliberations in what is a very important area for Indigenous Australia."

Here are edited extracts from the group's "Statement of Intent":

The Expert Indigenous Working Group considers that it is far more efficient and empowering for impacts from development to be dealt with at the front-end by those who are most affected.

It is the strong view of the Expert Indigenous Working Group that development on Indigenous land and waters will only be successful and sustainable where Indigenous people are provided with the opportunity to be partners in development, to give their free, prior and informed consent and to benefit economically and socially from the development. Such an approach is consistent with the United National Declaration on the Rights of Indigenous Peoples which was endorsed by the Australian Government in April 2009. There is a clear incentive where they are given the opportunity to engage as equals for Indigenous people to find ways to make development work on their country.

The Expert Indigenous Working Group is confident that where they are treated as equals, development on Indigenous land and water will become more efficient and will provide economic benefits for all stakeholders. The opportunity has always been there for development on Indigenous lands. Often it is the attitude of government, industry and third parties that has been a major impediment to development proceeding.

The right to economic development is fundamental to a successful society. The ability for Indigenous people to fully utilise their property rights to create wealth and prosperity is critical for Indigenous people and Indigenous societies to be able to participate and drive economic opportunities in the mainstream economy. The law and government policy needs to be amended to enable this and the Expert Indigenous Working Group would argue that this requires immediate redress.

However, in addition to law reform, Indigenous people need to be supported and resourced to fulfil their potential and engage with the mainstream economy. While not lacking in enterprise and endeavour, Indigenous groups face a number of disadvantages and potential hurdles in being able to fully capitalise on their assets.

A major issue is the fact that the land and water that is either capable of being claimed or is owned by Indigenous people is often the land that has otherwise not been developed or acquired by the Crown. This means that development of Indigenous land is hampered by a lack of infrastructure, the high transaction costs of doing business and sometimes just the simple fact that this land sits outside mainstream state and territory land administration systems.

There is also the well documented gap in socio-economic living standards which provides significant challenges in terms of the capacity of people and communities to take advantage of economic opportunities. This gap is also reflected in institutional capacity and governments should also ensure that a level playing field exists in commercial negotiations so that land use agreements and business partnerships are fair and in the best interests of the Indigenous people who are affected by development.

To allow Indigenous land use to fulfil its potential, government needs to support Indigenous people in their economic initiatives and to work with Indigenous people and their representative organisations to remove or reduce the barriers which prevent entry into the mainstream economy.

It is important that government recognises that where money is not invested to support Indigenous participation in the economy and reforms are not instituted to empower Indigenous economic development, government will inevitably be required to pick up the tab and subsidise the impacts on Indigenous people which accrue from non-participation and the cycle of welfare dependency which delivers little in the way of economic or social returns. It should be noted that this does not take away the responsibility of government to deliver services and programs to Indigenous Australia, rather government service delivery will become more effective if it is supported by private sector commercial activity.

The Expert Indigenous Working Group also highlights the importance of constitutional recognition for Australia's first people and the recognition of the property rights that have existed for thousands of generations.

While the work the subject of this Investigation sits outside of discussion around constitutional recognition, the incorporation of Indigenous Australians in the mainstream economy forms part of the broad reconciliation discussion and through the framework that land rights legislation represents provides an opportunity for each native title group within Australia to pursue its own self-determination and a form of reconciliation with the Crown.

"Often it is the attitude of government, industry and third parties that has been a major impediment to development proceeding"

Giles disappointed with COAG review

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ill-feeling, project uncertainty and delays. Such an approach has the effect of diminishing hard-fought gains in this area and well-established principles around the human rights of traditional owners."

In the end, rather than attacking Indigenous land tenure, the report to COAG's meeting in December last year identified five key areas where governments should otherwise focus their efforts:

- Gaining efficiencies and improving effectiveness in the process of recognising rights
- Supporting bankable interests in land
- Improving the process for doing business on Indigenous land and land subject to native title
- Investing in the building blocks of land administration
- Building capable and accountable land holding and representative bodies.

A communiqué issued after COAG received the report in December said that government leaders had agreed to the development of "a new strategic framework that puts Indigenous economic participation at the heart of the national agenda, recognising that economic participation underpinned by cultural participation leads to improved social outcomes".

"The framework will drive genuine cooperation, including with Indigenous leaders, to ensure we learn from and share what works. It will also support an increased focus on place-based solutions. This will support increased economic independence and reduced reliance on welfare, and help achieve Closing the Gap targets."

AS the 25th anniversary approaches of the tabling of the Royal Commission into Aboriginal Deaths in Custody report (15 April 1991), Australian governments are under increasing pressure to reduce the rates of Indigenous imprisonment.
The Northern Territory has by far the highest rate of imprisonment of any Australian jurisdiction; indeed, it has more prisoners per head of population than any country in the world.
Late last year, two of the country's most powerful professional peak organisations, the Australian Medical Association and the Law Council of Australia, separately called on Australian governments to set a target for closing the gap in the notorious rates of Aboriginal and Torres Strait Islander imprisonment.
On the following pages, Land Rights News presents the arguments for change by the Law Council and the AMA.
Darwin barrister John B Lawrence SC leads our coverage with a stirring contribution that reveals the scandalous absence of a public transport service to Darwin's new Superjail at Holtze...

The bus doesn't stop here

"The degree of civilisation in a society can be judged by entering its prisons"
- Fyodor Dostoevsky
The House of the Dead (1862)

SUPERFAIL: Holtze Prison. Photo by HELIFISH

The Northern Territory has not only four to five times more adult prisoners per head of population than any other state or territory in Australia; it has more prisoners per head of population than any other country in the world.

The country with the highest prison population in the world is the United States of America which jails 716 people per 100,000 head of population. The Australian national imprisonment rate is 194 per 100,000 head of population. The NT imprisonment rate is a mind-blowing 904 per 100,000 per head of population. What's more, 85 per cent of those prisoners are Aboriginal. As to juveniles, the NT imprisonment rate is more than five times higher than any other State or Territory in Australia – and, 97 per cent of the juveniles are Aboriginal.

Twenty-five years ago Australia held a Royal Commission into Aboriginal Deaths in Custody. It examined why the imprisonment rates of Aboriginal people were so high and disproportionate. The figures then were considered shameful and a disgrace. Then, Aboriginal people constituted 2.5 per cent of the population, while nationally they made up 14 per cent of the country's jail population. The Royal Commission made 339 recommendations to redress that shocking state of affairs. Twenty-five years later the figures are far worse. Aborigines still constitute 2.5 per cent of the Australian population but they now comprise 27 per cent of the countries' jail population.

So we now have "crisis," "disgrace," and "shame" to the power of 10 and no Government of any ilk has the will to genuinely acknowledge this and start the processes required to reduce these figures. There is simply no will. How can that be?

This is Australia 2016. These public Aboriginal incarceration figures do not constitute another 'Great Australian Silence' – the term coined by Professor Bill Stanner in his 1968 Boyer Lectures about the systematic obliteration in national memory of what the British settlers and their successors had done to the Aborigines. The difference today is we all know these Aboriginal incarceration figures and their deterioration.

Central to Professor Stanner's analysis, which goes to the heart of Australian identity, was the all-pervasive faculty of indifference towards the real history of Australia. Part of that indifference he described as 'sightlessness' – the aversion of our eyes to the facts. That's what's happening in Australia regarding these imprisonment figures which represent a malignant stain on our nation.

Indifference was appropriately defined by Auschwitz survivor Elie Wiesel in a speech to the U.S. Congress in April 1999:

"For the person who is indifferent, his or her neighbours are of no consequence. And therefore their lives are meaningless. Their hidden or even visible anguish is of no interest. Indifference reduces the other to an abstraction."

In many ways this is illustrated by the Darwin Superjail at Holtze, 33 kilometres south of Darwin, commissioned by the previous Labor Government and opened in September 2014.

Forget the rail link to Alice Springs or the Darwin Convention Centre: this will ever be Labor's legacy to the NT justice system and the Aboriginal people of the Northern Territory. This sprawling edifice can be clearly seen by visitors flying into Darwin. Darwin has no Statue of Liberty or Eiffel Tower, just this enormous footprint planted in the bush. This monument to the continuum of jailing Aboriginal people at gross levels has cost the tax payer $1.8billion according to the current Attorney-General, Mr John Elferink, and will take 30 years to pay off.

The jail is the most costly project in NT history. It is a continuing statement that this shameful, world-leading Aboriginal imprisonment rate is our norm and will continue to be so. Labour condoned and accommodated this nation's shame and offered nothing to address it.

The whole NT criminal justice system operates accordingly. During its chaotic reign, the present CLP Government has brought further policies and law reforms that have deliberately accelerated this incarceration frenzy. These reforms render our Courts basically as clearinghouses for the dispatch of Aboriginal men, woman and juveniles into the prison vans below and then down the Stuart Highway to their final destination: for adults, the Superjail; for juveniles the reopened adult jail, Berrimah Prison, formerly consigned for demolition.

Thus the symbols which illustrate the Northern Territory of Australia are crocodiles, cyclones and more and more Aboriginal men, women and children rotting behind bars. Aboriginal imprisonment is the real NT brand.

Concomitant with this out-of-control, unprincipled approach to justice and law and order has been a marked deterioration in the way our Department of Correctional Services treats its prisoners, part and parcel of Australia's moral and ethical decline.

Inhumane and medieval practices employed recently by the Department of Correctional Services toward Aboriginal juvenile detainees have been the subject of much national media attention.

The spit-hooding and deliberate gassing of Aboriginal children in detention, and the decision to move them out of the purpose-built Don Dale facility into the derelict adult prison, was one reason why the Department of Corrections' CEO, Mr Ken Middlebrook, was eventually thrown under a bus by his boss, the Minister responsible for Corrections, Mr Elferink.

Having thus ignored all constitutional principles of ministerial responsibility, Mr Elferink then announced the following week, to everyone's surprise, that he would retire after the term of this government. A former police officer himself, Mr Elferink in November 2015 appointed a personal friend, NT Police Deputy Commissioner Mr Mark Payne APM, to replace Mr Middleton.

There appear to have been no changes made in the crisis-ridden Department of Correctional Services. And so Aboriginal children (97 per cent) remain in a former adult jail not fit for human (never mind juvenile) habitation, and policies from the Middle Ages continue to be applied by unqualified and untrained staff.

Did somebody mention indifference?

Meanwhile, policies and procedures which apply to family prison visits at our Superjail have been in breach of international and national regulations, as well as all basic standards of human decency.

Philosophy and writings on this subject are in agreement: as far as the rehabilitation of a prisoner is concerned, the importance of receiving visits from family and loved ones is crucial, particularly for Aboriginal prisoners who are often far removed from country, language, culture and kin.

The Royal Commission of Inquiry made the point, with its Recommendations 168 and 169:

168: "That the Corrective Services effect the placement and transfer of Aboriginal prisoners according to the principle that, where possible, an Aboriginal prisoner should be placed in an institution as close as possible to the place of residence of his or her family. Where an Aboriginal prisoner is subject to a transfer to an institution further away from his or her family the prisoner should be given the right to appeal that decision."

169: "That where it is found to be impossible to place a prisoner in the prison nearest to his or her family sympathetic consideration should be given to providing financial assistance to the family, to visit the prisoner from time to time."

Similarly, as you would expect, international law, through various United Nation principles and resolutions, encourages and requires correctional services to provide appropriate mechanisms and procedures to effect regular and easy access for families to visit prisoners. The UN has Standard Minimum Rules (SMR) for the treatment of prisoners which recommend that all Member States 'make all possible efforts to implement the SMR.' Principle 19 of the United Nations' Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment states:

"A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his/her family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations".

