

The Tragedy of the Pitjantjatjara Lands

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South Australian Shadow Attorney-General
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A Paper presented to
the Bennelong Society Conference

Sydney, 4 September 2004

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Introduction

The aim of this Paper is to present a report on recent developments on the Anangu Pitjantjatjara Lands.

At the Bennelong Society Conference in 2003, I presented a paper which outlined some of the history of the *Pitjantjatjara Land Rights Act*. I will not repeat that material and assume that readers have some general familiarity with the Lands which cover over 100,000 square kilometres in north-western South Australia and which are home to about 3,000 Aboriginal people. The governing body of the AP Lands is called the AP Executive Board,¹ elected annually.

I concluded my paper last year with the observation that the great optimism which had accompanied the passage in 1981 of the *Pitjantjatjara Land Rights Act* (PLRA) has now faded. I wrote:

“The Act was the foundation-stone of a mansion which has not been built. The stone was laid with great ceremony and many clamoured to have their names carved upon it. But the attempts

¹ The Lands were usually called the AP Lands but are increasingly being referred to as the Anangu Pitjantjatjara *Yankunytjatjara* Lands, or APY Lands. The current Executive has adopted the corporate name of “the APY Land Council”. To avoid confusion, I have used the terms “AP Lands” and “AP Executive” throughout.

to put bricks and mortar around it have largely failed. To use another building metaphor, those who were responsible for this Act crafted a keystone – but we have not yet constructed the arch to support it!”

My reason for this pessimistic view was the continuing poor health status, longevity, educational attainments and lack of prosperity of people on the Lands.

Over the last six months, the AP Lands have received more media coverage than in all of the last 22 years since land rights were granted. This sudden interest has been prompted by a series of events and decisions of the Rann Labor government culminating in the appointment on 25 August 2004 of Professor Lowitja O’Donohue AC CBE and Rev Tim Costello as “advisers” on the Lands.

In light of the involvement of such high profile individuals and apparent activity, the reader may be forgiven for inquiring why the title of this Paper refers to the “tragedy” on the Lands. The answer can only be understood by examining in some detail the context of these events, announcements and decisions.

The Events

On 5 March 2002, the Rann Labor government took office and Hon Terry Roberts was appointed Minister for Aboriginal Affairs and Reconciliation.

When the Minister took office, there were three major issues on the Lands:

- There was a long-running dispute between the AP Executive and the Pitjantjatjara Council (“Pit Council”) and its chair, Gary Lewis. The focus of this dispute was the decision of AP Executive to discontinue an arrangement under which Pit Council provided legal and anthropological services to AP.

- The then AP Executive had engaged a consultant, Chris Marshall, who was advising it on community development and governance issues. It appeared that this rather painstaking process was rebuilding a robust organisation to provide effective governance of the Lands.
- Issues of health, law and order, substance abuse (including petrol sniffing) were being addressed by two consultative groups formed under the previous government. The first, the *Anangu Pitjantjatjara Lands Intergovernmental Interagency Collaborative Committee* (commonly known as Tier 1) had been formed in 2000. It comprised representatives of Commonwealth and State governments and was charged with “working through the Anangu Pitjantjatjara to ... improve ... community capacity to manage current and emergent issues” etc etc. The second was the *Petrol Sniffing Taskforce*. This committee of State government officers reported to Tier 1. Its key objective was the identification of solutions to the issue of petrol sniffing on the Lands.

In the months following the Minister’s appointment, the dispute with the Pit Council continued. The Minister took the side of the Pit Council and, within weeks of his appointment, the AP Executive was expressing no confidence in him and calling for his resignation. Rick Farley (former Executive Director of the National Farmers Federation) was appointed facilitator at a meeting between the Minister and the AP Executive. When that process failed, the Minister appointed Michael Dodson (former Aboriginal Social Justice Commissioner) to mediate the dispute. Again, mediation failed and, in August, the Legislative Council (on an Opposition motion) appointed a Select Committee to inquire into and report upon the PLRA and related issues.

In September 2002, the Coroner published the findings of an Inquest into the deaths of three aboriginal men who had been chronic petrol sniffers. In a scathing report, the living conditions on the AP Lands were described as a “disgrace and shame to us all”. The report referred to petrol sniffing as “endemic on the Lands”. He said that substance abuse and similar self-destructive behaviour could not be divorced from the “environment of poverty,

hunger, illness, poor education, almost total unemployment, boredom and hopelessness”.

