

“Aboriginal Participation, or Dreamtime?”

Introduction

I am talking to you today with a number of hats on. I am a Larrakia /Wadjigan man with connections to land in the Darwin region as well as an area where my Grandmother was born, Bul Gul, a place which is to the south West of Darwin, which is part of the Wagait Land Trust.

I am a lawyer and have worked with the NT Legal Aid Commission and NT Department of Justice.

In 2002 I was the former Chair of the ATSIC Yilli Rreung Regional Council, which is the Darwin Region. This Council was required to advocate to government on the needs of Indigenous people in this region.

From December 2004 to May 2006 I was the former Deputy Director of Indigenous Affairs with NT Correctional Services. I am also currently the Chairman of the North Australian Aboriginal Legal Service (NAAJA) and the Northern Territory Aboriginal Justice Advisory Committee (AJAC)

Today I want to tell you about my involvement with the Elders Visiting Program in NT Correctional Services. I was involved in this program from its genesis to implementation.

BACKGROUND

Any discussion in relation to Indigenous incarceration must refer to the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') recommendations. While this Inquiry may seem irrelevant today, it is directly linked to the need of government to have an Indigenous Justice Agreement with the Indigenous people of the NT. This, in turn, is linked to outcomes for Indigenous people having negative contact with the criminal justice system, including prisoners.

The RCIADIC produced a landmark report on the relationship between Indigenous persons and the criminal justice system throughout Australia. In considering the 99 lives that were the subject of the Inquiry, it offered a tragic portrait of the life histories and of the deaths examined as well a distillation of the common themes in those stories. The Report provided 339 recommendations aimed at reducing Indigenous overrepresentation at all stages of the criminal justice system.

Some of the findings¹:

- Using imprisonment as a last resort, reducing arrest rates and decriminalising public drunkenness (along with establishment of community based sobering up facilities) would significantly reduce custody rates;
- The most significant contributing factor to bringing Indigenous people into contact with the criminal justice system was their disadvantaged and unequal position within the wider society; and

¹ Royal Commission into Aboriginal Deaths in Custody *National Report* (1991), Vol 1, pp228-229

- The elimination of Indigenous disadvantage would only be achieved through empowerment, self-determination and reconciliation

This report was published 15 years ago and these findings are even more relevant today.

The final occasion on which the Government of the Northern Territory reported on the implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody was in its report of 1996/97. Since that time the momentum to commit to the RCIADIC recommendations has slowed to a crawl. One way to ensure that these recommendations are not forgotten is to address them in a systematic way through a comprehensive agreement between the State and persons affected.

A commitment to the urgent need to negotiate an Aboriginal Justice Agreement was made by every other State and Territory except the NT at a meeting of Attorneys General in Canberra on Friday 4 July 1997. It was agreed in a signed communiqué on that date by all other jurisdictions that: -

To address the over-representation of Indigenous peoples in the criminal justice system Ministers agreed, in partnership with Indigenous peoples, to develop strategic plans for the coordination of Commonwealth, State and Territory funding and service delivery for Indigenous programs and services, including working towards the development of multi-lateral agreements between Commonwealth,

State and Territory Governments and Indigenous organizations to further develop and deliver programs.²

The Strategic Plans which are referred to in this communiqué have become Indigenous Justice Agreements in other jurisdictions. Such agreements elsewhere in the country have led to tangible change, including a reduction in incarceration growth rates in other jurisdictions.

Mr. Bourke, Attorney General for the Northern Territory at the time, declined to sign the Communiqué.

On 16th October 2002, the summit communiqué was signed by Attorney General Toyne on behalf of the NT Government. This was a sign that finally we had a government that was willing to put words into action and take the practical steps required to achieve change.

However, despite extensive negotiations between the Attorney's representatives and Indigenous agencies, no Indigenous Justice Agreement of the kind referred to in the Communiqué has been finalised nearly 4 years later.