Further, the NT Government is a signatory to the Standard Guidelines for Corrections in Australia, a set of procedures based on international law. The Guidelines outline 'the spirit in which correctional programs should be administered and the goals towards which Administrators should aim.' On family visits, Guideline 3.21 dictates that contact should be encouraged due to 'the important role families have in the reintegration of prisoners back into the community upon release, and the advantages to be gained from reducing isolation in prisons.' Similarly, Guideline 3.26 highlights that facilities should be conducive to prisoners receiving visitors 'in a dignified manner.'

THE unused bus stop at Holtze Jail.

The NT Superjail's systems and procedures relating to family visits contravene all of the above in a cruel and macabre manner, and in stark contrast to other prisons in Australia and overseas. Bearing in mind these wanton deprivations relate to 85 per cent percent of a prison population which is Aboriginal, it further demonstrates that in 2016 our Minister for Corrections, his Department and its policies are obsessively punitive, inhumane and racist – a compelling basis why the Minister for Corrections and his new CEO are unfit for office.

Since 1992 I have been a regular visitor to the Darwin Prison and the Don Dale Juvenile Detention Centre to visit clients – for the first five years as an Aboriginal legal aid lawyer, thereafter as a private barrister. Until January 2015 these visits were to Berrimah Jail and the original Don Dale Centre. The visiting yard at Berrimah was an open area with tables and chairs used by all visitors, professional and family. If more privacy was required you could arrange and be given access to offices. What one noticed was that there were always large numbers of Aboriginal families in there visiting a young male family member. Typically, a table would accommodate a young Aboriginal male prisoner and his family, his wife, children, mum, uncles and aunties.

Getting to Berrimah jail wasn't easy for families: there were the airfares into Darwin, finding and paying for accommodation and the public bus to the stop on Stuart highway about 1km from the gates of Berrimah. The financial and geographical hurdles were exacerbated by the bureaucratic requirements of booking, etc. But none of this stopped families getting in and seeing the prisoner, talking language, touching, holding children, hearing stories.

Aboriginal people invented 'resilience', so visits happened and they clearly helped the prisoner in a big way. They also allowed the mothers, wives and children the opportunity to see, touch and talk with their loved one.

Since the new Superjail opened, I have noticed, to my surprise and disappointment, a large drop-off in the number of Aboriginal family visitors, to the extent that I have sometimes noticed virtually no Aboriginal family visitors at all. The 'system', the Superjail system of access for prisoner's families, has defeated them. Aboriginal prisoners now receive far fewer visits from their families. This is dreadful and scandalous; yet, bearing in mind the barriers put up to discourage family visits, it is hardly surprising.

Some of these difficulties were anticipated by Aboriginal Legal Aid and other interest groups before the jail was built. But assurances were given that the Superjail would not hinder the ability of families and others to visit the prisoners.

The first and obvious problem was the distance from Darwin to the Superjail, located 33km south of Darwin. Berrimah prison, now Don Dale Detention Centre, is 14km from Darwin.

Before the Superjail was built, it was agreed and understood that a bus would service the jail for family visitors and others. And so a bus stop and shelter was built about 500 metres from the reception area. According to the NT News it cost $40,000! It sits there today, and to date it has never seen a bus.

There is no bus service. It is a bus stop without a bus. Like so much that has been said of the Superjail, deliberate untruths were given to fob off interest groups.

Procedures at the Superjail have created other hindrances to visitor access.

To be allowed a visit you have to be able to book, in English by either phone or in writing, at least 24 hours before the visit. You are then allocated a time, say 10am, for your visit. On the day you must then report to Reception with photo identification no later than half an hour before 10am. If late or no photo identification, there will be no visit. You can just reschedule for another day.

If all goes well, you then wait until all 10am visitors are called. They then have to go through individual security screening: eyes and fingerprints are biometrically tested. On the first visit you are photographed and printed at reception which is then put into their superscreen system for you to then pass through, assuming your eyes and prints are verified.

Before going through this screening process you must remove all metal objects – shoes, wedding bands, jewellery – and then stand in a line to be tested for drugs by a sniffer dog. If that goes without incident you then walk through the screen process which checks your eyes and prints and, if okay, opens up the door on the other side. You then retrieve your property and go through to the visiting area.

The visit is for only one hour and prisoners are allocated two hours per week for visits.

After the visit, you have to exit through the biometric screening process again. Needless to say, the screening process rarely goes smoothly; there are invariably hiccups and problems. The whole process is invasive, stressful, embarrassing, particularly so for Aboriginal ladies from country who have English as a second or third language. Their shame and embarrassment are palpable as they struggle with the Superjail's technical intrusions.

The sniffing by dogs and the stumbling through invasive technical junk are bad enough. But the real blow which reduces the ability of Aboriginal families getting out there to visit and see their loved one is this deliberately non-existent, bus service. This is akin to some dark, absurd sick joke. Here is the bus stop, but there is no bus. As you drive past it you can almost see Kafka's Joseph K sitting there … waiting for Godot?

With no bus service the only way out is by taxi, which costs $70 one way from Darwin or $40 one way from Palmerston. The reality can sometimes be this: families from remote communities gather and save hundreds of dollars to fly return to Darwin, only to find themselves with no further funds to get a taxi from Darwin to the prison. I have met families in that very situation.

The NT Department of Corrections has defeated them. Fewer visits deprive wives, parents and children the opportunity to see their loved one. Fewer visitors diminish prospects of a prisoner's rehabilitation. Fewer visits

require fewer administrative resources. Fewer visits are the result of immoral and reprehensible decisions made and administered knowingly by the Minister for Corrections. It is cruel and shouldn't be allowed.

Needless to say, along with the NT's imprisonment levels and treatment of juvenile detainees, its refusal to put on a regular bus service to assist with family visits sits in total contrast with other jurisdictions in Australia and overseas.

The Queensland Government funds free shuttle buses to and from all its Correctional Centres. All other States and the ACT have regular bus services, some run free by NGOs, others at reasonable costs. The New Zealand Government funds some travelling costs of visiting family members. In Canada, bus services for family visits to remote jails are organised and subsidised by various agencies.

Nothing like the NT situation exists anywhere else in Australia. Again the question is asked: how could this be? This is the NT, Australia, 2016.

To answer that question properly, you need to thoroughly analyse what we have here. This is not an accident or simply one that went through to the keeper. Before the Superjail was built, interest groups foresaw the obvious problem, namely, the distance from Darwin would make it harder for all visitors, professional and family.

The obvious solution was a regular, low-cost bus service. The Government agreed that would happen. All understood that it was going to happen. The Government built the bus stop next to the jail. The jail and bus stop were completed. The jail was opened and its 1048-bed capacity is now virtually full after less than two years. But, no bus. The non-existent bus service was complained about by NAAJA and others. The Department of Correctional Services was asked, for all the obvious reasons, to provide this bus service. To this date it has failed to deliver.

"Kafka's Joseph K sitting there ... waiting for Godot?" Artwork by NICK BLAND

In August last year the NT News revealed the fact there was a bus stop built, but 11 months into the life of the new prison there was no bus service. The Minister for Transport, as opposed to the Minister for Corrections, proffered the Government's explanation in perverse jargon:

"The NT Government did not have the capacity or plans to provide a public bus service to the prison.

"Passenger demand from standalone locations such as the D.C.P is not of the required level to deliver a sustainable scheduled public urban route service.

"The Department of Public Transport has determined that a regular service is unavailable."

In December 2015 Father Dan Benedetti, who runs the Darwin Voluntary Catholic Chaplaincy, a group of pastoral carers who go out to the jail, wrote to Mr Payne pointing out that the new prison had been opened for more than a year and yet there was still no bus. He pointed out to Mr Payne the positive rehabilitation effect family visits have on the prisoners and that the cost of the taxi was just "not an option for families."

Fr Benedetti asked if Mr Payne could organise this needed bus service and even suggested it could be driven by a prisoner from the Sentenced to a Job Program. Mr Payne, the new CEO appointed by his friend, the Minister for Corrections, responded to Fr Benedetti thus: "With regard to your query in respect of the Public Bus Services, I can advise you that the provision of the Public Bus Service is a matter for the Department of Transport.

"I am the Commissioner for NT Department of Correctional Services and I am not otherwise involved in determinations surrounding public bus routes.

"With your consent I could forward your email to the Ministerial Advisor to the Minister for Transport."

Father Beneditti thanked Mr Payne and asked him to forward his email. He then received this response from a Michelle Lenard, the Ministerial Advisor for Transport and Infrastructure:

"At this stage the Department of Transport has no plans or capacity to provide a public bus service to Darwin Correctional Precinct (D.C.P). Public transport systems are designed to service high demand, high population centres and operate most effectively along routes between major activity centres. Passenger demand from standalone locations such as D.C.P. is not of the required level to deliver a sustainable scheduled public urban route service. There is currently no allocated public budget for the provision of public transport to the D.C.P.

"The provision of public bus services to the D.C.P would be required to align with population growth and demand in the local area. The provision of services to standalone areas is inconsistent with sustainable public transport planning principles. The closest bus stop in operation is the Howard Springs Road at the turn off to Whitewood Road.

"Our office understands a taxi and minibus industry is currently servicing the new facility and providing a transport option for visitors."

Upon that analysis it can be seen that NT Corrections, knowing of the crucial value of family visits to assist in rehabilitation, knowing of the basic humanitarian value not only to the prisoner but his family members, knowing the numbers and the demography of the prisoners it holds and knowing the relatively minor costs involved in putting on a fully or partly subsidised bus service for family visitors and others, steadfastly refuses to provide one. There can be no justification either economically or ethically for maintaining this bus stop without a bus.

On an issue as important as this, how can the CEO of Corrections respond to Fr Benedetti with:

"I am the Commissioner for NT Department of Correctional Services and I am not otherwise involved in determinations surrounding public bus routes."

This is not indifference, nor is it even wilful blindness. This is a deliberate policy driven by economic imperatives which further punishes not only Aboriginal prisoners but their families and loved ones. Make no mistake: if the Superjail's population comprised 85 per cent white prisoners, that bus stop would have a regular bus service.

• Mr John B. Lawrence SC is a former President of the Northern Territory Bar Association and Criminal Lawyers Association NT; as well, he's been a director of the Law Council of Australia and the Australian Bar Association. He has lived and worked as a barrister in the Northern Territory for more than 25 years. He was formerly a senior Crown prosecutor and then solicitor in charge of NAALAS before joining the independent bar in 1997. He was appointed Senior Counsel in 2010.

•• Land Rights News has asked the Department of Correctional Services for visitor numbers to the Superjail at Holtze, compared with numbers to the old prison at Berrimah. The Department has not supplied those figures.

AMA wants a justice target

The Australian Medical Association (AMA), which describes itself as Australia's most influential membership organisation representing registered medical practitioners and medical students, has called for a national target to be set for closing the gap in the rates of imprisonment of Aboriginal and Torres Strait Islander peoples.

The AMA also wants governments to adopt a justice reinvestment approach to fund services that would divert individuals from prison.

The AMA's "report card" on Indigenous Health, released late last year, advocates an integrated approach to treating the high rates of Indigenous imprisonment as a symptom of the health gap.

Leader Bill Shorten has promised that a Labor government would reinstate the target, which was abolished by Tony Abbott's government.

The Indigenous Affairs Minister, Senator Nigel Scullion, has argued he doesn't want a target because it would "send the wrong signal" that Indigenous offenders are different. He has also warned against "throwing money" at the wrong programs, and promoted the Coalition's school attendance policy as a more effective policy.

