The bus doesn’t stop here

"The degree of civilisation in a society can be judged by entering its prisons" – Fyodor Dostoevsky

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 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. Aboriginals still constitute 2.5 per cent of the Australian population but they now comprise 27 per cent of the country’s 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?
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”.

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 aunts.

Getting to Berrimah jail wasn’t easy for families: there were the airfares and 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 foil 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 and at reception which is then put into their superscreen system for you to then pass through, assuming your eyes and prints are bears.

Before going through this screening process you must remove all metal objects – shoes, wedding bands, jewellery – and then stand in a line to be tested for drugs by a sniffer dog. If that goes without incident you then walk through the screen process which checks your eyes and prints and, if okay, opens up the door on the other side. You then retrieve your property and proceed to the visit area.

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

After the visit, you have to exit 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 families 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 snifing 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.

The Queensland Government funds free shuttle buses to and from all its Correctional Centres. All other States and the ACT have regular bus services, some run free by NGOs, others at reasonable costs. The New Zealand Government funds some travelling costs of visiting family members. In Canada, bus services for family visits to remote jails are organised and subsidised by various agencies.

Nothing like the NT situation exists anywhere else in Australia. Again the question is asked: how could this be? This is the NT, Australia, 2016.

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.

“The Department of Public Transport has determined that a regular service is unavailable.”

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.

“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.”

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: “At this stage the Department of Transport has no plans or capacity to provide a public bus service to Darwin Correctional Precinct (D.C.P.). Public transport systems are designed to service high demand, high population centres and operate most effectively along routes between major activity centres. Passenger demand from standalone locations such as D.C.P. is not of the required level to deliver a sustainable scheduled public urban route service.

“There is currently no allocated public budget for the provision of public transport to the D.C.P.

“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 punishments 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.