Since the demise of ATSIC, the Attorney had indicated that such an agreement was no longer necessary.

In January 2006 AJAC wrote to the Attorney-General expressing concern at this failure and received the following response: -

The decision not to develop an Indigenous Justice Agreement has been taken that there is no longer any Government need for a written

² Portion of the Communiqué dated the 4 July 1997 signed by Attorneys General of each state and Territory save the Northern Territory

agreement of the kind that had been formerly contemplated. The Government is satisfied that there are already sufficient reporting mechanisms in place for the purpose of indigenous disadvantage.

This statement was a blow to the aspirations which Indigenous people, represented by various agencies, have to participate in decision making on justice issues which affect them.

This decision was made without consultation with Indigenous agencies. In itself this act was a demonstration that the government was not committed to the principles of inclusiveness and participative planning.

I am pleased to report that after concerted lobbying by AJAC and other interested bodies, the Department of Justice has agreed to continue to work toward the finalization of an Indigenous Justice Agreement.

However today no Agreement has been signed. The struggle continues. Why? Because with almost 30% of the population Indigenous, we are a long way behind our brothers and sisters in other States and Territories in Australia.

Issues faced by Correctional Services

A review of Corrections³ was completed in March 2004. It outlined that as 80 percent of Territory inmates are Indigenous there is a need for urgency to address the many issues relating to Indigenous incarceration. The NT Government adopted the 71 recommendations of the review and claimed that

³ A Review of the Northern Territory Correctional Services – adult custodial operations, “A Path to Good Corrections”, CAYA Management Consulting International Inc, March 2004

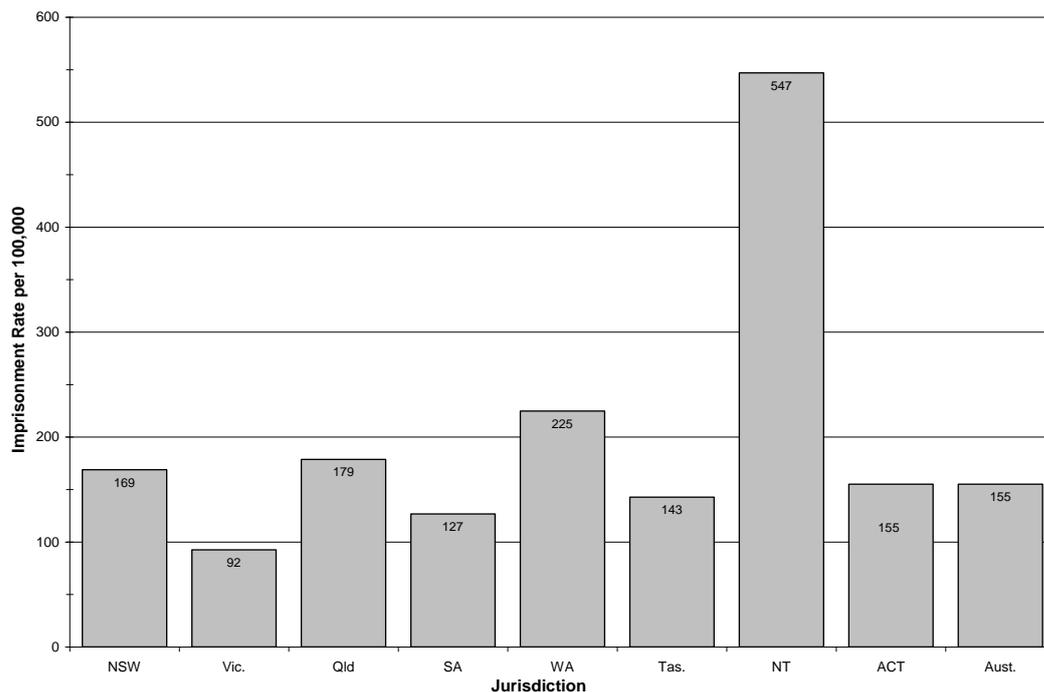
it would make our correctional centres the most effective and efficient in Australia.

