

## **Palm Island - 'Something is very wrong'**

Issues concerning Palm Island following the recent death in police custody have managed to attract considerable controversy. Government institutions and judicial systems have had to publicly engage with this isolated Aboriginal community. This engagement has been difficult. Mistakes have been made. There have been some significant casualties. A Minister for Aboriginal & Torres Strait Islander policy has resigned following Crime & Misconduct Commission ("CMC") findings of dishonesty concerning airfares for a visit to the island. The Premier referred his own conduct - pre-empting public allegations of blackmail against him - at his meeting with the local council, to the CMC as well. That investigation is still proceeding. Last week, the State Coroner stood down from the coronial inquiry following issues being raised about his past involvement in investigations into police whilst he was a CMC officer and his "social" contact with lawyers during the inquest. The inquest will now start again later this month, but it has stalled somewhat as disagreements have arisen amongst the parties about the course and ambit of this coronial inquiry. The Police Commissioner has also become embroiled in difficulties. He has been censured over his public endorsement of one of the police officers said to be involved in the arrest of the man who later died. The Deputy State Coroner is yet to decide what to do with this prima facie contempt of the inquest. The litigation of the criminal proceedings will bring a further dimension when the committal proceedings get underway in April. It will, amongst other things, facilitate an examination of whether the alleged "riot" was an understandable expression of distress and frustration over the death in police custody or merely a violent attack on police buildings by a lawless mob. Finally, the bail conditions which banish many of the charged men from the island have been examined by the Court of Appeal. In removing this "banishment condition" in respect of one of the men, the Court of Appeal observed: "apart from actual imprisonment, it is difficult to imagine a more onerous bail condition."

Since the start of this engagement there have been no tangible outcomes other than the opening of a new \$5.5M centre currently being operated by the Police & Citizens Youth Association.

The inquest, bail applications and criminal proceedings have thus now become the focal points in which the differences of perspective of the police interests and that of the local Aboriginal community on Palm Island are laid bare. This should not be permitted to conceal the government's responsibilities to this community.

This paints a grim picture of the challenges that lie ahead in this engagement, for those involved in Palm Island, on all sides including politicians and those representing the various interests about the island and its future. These events and associated difficulties should not be regarded as unrelated coincidences. Rather, they give an indication of the degree of care that needs to be taken from this point by those who continue to participate in these several complex interactions.

This standard of care requires the use of a clean lens beginning with a proper regard for the history of this State Government 'settlement'. It may make some of us more

comfortable but it would be tendentious to view the living conditions on Palm Island as due to limitations within the community.

Some of the bare statistics provide a sense of the institutional and systematic disregard endured by this community. A Department of Public Works Director-General's briefing note records that in an 8 month period in 2003, there were 16 youth suicides and 8 domestic murders on the island. The community of 3500 indigenous people is squeezed into about 220 houses, averaging 17 people to a house. The rates of violence - in particular alcohol fuelled conduct - are said to be disproportionately high. The unemployment rate on the island is said to be around 95%.

If one then looks at the history of the island, the initial discomfort is quickly replaced with a sense of first world community guilt about how this settlement was set up, how it has been 'managed' and left to flounder whilst the adjoining islands and surrounding areas, including Townsville, have prospered. Since its inception the "management" of Palm Island has been flawed. It was a place to which Aboriginal people were sent as a form of punishment. It was built as an open prison and run with authoritarian rule. This has left generational scars. No-one could seriously dispute that. The treatment of Aboriginal people on the island should attract international censure. Even filtered by 'white arm banded historians', the history of Palm Island is a prime example of the failings of past government policy in respect of Aboriginal people. An apology is no longer sufficient: a real undertaking to redress the wrongs is now an obligation.

There is no utility in sinking into debate about the history of Palm Island. The presence of third world conditions on the island, just a short flight from the prosperity in Townsville and the opulence on Orpheus and Dunk islands is sufficient reason to be motivated to take some fresh ideas into the situation. A candid appraisal reveals that something is very wrong on Palm Island and that it is our collective responsibility to do something about it.

The more difficult task is assessing what needs to be done to start the repair of the social and living conditions in this community. Palm Island has become a significant litmus test for our political and judicial systems and how effectively they can operate in this framework. From my brief engagement with the Premier and some of his advisers, I suspect that a preparedness to do something is not missing in his government. However the process of identifying the priorities and how to go about it has not been adequately assessed by those who advise him and the other ministers in his government. There are few within government who understand how to communicate with this community. It has taken us several months of constant engagement to start to be able to do so. The present tragedy is that the lack of communication skills in government and the inability to develop trust is only matched by their hubris and certainty. The fact that the Opposition is less likely to be concerned and committed to indigenous outcomes only makes this government weaker and less accountable in its commitment to these issues. There has been wasted energy by many of the bureaucrats involved in pointing the finger at any one issue or another or at personalities to seek to explain why this current debacle exists. There is no use expending energy criticising those who have failed so far. The mistakes are obvious and easy to identify.

