
Petrol Sniffing and the contribution of the Coroner in Catalyzing Change
Focus of presentation

- Petrol sniffing on the APY Lands
  - Issue of ongoing concern to Anangu before, during and after the Act
  - cyclic ‘visibility’ and construction of sniffing as an ‘Indigenous issue’

- Coronial Inquests 2002 and 2004/5
  - 2002: Issues raised about lack of government service provision
  - 2004/5: Issues raised about lack of progress; ‘governance’?

- Government’s response and legislative change
  - 2004 Pitjantjatjara Land Rights (Executive Board) Amendment Act
  - 2005 Pitjantjatjara Land Rights (miscellaneous) Amendment Act
  - 2006 Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Act
Petrol sniffing

• Only cyclically in public view: sensational media - ‘moral panic’ –
• Constructed as policy ‘crisis’ which mitigates against ‘sustained, evidence-based policies and programs’

“Petrol sniffing is a product of neither statistical trends nor sustained public lobbying; as a public issue, it owes almost everything to media outbursts, although in recent years at least two coronial inquests have drawn attention to the issue in a way that might yet generate pressure for change……” (Brady, 2004)

“The overemphasis on external factors and the use of a socio-political framework to explain a social problem perpetuates, in effect, the 'victimisation' of Aborigines. They are understood to be the helpless victims, overwhelmed by oppressive social circumstances and the power of a dominant society…” (Brady, 1992)
Petrol sniffing

• Early reports of petrol sniffing on APY Lands from ‘40s; reports accounts of sniffing at Ernabella (Pukatja) and Amata in ’50s &’60s

• Raised by Anangu before and during passing of APY LR Act (1981)

“We are proud of our freehold land and have benefited greatly from taking control of it. We feel our future is more certain now than it was before when we lived on leases and reserves. You have recognised properly our ownership of our traditional land and we expect long term benefits from this. Not all problems are solved by granting a title. You will still see around you things that cause us unhappiness. Some children are sniffing petrol, some of the young men are being arrested and taken to gaol. We still have serious sickness and our kids have much to learn before they are able to properly deal with Europeans and take over this country [again]…”
“There has been petrol sniffing since the 1950s. Who is responsible? The petrol doesn't belong to us. It is not part of Anangu law. It was introduced to the Lands by white people. It is important that Anangu revive their culture and hold on to their culture. The problem with petrol comes from outside, it's like the Maralinga bomb tests, the solution should come from the outside too.”

Kuwaki Thompson, 2002

“We haven’t got the song, Tjukurrpa song, to send the Whiteman’s Parma grog away. We can’t get rid of this one. We can only strengthen the good Parma (i.e. the bush sugars found in native plants and insects.) The songs for petrol and alcohol must come from the Whiteman. You, the white people, have lost your dreaming; maybe you don’t know the songs for alcohol and petrol. To turn to us...for the songs is not right. To expect me to dream petrol and alcohol songs is too much...”

Divakaran-Brown and Minutjukur, 1993
Petrol Sniffing

- The *Pitjantjatjara Land Rights Act Amendment Act (1987)* gave Anangu power to make by-laws to possess or supply petrol for inhalation on the APY lands (also alcohol)

- In **December 1986** SA Minister for Health promised a rehabilitation facility for petrol sniffers would be built on the Lands *“within twelve months”*

- Trend down till spike in late ‘90s early ‘2000s:
  - At time of 2002 Inquest -> 35 deaths in previous 20 years in a population of between 2,500 – 3,000.
  - 178 in 1993 -> to a low of 85 in 1995 -> increase to 166 in 2000
Petrol sniffing


(source Nganampa Health Council as cited in Shaw et al. 2004)
Petrol sniffing

“….as early as 1973, applications were being made to the Department for Community Welfare (now part of the Department of Human Services) for assistance to deal with petrol sniffing…In particular to establish camps out of the community, in Homelands or Outstations where the family could care for their young people and reaffirm their family connections and rehabilitate them in that sense. All this required in those days was basically funding for blankets, food, rifle and a vehicle to get out in back, and over the last 29, 30 years I am still hearing basically that this is the principal request of (the people) when asked how would they address the problems of petrol sniffing. They are still getting the same response nearly 30 years later ...”