Statistical Background

In 2004-05 the Australian Bureau of Statistics (ABS) reported that the Northern Territory recorded the highest imprisonment rate of 547 prisoners per 100,000 adult populations, representing three times the national rate.

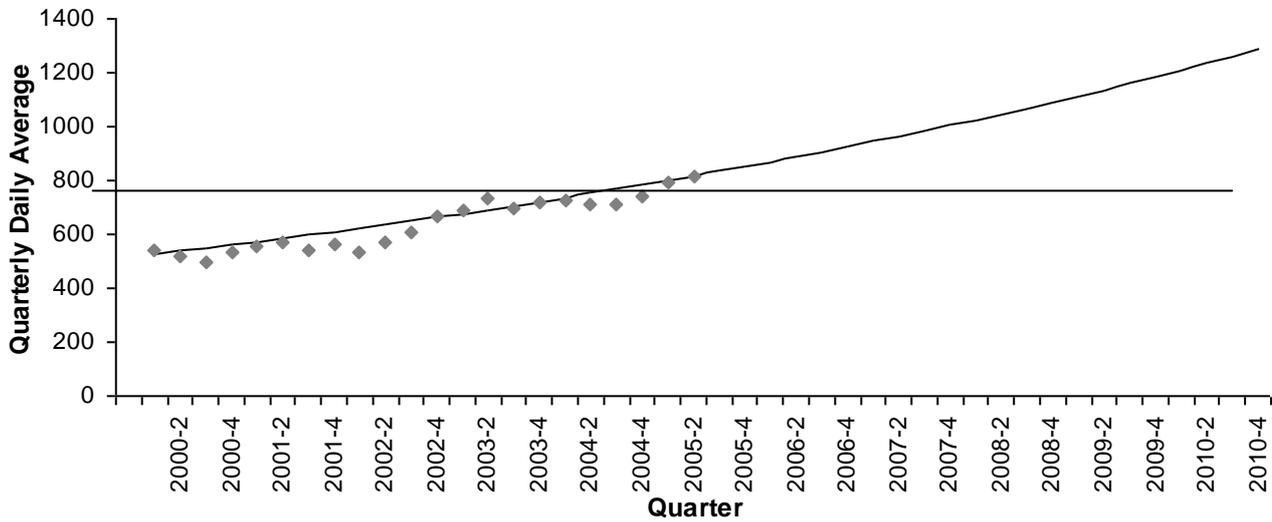
If this is not alarming enough, the projections are that this number will grow by one third in the next five years.

Figure 1 Estimated adult imprisonment rates by jurisdiction, 2004-05.



Estimates of imprisonment rate per 100,000 adult population based on ABS Corrective Services Australia (4512.0).

Figure 2 Projected Figures



Quarterly Daily Average (Excl. People Smugglers) –
 Proportional Growth Projection⁴

The NT Legal Aid Commission has produced a paper entitled *Managing Prisoner Growth in the NT*⁵. That paper outlines the concern that external factors may impact on this projection and raises the prospect that actual prisoner numbers could increase much more quickly:

The Northern Territory imprisonment rate is the highest in Australia and is more than 3 times the national rate. If prisoner numbers continue to grow at the existing rate there will be 433 more prisoners by 2010. Due

⁴ Graph utilized in the NT Corrections Indigenous Economic Development Taskforce Presentation, January 2006

⁵ NT Legal Aid Commission, January 2006

to the unique social, demographic and policy influences in the Northern Territory, the growth rate is likely to be far greater.⁶

The Legal Aid Commission has identified 3 key areas which have the impact to blow out the prisoner number projections: Demographic change; Socio economic issues; and legislative and policy change.