Since December 2004 my firm has provided legal assistance and representation to the council in its dealings with government and at the inquest into the death in custody. We have also successfully challenged the banishment condition that was imposed on one of the men charged with involvement in the riot. Government agencies have refused to fund or support the provision of my firm's assistance to the council. We decided that we would not charge any fees for this assistance. The Premier, using the 'coward's castle' that parliamentary privilege provides, has called me and others in my firm "leeches" to the community, a "pack of thugs" and "hangers on" who would best assist the community if we "left the island".<sup>1</sup> I have 'pocketed those insults' to the extent that they were directed at me personally. This has been easy as they are palpably untrue. The professional support for the firm's position has been well ventilated by the Law Society and Bar Association as well as some others. However the attack on the community and the council in the same breath is far more reprehensible. Surely Aboriginal people are entitled to assert their legal rights in relation to government action. They are entitled to disagree with government policy and they are not "dysfunctional" merely because they do. So, despite discomfort to the Beattie government, we will continue to assist the council and the community whilst we are welcomed by them to do so and while we can see that our assistance is worthwhile and sustainable. This is an example of the wasted energy that politics generate. Palm Island has had to endure far greater insults from this and other governments than this recent verbal assault, but the public are entitled to expect and should demand more from a sophisticated government.

As to the bigger picture a possible solution lies, I think, in approaching Palm Island with a generous hand, mindful of the current circumstances and limitations, cognisant of the recent past and honest about what is necessary to bring about generational change. It is an awesome responsibility for non-Aboriginal Australia. As indigenous issues are not on the sympathy radar in Australia at the moment, the challenge for government is to lead discussion of its responsibilities even if they are at first unpopular. There is a sense within the general community that "we" have given "enough" already to indigenous people. Political leadership is needed to address the misunderstanding and meet this responsibility.

There are a few other matters which occur to me to be fundamental in working towards solutions with the Palm Island community.

Firstly, it needs to be appreciated by all that are involved that the communication lines between this community and the rest of Australia are distorted by mistrust and miscommunication. The historical explains the mistrust. Miscommunication between non-Aboriginal people and those that use Aboriginal English is very well documented.<sup>2</sup> Whilst some of the same words are used, there is clearly a different language spoken on the island and there are different cultural practices: time has a different meaning; respect is important and disrespect is sensitively noticed.

---

<sup>1</sup> Hansard 23 February 2005, p 160-162

<sup>2</sup> *R v Kina*, Court of Appeal (Qld) CA 221 of 1993

Those seeking to assess or judge life in this community should try to picture what it must be like to live and grow up in an environment of stark poverty such as on Palm Island. Ironically, children grow up in a backyard of extraordinary natural beauty. The beaches are postcard perfect. The jetty is both a stage for showcasing the acrobatic skill of children at high tide and a place of respite from domestic calamities at night. The fishing is abundant. However, at the age of adolescence all innocence is ripped away. The ravages of a decimated culture manifest in a sense of hopelessness and some are debilitated by adolescent alcohol abuse. Youth disillusionment and self destruction is evident. The housing conditions are simply appalling in some areas, and third world in most. Viewing this state of affairs as the fault of the people on the island would again be tendentious. The Premier blurted in parliament that "these people should get off their backsides and work." It was a regrettable statement which sought to inflame the Hansonesque myth that Aboriginal people are inherently lazy. However its unfairness is obvious when you look a little closer at the lack of opportunities on Palm Island. The framework in which people live on the island would be foreign to most of us. Mainstream educational curricula are hardly likely to be relevant to children in a community where most of their parents and relatives are not and have never been employed. There is little to which these children can aspire.

Moreover, economic leverage and participation in the wider Australian context is reliant upon our capacity to borrow against private land holdings. Mortgages support many small businesses including my own law practice. However, private ownership of land on the island is not lawful. The statutory framework that was placed on the island in 1986 by the Bjelke-Petersen government effectively extinguished 'native title rights' as subsequently defined by the Mabo decision. In any event, all but one of the traditional owners had been moved off the island decades earlier when the settlement was first set up. The present community is comprised of the descendants of displaced persons from communities throughout the State; people whose parents and grandparents were brought to the island for punishment. The land upon which they all live is held by the local council under a deed of grant in trust which requires the use of land to be limited "for the benefit of the Aboriginal inhabitants". There is no economic base that can be used to spawn local business or private industry.

This history has created a uniquely tragic situation. The Palm Island community is connected by familial tentacles to almost every other indigenous community in the State, and its circumstances are a symbol of oppression for many indigenous people. This community has had to politically integrate across family lines, and to a large extent they have done so. The elected council is comprised of representatives from the larger family groups on the island and has operated cohesively despite the current complexities. Important decisions of the council have been unanimous whenever proper time and process have been able to be applied. This sometimes takes time.