In an introduction to its 2015 report card, the AMA recalls that in 2006 it first cast its spotlight on the incarceration of Aboriginal and Torres Strait Islander people, and the links to the lifetime health conditions of Indigenous people who have spent time in prison.

At that time, Aboriginal and Torres Strait Islander people comprised 22 per cent of the entire prison population, and an Indigenous person was 12 times more likely to be imprisoned than a non-Indigenous peer.

Last year, Aboriginal and Torres Strait Islander people comprised 28 per cent of all sentenced prisoners, and are 13 times more likely to be imprisoned than non-Indigenous people.

"The rate of imprisonment of Aboriginal and Torres Strait Islander people is rising dramatically, and is an issue that demands immediate action," the AMA says.

"Between 2014 and 2015 alone, the number of Aboriginal and Torres Strait Islander males in prison rose by seven per cent and females by nine per cent. What is more disturbing is that young Indigenous people aged 10 to 17 years are 17 times more likely than their non-Indigenous peers to have been under youth supervision.

"The 2015 Report Card on Indigenous Health recognises that life expectancy and overall health is most definitely linked to prison and incarceration. The AMA believes that the 'imprisonment gap' is symptomatic of the health gap and that it is possible to isolate particular health issues – notably mental health conditions, alcohol and other drug use, substance abuse disorders and cognitive disabilities – as among the most significant drivers of the imprisonment of Aboriginal and Torres Strait Islander people.

"The 2015 Report Card on Indigenous Health examines how the imprisonment of Aboriginal and Torres Strait Islander people is compounded by a health system and prison health system that, despite some improvements over past decades, remains unable to respond appropriately to the needs of Indigenous prisoners.

"It is not credible to suggest that Australia, one of the world's wealthiest nations, cannot solve a health and justice crisis affecting three per cent of its citizens. The AMA urges Australia's political leaders at all levels of government to take note of the 2015 Report Card on Indigenous Health and act to implement solutions."

Report card into Indigenous health, wellbeing

The Australian Medical Association (AMA) has delievered an Executive Summary of its report card.

Among the divides between Aboriginal and Torres Strait Islander peoples and non-Indigenous people in Australia, the health and life expectancy gap and the stark difference in the rates of imprisonment are among the most well-known.

• It is estimated that, on average, an Indigenous male born in 2010-2012 will live just over 10 years less than their non-Indigenous peers (69.1 and 79.7 years respectively) and an Indigenous female just under 10 years less than her non-Indigenous peers (73.7 and 83.1 years respectively). Life expectancy is a proxy indicator for overall health and wellbeing. Each year, the Prime Minister, reports against 'Closing the Gap' targets that include one to close the life expectancy gap by 2030.

• The age standardised imprisonment rate for Aboriginal and Torres Strait Islander peoples was 13 times greater than for their non-Indigenous peers in 2015. The year 2016 marks a grim milestone in the numbers of Aboriginal and Torres Strait Islander peoples being held in custody. At the end of the 2015 June quarter, the average daily number of Aboriginal and Torres Strait Islander adult prisoners was 9940, comprising 8938 males and 1002 females. Under current projections, for the first time, over 10,000 Indigenous people could be in custody on the night of the annual prison census on 30 June 2016. At the 2015 June quarter, Aboriginal and Torres Strait Islander people represented 28 per cent of all adult full-time prisoners despite being only three per cent of the population. They accounted for approximately two per cent of the total Aboriginal and Torres Strait Islander population.

This Report Card treats the two gaps as connected. While acknowledging the complex drivers of imprisonment in any individual's case, it considers the 'imprisonment gap' as symptomatic of the health gap. In particular, the AMA believes it is possible to isolate particular health issues (mental health conditions, alcohol and other drug use, substance abuse disorders, and cognitive disabilities are the focus of this report card) as among the most significant drivers of the imprisonment of Aboriginal and Torres Strait Islander peoples, and target them as health issues as a part of an integrated approach to also reduce imprisonment rates.

Further, this Report Card examines how the situation is compounded by a health system and prison health system that, despite significant improvements over past decades, remains – in many critical areas – unable to respond appropriately to the needs of Aboriginal and Torres Strait Islander prisoners.

The year 2016 marks two anniversaries that make this Report Card timely.

• The first is the 25th anniversary of the report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). As this Report Card demonstrates, many of its recommendations are as relevant today as they were in 1991.

• The second is the 10th anniversary of the 2006 AMA Indigenous Health Report Card, Undue Punishment? Aboriginal and Torres Strait Islander People in Prison: An Unacceptable Reality. At that time, Aboriginal and Torres Strait Islander peoples comprised 22 per cent of the prison population, and an Indigenous person was 12 times more likely to be in prison than a non-Indigenous peer. As the 2015 data above demonstrates, today the situation is worse.

The AMA's 2006 Indigenous Health

'Time for Government to act'

The Law Council of Australia is the peak national body of the legal profession, and represents about 60,000 legal practitioners.

Late last year in Sydney, the Council convened a high-level assembly of professional leaders, including judges and academics, to ponder the challenges to reducing the imprisonment rates of Indigenous people.

After its symposium, the Council issued a communiqué which recorded these resolutions:

– The Council of Australian Governments (COAG) to place 'reducing Indigenous imprisonment' as a key item on its 'Closing the Gap' agenda and establish specific targets, including:

1. Reducing rates and length of imprisonment for men, women and youths by 50 per cent, within five years.

2. Implementing trials in all jurisdictions aimed at reducing imprisonment by effective diversionary programs within 12 months with:

(a) Commitment to fund programs for five-year cycles, subject to performance targets;

(b) National review of programs within three years.

– COAG to develop:

1. Immediate strategies to address violent offending, particularly violence against Indigenous women and children.

2. Immediate strategies to address imprisonment of Aboriginal and Torres Strait Islander youths, women and those with cognitive disabilities, including:

(a) A one-off increase in funding to community-controlled, culturally appropriate youth diversion/engagement programs to match urgent need;

(b) A review of Family and Community Services to reduce the number of children in care entering the juvenile justice system;

(c) A campaign to increase Indigenous youths' pride in culture and identity, and creating pathways to self-esteem through education and work;

(d) Establish a legislative presumption against arresting victims of domestic violence at time of police intervention for outstanding unrelated charges (in light of evidence victims may be reluctant to report violence or seek help, for fear of arrest);

(e) Address the specific needs of Indigenous women, particularly in relation to family violence and child protection, and ensuring the availability of culturally appropriate and community-controlled health services;

(f) Substantially increase funding for Family Violence Prevention Legal Services, as the primary providers of joined-up legal assistance and referral to Aboriginal and Torres Strait Islander victims of family violence;

(g) Implement screening processes for all Indigenous youths and adults arrested by police to identify impairments and any reasonable treatment and rehabilitation required to minimise their prospects of reoffending;

(h) Ensure a continuum of support for Indigenous Australians with cognitive impairments and mental health disorders, including culturally relevant early intervention and support, diversion from detention and pathways out of prison into supported accommodation programs and appropriate services;

(i) Review penalties for minor infringements, and stop fine default imprisonment;

(j) Abolish mandatory sentencing and 'baseline' sentencing;

(k) Increase funding for Aboriginal and Torres Strait Islander legal services; and

(l) Increase funding for tailored prisoner thorough-care programs for Indigenous custodial offenders on release.

– Law Council to convene a taskforce to identify a national data set for collection by all States and Territory Governments by 30 April 2016.

– Urgent reform of laws with disproportionate effect on Indigenous people including:

1. Driving licence disqualification and custodial sentences for traffic infringement defaults (other than offences involving alcohol);

2. Bail laws;

3. Mandatory sentencing;

4. Parole policies.

– Diversion, not custodial sentences of less than 6 months, except where the offender is a risk to the community.

– Through the Law Council and State and Territory law societies and bar associations, drive engagement between government and the Indigenous communities to achieve Indigenous participation in, and equal access to alternatives to imprisonment.

– Support a campaign of informing the broader Australian community of the crisis in Indigenous imprisonment.

The Law Council said it would work with participants in the symposium to "elevate this national crisis" to the COAG agenda.

"It is unacceptable for governments to simply accept the status quo. It is time for governments to act, to break the vicious cycle of imprisonment, which is simply getting worse each year and seriously stymieing efforts to overcome Indigenous disadvantage.

• Report card continued

Report Card called on the Australian Government to 'keep out of prison those who should not be there, principally those with mental health and substance abuse disorders' by: setting targets to reduce imprisonment among this cohort; screening all those on remand and following sentencing for mental health problems within 48 hours; and diverting them to best practice treatment and support programs.

This Report Card builds on these calls by recommending:

• Setting a national target for 'closing the gap' in the rates of imprisonment of Aboriginal and Torres Strait Islander peoples (that is, bringing it down to at least the rates among non-Indigenous people); and

• Adopting a justice reinvestment approach to fund services that will divert individuals from prison as a major focus.

Our 2006 Report Card on Indigenous Health also called on the Australian Government to 'ensure that health service provisions in prisons is the best it can be, in particular supporting inmates to 'take control of their health and the determinants of their health'.

This Report Card builds on this call by recommending that Australian governments adopt an integrated approach to reducing imprisonment rates and improving health through much closer integration of Aboriginal Community Controlled Health Organisations (ACCHOs), other services and prison health services across the pre-custodial, custodial and post-custodial cycle. Key elements of this approach are:

• A focus on health issues associated with increased risk of contact with the criminal justice system and imprisonment. In particular, mental health conditions, alcohol and drug use, substance abuse disorders and cognitive disabilities;

• Service models that incorporate both health care and diversionary practices. These models would be developed by ACCHOs working in partnership with Australian governments and prison health services. Such would define the roles, and integrate the work of, ACCHOs, other services and prison health services to provide the integrated approach;

• Preventing criminalisation and recidivism. The former, by detecting individuals with health issues that can put them at risk of imprisonment while in the community and working with them to treat those issues and prevent potential offending; and

• Continuity of care. That is, (a) from community to prison, with a particular focus on successfully managing release. And (b) post-release (from prison to community), with a focus on successful reintegration of a former prisoner into the community and avoiding recidivism. Important elements of continuity of care include access to health records, and individual case management as available.

A critical part of the implementation of this approach is likely to involve:

• Expanding the capacity of ACCHOs and other services as required to establish and/or build on existing interdisciplinary mental health and social and emotional wellbeing teams that can work effectively with or coordinate health care for people at risk of imprisonment while in the community and work to divert them from potential contact with the criminal justice system;

• Ensuring that these interdisciplinary mental health and social and emotional wellbeing teams are connected to, or include, culturally competent professionals to work effectively with mental health disorders, substance abuse disorders, and cognitive disabilities; and

• Supporting prison health services to be able to deliver a culturally safe and competent service including by employing greater numbers of Aboriginal Health Workers and Indigenous health professionals, and working in partnership with ACCHOs or other services.

Because Aboriginal and Torres Strait Islander peoples tend to come into contact with the criminal justice system at younger ages than their non-Indigenous peers, a major focus of this integrated approach is on the health, wellbeing, and diversion from the criminal justice system of Aboriginal and Torres Strait Islander children and adolescents. Culturally-based approaches have been identified as effective in working with this cohort in areas like suicide prevention. The AMA anticipates that the integrated approach it is recommending would incorporate access to Elders and cultural healers as a core component.

