

**QUESTION TIME BRIEF (QTB)
DON DALE CORRECTIONAL FACILITY IN DARWIN**

QUESTION: Are you aware of the report by the NT Children’s Commissioner into an incident at the Don Dale Juvenile Detention Centre?

KEY POINTS:

s 47C

BACKGROUND:

The NT Children’s Commissioner published a report in September 2015 which looked at the use of tear gas during a three hour siege by inmates in August 2014.

The report also explained that approval was given to transfer five young people to the adult prison, however six young people were transferred, despite one only being 14 years old. This is in breach of the *Youth Justice Act* which requires that transferees be 15 years or older.

The report recommended the NT Correctional Services develop appropriate training for staff, consider recruitment processes, review operational practices and ensure procedures ensure the rights of the young person as specified under the UN Convention on the Rights of the Child.

CONTACT: Gavin Matthews s 22 DIVISION:Community Safety and Policy
DATE: 12 October 2015
DEPARTMENTAL INPUT CLEARED BY: Gavin Matthews

***Not for tabling – For Official Use Only**

The NT Government announced on 24 September 2014 that a Youth Justice Advisory Group, including Peak Indigenous bodies, was set up to oversee recommendations made by the 'Vita Report' to improve NT youth detention practices. The Vita Report was released in February 2015.

The NT Child Abuse Taskforce is also investigating a number of other allegations of mistreatment of youth in relation to the Centre. Allegations have been made that guards at the Don Dale Youth Detention Centre forced young people to fight, made one inmate eat bird faeces and threatened detainees with retribution on the outside.

The Don Dale Youth Detention Centre holds young people between the ages of 10-17.

Media (Attachment A):

- 9 October 2015, ABC, "Law Council calls for urgent action over report into Don Dale youth detention in Darwin".
- 24 September 2015, NT Government Media Announcement, "Youth Justice Advisory Group include peak Indigenous bodies"
- 23 September 2015, NT Police Media Announcement, "Mistreatment Allegations Don Dale Juvenile Detention Centre"

Law Council calls for urgent action over report into Don Dale youth detention in Darwin

By the National Reporting Team's Natasha Robinson
Updated Fri at 8:26pm Fri 9 Oct 2015, 8:26pm

The Law Council of Australia has called on the Northern Territory Government to take urgent action to protect vulnerable children incarcerated in its youth detention system in the wake of a damning report.

A report by the Northern Territory Children's Commissioner into the circumstances behind an alleged riot at the Don Dale Youth Detention Centre in August 2014 exposed [cruel and degrading treatment of youth detainees](#).

Unrest at the centre escalated to crisis point after six young people were placed in solitary confinement for between six and 17 days, for between 22 and 24 hours a day.

At the height of the tension, juvenile inmates were tear-gassed, hooded and treated with unnecessary force by prison officers from Darwin's adult Berrimah prison.

NT Children's Commissioner Colleen Gwynne released a report into the incident two weeks ago.

The report called for an overhaul of staff training and recruitment in youth detention, a review of operational practices, the provision of remedial programs for young people and rigorous policies that would severely limit the use of spit hoods, which are used in youth detention to prevent young people spitting on corrective services staff.

TREATMENT OF CHILDREN 'A MORAL GAUGE'

Law Council of Australia director Arthur Moses SC said the NT Government must urgently address those recommendations.

Of particular concern to the Law Council is the indiscriminate use of hoods and handcuffs, the solitary confinement of young people in breach of the NT's Youth Justice Act, and the use of tear-gas in favour of a meaningful attempt to negotiate a peaceful outcome in response to last August's unrest.

Mr Moses said he was deeply concerned at the NT Government's inaction on implementing the report's recommendations.

"If these findings are true, the inhumane management of the Don Dale incident is a blight against Australia's human rights profile," Mr Moses said.

"It's important to remember that more than 90 per cent of youth detainees in the Northern Territory are Indigenous.

"Children are, of course, the most vulnerable group in the Australian community and it is critical the NT Government takes swift and effective action to implement the findings of this report.

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"If it fails to do so, the Federal Government should intervene to deal with the situation."

While the Law Council commended Corrective Services for acting on an earlier review of youth justice by Michael Vita, Mr Moses said staff who acted in violation of children's rights had not been held to account or investigated.

"The treatment of our children in detention centres must not only comply with our domestic and international legal obligations, it also serves as a moral gauge," Mr Moses said.

"A nation is judged by how it treats its most vulnerable and these findings say we should be judged harshly."