In relation to demographic change, the Commission concludes:

This profile will result in rapid changes in the age structure of the Indigenous population over the next two decades. The Indigenous population of 'imprisonable age' will remain disproportionately higher than the non-indigenous population and is predicted to increase the number of Indigenous people in gaol.⁷

In relation to legislative and policy change, the Commission points to recent changes to Northern Territory legislation have the potential to impact directly on the prisoner numbers:

- Amendment to the *Bail Act*, extending the presumption against bail;
- Amendment to the *Domestic Violence Act*, extending the power to make restraining orders to police;
- Amendment to the *Criminal Code* repealing the offence of dangerous act; and
- Introduction of legislation in relation to anti-social conduct.

⁶ Ibid @ 1

⁷ Ibid @ 8

In addition, the Commission raises concern that ‘tough on crime’ and “zero tolerance” law and order policies by government may also impact on incarceration levels.

RCIADIC⁸ observed that there was a well established parallel between public drinking by Indigenous people, police contact and the justice system. The RCIADIC called for the decriminalization of public drunkenness in the jurisdictions where it was still an offence, and that adequate funding of non-custodial facilities for the care and treatment of intoxicated persons.⁹ One of the most commonly suggested ways for reducing Indigenous people held in custody is to decriminalize public drunkenness.

The recent cessation of funding to the community patrols will further increase the contact Indigenous people have with police. Increases in policing resources as well as changes to policing have already resulted in an increase in reported crime. These factors will also increase the chances of incarceration.

Partnerships

In 2003 I was the Chair of the Yilli Rreung Regional Council (YRRC) and which developed its Law and Justice Policy Plan. YRRC wanted to enhance the rights of Indigenous people in the Darwin Region through preventative measures which address the overrepresentation of Indigenous people in the criminal justice system and the provision of a quality and culturally appropriate legal services.

⁸ National Report (1991), Vol 2, ch 13

⁹ RCIADIC 1991, Vol 3, p28

In the endeavors to develop the plan the Council tried to access ATSIC funding for the use in the NT. The YRRC developed a submission to ATSIC and ATSSIS Program Managers to gain these funds.

The submission was for the following projects:

- Community Based Family Violence Offender Programs;
- Community Courts in Darwin and Nhulunbuy
- Reintegration Officers in Darwin and Alice Springs
- A Family violence Perpetrator Program in Alice Springs and
- The Elders Visiting Program in Darwin and Alice Springs Gaols.

Funding was obtained for these programs, which was allocated to the Northern Territory Government under the badge of an 'Indigenous Justice Partnership' between ATSIC and the NT.

The implementation of the initial stages of this partnership was overseen by the later Chair of the YRRC, Kimberley Hunter, until ATSIC was abolished in June 2005.

Elders Visiting Program

The Elders Visiting Program was developed in recognition of the importance of inmates maintaining connections to their community as a key to the prospects of positive re-integration upon release.

The Elders Visiting Program (EVP) was consistent with Government and stakeholder objectives that aim to reduce:

- the over representation of Indigenous people in the criminal justice system across the Northern Territory; and
- the rate of recidivism.

The project aimed to fully implement the Elders Visiting Program in the Alice Springs and Darwin Correctional Centres by June 2005

It was envisaged that twelve visits (six to each prison) would take place during the 12 months. A total of 26 visits (six to Alice Springs and 20 to the Darwin Correctional Centre) took place. Four of the visits to Darwin also included meetings of Elders with management and (at times) the Minister for Justice and Magistrates.