The recommendations in this report card further develop the AMA's 2012 Position Statement on the Health and Criminal Justice System that stated:

• Aboriginal and Torres Strait Islander peoples should 'have full access in prison to culturally safe primary health care, including management of chronic illness, social and emotional wellbeing, mental health, and drug and alcohol problems';

• Aboriginal and Torres Strait Islander cultures are 'respected in the design and provision of health and medical care in prisons and juvenile detention facilities'; and

• Aboriginal and Torres Strait Islander prisoners have access 'to community elders and to relevant representatives of their communities to address their cultural beliefs and needs'.

Sacred Sites Act reviewed

A review of the Northern Territory Aboriginal Sacred Sites Act, ordered last year by the Giles Government, was born out of the Government's dissatisfaction about how the Aboriginal Areas Protection Authority (AAPA) was dealing with the proposal to extend the Ord Stage3 irrigation scheme into the far north-west of the Northern Territory, and out of threats to sack the board of AAPA.

The Act was one of the first pieces of legislation enacted after the Northern Territory attained self-government on 1 July 1978.

It was enabled by the NT Aboriginal Land Rights Act which had been passed by the Commonwealth Parliament two years earlier and extended the power of the NT Legislative Assembly to the making of-

"laws providing for the protection of, and the prevention of the desecration of, sacred sites in the Northern Territory, including sacred sites on Aboriginal land, and, in particular, laws regulating or authorising the entry of persons on those sites, but so that any such laws shall provide for the right of Aboriginals to have access to those sites in accordance with Aboriginal tradition and shall take into account the wishes of Aboriginals relating to the extent to which those sites should be protected;"

The Sacred Sites Act has not been reviewed since it was amended in 1989, when the NT's Land Councils rose up in angry protest.

One of the 1989 amendments gave power to the Minister to override decisions of AAPA.

Both the Northern and Central Land Councils have again expressed serious apprehensions about the outcome of this latest review.

Terms of reference

The NT Government has appointed a team from PwC Indigenous Consulting to conduct the review of the Aboriginal Sacred Sites Act.

PwC is an acronym for Price Waterhouse Cooper, one of the world's largest professional services firms. Its Indigenous business arm is majority owned, led and staffed by Indigenous Australians.

The terms of reference say the review is to "investigate the extent to which the Sacred Sites Act supports economic development in the Northern Territory.

"The review will examine the scope and operation of the Act, as well as the strategic and day-to-day operations of AAPA."

The review team has been asked to provide advice on:

1. Areas in which the Act might be strengthened to improve protections for sacred sites

2. Areas in which the Act might be strengthened to reduce red tape and provide certainty and improved processes for economic development in the Northern Territory

3. Ways in which AAPA can (a) become more efficient, and (b) balance the need for development with the need for protection of sacred sites.

The Act has not been reviewed since it was amended in 1989, when the NT's Land Councils rose up in angry protest.

Both the Northern Land Council and the Central Land Councils have again expressed serious apprehensions about the outcome of this latest review.

Dealing with the scope of the review, the terms of reference say that the Department of the Chief Minister proposes that a comprehensive review of sacred sites process and outcomes should include, among other things, consideration of the following eight key areas:

1. Reducing red tape and improvement of timeframes

It would be beneficial to increase certainty to developers about the timeframes that will be needed in connection with Authority Certificates. The Act does not set out specific timeframes for the various types of work that will be undertaken. Concerns have been expressed about the amount of time it is currently taking to get Authority Certificates issued, with the latest figures showing an average of 136 days in the current financial year. Analysis of AAPA's procedures should be undertaken and consideration should be given to the imposition of timeframes.

2. Investigation of a system of site clearance for broader areas

Consideration should be given to including provisions of how AAPA can improve processes for site surveys of large areas including extending the validity of Authority Certificates to facilitate development of large scale projects with long lead-in times.

3. Aligning the Sacred Sites Act with other NT regulatory frameworks

Consideration should be given to including the Act in legislative frameworks associated with land use development in certain instances. This could enable shorter overall processing times for major projects and ensure a high level of risk management for proponents. Protection of sacred sites should be a regular consideration for developers in the Northern Territory and a regular part of the development process. If an applicant goes through all the other land access and approval processes for a project, only to be told at the end they need to comply with the Act, it is an inefficient use of time and money.

4. Compensation where site damage has occurred

Land Councils negotiate compensation where damage to or desecration of sacred sites has occurred and been proven/accepted. There is, however, no compensation regime or schedule currently set out in statute. Consideration may be given to setting out a statutory damages payment scheme or the possibility of giving powers within the Act to courts to set compensation payments as well as determining fines/penalties under the Act.

Artwork by Chips Mackinolty

5. Roles and relations with land councils: avoiding duplication; increasing certainty, cooperation and efficiencies

The Act sets a number of ways in which interaction is to occur with land councils. There are continuing complications in the protection of sacred sites in the Northern Territory as a result of the parallel functions held by the land councils under the Aboriginal Land Rights (Northern Territory) Act. There have been a number of attempts at establishing protocols with the land councils, but no formal agreements have been reached. Consideration may be given to how AAPA and the land councils' roles can be more clearly delineated, including increasing certainty and removing duplication for development, and how cooperation may lead to better efficiencies and reduced transactions costs for all involved.

6. Reviewing the offence provisions in the Act

AAPA has very little in terms of powers to prevent interference with sacred sites, beyond prosecution which

NLC's submission

The Northern Land Council has recommended that the Northern Territory Aboriginal Sacred Sites Act should not be amended without the agreement of the Aboriginal Areas Protection Authority (AAPA) and the Land Councils.

This is a primary recommendation in the NLC's submission to the team of consultants engaged by the NT Government to review the Act.

The submission records that Commonwealth parliamentary committees have noted with approval that the Northern Territory's legislation represents best practice in Australia – "not an isolated observation".

It recalls a 2003 report by the House of Representatives Standing Committee on Industry and Commerce which noted when considering issues of heritage protection that:

"The Committee considers that the Northern Territory Aboriginal Areas Protection Authority is a model that should be examined by all states as one means of addressing the problems that clearly exist at the state level."

That parliamentary committee was also told by the mining company Rio Tinto that: "One of the high points would be that there exists already the Aboriginal sacred site protection authority (sic) in the Territory.

In the past we have found the anthropological services provided by the authority to be very professional, effective and fair to both parties.

They have allowed us to get on with the job. We would appreciate that or a similar service operating where we are trying to get into at the moment."

Other major points from the NLC's submission:

Reducing red tape

The NLC has not identified any unnecessary regulatory provisions or procedures and rejects suggestions that sacred sites clearances are unusually slow or otherwise unacceptably onerous. The NLC does not support the imposition of arbitrary time-frames for issue of AAPA Certificates.

Addressing the level of regulation and timeframes, the NLC says that the procedure to apply for an AAPA Certificate is straightforward, and the regulations contain clear guidelines for classifying applications as standard or non-standard.

"AAPA's website includes an application form that provides ample guidance for applicants. If the term 'red tape' (in the review's terms of reference) is read as referring to excessive regulation, it is difficult to see how it could reasonably be applied to the Act and Regulations.

"The Act sets out a time-frame within which AAPA is required to consult with custodians, which is reasonable considering that before it can consult custodians it must first identify the custodians and locate them. This is not necessarily a simple or straightforward exercise.

Site clearance for broader areas

The review is charged with investigating a system of site clearance for "broader areas" – presumably to speed up approvals for large developments like Ord Stage3.

The NLC's submission argues against any such regime.

"If it was intended to encourage consideration of sacred site surveys for large areas in the absence of a development proposal, then we question the point.

Consultations with custodians should be able to inform them about an actual development proposal so they can consider known risks to their sites and appropriate conditions that may be applied to ameliorate those risks.

The consultation should not take place in an information vacuum, nor should custodians be asked to disclose cultural information without good reason. The NLC rejects any suggestion that site surveys should be undertaken in such circumstances.

"If (it) is intended to address just the issue of large-scale projects with long-lead in times, there have been numerous examples over the years which demonstrate how that can be achieved. These include the railway corridor, communications and pipeline corridors, as well as resource developments. The fact that there are always long lead-in times for large projects provides the opportunity for the sacred site protection measures to be put in place and incorporated into project planning during that lead-in period."

Aligning the Sacred Sites Act with other NT regulatory frameworks

In the NLC's submission all statutes regulating land use should establish an obligation to seek and obtain clearance as a condition of any related approval. This can and should be done without any compromise to the integrity and independence of the sacred site protection process.

"The regulatory alignment that would probably be most beneficial to all parties would be to include provisions in the Planning Act to make a sacred site clearance mandatory for all land development, and to require applicants for development permits to include information about proposed sacred site protection measures in the information provided as part of the applications.

This would ensure that developers did not overlook the requirement for a site clearance, and that it was incorporated into the development plans at an early stage."

Compensation where site damage has occurred

The NLC says that compensation for intrusion or damage should be a last resort.

The greatest effort must be put into protection measures, with adequate resources for monitoring to ensure compliance with conditions of work under Authority Certificates. Criminal sanctions for breaches of conditions and damage to sites must be sufficiently severe, and must also apply to corporate officers, so that they amount to a genuine deterrent.

• Continued p12

SACRED SITES PROTECTION? STRENGTHEN THE LEGISLATION!

Terms of reference continued...

requires a high burden of proof. Once a developer has an Authority Certificate, they can act freely and AAPA has to wait to determine whether site damage has occurred and then decide on prosecution. It would be useful to consider the appropriateness of current offence provisions, including any additional provisions which are required to streamline enforcement for both developers and AAPA. Alternatively, interim powers may allow for AAPA to prevent damage occurring thus reducing the burden of the cost of legal action on developers and AAPA.

7. The AAPA Board appointment process and terms of membership

AAPA Board members are appointed by the Northern Territory Administrator for a period of three years on the nomination of land councils and with the approval of Cabinet. The Act requires that, for the 10 non-government Board positions, land councils provide two recommendations for each position, allowing the Minister to choose between candidates, as well as ensuring a balance of male and female members. Consideration may be given to increasing flexibility in how Board members are nominated. Currently, 10 of the 12 Board members' terms on the Board expire on the same day and the remaining two within a few months of that date. Consideration may also be given to amending the appointment process to allow for the staggering of Board appointments.

8. Determining the use and protection of sacred site information -- creating certainty

AAPA is developing a new web-based portal to allow for applications for Authority Certificates to be made online. Work is being done to integrate this system with the NT Government's Integrated Land Information System (IUS). There is scope for providing information to applicants about sacred sites within a given area at the point of application, which could have a significant impact on reducing processing times and helping drive development across the Northern Territory. The Act lacks clarity in defining responsibilities and liabilities of persons who use, reinterpret or transmit AAPA's sacred site information to third parties. Consideration of this matter and how it may be resolved would help protect the integrity of AAPA's information and ensure custodians and developers receive authorised data. Subsection 10(g) of the Act sets out that AAPA is to make available for public inspection the Register and records of all agreements, certificates and refusals, except to the extent that such availability would disclose sensitive commercial information or matters required by Aboriginal tradition to be kept secret. Clarity in this area has particular relevance given the abovementioned developments in technology.

NLC's submission

• From previous page

"The NLC would reject any proposal that provided for a schedule of compensation. As noted previously there would be a clear risk that this would be regarded as a "price list" and may actually encourage breach of protection measures."