The report criticised Federal and State governments for taking “far too long to act”. It stated that the two consultative groups set up to examine the problems of petrol sniffing “seem stuck in the information-gathering phase”. The Coroner considered that the time for information-gathering was over. What “is missing is prompt, forthright, properly planned, properly funded action”, he concluded.

The Coroner provided a blueprint for action. He recommended (*inter alia*) the establishment on the Lands of a secure detention facility and detoxification and rehabilitation facilities as well as a permanent police presence.

The AP Executive expressed support for the recommendations and called upon Commonwealth and State governments to “support properly planned and properly funded programs to assist communities to eliminate petrol sniffing from the AP Lands”.

The first Annual General Meeting of the AP after the new State government came into office was held in November 2002. The election of Gary Lewis as chairman was warmly applauded by the Minister. The AP legal officer, Neil Bell, (former Labor Member of the Northern Territory Parliament) complained to the SA Electoral Commissioner about aspects of the election and requested an investigation. Bell alleged that the Minister, who had personally attended the AGM, had interfered in the process by expressing support for the group led by Gary Lewis and that Mr Lewis had “verbally and aggressively” put pressure on electors.

After the election of the new Executive, the appointment of Chris Marshall was terminated. In his final report, Mr Marshall decried the fact that the new Minister had taken the side of the Pit Council and had thereby exacerbated divisions and fostered ongoing disputation. In Marshall’s view:

“The sentimental belief that the demise of the Pit Council is a matter of great regret and sadness amongst Anangu is misplaced. It is many years since the Pit Council provided a genuine forum for Anangu unity, public debate and political action. It has, however, been used as the power base for the political objectives of one or two

individuals – with the active support of the Minister responsible for AP and with the vociferous support of a few of its staff.”

In May 2003, the Commonwealth/State governments announced that the APY Lands were selected for a Council of Australia Governments (COAG) “trial” for managing delivery of services on a whole-of-government approach.

At about the same time, the new AP Executive passed a resolution seeking an amendment of the PLRA to extend their term of office from 1 to 3 years. Later, a general meeting of AP purported to endorse the Executive decision to extend its term for 3 years and, in October, the AP constitution was amended to achieve this objective. Warnings by the Opposition in Parliament and elsewhere that this extension was contrary to the PLRA were not heeded. At the ensuing Annual General Meeting, no election for office bearers occurred and the Executive continued to hold office. Much of the ensuing tragedy has followed from this high-handed manoeuvre. And, regrettably, the best one can say for the Minister is that he adopted a compliant approach to the Executive.

The State Budget at the end of May allocated an additional \$1m in 2003-04 for “improved health and wellbeing for AP communities” and \$250,000 for “policing initiatives”. With other housing and infrastructure spending, the total additional allocation for the AP Lands over 4 years was \$12m. When giving evidence to a Parliamentary Estimates Committee, the Police Commissioner acknowledged that no police were permanently based on the Lands and announced a proposal to have 4 police stationed there “soon”.

In July, Magistrate Garry Hiskey handed down a judgment in a case in which a resident of the AP Lands pleaded guilty to five counts of possessing petrol. He was placed on a supervised bond notwithstanding the absence of appropriate supervision on the Lands. The Magistrate was critical of the fact that the Coroner’s recommendations had been ignored. His comments received some media coverage in Adelaide but the Minister brushed them aside by issuing a statement which disingenuously welcomed the Magistrate’s “efforts to increase public awareness” and spoke of new funding and “culturally acceptable” solutions.

The South Australian Parliament passed legislation to establish a new Aboriginal Lands Parliamentary Standing Committee comprising members of both Houses. It is chaired by the Minister and has two members from each of the Labor and Liberal parties and one from each of the Australian Democrats and the Greens.

In October, the University of South Australia, Social Policy Research Group, presented a report. It reviewed findings of the Coroner's Inquest and strategies for community capacity-building in the Lands. For a supposedly academic report, it is uncharacteristically laudatory of the Minister who commissioned it.

The report is rich on the rhetoric of self-determination and capacity-building. However, it suggests a retreat from the Coroner's blueprint. The authors say:

"... while there is agreement that there are a range of things which could be done and which could make a difference (more police, removal of offenders, drying-out facilities, more recreation services), there is no strong sense of agreement amongst the communities about the best way to manage the problem across the Lands.

For example, there is disagreement on whether adopting a zero tolerance approach and therefore enforcing removal/prosecution of offenders by an increased police force and expulsion by and from the community to drying-out facilities is the best policy, or simply moves the problem/people on in time and place.

"Indeed, there is no apparent agreement on the best location for a drying-out facility or recreation facility/programs.

"... some Anangu have suggested that it would be good if there was a Youth Policy ... [which] ... could establish a consensus of all the communities about the best way to deal with the issues and interventions around sniffing and youth services in general

...

The authors generously offer their institution as a "third party resource" base to assist in "consultative planning process" to implement a new Youth Policy! However, from my perspective, their resort to displacement theory and the need for consensus was disappointing.

On 12 March 2004, Dr William Jonas, ATSI Social Justice Commissioner, tabled in Federal Parliament the *Social Justice Report, 2003*. This report devoted an entire chapter (44 pages) to the subject: *Responding to petrol sniffing on the Anangu Pitjantjatjara Lands: A Case Study*. The chapter is generally critical of the slow progress. However, the Report was couched in generally restrained language and did not attract any immediate media attention in Adelaide. No doubt, it was closely read in the Minister's office because a few days earlier, the Minister had learned that four young men living on the AP Lands had taken their own lives in the first two weeks of March. The police told him that "a further eight young people had attempted suicide." (This information was not publicly revealed until later) Moreover, it was known that the State Coroner was due to return to the Lands and that he would certainly comment adversely on the government's tardiness in implementing the recommendations which he made in September 2002. A political crisis was looming.

The cloud-burst came on 15 March 2004, with an "exclusive" item on page 1 of *The Advertiser* under the banner headline "DISGRACE – Funding To Save Lives Tied Up By Red Tape".

"An investigation by The Advertiser has found bureaucratic delays have blocked the delivery of the funding to doctors and nurses battling petrol sniffing and drug addiction in the AP Lands."

The editorialist wrote:

"The State Government must act immediately to ensure funds allocated ... to combat petrol sniffing ... reach appropriate health services.

... the failure of the government to ensure the money was paid and the program implemented is disgraceful."

Conveniently, Cabinet met later that day and complied with the demands in the editorial. Deputy Premier Kevin Foley issued a media release: "Government sends in top level taskforce to Aboriginal Lands". The flavour of the announcement is captured in the following extracts:

"A high level task force headed by former SA Assistant Police Commissioner Jim Litster will be sent into the Anangu

Pitjantjatjara Yunkunytjatjara (APY) community in South Australia's north to sort out an escalating crisis that has resulted in tragedy and death.

"Deputy Premier...Kevin Foley says he is deeply concerned about developments on the APY Lands in the past fortnight, the vast majority of which appears to be related to petrol sniffing.

"...It is the opinion of Cabinet that this crisis has simply gone beyond the capacity and control of the APY Council [ie, the AP Executive].

"Crown law has advised us that the APY Council may not be valid since last December and that it now has questionable authority to spend State Government money on services and in areas where it is clearly needed."

In media interviews which became the leading items on radio and television news bulletins that evening, the Deputy Premier described Mr Litster as "administrator" of the Lands.

The next day the topic again appeared as lead item on page 1. The headline was "SELF RULE IS FINISHED". In the extensive coverage which followed, the Deputy Premier was quoted as saying:

"This government has lost confidence in the ability of the executive of the AP Lands to appropriately govern their lands..."

"Self governance...has failed.

"This government...will not tolerate an executive that cannot deliver civil order, community services, social justice and quality of life in their community."

On 17 March, the story was relegated to page 2 with a picture of Gary Lewis and a report that he was "angered" by the Cabinet decision. He called for:

"all Aboriginal people, trade unions and the community to defend land rights, human rights and self-determination.

We will not be pushed around ...

"This is a sad day. This is a cynical action by a very conservative government".

The saga continued with a report under the headline: “Foley wants return of \$1.65m funding.”

“Mr Foley said the government has been given Crown Law advice the Council had been illegally constituted since December last year when its term expired and did not have the authority to spend the \$1.65m.”

“Deep divisions have emerged within the aboriginal community over the takeover with the NPY Women’s Council welcoming government intervention.”

“... the Aboriginal Legal Rights Movement Executive Officer, Perry Agius, attacked the government’s decision. ‘What happened on Monday swept away SA land rights history’, he said.”

In a signal rebuff to the Minister for Aboriginal Affairs and his department, a group was set up in the Department of Premier and Cabinet to “administer” funds and services on the Lands.

On 22 March, the Government had to announce the embarrassing news that the newly-appointed Administrator, Jim Litster, had resigned “due to family and health issues”.