Visit Records

Community	Visit	Visit	Visit	Visit	Visit	Visit
	1	2	3	4	5	6
Hermannsburg	15 prisoner (ASCC)	6 women prisoners (DCC)	16 prisoners (ASCC)	16 prisoners (ASCC)	12 Prisoners (DCC)	12 Prisoners (DCC)
Tennant Creek	10 prisoners (ASCC)					
Yuendumu	10					

	prisoners (ASCC)					
Katherine	10 prisoners (DCC)	6 prisoners (ASCC)	17 prisoners (DCC)	17 prisoners (DCC)	8 prisoners (ASCC)	17 prisoners (DCC)
Groote Eylandt	9 prisoners (DCC)	11 prisoners 1 prisoner on request (DCC)	11 prisoners 1 prisoner on request (DCC)	10 prisoners 1 prisoner on request (DCC)	13 prisoners 1 prisoner on request (DCC)	13 prisoners 1 prisoner on request (DCC)
Tiwi	6 prisoners (DCC)	9 prisoners (DCC)	14 prisoners (DCC)	8 prisoners (DCC)	11 prisoners (DCC)	14 prisoners (DCC)

Elders Meetings

There have been four Elders meetings held in Darwin for the purpose of sharing experiences about prison visits, discussing prisoner feedback and developing community support strategies. These meetings have provided direction for the program and developed ideas for post release support for offenders to assist them back into the community. The feedback has highlighted community concerns and the program itself has been extremely successful with community engagement that has been encouraging.

Elders Program feedback included:

- The need to address the high rate of re-offending.
- The need to improve literacy and numeracy skills.
- The need for skills training.
- Importance of improving education for all community members.
- Making education compulsory for all prisoners with low literacy and numeracy skills.
- Making their community safer by addressing substance abuse.
- Getting involved in the reintegration process as a shared responsibility.

There have been several 'good news' stories in the media highlighting the importance of the program. See for example, the story which featured on Stateline (NT) recently¹⁰

Proposed Community Initiatives for 2006:

- A Mens Centre workshop at Tjuwanpa Resource Centre (Ntaria Community).
- A Halfway House at Ntaria or Tjuwanpa.
- Video Conferencing for Ntaria.

¹⁰ <http://www.abc.net.au/stateline/nt/content/2005/s1522667.htm>.

- Additional Programs on Communities in partnership with Indigenous Elders – eg Family Wellbeing and Domestic Violence.
- Guidance and mentoring assistance for offenders to reintegrate back into community life.

Literacy & Numeracy

At the Indigenous Economic Development Forum held in Darwin in May 2005, the recurrent message from most industry presenters was that the poor level of literacy and numeracy is a major barrier to employment for Indigenous people.

Communities know this and want to turn the situation around. They want to maintain their culture and language but they realise that English literacy and numeracy is also important.

Through the Elders Visiting Program an Education Advisory Committee has been formed which has encouraged more offenders to engage in prisoner education.

This committee has advised on skills shortages and employment opportunities in communities.

Role Models

The Visiting Elders said they want to re-establish family units that have been decimated by prison sentences. Elders appreciated the value of role models to influence the younger generation and they know that when fathers are in prison it is the wrong role model (their words) for their children.

Employment Opportunities

Elders and communities want employment opportunities to help to again make some of these men proud of their community. They want the young men to respect their community and to accept responsibilities. They want them to learn to lead their community forward. They have discussed that some of these young men will be the future Elders and must learn to respect family and culture to stay strong (again their words).

Many communities want to establish business projects and some have been successful such as Titjakala and the Tiwi Islands. Elders and communities know that they need their young men to work in these businesses. They need training and skills development and they need English literacy & numeracy.

Ministerial Council on Education, Employment and Training Youth Affairs (MCEETYA)

Elders' aspirations for their communities are very similar to the eight main points of the Australian Government's MCEETYA. This lists eight priority areas for Indigenous education and training:

1. Improving Indigenous **literacy**.
2. Improving Indigenous **numeracy**.
3. Increasing the **employment** of Indigenous Australians in education & training.
4. Improved **educational outcomes** for Indigenous students.

5. Increased Indigenous **enrolments**.
6. Increasing the involvement of Indigenous parents/**community members** in educational decision making.
7. Increasing professional development for **staff** involved in Indigenous education.
8. Expanding **culturally inclusive** curricula.

