Senate Standing Committee on Community Affairs

Inquiry into Stronger Futures in the Northern Territory Bill 2011 and two related bills

Responses to questions taken on notice at hearing on Thursday 1 March 2012

1. **Senator CROSSIN:** *But this goes back to one particular court case that happened a number of years ago, doesn't it? That is the basis for it, isn't it? It is one particular court case where the judge actually did take into account the cultural practices and somebody somewhere had a view that that was over and above what that judge should have done.*
   Ms Chidgey: *The amendments are based on the 2006 COAG decision. I am not aware of the range of court cases that might have influenced that original COAG decision.*
   Senator CROSSIN: *Would you take it on notice to find out for us, please.*
   Ms Chidgey: *We can see whether there is further information about that.*
   Senator CROSSIN: *My understanding is that it related to one matter to do with the relationship that a traditional man had with a girl under the age of 16.*
   Ms Chidgey: *We can take that on notice.*

In July 2006, the Council of Australian Governments agreed that 'no customary law or cultural practice excuses, justifies, authorises, requires or lessens the seriousness of violence or sexual abuse. All jurisdictions agreed that their laws will reflect this, if necessary by future amendment'.

A copy of the Communique for the COAG agreement dated 14 July 2006 is at:
http://www.coag.gov.au/coag_meeting_outcomes/2006-07-14/#indigenous

The COAG agreement was informed by the findings of the Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities, which met on 26 June 2006 to discuss an integrated and comprehensive strategy to address the problems of violence and child abuse in these communities.

A copy of the Communique for the Intergovernmental Summit dated 26 June 2006 is at:
http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/AUIndigLawRpr/2006/57.html?stem=0&synonyms=0&query="Intergovernmental%20summit%20on%20violence%20and%20child%20abuse%20in%20Indigenous%20communities"#Heading4

It does not appear that a particular case specifically influenced the development of the Intergovernmental Summit's action strategy, or COAG's agreement in relation to customary law and cultural practice.

There was extensive media reporting at the time of the Intergovernmental Summit and COAG meeting about the case of *The Queen v GJ* [2005] NTCCA 20 [28], which was referred to by Northern Territory Crown Prosecutor Nanette Rogers in her interview with ABC's Lateline on 15 June 2006. (Transcript at http://www.abc.net.au/lateline/content/2006/s1639127.htm).

On 11 August 2005, GJ had pleaded guilty before the Northern Territory Supreme Court to the offences of unlawful assault and sexual intercourse with a child under 16 years of age. GJ submitted, in mitigation of the seriousness of the offences, that the 14 year old girl was his promised wife; that based on his understanding and upbringing, he believed that the victim had consented to sexual intercourse, and that under traditional law, his striking of the child was justified and permissible as punishment for her behaviour. GJ was sentenced to cumulative sentences of five months imprisonment for the first offence and 19 months imprisonment for the second offence,

to be suspended after one month. (*The Queen v GJ*, 2005, unreported, NT Supreme Court, SCC 20509570).

On 22 December 2005, following an appeal by the Crown Prosecutor, the Northern Territory Court of Criminal Appeal set aside the 19 month sentence, and imposed a sentence of three years and six months for the sexual offence, to be served cumulatively upon the five month sentence for the assault. The court considered that the sentence should be suspended after 18 months on the condition that GJ not communicate directly or indirectly with the victim (*The Queen v GJ* [2005] NTCCA 20 [28]).

On 19 May 2006, the High Court refused an application by GJ for leave to appeal against the severity of his sentence.

2. *Please provide a copy of the Attorney General's Department's 2009 report of the review of the customary law in bail and sentencing provisions.*

Please find attached a copy of the report, *Review of Customary Law Amendments to Bail and Sentencing Laws* dated September 2009. A copy of this report is also available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/bud_0910/ag/index.htm (see Question on Notice 119 from Senator Barnett).