Reviewing the offence provisions in the Act

The NLC says that the offence provisions should be made more effective, with corresponding greater deterrence, and its submission argues for the following changes:

- **Reversing the onus of proof, so that a defendant cannot, as the law stands, plead ignorance as a defence: "This in effect places a premium on ignorance, and encourages the maintenance of ignorance through not encouraging any inquiry let alone seeking a sacred site clearance."**
- **Increasing penalties (fines and jail sentences)**
- **Extending liability to directors and executive officers of corporations.**
- **Enabling AAPA to issue stop work orders if a breach of certificate conditions or other offence is believed to have been committed; and**
- **Imposing substantial penalties per day for failure to observe a stop-work notice or act pursuant to a remediation notice order validly served.**

The AAPA Board appointment process

The NLC opposes any change to the present arrangements for appointment of custodian members. The NLC also does not agree to any changes to the structure of the Authority that would reduce the present level of independence, or diminish in any way the authority accorded to custodian members in that structure.

In the view of the NLC, the Authority has functioned effectively for many years and no case has been made for change.

When the Minister overrode AAPA

The only time an NT Government minister has overridden a decision of the Aboriginal Areas Protection Authority, he was thwarted by the Commonwealth.

Back in the early 1990s, the NT was determined to build a dam in Alice Springs, which would have damaged and destroyed important sacred sites.

The Aboriginal custodians finally appealed to the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs, Robert Tickner, who issued a declaration under the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984. That stopped the NT in its tracks, and brought to an end a controversy which had racked the town for several years. Here's how Land Rights News reported the matter in August 1992:

The first proposals for a dam in Alice Springs were to build a recreation lake at Werlatye Atherre, in the Old Telegraph Station area north of town. The strength of both Arrernte and Pitjantjatjara women, who fought for more than a decade, prevented the desecration of the important women's site.

After severe flooding in 1988, which claimed three lives, the Government stepped up pressure by claiming that a 'flood mitigation' dam was needed to protect lives and property in Alice Springs.

In 1989 the Northern Territory Sacred Sites legislation was weakened to allow the Government to override the recommendations of the (then) Sacred Sites Authority, giving rise to fears that the Government would yet succeed in overriding the women custodians.

The extraordinary pressure on the custodians continued on into the 1990s, as the Territory Government finally abandoned the Telegraph Station site and began secret negotiations with custodians of alternative areas.

The Government announced the proposed construction of a $20 million flood mitigation dam further upstream at the Junction Waterhole site in mid-1990, claiming to have conducted "impeccable" consultations with the traditional custodians.

The proposed dam was to be a 'wet' dam with potential future use as a recreation lake.

Those who had been consulted accused the Government of deceiving them about the proposal and others complained that many of the custodians had not been consulted at all.

Following further consultations with the custodians, the new Aboriginal Areas Protection Authority withdrew its site clearance certificate for the proposed dam in April 1991. Continuing Government pressure failed to reverse the decision of the authority or the custodians.

Finally, in March 1992, NT Land and Housing Minister Max Ortmann, announced he would use his powers under the weakened Sacred Sites protection legislation to issue a work certificate, despite the fact that the dam construction would destroy sacred sites.

Construction work, including blasting and bulldozing, was already under way when the Federal Minister for Aboriginal Affairs intervened and made an emergency declaration to stop further damage to the area.

Despite the emergency declaration, the NT Minister secretly issued a certificate in early April. But he did not tell the custodians his decision.

After receiving advice from Hal Wootten QC, the Federal Minister announced his decision to make a 20-year declaration to protect the sites on 17 May 1992, some 13 years after the NT Government had first put forward its proposal for a lake in the desert.

Aboriginal Areas Protection Authority

NLC: Write Minister out of the Act

The NLC's submission to the review of the Sacred Sites Act says that a Minister should not have the legal power to override a decision of the Aboriginal Areas Protection Authority.

"The right to seek review in those circumstances is not contentious," the NLC said.

"However, in the view of the NLC, the Minister should not have the power to substitute (his) decision in place of a decision of the Authority.

"The Minister's role in a review should be limited to making a request or recommendation to AAPA to reconsider or to take into account some matter that has come to light in the Minister's review of AAPA's original decision."

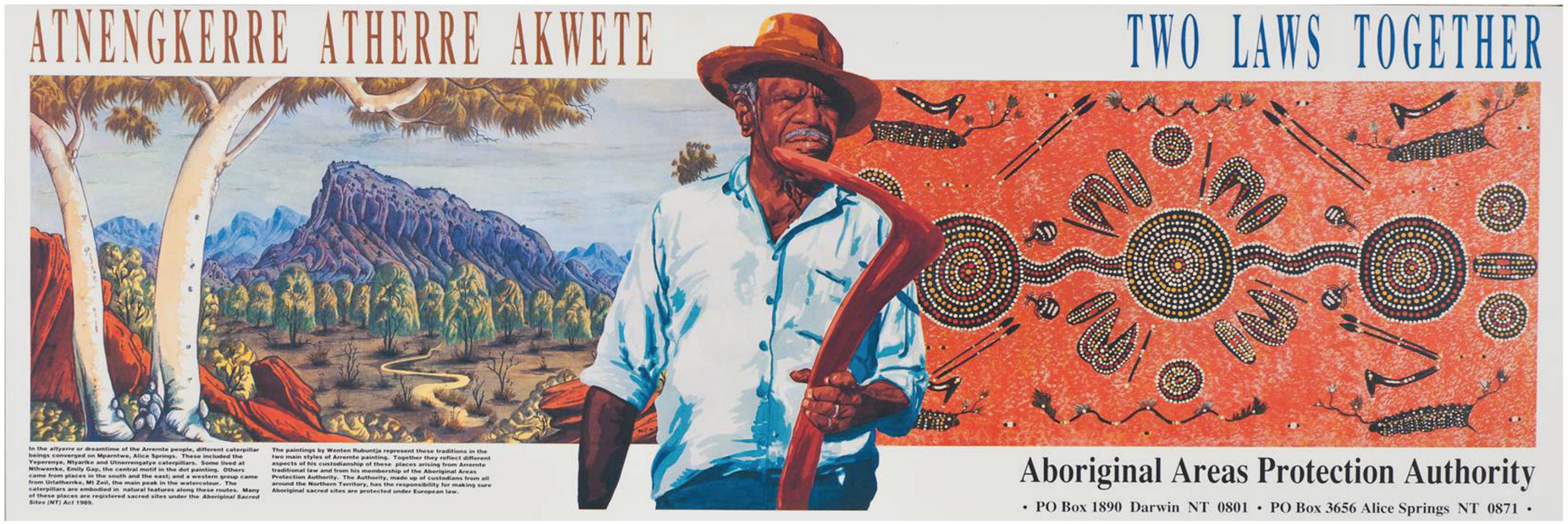
The Minister has resorted to the exercise of the power to substitute (his) decision for the decision of the Authority only once, the controversial Alice Springs dam matter, and that was back in 1992.

"The passage of 24 years without a further example demonstrates not only that the provision is unnecessary but also that AAPA's decisions since then have all withstood any challenge or have been appropriately amended to meet concerns, consistent with the wishes of the custodians," the NLC has submitted.

"The potential for a developer to seek a Ministerial decision in place of a decision by AAPA of itself creates an element of uncertainty and the subsequent risk of custodians losing confidence in the system.

"Lastly on this point, the power of the Minister to issue a certificate that does not take into account the wishes of Aboriginal people relating to the extent to which a site should be protected remains contentious and is unresolved. That is a further reason that the provision should be removed."

"The NT Minister secretly issued a certificate in early April ... but he did not tell the custodians"



The poster (left) was a joint work by the late Wenten Rubunka, a former chairman of the Central Land Council, and Chips Mackinolty, who now spends his time between Darwin and Palermo, Sicily.

It was produced in 1990 as a four-colour screen print – a tricky job, given high humidity at the time, and the dimensions of the work (50cm x 147.5cm).

Mr Mackinolty recalls its genesis:

The Two Laws Together poster was conceived by Wenten and me in the context of the then-recent attacks on the old Sacred Sites Act.

Wenten, as we all remember, was the chairman of the old Sacred Sites Authority, and an implacable defender of Aboriginal religious and cultural traditions.

The idea was to visually describe ways in which whitefella law could successfully be used to defend Aboriginal Law under groups such as the Aboriginal Areas Protection Authority.

Wenten came and stayed with me at my place in Darwin, and spent two days painting his images in two styles.

They essentially depict different aspects of the same set of dreamings so important to the Arrernte people of Alice Springs.

The idea was to supply these teachings about sacred sites in a "traditional" style: a dot-dot style; and as well as a watercolour ... arguably a more European style, but one which had been captured and owned by Arrernte people since the days of Albert Namatjira. In other words: Two Laws.

In between lots of food and watching cowboy and "ninja" videos, Wenten worked while I waited to be able to work on his portrait for the poster, something he refused to cooperate with until he had finished his work.

Then he asked me for a razor for a decent shave, grabbed the hook boomerang, straightened his hat, and posed for the image which forms the centrepiece of the poster.

There are still faint traces of the paint he used on the stone pavers at the back of my house, echoes of the Aboriginal Law that sits even under suburban places such as Nightcliff in Darwin.

Tollner wants Bagot, and more

"It is a battle we need to have"

Lands and Planning Minister Dave Tollner is not just eyeing off for real estate development the 23 hectares of land occupied by the Bagot community in Darwin; he's prepared to go all out to wrest back the leases of all Darwin's Aboriginal town camps and convert them to freehold title.

He made his intentions plain during a debate in Parliament about housing. Referring to the camps at Knuckey Lagoon and 15 Mile, Mr Tollner said he was aware that some residents there want to own their own houses.

"But until the ownership of those communities changes, nothing can be done," Mr Tollner said.

"I am at the preliminary stages of working through that. I am told by some people that this will be a bigger battle than we have ever had. I do not care. I think it is a battle we need to have because, ultimately, people should be able to live in their own house if that is their choice and I fully support them in that."

Knuckey Lagoon and 15 Mile sit on Crown land leased to the Aboriginal Development Foundation, which also holds the lease in perpetuity to One Mile Dam, 3.2 hectares of prime real estate close to the Darwin CBD.

Mr Tollner has previously described One Mile Dam as a "hellhole" and "the base for the long-grass association".

Mr Tollner went on to talk about the Bagot Aboriginal community which sits on 23 hectares of Crown land at Ludmilla, leased to Bagot Community Inc (BCI) which late last year went into voluntary administration.

That means a team of financial specialists, appointed by the management committee of BCI, currently runs the association and manages its day-to-day operations such as the Bagot clinic.

The administration results from threats of legal action by Power and Water Corporation (PWC) to recover payment of disputed water bills. The residents of Bagot dispute the PWC claim, and say they have been paying their bills, many of them large, with huge variations in year-to-year water use.

PWC is wholly government-owned, and is the Ministerial responsibility of Mr Tollner, who has campaigned for many years for Bagot to be "normalised". He has said he would forgive the Bagot "debts" to PWC if BCI surrenders the lease to all the land at Bagot.

The management committee of BCI, made up of local Aboriginal residents, has been working hard to resolve the problem.

In December, the committee met with Mr Tollner to discuss a plan the community had developed which included the partial development of some of their land for future benefit.

"HELLHOLE": One Mile Dam community.

Mr Tollner was blunt: he was not interested in the plan; his only offer was to forgive any purported debts on the proviso that the community handed back the perpetual community lease to the government. The Bagot community is rejecting Minister Tollner's offer.

In Parliament, Mr Tollner said he thought that Bagot Community Inc would be liquidated "at some stage in the future."

"We want to see these town camps freehold," Mr Tollner said. "We want to see them turn into normal functioning suburbs like any other suburb around the Territory where people can live as part of a suburban community rather than in some sort of modern-day ghetto.

"To me it is an absolute disgrace that in a modern city like Darwin we have people living in complete poverty right in the middle of the city. I would like to see that change."