On 24 March, the Legislative Council passed a motion of censure against the Government for its:

1. *failure to provide a timely and adequate response to the recommendations made in September 2002 by the State Coroner in relation to petrol sniffing on the Lands,*
2. *failure to insist that the AP Executive face election at the last annual general meeting of the Anangu Pitjantjatjara,*
3. *refusal to accept responsibility for the delays in providing effective health, welfare, police and other services for the people on the lands, and their*
4. *attempts to transfer blame to the AP Executive for the failures of the government to address issues on the AP Lands.*

On 7 April, the government attempted to take the heat off itself by announcing the appointment of the former Federal Minister, Hon Bob Collins to “coordinate the provision of State government services” to the Lands. Given Collins’ high reputation, credentials and experience, his appointment was greeted with acclaim by the media and the public. It was, however, not popular with the AP Executive.

Bob Collins accompanied the Premier and a large media contingent on a daytrip to the Lands. Images of a tough-talking Premier were shown on the television bulletins and *The Advertiser* quoted him:

“I have heard a very powerful message here today about the fact that people are running grog, running drugs and running petrol.”

I should interpose the narrative to explain my cynicism about the Premier’s visit. At the time, I was suspicious about his motives and the government brushed aside my public statement that the visit should not be a mere photo opportunity. Alas, my suspicions were confirmed by a letter which surfaced later.

The letter was written to Mike Rann by Makinti Minutjukur, the Municipal Services Officer at the largest community on the Lands, Pukatja (formerly called Ernabella). She is also a member of the AP Executive. Her letter is dated 30 May. Makinti wrote:

“When you visited the Lands at the end of April, we were looking forward to meeting you after we received a fax at the Pukatja Community Office telling us to expect you. I got Council members ready for a meeting with you and we had the kettle boiling for a cup of tea.

“When you didn’t arrive, I drove across the creek to see where you were and found you outside the TAFE building in front of the news cameras. Unfortunately, I didn’t see you again.”

On 23 April, Bob Collins provided the government with an initial report.

The following extracts from Collins’ report shows that he had “grasped the nettle”.

“There are fundamental structural problems in the current operations of the APY Land Council that are impeding the progress of important community initiatives to the great frustration of Anangu in the region.”

“The COAG trial is completely stalled ... [the] trial in SA is in the worst position of any COAG trial in Australia.

This is completely unacceptable in view of the great need that exists in the region and must be redressed immediately.”

“I am dismayed at what appears to be a profoundly dysfunctional situation in the most important Anangu organisation in the Lands. It is difficult to see how substantial progress can be made in achieving the desperately needed improvements on the outcomes for Anangu in the Lands in the existing environment.

There is serious dispute among Anangu about the validity of the constitutional change that extended the term of office of the APY executive from one to three years.”

Collins' major preliminary recommendations were:

1. *“That legislation [be] introduced to provide for an election [conducted by the Electoral Commissioner] for the APY Land Council [viz, the AP Executive] as soon as practicable, but in any case no later than July this year ...*
2. *That the term of the council so elected be for 12 months.*
3. *That a review be conducted of the Pitjantjatjara Land Rights Act ...*
4. *That [additional police] resources commence immediately.*
5. *That funds be provided to immediately upgrade the short-term detention facilities ...*
6. *That consideration be given to the establishment of an Anangu-staffed community night patrol ...*
7. *That ... the Coordinator immediately initiate discussions to commence the COAG trial in the APY Lands.”*

The Collins Report was tabled in Parliament where it was applauded and endorsed by the Premier.

In the Parliament, the State Budget allocated \$9.5m for 2004-05 for additional policing and other services on the Lands. The Report of the Legislative Council Select Committee on Pitjantjatjara Land Rights was tabled.

On 19 June, Bob Collins was seriously injured in a motor accident and hospitalised. It was soon obvious that he would be unable to continue as coordinator.

Although Collins had recommended elections for a new AP Executive before the end of July, the government delayed the legislation and the AP Executive itself fought a rear-guard action aimed at preventing or delaying an election. Typical of the delaying tactics was a complaint which received coverage in *The Advertiser* and on ABC radio about the proposal of the Electoral Commission to mark voters with ultraviolet ink to stop them voting more than once. A Uniting Church minister associated with the Executive said:

“... the ink mark had “connotations of branding animals” and was similar to branding which occurred at refugee detention centres.

“It is offensive because it is not used anywhere else and it is a way of rushing through an election rather than treating people properly.”

This balloon of moral outrage was pricked by a statement issued by Donald Fraser, a well-known resident on the Lands (and a former Chair of the AP Executive). He described as a “myth” the allegation that people felt like cattle when ink markers were used. He said:

“We have been holding elections on the APY Lands since the beginning of the Land Rights Act over 20 years ago. Last year is the first year we missed out.”