WE'VE ACTED ON ISSUES, MT MINISTER SAYS

A spokesperson for John Elferink, the NT Minister for Correctional Services, said many of the report's recommendations overlapped with the Vita report.

"The Vita review was commissioned by the Minister in September 2014 following incidences at the old Don Dale Centre, which is now closed," the spokesperson said.

"The Vita review provided 16 recommendations, all of which have been implemented or are in the process of being implemented within the new youth justice system.

"We accept that there were issues and acted swiftly to implement change in the youth justice system."

YOUTH JUSTICE ADVISORY GROUP INCLUDE PEAK INDIGENOUS BODIES

24 September 2015

Peak Indigenous bodies are members of a multi-agency Youth Detention Reform Advisory Group set up to oversee recommendations to improve the Territory's youth detention practices and centres, Minister for Corrections John Elferink said today.

The advisory group has met four times this year and is scheduled to meet every two months until the recommendations of an independent expert on youth detention are fully implemented.

"I find it surprising that the North Australian Aboriginal Justice Association has criticised the progress we are making in this area," Mr Elferink said. "NAAJA is an important member of the group helping to make our system better. They meet regularly on these issues.

"The Vita report – a roadmap for youth detention was prepared by a former superintendent of prisons from NSW, and who is currently superintendent of one of NSW's largest youth facilities – was released on February 18 2015.

"Subsequently, the NT Children's Commissioner conducted an "own-initiative" report into the same issues that were addressed in the Vita Report. Her report, released last week, has also proven to be a most important document. This is a report that was voluntarily released by government despite legal advice to say it didn't have to be released.

"We did so to demonstrate that government will not suppress debate on this important issue. Remember. Most of the problems we are now trying to fix were created under 12 years of Labor Government 'do nothing' policies."

Mr Elferink said the two reports were complementary and he would be monitoring the issues on an on-going basis.

"Following that release the Department of Correctional Services established the Youth Detention Reform Advisory Group," Mr Elferink said: "That group has a combined NT Government and non-government organisation membership representing:

- North Australian Aboriginal Justice Agency.
- Office of the Children's Commissioner.
- Central Australian Aboriginal Legal Aid Service.
- NT Legal Aid Commission.
- An elected staff union representative from youth detention.
- Department of Correctional Services.
- Department of Children and Families.
- Department of Education.
- Department of Health.
- NT Police.

CONTACT: Gavin Matthews s 22

DIVISION:Community Safety and Policy

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CONFIDENTIAL *

Ref: QTB15/794

“Note that the group was structured to ensure it was balanced with Government agencies and non-government representatives.”

The Advisory Group has met four times so far and will continue to meet on a bi-monthly basis until all of the 16 recommendations have been implemented.”

To date 15 recommendations of the Vita Report have been completed with:

- Three requiring no further action.
- Seven of the completed recommendations now forming on-going practice.
- Five of the completed recommendations requiring on-going action and monitoring.

Both reports are public documents.

Julian Swinstead – 0429 806 669

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DATE: 12 October 2015
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Mistreatment Allegations Don Dale Juvenile Detention Centre

Wednesday 23-Sep-2015 15:01

Northern Territory Police are investigating allegations of mistreatment of a youth at the Don Dale Juvenile Detention Centre.

Assistant Commissioner Jeanette Kerr confirmed that a complaint was referred to Police by a Government agency on 8 May, 2015, and is currently being investigated by the Child Abuse Task Force, Crime Command.

"Northern Territory Police take this type of referral extremely seriously.

"We work closely with all the relevant agencies. This approach ensures the welfare and safety of the children involved."

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CONTACT: Gavin Matthews PHONE: s 22 [REDACTED] DIVISION:Community Safety and Policy
DATE: 35 November 2015
DEPARTMENTAL INPUT CLEARED BY: Gavin Matthews

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DATE: 35 November 2015
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ATTACHMENT A

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- ~~• ————— NT Police.~~

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CONTACT: Gavin Matthews PHONE: s 22 DIVISION: Community Safety and Policy
DATE: 30 November 2015
DEPARTMENTAL INPUT CLEARED BY: Gavin Matthews

***Not for tabling – For Official Use Only**

**QUESTION TIME BRIEF (QTB)
INDIGENOUS INCARCERATION RATES / JUSTICE TARGET**

QUESTION: What is the Government doing about Indigenous incarceration rates and deaths in custody? Will the Government introduce a justice target?