Mr Tollner acknowledged he'd face stiff opposition: "It seems to me there is a bunch of people who are somewhat envious and are dead keen to stop that. There is a group of people who do not want to see Aboriginal people progress in that manner; they believe the land should be communally owned and people should live in that sort of poverty forever. It is not my view but it is the view of some people."

Royalties advice for TOs

The NLC's Anthropology Manager, Steve Johnson, wants Traditional Owners to understand the complexity of our business when it comes to royalties: the processes of identifying Traditional Owners, and then the distribution of monies. He also has advice for those who receive royalty payments.

The Northern Land Council (NLC) is responsible for managing royalty payments on behalf of countrymen across our wide jurisdiction. Sometimes these are little amounts, other times they are much larger.

Overall, the NLC distributes tens of millions of dollars each year to Traditional Owners.

These payments are made after permissions from Traditional Owners are sought and given, to allow for many different activities to take place on Aboriginal lands and waters – from mining to leasing of land for a whole range of purposes and activities.

To perform the distribution of royalty monies properly, in accordance with our responsibilities under the Land Rights Act, the NLC must first identify and consult with the appropriate owners of country to make sure they are fully informed about, and agree to, whatever is proposed.

This responsibility falls mostly to the NLC's Anthropology Branch, and our regional anthropologists.

Senior Project Officers and other staff work hard to organise consultations and ensure that all the appropriate people are talked to.

If permission is given, an agreement is formed and NLC staff must then take instructions from Traditional Owners (according to traditional decision-making processes) on who should be paid what and when.

These instructions and other details are filed on our database (in the Land Interest Reference/Register) and payments come into NLC accounts.

This whole process sounds pretty straightforward but is often very complicated.

To start with, the NLC receives limited funding to hold meetings and therefore it is sometimes difficult to take proper instructions.

In other cases, clans and families are in disagreement over ownership and other issues and we are unable to make payments until those arguments are sorted out.

In spite of these problems, previous managers have made some real improvements to the system over the years.

We now employ two competent and dedicated royalty officers and all calls about payment must now go through them, which makes the whole process run much smoother.

We also try more and more to plan ahead so that we can cover a lot of business (including consultations and the taking of instructions) at single meetings. This approach is more cost effective and allows us to provide a better service to you, our constituents/bosses.

On top of that, Anthropology and Finance branches are working closer together to build up a list of payments due over the year so that we can prepare ahead of time and make sure those payments are made promptly when the time comes.

We will also be coming out into the regions this year, 2016, to update people's details. These improvements have made a difference but we need your help.

As we said above, we have limited funding to hold meetings so we are hoping to talk to Traditional Owners and take more standing instructions: these are instructions that stay the same from year to year.

We also ask that you remember that the NLC looks after more than 36,000 people and many of them receive royalty payments.

This means we have a big workload and we cannot respond immediately to every person who has some change in circumstances.

So to help us manage these things, we have a few simple guidelines and requests as below:

1. The royalty hotline number is 8920-5147. There is no other number to ring for royalties.

2. When staff advise you of a payment date, ringing back repeatedly won't change things.

3. When people do ring repeatedly, to get payments early, they may disadvantage other TOs who end up further down the queue.

4. We cannot make advance payments for individuals without permission from the group.

5. We cannot take or change instructions over the phone.

6. If there is a legitimate need to change those instructions please make an appointment.

7. We will not respond when people arrive in reception and expect us to drop everything and service their demands immediately. This is unfair on others.

8. We work hard for our constituents and no NLC staff member should ever be subjected to verbal or physical intimidation.

9. Please show staff the same level of respect they hold for you.

As we said, things are improving and the vast majority of people awaiting payments are polite and patient.

If we all behave this way, the system will run even smoother for the benefit of all.

Full Council's demands

With an eye to the Federal and Northern Territory general elections this year, the NLC Full Council meeting at Gulkula late last year put political parties on notice. The Council issued a statement which said policy failures of successive governments have left Indigenous people untrusting of interference in their lives.

"The push to develop the north without adequate consultation with and engagement of Aboriginal people in planning processes is a stark example of the disrespect and disregard of Aboriginal people who comprise 30 per cent of the Northern Territory population and own 50 per cent of the land mass, 85 per cent of the coastline, and claim Native Title rights and interests over 44 per cent of the remaining land," the statement said.

The Full Council sought strong leadership and implementation of important policies affecting Indigenous landowners and residents, including commitments to:

• Work positively with the Territory's Aboriginal land councils, to protect the Aboriginal Land Rights Act and to settle all outstanding land claims.

• Review the Government's approach to accessing the intertidal zones covered by the Blue Mud Bay High Court decision.

• Protect sacred sites and properly resource the Aboriginal Areas Protection Authority to deal with the added work brought about by the push to develop northern Australia.

• Amend legislation to include a Strategic Indigenous Reserve in all water plans in order to aid Indigenous economic development.

• Support Indigenous economic development and engage constructively with Indigenous Territorians on all matters relating to northern development.

• Fund and support Indigenous-controlled health organisations.

• Adequately fund Indigenous housing programs and return control of housing to communities.

• Work constructively with the Indigenous community to improve Indigenous education outcomes.

• Expedite enforcement powers for Indigenous ranger groups.

• Demonstrate transparency and accountability of monies for Indigenous programs, particularly Commonwealth allocations to overcome Indigenous disadvantage.

Art from the heart: Jack wins at ACF Awards

Jacky Green, a long-time Northern Land Council staff member and a Full Council member from Borroloola, has been awarded the Australian Conservation Foundation's 2015 Peter Rawlinson Award for his outstanding contribution to caring for country in the Gulf region.

ACF CEO Kelly O'Shanassy said: "Jacky was unanimously chosen by the selection committee".

"The Australian Conservation Foundation has a long history of working closely with Indigenous people around the country and we are pleased to have the opportunity to honour Jack Green's tireless work.

"From leading a campaign against the environmental pollution of his region from Glencore's massive lead and zinc mine in the McArthur River, to working with other Indigenous groups to regain ownership of their lands, to the establishment of Indigenous ranger programs – Jack Green is a worthy winner of this year's Rawlinson Award."

The Award is in memory of Peter Rawlinson, an environmental biologist who was committed to the work of the ACF. From the beginnings of the environment movement in the 1960s, he challenged and worked to change government policies on many issues including forest and habitat destruction, and the removal of lead from petrol. He died in 1991.

Mr Rawlinson's widow, Marnie, said: "Jacky Wongili Green from Borroloola in the southwest region of the Gulf of Carpentaria is the most worthy winner of the 2015 Peter Rawlinson Conservation Award. Some of Jack's important achievements were regaining ownership of land, the forming of ranger groups, implementing management practices to avoid more vast wildfires and bringing about environmental and social changes in a remote part of Australia.

"Jacky has used his talent as an artist to express his concerns for the land and culture, especially at McArthur River where the mining is polluting the water and land, and also damaging sacred sites. It has taken bravery and sustained personal effort to speak out and to question government legislation affecting the region. Jacky has truly made an outstanding contribution."

Jacky was nominated for the Award by Dr Seán Kerins from the Australian National University, David Morris of the Environmental Defenders Officer (NT) and Kirsty Howey from the Northern Land Council.

All three have worked with Jacky on many of the projects that Jacky has initiated to protect and care for country in the Gulf of Carpentaria region.

David Morris said: "Jacky has left on me an enduring impression of the importance of fighting for country and fighting for his people. Jack sees the two things as inseparable. These matters and Jack's work are almost always out of sight, they should not be out of mind."

Dr Kerins said: "The environmental contamination from mining and the undermining of customary Law by mining companies are ongoing processes that are robbing the Indigenous peoples of the Gulf country of their right to economic, social and cultural development in accordance with their own needs and interests.

Above: Jacky Green, with daughters Jackie and Shauntrell and (below) with wife Josie in Melbourne.

"While Jack has done a lot to help get ranger programs up-and-going and work with land owners to develop Ganalanga-Mindibirrina Indigenous Protected Area in the Nicholson River region, it's Jack's ability to speak truth to power, along with his unwavering commitment to the customary institutions of the Garawa, Gudanji, Mara, Yanyuwa and Waanyi people, that I deeply admire."

Jacky Green was given the award at a special ceremony in Borroloola in October.

He, along with his wife, Josie, and daughters Jackie and Shauntrell, were invited to Melbourne where Jack spoke at the ACF's annual general meeting and their 50th Anniversary celebrations in the St Kilda Town Hall.

It was here that Jacky Green held his award aloft and said to the 500 ACF supporters:

"I'm so happy to win this award; I just wish all my old people from McArthur River who been fightin' that mine could be here. It's hard for us to see our country destroyed just for money. We all gotta stand together and look after this country. It doesn't matter what colour you are, black, white or brindle, we all gotta work together".

He left the stage to a thunderous applause.

Shaleena, Stronger Sisters win at NT Fitzgerald Awards

The NT Human Rights Awards, known as "The Fitzgeralds", have recognised the achievements of Aboriginal people and organisations.

The awards are named after the late Tony Fitzgerald, a former Anti-Discrimination Commissioner.

They were announced at a ceremony in the Supreme Court in Darwin last November. There were 51 nominations for the four awards.

The Fitzgerald Youth Award was won jointly by Shahleena Musk and a group from Tennant Creek High School called Stronger Sisters.

Shahleena Musk (pictured) was recognised for her work at the North Australian Aboriginal Justice Agency (NAAJA) through innovative and holistic approaches to working with Aboriginal youth in the criminal justice system.

Stronger Sisters is a program which imparts leadership and life skills to young women at Tennant Creek High School.

The Fitzgerald Justice Award also had joint winners: the Aboriginal Interpreter Service for its four-year-long project to interpret the police caution into 18 Aboriginal languages, for use on an iPad; and the Larrakia Nation Night Patrol for protecting the rights of Aboriginal people in the greater Darwin area.

The night patrol recently expanded its service to include a mini bus to transport children to community activities.

Land Rights News gets recognition

Land Rights News (Northern Edition), the NLC's quarterly paper, was a finalist (one of five) in the media section of the Australian Human Rights Commission's 2015 Human Rights Awards.

NLC deputy chairman Wayne Wauchope accepted the recognition at the Commission's annual awards ceremony in Sydney late last year.

The citation to the nomination as finalist read: "A collection of well-researched and written stories, Land Rights News (Northern Edition) focusses on issues affecting Indigenous Australians in the Northern Land Council region.

"This publication plays a critical role in putting issues facing Aboriginal people on the agenda, whether it be land rights and native title or inequality and injustice."

The Media Award was won by Kirsti Melville from ABC Radio National.

NLC Deputy Chair Wayne Wauchope with Preofessor Gillian Triggs, President of the Australian Human Rights Commission, at the AHRC awards presentation.

Garrmalang gears up for third festival

Now in its third year, the Garrmalang Festival is set to return to the Darwin Entertainment Centre from Friday 20th May to Sunday 22nd May, with thousands expected to attend the celebration of Indigenous culture.

Garrmalang is a Larrakia word for the Darwin esplanade region and it's used with the kind permission of the Larrakia Nation.

Artistic Director, Larrakia man Gary Lang, says the festival has gone from strength to strength – and this year features music, dance and Indigenous storytelling.

"The Garrmalang Festival is an opportunity to showcase some of Australia's most exciting Indigenous talent – and we are thrilled that Dan Sultan and his band will be headlining the Festival," Gary Lang said.

"With a voice that is simultaneously sweet and rough, Dan Sultan knows how to turn on a crowd – add his full band to the mix and it will be a night to remember."

The Festival will also feature local Indigenous bands, and a few from out bush.

The festival will also be premiering "Inspired", a new dance work from Gary Lang NT Dance Company. The production explores Tchaikovsky's Swan Lake music – Territory style.

The festival will also feature Spun, where ordinary people share extraordinary true stories. Now a few of Darwin's Indigenous stories will be told.

Garrmalang will feature free and ticketed events.

Tickets can be obtained at www.yourcentre.com.au or phone 08 8980 3333.

Songbook will keep open the songlines

Waralungku Arts late last year celebrated the publication of the Gulf Country Songbook: Yanyuwa, Marra, Garrwa and Gudanji songs.

More than 200 people attended the launch in Borroloola.

The audience was welcomed in Yanyuwa by Mavis Timothy Muluwamara, and Waralungku Arts Community Events Officer, Marlene Timothy, introduced performances by Yanyuwa, Marra, Garrwa and Gudanji singers and dancers of some of the featured songs.

There was also a minute's silence to honour the old people and key contributors to the book who had passed away during its production: Thelma Dixon Kanjibaranya, Roddy Harvey a-Bayiwuma, and Maureen Timothy Jungundumara.

The Gulf Country Songbook is an impressive showcase of some of the many songs composed in Yanyuwa, Marra, Garrwa and Gudanji languages over the last 100 years.

There are songs of land rights claims, of the maranja – dugong hunters of excellence, paddling a canoe on the sea at night, boundary riders on a pastoral station, and ancestral beings journeying across country.

"This was our way of history keeping," says Allan Baker Bajayi, who is learning songs from his Gudanji family.

The songbook tells a powerful story of kinship and country, offering insights into the social history of the region, the critically endangered languages of this part of the country and the composers, dream song finders and singers.

Nearly 50 song lyrics and their English translations/interpretations are included, as well as rhythmic transcriptions, a CD of the songs, and a DVD of mini documentaries about some of the songs.

QR codes on song pages allow readers to listen to the songs on mobile devices.

At its heart, the Gulf Country Songbook is a generous sharing of culture and an invitation to learn.

'You gotta sing along with us, good way!' says Marjorie Keighran Managirri, a singer of Yanyuwa and Garrwa songs.

Creative producer and co-author of the book, Karin Riederer, said the support from local organisations was terrific.

"This songbook evolved from families in Borroloola wanting to find ways to enable their languages and the knowledge they hold to be passed on to their children and all their families coming behind," she said.

"The initiative was enthusiastically and generously supported by many people and local organisations, including the li-Anthawirriyarra Sea Rangers, Malandari Flexible Aged Care and Ngukurr Language Centre."

Principal funders of the project, which began in 2013 and was auspiced by Mabunji ARIC, were the McArthur River Mine Community Benefits Trust and the Australian Government's Indigenous Languages Support program. Contributing families will benefit from the sales of the books, with Waralungku Arts committed to re-investing 90 per cent of income from all sales in language or song activities in the region.

The Gulf Country Songbook is available from Waralungku Arts. Hardback, full colour, 112 pp, CD & DVD: $60 rrp + delivery.

Hazel Godfrey, the main singer for and custodian of the Garrwa songs in the Gulf Country Songbook. Photo by Karin Riederer.

Gudanji song recording session at Garrinjini Outstation by Little River: Peggy Mawson Yarrbunkalinya, Katie Baker Bandalurrka, Elizabeth Lansen Yayab and Adie Miller Gungujubina (Topsy Green Inganjuba and Allan Baker Bajayi at rear). Photo by Sandy Edwards.

Native title claims settled at Borroloola

The Federal Court, sitting over two days at Borroloola in late November last year, has made native title determinations over nearly 40,000sq/km of land held under pastoral leases in the gulf country.

On the first day, Justice John Mansfield made determinations over Greenbank, Manangoora, Spring Creek, Seven Emu, Pungalina and Wollogorang pastoral leases.

The determinations over Pungalina and Wollogorang leases were non-exclusive, meaning that native title holders share their rights with the pastoralists of those properties. Non-exclusive rights include the right to access and hunt and fish on the land and to practise ceremony there.

Exclusive rights extend over the other properties.

Those rights include possession, occupation, use and enjoyment of the land to the exclusion of all others.

On the second day, non-exclusive native title was determined over Kiana, Calvert Hills, McArthur River, Walhallow and Mallapunyah Springs pastoral leases.

Sitting in Darwin the same week, Justice Mansfield determined non-exclusive native title over Banjo and Gilnockie pastoral leases.

Justice Mansfield thanked NLC lawyer Tamara Cole and lawyers for the NT government and the pastoralists for their work in getting the claims finalised by consent.

A 'social licence to operate'

NLC Mining Officer Howard Smith has told an international uranium mining conference that the inherently destructive nature of mining means that failure to obtain community support can create significant financial and emotional backlash against mining companies and, ultimately, the wider industry.

Dr Smith presented a paper late last year in Vienna to the Uranium Mining and Remediation Exchange Group, which has the object of promoting environmentally sound and economically balanced uranium mining and remediation.

"Acquiring community support is made harder where communities are affected by past negative legacies of mining, or where people hold different worldviews to those of company management," Dr Smith said in his presentation.

"This can be a particular problem for mining companies working close to remote Aboriginal communities, who continue to live in a culture where people do not generally differentiate between the spiritual and the natural environments. Such communities often perceive damage to the environment as an attack on their way of life.

"The 'social licence to operate' is a concept that directly reflects the degree of support a company has obtained from affected communities for its proposed actions.

DR HOWARD SMITH

"Much social friction is caused by cultural differences, past actions of mining companies and, in the case of uranium mining the actions of third parties using the mines' products.

"Unless these issues can be adequately resolved, communities are unlikely to support new mining products.

"Where support is not forthcoming, the 'social licence to operate' will not be attained and negative consequences to the company (e.g., high legal costs or loss of the resource) and the community (e.g., loss of opportunities) are likely to follow.

"To engender support and obtain their 'social licence', companies are now obliged to undertake a high level of community engagement, much of which is of a cross-cultural nature."

To illustrate his case, Dr Smith took his audience through the troubled history of the Ranger Uranium mine in Kakadu National Park, and the impact of that operation on the Mirrar-Gundjeih'mi people, the traditional owners of the land.

By 2007, management of the Ranger mine began to seek ways to involve Mirrar-Gundjeih'mi in the process of closing the mine.

"At that time the relationship was poor, so the Northern Land Council, which had acted as an intermediary since the mine's inception, began to work with Mirrar-Gundjeih'mi to develop strategies that ensured cultural requirements would be met when the mine was closed," Dr Smith said.

Mirrar-Gundjeih'mi were engaged directly and outside of the existing regulatory approach, to determine the key cultural issues that needed to be addressed and included in closure criteria.

"Although it took several more years for mine management to accept the Mirrar-Gundjeih'mi view, progress has been made," he said.

"Throughout the Ranger discussions, it became apparent that if this approach had been adopted prior to mining, it may have been possible to develop a more targeted and culturally appropriate mining operations plan that would have led to improved stakeholder engagement throughout the process and easier progress to closure."

In conclusion, Dr Smith said that by engaging Aboriginal people according to their cultural mores, a workable engagement strategy was developed for the Ranger Uranium Mine and used for resolution of some long-standing problems.

"In turn, this has led to development of a general strategy that may be applicable to the wider mining industry," he said.

"This strategy can be applied to any site and at any point during the life of mine process, but it is better applied before mining begins and utilised as operations progress.

"Early engagement allows stronger and more equitable relationships to be developed, potentially avoiding the need to address damage to cultural sensitivities that may otherwise occur as a result of ineffective management."

Ranger uranium mine. Photo courtesy Gundjeihmi Aboriginal Corporation.

Brian Wyatt 1951-2015

BRIAN WYATT

FROM THE ARCHIVES: Bryan Wyatt (right) as chairman of Black Action Group, in 1978.

Brian Wyatt, the late Chief Executive Officer of the National Native Title Council (NNTC) who died late last year, was a fierce advocate for Indigenous people.

He was born in Meekatharra and worked in various jobs in Western Australia before he moved to NNTC.

In the mid-1970s, he was a leader in Perth of the Black Action Group, which confronted racism and agitated for Indigenous rights.

At his funeral in Kalgoorlie, a friend, Howard Pedersen, recalled the power of his advocacy.

"I was a young white bloke from the protected middle class but my conscience had been stirred about Australia's treatment of Aboriginal people," he said.

"I went to political rallies where Brian spoke, to show my support and to learn.

"His searing oratory cut through. I had never heard anybody speak so powerfully about injustice.

"And he spoke with such articulated urgent anger demanding change now."

Brian Wyatt maintained strong Labor leanings throughout his life.

In the 1980s he was an advisor to Ernie Bridge, who was Minister for Water Resources, the North-West and Aboriginal Affairs in the WA Government, and the first Aboriginal politician anywhere in Australia to serve in a ministerial portfolio; later he served as principal policy officer in the office of the WA Department of Premier and Cabinet.

Howard Pedersen: "He truly believed that government had a duty and responsibility to make changes that could not only improve people's lives but also reshape the colonial relationship between the State and Aboriginal people.

"He never gave up on that belief, always looking for a chink in the armour of the colonisers.

"At times he despaired but he never allowed cynicism to erode his sense of hope. He kept his eyes firmly on the prize.

"But he was not a romantic idealist. Far from it.

"He was a master of Australian history and a formidable political analyst.

"He knew where power laid and how ruthlessly it could be exercised.

"He was both a pragmatic reformist and an advocate for revolutionary change and always guided by principles that were as consistent as his angelic smile and his infectious humour."

Brian Wyatt was CEO of the Goldfields Land and Sea Council for 11 years before his appointment in March 2010 as CEO of NNTC ; before then he had been the inaugural chairman of NNTC when it was incorporated in November 2006.

The NNTC is an alliance of Native Title Representative Bodies and Native Title Service Providers from around Australia, formally incorporated in November 2006.

Its mission is to maximise the contribution of native title to achieving and improving the economic, social and cultural participation of Indigenous people.

Mr Wyatt's passion for human rights led him to represent Australia internationally.

He was a regular participant at the United Nations Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples.

He was elected to represent the Indigenous Peoples Network of Australia at Rio+20 in Brazil in 2012 and the 2014 UN conference on Indigenous Peoples in New York.

After his passing, the present NNTC chair, Nolan Hunter said Brian Wyatt was a true leader in Indigenous affairs and the land rights movement.

"He believed passionately in the potential for native title to reconcile Australia and be one of the key instruments in nation building," Mr Hunter said.

"He fought tirelessly for reforms to the system so that it could live up to its promise of economic and social development for Indigenous people."

Mr Wyatt was 64 years old when he died.

He is survived by his wife, six children and seven grandchildren.

> **"I had never heard anybody speak so powerfully about injustice"**

Remote employment:

JON ALTMAN, the author of this article, is a research professor at the Alfred Deakin Institute for Citizenship and Globalisation

Two events occurred simultaneously on 2 December 2015.

First, an important new report by the Productivity Commission states in the politest possible way that the framing of the National Indigenous Reform Agreement around the goals of Closing the Gap is delusional and failing.

This is especially the case with the goal to halfclose the employment gap that is not just widening but remains 'an unlikely prospect', especially in remote and very remote Australia where the employment/population ratio disparity is greatest at 38 per cent.

Simultaneously, the Minister for Indigenous Affairs Nigel Scullion tabled the Social Security Legislation Amendment (Community Development Program) Bill 2015.

This Bill reflecting left-over business from the days of Tony Abbott, the failed Prime Minister for Indigenous Policy, demonstrates the extent not just of the delusion, but also the fragmentation and inadequacy of Indigenous policy making today and the disconnect of policy from the lived reality of Indigenous people.