After pressure from the Opposition about replacing Bob Collins as coordinator of government services, the Premier announced on 25 August the appointment of Lowitja O’Donohue and Tim Costello as “special advisers”. Precisely what role they are to perform has not been clearly defined.

Conclusions

What conclusions can be drawn from these events?

The first point is that conditions on the AP Lands are now on the political radar screen. For too long, the situation in remote aboriginal communities has been a case of “out of sight, out of mind”. However, whilst the problems have been

acknowledged for years and there is no evidence yet that the greater attention they are now receiving will produce better outcomes.

The second point is that the State government's responses to date have been media-driven, superficial and cynical.

No politician relishes being seen as a startled rabbit caught in the headlights of a fast-approaching vehicle. The conventional solution is to "handball" the problem to a committee, a consultant or a working party. A refinement of this strategy is to pass the issue onto an eminent person in whom the public has trust. This is a technique which Mike Rann (a former press secretary and political adviser) has perfected. It was used in this case by the successive appointments of a retired Assistant Police Commissioner, then a retired Federal Minister (Bob Collins) and finally Rev Costello and Professor O'Donohue. (The government is climbing the ladder of eminent persons! If either of the current advisers retires, Nelson Mandela may expect a call!)

Whilst the appointment of celebrities may provide a short-term solution to a political problem, it does not solve the underlying issues.

My third point is more positive. The fact that the State government has allocated more funds for policing on the Lands should be welcomed. This was one cornerstone of the Coroner's recommendations. No community can function where a significant number of its members are in the grip of substance abuse and where persistent violence and the use of, and dealing in, illicit substances goes unchecked. Most communities on the Lands recognise this fundamental point. Unfortunately, concepts of discipline and good order appear to be an anathema to many of those who see themselves as the champions of aboriginal causes. Moreover, based on past experience, the police will have difficulty providing an effective permanent presence.

Fourthly, there is no agreed "solution" (let alone a simple solution) to the issue of petrol sniffing. As one experienced worker on the Lands told the Coroner:

"Federal and State governments ... have been aware of ...[the petrol sniffing] ... problem up here for ... more than 30 years. There have been many, many articles – you could just about fill this

room with the number of articles and PhDs that have been [written] on petrol sniffing.”

The *Social Justice Report 2003* contains an excellent (albeit brief) account of the vast literature on this topic. The author of that report, Bill Jonas, said:

“The sheer number of inter-departmental and inter-governmental forums for dealing with issues such as petrol sniffing on the AP Lands reads like a nightmare from a Kafka novel.”

Noel Pearson has suggested a radical solution, viz, the cessation of unconditional welfare payments to encourage young people to work. The rationale for Pearson’s proposal was summarised by him as follows:

“At present the welfare system provides unconditional income support to young people once they leave school. It immediately provides an easy option to young people: you don’t have to undertake further education or gain skills or work, because you will receive an income regardless.

This path of least resistance becomes the road well-travelled. Young people have free money to purchase grog, cannabis and other substances. They soon become addicted. Thereafter the welfare system pays for their addiction.

A major contributor to the weekly drug habits of young Australians is Centrelink.

This may be an outrageous thing to say, but it is the truth.

If we want to ameliorate the tragic situation that Bob Collins is talking about in remote indigenous communities, then we have to end unconditional welfare payments.”

According to Pearson, Bob Collins agrees with him. Neither the State government nor the present AP Executive is likely to push for this solution. It remains to be seen whether the government’s new “advisers” will embrace such a radical proposal.

Finally, I have little optimism that the Coroner’s proposal for a secure care facility and enforceable correctional mechanisms will not be lost in a fog of rhetoric about “partnerships” pursuing a youth policy based on “consensus”. I fear that the government will not heed the warning of Peter d’Abbs and Maggie Brady:

“[W]hile communities must be partners in any program to address petrol sniffing, the notion that government agencies can sit back and insist that communities take “ownership” of the problem, and that all governments need to do is provide intermittent project grants to community groups, needs to be exposed and rejected.”

It gives me no pleasure to report that the tragedy of the Anangu Pitjantjatjara Lands is that there has been scant progress on improving conditions on the Lands. An election for a new AP Executive will be held in September. It is only one small part of the jigsaw of improving conditions. There have been many headlines over the last year but the current State government appears to be as much interested in cosmetic salesmanship as it is in building lasting solutions.