(Coroner: 2002: 6.2)
Coronial Inquest 2002

• Coronial Inquest 2002 - Coroner Wayne Chivell
  ➢ Campaign by Anangu leaders & NPY Women’s Council

“Children and sniffers have become bosses over their parents. They are running the agenda by their behaviour. They are out of control and people have to react to the behaviour of sniffers rather than keeping to the law and keeping to the culture.... There is violence against families. Sniffers threaten their parents that they will commit further acts of self-harm. They swear at their parents. ...They breach traditional secrets by speaking out of turn...We as older people are worried about the children and about the younger generation of parents having to bring up petrol sniffers. .....  

... We have no sniffers now. We have lost our only son.”

Kuwaki Thompson (2002)
Coroner as ‘Ombudsman for the Dead’

- Focus of findings: on socio-eco factors and government service provision
- Strong critique of government (Cmth & State) : - eg.
  - lack of policing; non-delivery on 1986 promised of Rehab Facility; support by SA Government to families and children: “appalling”.
- Recommended series of actions:
  - Primary interventions – to reduce recruitment into substance abuse;
  - Secondary interventions – seeking to achieve abstinence and rehabilitation;
  - Tertiary intervention – providing services to the permanently disabled.

“The interventions must be implemented as part of an overall multifaceted strategy, and not piecemeal, as they are interdependent and stand a high chance of failure if they are introduced separately...”
Coroner as ‘Ombudsman for the Dead’

“I believe that both the federal and state governments have failed the people up here in that they have been aware of this problem up here for, in my own experience, more than 30 years....– and still there is very little that occurs, and I don’t think it’s for want of resources.”

“The extent of the problem diminished somewhat in the mid 1990’s, and it is apparent that there was a reduction in effort towards tackling the problem. It has been apparent since at least 1998 that the problem was returning, and that the prognosis was bad, but little has been achieved to restore the effort to pre-1995 levels, let alone take it further.”
Coroner as ‘Ombudsman for the Dead’

“What is missing is prompt, forthright, properly planned, properly funded action…….”

“Many of the people in the field complained of the remoteness of bureaucracies, and their incessant demands …meetings are too far apart, and still seem stuck in the ‘information gathering’ phase”

* NO mention of Anangu governance or changes to the APY Land Rights Act
Coroner as ‘Ombudsman for the Dead’

“Considerable poverty and socio-economic marginalisation identified as incubating and precipitating endemic petrol sniffing in Indigenous communities raises significant human rights concerns about the lack of equality in the provision of government services to Indigenous people on the AP Lands....

It raises concerns regarding rights to adequate food, the highest attainable standard of health, education, decent work and adequate housing, and the lack of reasonable access to police services...rights to personal security and to equal access to justice....... 

The disadvantage experienced by the Anangu is indicative of the ongoing failure to provide the full measure of human rights to which all Australians, including Indigenous peoples, are entitled.”

(HEREOC SJ 2003)
Coronial Inquest 2004/5

“...it is clear that there was a very significant increase in suicidal and self-harming behaviour on the Anangu Pitjantjatjara Lands commencing around February-March 2004.”