Elders are the direct link between the community, the offender and Department of Justice. They can offer advice on:

- Skills shortages in the community and training requirements.
- Community employment opportunities.
- Behaviour expectations for offenders.
- Conditions under which an offender may return to community.
- Reparation requirements of the victim, victim's family or community.
- Driver Licensing issues and impact of drink driving on family and community.
- Family violence issues.
- Cultural issues.

The project has been highly visible and of benefit to communities and offenders. The Department will endeavor to continue to support Elders to visit the Correctional Centres.

Funding has been identified to continue the program for a minimum of another two years and will continue to be managed by Northern Territory Correctional Services.

Positive Outcomes

As mentioned earlier in this paper, I am an Indigenous man who has extensive links in the Northern Territory. I have a huge extended family. And because of this I am bombarded with the ongoing issues of the incarceration rates of my people. It's not just knowing the figures, but personally knowing 30% of the 85% of the mob in gaols.

The clash is that I personally know them from school age, to adulthood. I know that they are personally a great person, reliable, held jobs and were a cherished contributor to the work place. The majority of the time that they are in trouble is alcohol or drug related.

There is no excuse for the domestic violence, and other violent crimes. Violence is a scourge on our community and we need to take positive steps to change this.

However, because of the current system in the NT, majority of these offenders are not receiving treatment programs whilst incarcerated or whilst on bail.

The elders program offers a positive glimpse of what is possible in a system which is full of negativity. Although there has not been an evidence based report done as yet, there are other indicators that have shown that it has been a success.

The prison officers are the biggest indicators on how well this program is received. The officers themselves have asked to utilize the elders to speak with other inmates who are not in the targeted group. Prison Officers have asked elders to speak with prisoners that they are having trouble with or who are perceived struggling in the prison environment. The prison officers see the benefits of working with the elders and have been a big reason on the success of this program.

Prisoners themselves have asked to be included in the program even when they are not in the targeted group of the program. Due to financial restraints priority was given to offenders due for release within 2 years of the program's commencement. Prisoners coming from areas of small representation in the gaol system have also requested to have the elders program.

The elders have been engaged and have participated in workshops and to discuss the process of their input into the Community Based Family Violence Offenders Program, the Community Courts Program.

Their input as mentioned in this paper has been invaluable to the DoJ. It has allowed Indigenous input into the delivery of service. It has also educated staff on cultural issues and other concerns for Indigenous people.

The elders have in their forums proposed:

- Community Initiatives for Men's Centre workshops to look at the reintegration and rehabilitation for remote Indigenous men returning to country.
- Additional Programs on Communities in partnership with Indigenous Elders – eg Family Wellbeing, Community Court, Community Based Family Violence Offenders Program.
- Guidance and mentoring assistance for offenders to reintegrate back into community life.

Conclusion

The elders input introduced Indigenous participation into an area where in the past such participation has been frowned upon. This interaction has been valued by Corrections and helped Corrections build better programs and a better relationship with the indigenous community.

For the elders it gives them the opportunity to influence policy and programs to help rehabilitate our people before it's too late. This influence is the ability

to convey the diverse cultural needs and interest of their people to others who may not have the same level of understanding.

But those of you who know me will know that I don't like to end things on a positive note.

Some may see that as negative or cynical, but for me it is because we have so far to go.

We must celebrate the small but symbolically important gains we have made to enabling Indigenous participation into decision making. The Elders Visiting Project represents an important step in this direction.

However, the disadvantages faced by Indigenous people, who were recognized by RCIADIC are largely the same. Only systemic change can address this disadvantage. We are on the cusp of finalizing an Indigenous Justice Agreement which will be the basis for tangible change in the future. I encourage all who can to support and encourage the completion of this agreement.

I would like to finish with a quote from the great Nelson Mandela:

We must use time wisely and forever realize that the time is always ripe to do right.