The new Bill reflects Scullion's rhetorical attempt to paste over an enormous crack in policy logic that has resulted from the gradual abolition of the Community Development Employment Projects scheme (CDEP) that began in 2005 and was completed a decade later on 1 July 2015.

Even as the last nail was being hammered into the CDEP coffin, Scullion instructed government officials to extract just a few nails and partially reinstate elements of the scheme.

And so in December 2014 he launched his cleverly-branded CDP scheme with its discursive focus on 'community development' rather than 'remote jobs'.

Sadly, the new proposal currently being examined by a Senate Inquiry is at best cosmetically linked to the defunct CDEP scheme; at worst, it will be as destructive of jobs and enhancing of deep poverty as the Remote Jobs and Communities Program (RJCP) it critiqued and set out to replace.

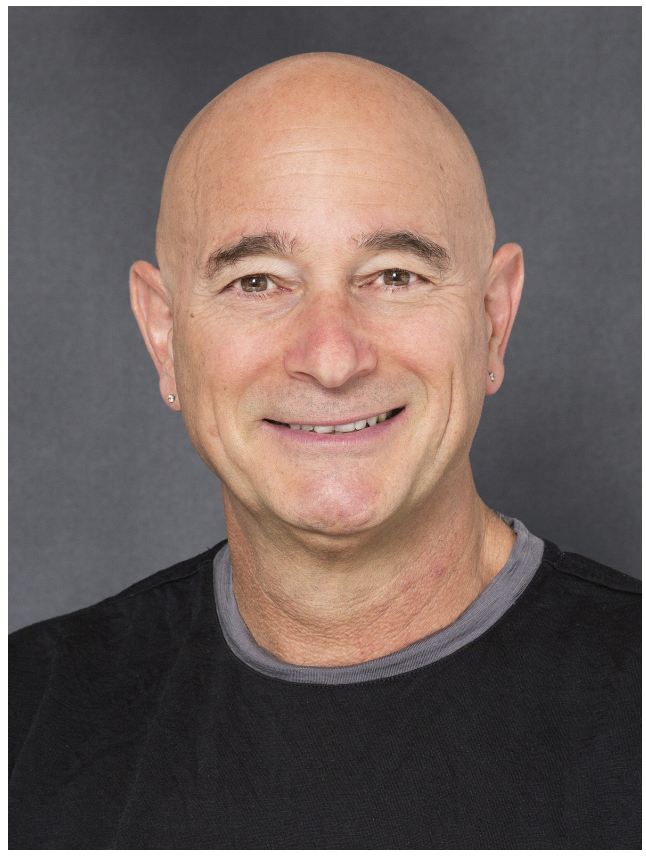
The rapid churn in experimental approaches in the last decade has left those Indigenous people participating in employment programs, the so-called 'providers' administrating programs, and analysts looking to evaluate their effectiveness –- including the well-resourced and powerful Productivity Commission -– somewhat confused.

The Productivity Commission frames its assessment using statistical analyses by some economists to argue that having a job can substantially improve a person's economic and social wellbeing assuming that social, cultural and political processes are just 'noise'.

But other economists, like Mike Dockery, have similarly used statistical techniques and official information to demonstrate that living on one's country and retaining culture and tradition can similarly improve economic and social wellbeing.

This latter more problematic research is ignored because it does less ideologically useful work for the Productivity Commission's assessment.

Such important values contestation aside, the Productivity Commission, using available official information, shows unequivocally that however measured, the employment disparity between Indigenous and other Australians is growing not declining.



JON ALTMAN

THE END: Centrelink flags the demise of CDEP at Wadeye, soon after the Howard Government's Intervention in 2007.

Three measures –- the employment/population ratio, the labour force participation rate and the unemployment rate –- are used and all have deteriorated at the national and subnational (state and territory) levels; no jurisdiction within the nation is on track to even partially eliminate the employment disparity and associated poverty.

Importantly, this is the first official report that debunks the myth that it has been the abolition of the CDEP scheme that has widened the employment gap.

Even compensating for CDEP job losses, the disparity between Indigenous and non-Indigenous employment worsened rather than improved; abolishing the CDEP scheme and moving participants from work to welfare just exacerbated this situation.

The Productivity Commission focuses on what economists call 'demand-side' explanations for employment decline and suggests that it is due to changes in the very nature of labour demand that requires more highly skilled workers and an overall cyclical softening of the Australian labour market reflecting global circumstances and the end of the long resources boom.

And geographic influences, the propensity of Indigenous people to live remotely, often on the land that they own under land rights and native title laws where there are few or no mainstream jobs, are also highlighted. No mention is made, however, of the historical legacy of colonisation and neglect of Indigenous wellbeing.

The Productivity Commission states boldly and belatedly that the Council of Australian Governments' target to halve the employment gap by 2018 is unachievable, especially in very remote Australia.

This is an observation, seven years on, that echoes one that my colleagues and I first made when the goal was first unilaterally mooted by the Rudd Government as an element of the National Apology in 2008.

The 200-page report makes two recommendations for change of approach, perhaps sensing presciently that the new Prime Minister might want to see some 'innovation'.

First, it argues that there is a strong case for reducing the wide array of information collected on the extent of Indigenous disadvantage that is now very well documented.

Perhaps a little unreflexively, no mention is made of the role that the Productivity Commission has played in this information-gathering industry as it regularly produced costly massive tomes of questionable value like Overcoming Indigenous Disadvantage and the Indigenous Expenditure Review.

Second, and more importantly, it calls for a greater focus on policy evaluation, rigorous assessment of which policies and programs work better than others and why.

The Commission is calling for more discipline in what have been haphazard and ideologically-inspired policy-making processes for Indigenous Australians, many of which have failed.

This report was made public on 2 December 2015, exactly a month after it was confidentially presented

technical tinkering

to Prime Minister Malcolm Turnbull. Intentionally or unintentionally — or maybe just to divert media and public attention from the Commission's scathing performance assessment — a depressingly inadequate policy proposal for remote Australia was tabled in Parliament on the very same day.

In January 2015 in Land Rights News (Northern Edition) I outlined Nigel Scullion's proposal to replace the Remote Jobs and Communities Program (RJCP) with the Community Development Program (CDP). I labelled these proposals as incoherent and inadequate and symptomatic of a government that, despite fine intentions focused on remote Australia, had lost its way.

Depressingly, after 12 months of additional policy development work by the Department of Prime Minister and Cabinet, what is now being proposed as new law is even more incoherent.

Indeed the Explanatory Memorandum (EM) developed by government officials to explain the need for this new law is an exemplar of the deeply-entrenched problem identified by the Productivity Commission — an inability to comprehend what did not work with RJCP and an inability to comprehend that CDEP worked better and why.

Perhaps worst of all, it demonstrates an inability to recognise the contradictions and limitations in the CDP proposals that represent little more than technical tinkering to deeply embedded and complex development challenges.

At face value the Bill aims to do two worthwhile things.

The first is to provide better incentives for participants to take up any available paid work so as to earn more without their income support payments declining.

Second, it aims to simplify No Show No Pay compliance arrangements so that the extraordinarily high rate of financial penalty experienced by those on CDP (12 times the national rate) is reduced so as to counter a dramatic impoverishment process that is under way.

But the ideological and unrealistic underpinning of the proposed changes is clearly evident in the Memorandum.

The ultimate populist aim is to move people off the income support system.

It is asserted in the EM that this will be achieved by using incentives to drive behavioural change needed to get people active, off welfare and into work. The ultimate goal is to transition people to full-time paid employment even though jobs are not available and even though more than 30 per cent of Australia's employed work part-time.

At times the Memorandum deploys almost hysterical and spurious causality to justify the government's proposals.

For example, recognising that financial penalties associated with the current compliance framework are causing hardship, it is asserted that this leads to disputes and violence and hospitalisation rates from assault in remote Australia at rates apparently 15 times higher than in major cities.

Such simplistic non-sequiturs are hardly the basis for sound policy making and shamefully demean remote living Indigenous people, irrespective of their employment status.

The perceived employment problems of remote Indigenous Australia are all down to the poor behaviour of individuals, not to poor institutional design often by the same bureaucrats now proposing new experimental solutions; nor to the structural factors soberly outlined by the Productivity Commission.

So now a full year after the initial proposals a new 'experiment' is being proposed for four of 60 regions in remote Australia.

> **The new proposal overlooks key features ... because policy-making officials are prisoners of their own idelogy**

The new experiment is supposed to empower communities by reducing poverty traps — in other words, allowing people who have worked 25 hours for their dole equivalents at below award rates to work extra hours and earn more.

And it is supposed to empower the four selected communities by letting them administer the scheme taking control of the development projects in which the formal unemployed will participate and taking control of the difficult task of encouraging participants to work or train 25 hours or more with the incentive that if work is available or can be created then people could earn more. But these potentially positive features of the new experiment are quickly cancelled out by lazy thinking and a program structure that seems almost designed to fail.

While it is unclear how the experimental regions will be selected even if criteria are outlined, it is very clear that the Minister for Indigenous Affairs intends to retain total control over what constitutes work and what are the broad parameters for judging success.

This is not how community empowerment through devolution works.

And while the aim is to make the links between work and rewards far clearer, the mechanisms proposed remain punitive: extra hours worked and extra income will be offset by any of the 25 base hours not worked.

And surveillance to be undertaken by community-based providers will be enhanced, down to the hour worked, while reporting to the Department of Human Services of work undertaken for the dole, as well as extra work if available, will escalate.

The new proposal overlooks key features of CDEP success perhaps because policy-making officials lack corporate memory or do not comprehend them or are prisoners to their own ideology.

So let me remind them.

First, it was community organisations who decided what constitutes work and how myriad versions of the 'no work, no pay' rule would be applied. Indeed in some situations like at outstations CDEP was paid as a guaranteed basic income on the assumption that people undertook 'real' work for at least 15 hours a week even if outside non-existent labour markets.

Second, all work under CDEP was at award rates. This eliminated the opprobrium and indignity of employing people at discriminatory and impoverishing below-award rates.

Third, community-control and the linking of administrative and capital resourcing on a formula based on participant numbers gave CDEP organisations a degree of political power, autonomy, flexibility, and enhanced capacity.

In short, participants in the CDEP scheme were better off if they worked at award rates or if they did not work formally but were covered by a community-administered safety net.

Just as RJCP failed when compared with CDEP, so will CDP. Eventually governments will fathom that heavy handed paternalistic conditionality and behavioural assumptions based on western norms will not deliver livelihood and wellbeing outcomes in difficult remote circumstances.

The new bill should be quickly withdrawn before millions of taxpayer dollars are wasted on poorly devised reform that is destined to fail.

Instead, a revamped CDEP institution that was very popular and that worked far better than welfare for nearly 40 years should be reintroduced.

If the new Prime Minister for Innovation wants to seriously consider innovation, especially in an election year, then a community-managed basic income grant scheme could also be introduced that unconditionally provides income support to individuals without excessive surveillance or ministerial interference.

Such innovation is currently happening in other countries in the global North and South.

And then in accord with the recommendation of the Productivity Commission relative benefits and costs of different approaches could be rigorously evaluated and what works best supported.

When Roy Orbison came to town

THIS photograph of Roy Orbison at Kormilda College, Darwin, in 1972 has been circulating on social media. It was taken by Michael Jensen, who was employed by the Australian Information Service as an official photographer. Does a Land Rights News reader recall the occasion, or recognise any of the other people in the photograph? If so, let us know: media@nlc.org.au or phone 8920-5114

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