“On 12 March 2004 the Commissioner of Police briefed Government on three deaths by suicide and eight attempts that had occurred on the AP Lands within the preceding twelve days.' (Exhibit C15)”

“...since March 200(2) there had been a total of 67 events of suicide or attempted suicide (T415)”
Coroner as catalyst

“\n\nIn about **February 2004** Cabinet Office was asked by the Chief Executive of the Department of the Premier and Cabinet to look into how the money for the petrol sniffing problem was being spent. $12 million had been provided over 4 years from the 2003-04 Budget for this purpose. We were asked to investigate the expenditure of this money and, in particular, what it was being spent on. In doing so, we found that a large amount of the money was yet to be spent and we informed the Chief Executive of the Department of the Premier and Cabinet of this situation…..” (Buckskin, Exhibit C10, paragraph 5)

“\n\nCoincidentally, on **16 February 2004** Counsel Assisting me,...wrote to all of the persons and agencies who had signified an interest in the 2002 inquests and findings, advising that I proposed to conduct inquests into the deaths of Kunmanara Ward and Kunmanara Ken at Umuwa in the Anangu Pitjantjatjara Lands **commencing on Tuesday 4 May 2004.**” Coroner Chivell
Coroner as catalyst

Coroner comments: “... the ensuing deaths of 4 Anangu men in March 2004 prompted much more urgent action from the SA Government”...

15th March 2004: SA Govt’s Deputy Premier Foley announced former Assistant Police Commissioner as ‘administrator’ for APY Lands:

“...this government has lost confidence in the ability of the Executive of the AP Lands to appropriately govern their lands…Self governance in the Anangu Pitjantjatjara lands has failed...Time’s up APY....” (Foley,2004)

16th March 2004: “(Premier) Rann Takes Control from Blacks” said the
“Government had lost confidence in the APY council and had intervened to take control of the region… effectively ending 23 years of self determination”
(The Adelaide Advertiser, 16/3/04).
Pitjantjatjara Land Rights (Executive Board) Amendment Bill 2004

“In March 2004 SA government formed the Aboriginal Lands Task Force in response to reports that, despite attempts to respond to recommendations of the 2002 Coronial Inquest, conditions on the (APY) Lands had continued to deteriorate.”

- 25 August 2004. - Lowitja O’Donohue and Tim Costello appointed

In May 2004 the Pitjantjatjara Land Rights Act (Executive Board) Amendment Bill 2004 introduced into parliament to force fresh elections to be held for the APY chair and executive of the board.

Passed: 15th July 2004– Premiers Dept assumes control of DAARE

4 October 2004 - APY Executive elections- new Chair and Exec
Pitjantjatjara Land Rights (Executive Board) Amendment Bill 2004

• Following election of the new APY Chair and Exec Board in **Oct 2004**, Premiers Dept approaches the new Exec to work with them and AG’s towards amending the Land Rights Act.

• Formation of *Tjungungku Kuranyukutu Palyantjaku* (TKP) (‘together towards the future’) new peak body of Anangu, State and Commth reps: to “work and plan together to provide better outcomes in law and order, health, education, employment and housing and to create better opportunities for young people”.

• **November 2004** - Coroner commences Inquest
• **Reports March, 2005** - 1 year after SA Govt ‘intervention’
Coroner as ‘watchdog’/ accountability audit

“In the 2002 findings, I made a number of recommendations which I thought may prevent, or reduce the likelihood of, a recurrence of an event similar to the deaths being considered (see Section 25(2) of the Coroners Act, 1975).

Tragically... the deaths now being considered are so connected with petrol sniffing that they must be considered ‘similar’ to the deaths being considered in the 2002 inquests. Indeed, since the 2002 findings, the problem of petrol sniffing has become worse, not better...”

“...either the recommendations I made in 2002 were inappropriate, or they have not been effectively implemented.”
Coronial Inquest 2004/5 – Coroner as ‘watchdog’

• “Unfortunately, despite further negotiations, a ... program could not be organised for December 2003-January 2004. This was the period during which Kunmanara Ken died.”

• “... with Kunmanara Cooper’s case.. It is impossible to know whether his death could have been prevented if such a facility had existed in March 2004, but it is reasonable to suggest that it may have been.

• “It is very unfortunate optimism expressed by SA Govt reps during the 2002 inquests did not translate into the ‘prompt, forthright, properly planned, properly funded action’ which was called for, until March 2004.... If these efforts ‘run out of steam’ again, further deaths and misery can be expected.”

Coroner, 2005
Coronial Inquest 2004/5 – Coroner as ‘watchdog’

- Inquest Coroner makes further recommendations
  - rehabilitation corrections facility; better policing; delivery of services

- Notes the ‘political instability’ evidence re the APY Executive but makes no findings or recommendations re Anangu governance

- Argues central co-ordination in Dept P & C appears positive

- Makes no recommendations for changes to governance or the Act
Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill 2005

• **March 2005** – APY AGM resolves to work with SA Govt on review of the Act and that the review to be conducted in 2 stages:
  
  ➢ first stage being limited to issues of governance and the second stage considering matters relating to the *commercial exploitation of the Lands*.

• **October 2005** – SA Parlt passes Pitjantjatjara Land Rights (Miscellaneous) Amendment Act 2005
  
  ➢ “*for a more accountable and transparent system of governance on the APY Lands*”.

Hon Terry Roberts, 2005
Pitjantjatjara Land Rights (Miscellaneous) Amendment Bill 2005
“We are not really familiar with what is going on and I am asking for time so that we can talk about it and think about what is put before us. … A lot of the Traditional Owners are saying, ‘How can this story or this plan be done very quickly because a lot of the Traditional Owners do not understand?’ I have looked at the paper that the Government has sent and it seems very very hard to understand. … How can I explain to the other Traditional Owners when I do not understand myself what is in that paper? The Traditional Owners… are our bosses. … They have our law and our culture from the beginning of time. And our laws and our Tjukurpa does not change. I am not familiar with the English language. Maybe I can understand a bit of it, but the pampa, the old people, the old men and old women, how can they understand? … I am asking the Government, ‘Would you please give us more time so the Traditional Owners and ourselves can sit down quietly so we can understand what is there?’ “
“The Amendment Act significantly altered the structure established by the 1981 Act. The SA Govt has, as a result, interposed itself into the relationship between the members and the corporate body by centralising the powers of the Executive Board. The Amendment Act also provides the Minister of Aboriginal Affairs with greater powers and control of the Executive “

“The increased control and intervention by the Minister undermines the position of the Traditional Owners in their interactions with the Executive Board. The Executive may be placed in the invidious position whereby it has contrary directions from both the Traditional Owners and the Minister on a matter. An example where such conflict could arise would be in relation to the consent to mining activities on the Lands. The Act is silent as to how a circumstance such as this would be resolved.”

Berg, 2005
Anangu Pitjantjatjara Yankunytjatjara Land Rights (Regulated Substances) Amendment Act 2006

This Act introduced harsher penalties for the illegal sale and smuggling of petrol and other sniffable substances on APY lands.

As well as introducing tougher terms of imprisonment and fines, the Act also gave police the power to seize vehicles they believe are being used in conjunction with substance related offences.

* Passed 7th September, 2006
Anangu Pitjantjatjara Yankunytjatjara Land Rights (Mintabie) Amendment Bill 2009

- Review of operations of 2005 amended Act reported in October, 2008

- Current ‘2nd stage’ (commercial) amendments pending [increased mining exploration]

- Entrenched battle between ‘new’ APY and SA Government

“South Australia's Aboriginal Affairs Minister, Jay Weatherill, says plans to change the APY Land Rights Act will not be abandoned despite the opposition of the APY executive board. [he] says the APY board has abused the permit system by obstructing public servants from entering the Lands. I will not be deflected from delivering services to Aboriginal people where they need them. “

Weatherill, 2009
APY Lands: substance misuse rehabilitation facility
promised December 1986 - opened July 2008
Niarchas – suggests the 2004 ‘intervention’ paved way for Howard to enlist Labor re abolition of ATSIC - and sowed seeds for later intervention into NT?

What if no deaths? No Coronial Inquests?

Hindess – liberalism; Dean - on ‘analytics of government’; Kymlikca – collective rights; Sanders – guardianship; diversity/equality;