Only once this framework is understood will it become even remotely possible to start devising the 'changes' that are necessary to assist this community to function and relate to government at an equal level. Whilst the Royal Commission into Aboriginal Deaths in Custody (1993) and the more recent Cape York Justice Study (2002) are instructive about indigenous issues generally, government engagement with Palm Island will not work if there

is resort to a template approach of what may have seemingly worked with other black communities. In my view a specific independent process of inquiry is needed.

Second, the present examination should respect the cultural mores and practices in the community. First world communities often find it challenging to empathise with and respect the cultural traditions of indigenous peoples who might live in their midst. What might be quaint to our eye - such as a smoking ceremony to remove the spirits of man who died in custody - is in fact a visceral part of a community of people who had their various language and ritual practices prohibited when they were brought to the island. Our non-preparedness to respect spirituality or rituals unless they are approved by a Judeo-Christian tradition or part of sporting folklore is well documented. We continue to do so at our peril. A community deprived of material wealth will almost by definition, turn to its faith to endure and understand the human condition. The Aboriginal spirituality which has developed - and which has accommodated Christian missions - is a valid and important institution in this community. These customs and practices have survived statutory prohibitions in the last century as well as the barely disguised cynicism that pervades the thoughts of many non-Aboriginal people who have had some interaction with the community. The community's respect for the man who died, concern and interest in how he died, and how it deals with the underlying issues surrounding the death is a matter that has not yet been respected by the non-Aboriginal community. Until that respect is shown very little will be achieved.

Thirdly, we should accept that we, as a society, are quite capable of being racist - if not in our hearts and minds, then certainly in our systemic and institutional actions. It is mostly a passive and almost lazy racism often veiled as indifference and inaction. Aboriginal communities such as Palm Island are entitled to our collective generosity. Their plight may not be as a result of a tsunami, but a significant toll has been inflicted by waves of generational indifference and disregard by successive governments that we have elected and tolerated from both sides of the white political fence. A community with these appalling statistics and attributes is inherently likely to be dysfunctional in its regard for the white community; and cynical about promises made but not kept, and the apparent disregard shown towards the tragedies in their midst.

These issues cannot, however, be left to the government to resolve alone. We as individuals should walk a little of our own talk. Palm Island needs committed and skilled professionals across all service areas. Housing needs to be developed to meet the conditions on the ground at the moment as well as to foster the regeneration of the social structures necessary to develop culture. Medical intervention is required to address the localised health issues. Social services and education professionals must continue to devise curricula to address the local needs and which acknowledge the local conditions. It is a traumatised community straining under poverty and many need counselling. Ethical private investment is also needed. A privately operated bakery training and employing local people would both invest and profit in the community. A fishing co-operative would feed and support the community. There are some symbols of hope on the island horizon. Individual teachers, nurses, doctors and police officers acting with decency have had and continue to have a

profound effect. But the race divide has to be bridged. The absence of white faces at the funeral of the man who died in police custody was a haunting indicator of this divide.

I have kept my observations general. But the challenge should be clear. If the Beattie government wants to improve the lives of indigenous people who live on Palm Island then the polemic bullying and 'know it all' approach that has been adopted to date should be reconsidered. It just won't work. If, as the Premier has repeatedly stated, the Palm Island community and its council are "dysfunctional", then it is not too difficult to see how it became so and who caused it. Rather than public abuse, Beattie should appoint a skilled mediator to work through this dysfunction. The political slogans of 'partnership' will only work if it is a trusting and equal engagement. The Palm Island community needs compassion and understanding, not dictatorial aggression and public slanging utilising the extreme political power differential that exists in favour of the state and federal governments. These governments should not see the injection of public funds as acts of undeserved generosity, rather as the due discharge of a significant obligation that it has run up over decades of institutional disregard.

Equality before the law does not mean that all people are given "the same" treatment. If you treat situations with vastly different realities in the same way then you will necessarily cause significant injustice to some. It will not be sufficient to treat the Palm Island community the same as other communities. There are unique issues. The community needs extraordinary and specific measures to address the current deficiencies in public infrastructure and housing. For the Beattie government and the newly appointed indigenous affairs Minister and Parliamentary Secretary it's time to start 'walking the (government's) talk'. Enough of the crocodile tears 'for the children'; what is needed is a little respect and integrity and some basic decency in this engagement. Given the political stubbornness of Mr Beattie and his run of faux pas this seems unlikely. The political irony may well be that it will take a conservative federal government to lead the way.

Andrew Boe

B O E L A W Y E R S

10 March 2005

Boe is a Brisbane based lawyer whose firm has been assisting and advising the Palm Island Aboriginal Council in its engagement with the Queensland Government since December 2004. The firm also appeared for one Palm Islander, John Clumpoint in his successful bid to remove bail conditions that banished him from returning to his family and work on Palm Island - [Clumpoint v DPP \(2005\) QCA 43](#) - and are also appearing for the council at the inquest into the death of the man who died in police custody. The work has been conducted together with the assistance of several barristers, including Bret Walker SC, Elizabeth Fullerton SC and Sarah Pritchard all from the NSW Bar and all on a pro bono (free) basis.