KEY POINTS:

. s 22 [Redacted]
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CONTACT: s 22 [Redacted] PHONE: s 22 [Redacted] DIVISION:Community Safety and Policy
DATE: 2 March 2016 DEPARTMENTAL INPUT CLEARED BY: Gavin Matthews

***Not for tabling – For Official Use Only**

BACKGROUND:

s 22

[REDACTED]

In a Land Rights News article on 1 March 2016 (Attachment A), John Lawrence SC wrote that the Northern Territory has more prisoners per head of population than any other country in the world: 904 per 100,000. However, NT has the second highest rate of *Indigenous* imprisonment as a proportion of total Indigenous population in the territory (2,886 Indigenous prisoners per 100,000 Indigenous head population) and WA has the highest rate (3,621 Indigenous prisoners per 100,000 Indigenous head population). *Don Dale Youth Detention Centre*

The Land Rights article also refers to incidents at the Don Dale Youth Detention Centre, including the use of tear gas during a three hour siege by inmates in August 2014.

In response to recommendations in the ‘Vita Report’ (February 2015) and the NT Children’s Commissioner Report (September 2015) the NT Government announced on 24 September 2014 that a Youth Justice Advisory Group, including Peak Indigenous bodies, was set up to oversee recommendations to improve NT youth detention practices. The NT Child Abuse Taskforce is also investigating a number of

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Land Rights News, 1 March

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)

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 \$1.8 billion 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 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.

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

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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.

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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.

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.

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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.

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Father Benedetti 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:

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



**QUESTION TIME BRIEF (QTB)
INDIGENOUS INCARCERATION RATES / JUSTICE TARGET**

QUESTION: What is the Government doing about Indigenous incarceration rates and deaths in custody? Will the Government introduce a justice target?

KEY POINTS:

. s 22
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CONTACT: s 22 PHONE: s 22 DIVISION:Community Safety and Policy
DATE: 3 March 2016 DEPARTMENTAL INPUT CLEARED BY: Gavin Matthews

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s 22

[REDACTED]

In a Land Rights News article on 1 March 2016 (Attachment A), John Lawrence SC wrote that the Northern Territory has more prisoners per head of population than any other country in the world: 904 per 100,000. However, NT has the second highest rate of *Indigenous* imprisonment as a proportion of total Indigenous population in the territory (2,886 Indigenous prisoners per 100,000 Indigenous head population) and WA has the highest rate (3,621 Indigenous prisoners per 100,000 Indigenous head population).

Don Dale Youth Detention Centre

The Land Rights article also refers to incidents at the Don Dale Youth Detention Centre, including the use of tear gas during a three hour siege by inmates in August 2014.

In response to recommendations in the ‘Vita Report’ (February 2015) and the NT Children’s Commissioner Report (September 2015) the NT Government announced on 24 September 2014 that a Youth Justice Advisory Group, including Peak Indigenous bodies, was set up to oversee recommendations to improve NT youth detention practices. The NT Child Abuse Taskforce is also investigating a number of other allegations of mistreatment of youth in relation to the Centre. Allegations have been made that guards at the Don Dale Youth Detention Centre forced young people to fight, made one inmate eat bird faeces and threatened detainees with retribution on the outside.

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'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 con-

vene 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 imprison-

ment, which is simply getting worse each year and seriously stymieing efforts to overcome Indigenous disadvantage.

Land Rights News, 1 March

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)

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.

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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 \$1.8 billion 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 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.

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"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."

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"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.

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Ms Carroll
Mr Eccles
Ms Edwards
Mr Matthews

To: Minister for Indigenous Affairs (for meeting)

(cc: Parliamentary Secretary to the Prime Minister, the Hon Alan Tudge)

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s 22

MEETING WITH NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY

File:

s 22 [Redacted]	Timing and Venue: 18 February 2015, Darwin Office
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s 22 [Redacted]

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Purpose built detention centre for youth

- NAAJA wants you to pressure the Northern Territory Government to build a new youth detention centre and remove children from the new Don Dale Youth Detention Centre.
- Juvenile Offenders were transferred to the facility in January 2015. This facility was previously the Berrimah Correctional Centre and was a maximum-security prison for adult offenders.

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- The previous Don Dale Juvenile Detention Centre was shut after a riot in August 2014, where staff used tear gas on six teenagers.
- NAAJA is concerned that the maximum security prison is not an appropriate place to meet the therapeutic needs of young people.
- The NTG are completing an \$800,000 upgrade of the facility to ‘transform it into the new Don Dale Youth Detention Centre’.
- The NTG have stated that they will not be constructing a new juvenile detention centre because they cannot afford the cost (approximately \$150 million).

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Gavin Matthews
Assistant Secretary
Community Safety
February 2015

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NOTED:
Date: