

R.G.

RECEIVED
21 DEC 2009

BY: AFS19

A Submission to
The House Standing Committee on
Aboriginals and Torres Strait Islander Affairs'

Inquiry into
The high level of involvement of Indigenous
juveniles and young adults
in the criminal justice system

From
The Catholic Bishops of Broome and Darwin
On Behalf of
The Catholic Bishops of Australia

A Submission to the House Standing Committee on Aboriginals

and Torres Strait Islander Affairs'

Inquiry into the high level of involvement of Indigenous juveniles

and young adults in the criminal justice system

From The Catholic Bishops of Broome and Darwin

On Behalf of The Catholic Bishops of Australia

Thank you for the opportunity to make a submission to the Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system (the Inquiry). This submission is signed by Bishop Chris Saunders, Bishop of Broome and Bishop Eugene Hurley, Bishop of Darwin, on behalf of the Australian Catholic Bishops Conference. Bishops Saunders and Hurley have both spent their working lives in remote Australia and bring much first-hand experience to the issues being considered by the Inquiry.

Why Yet Another Inquiry?

1.1 There is no suggestion that those who proposed this Inquiry or Members of the Committee undertaking the Inquiry have anything but the best of motives for the Inquiry. But there is widespread cynicism across Aboriginal Australia at yet another Inquiry but very little action. The issues being considered by the Inquiry have been examined at length in numerous studies over many years, but little has happened to improve the situation. In

many cases the situation has deteriorated considerably. Some have suggested that the problems are too hard and that it is easier to study than to fix. The short time frame for submissions and the somewhat convoluted Terms of Reference have also elicited numerous cynical comments.

1.2 Members will be aware that in 1988 the Catholic, Uniting and Anglican Churches in Australia together with the Australian Council of Churches released a report entitled *Prison: the Last Resort*. The recommendations of that 1988 report are still relevant 21 years later; not much has changed:

- Immediate negotiations between government, police and Aboriginal communities to determine ways of reducing the number of Aboriginal people in prison
- Train police to deal with 'their own racism' and the racism of the communities where they are placed
- Governments to monitor the charges on which Aboriginal people are detained and ensure police take alternative action with Aboriginal people committing minor offences
- Police to be held accountable when responsible for victimisation of Aboriginal people and to use 'protective custody' for drunkenness as a last resort
- Police who illegally detain Aboriginal people to be disciplined
- Governments to deal with the root causes of the disintegration and despair that contribute to Aboriginal people breaking the law by implementing:
 - programs to help Aboriginal communities become independent and self-managing

- programs to help Aborigines develop their own education, health and welfare programs, including the preservation and handing on of their culture.
- Prisoners to be encouraged and helped to maintain family ties, maintain contact with children as a right; recognition be given to the rights of family to maintain contact.

1.3 Members will be aware that the Aboriginal Deaths in Custody Royal Commission was established in November 1987 and, in its subsequent reports over a number of years, reported upon many alarming statistics regarding Indigenous Australians in custody, especially young Indigenous Australians. Members will also be aware of the 1996 report by the Office of the Aboriginal and Torres Strait Islander Commissioner on *Indigenous Deaths in Custody 1989-1996*. It is sobering reading and one notes that only minor changes have occurred since 1987.

1.4 Members will be aware of the Productivity Commission's series of reports regarding *Overcoming Indigenous Disadvantage*, the most recent being published in 2009. Some statistics in that report highlight the magnitude of the problem, for example:

- Indigenous Juveniles are 28 times as likely to be detained as non-Indigenous juveniles at 2007.
- Between 2001 and 2007, the Indigenous juvenile detention rate increased by 27%.
- Between 2000 and 2008, the detention rate for Indigenous women increased by 46% and for Indigenous men by 27%.

- Indigenous people were hospitalised as a result of spouse or partner violence at 34 times the rate of non-Indigenous people.
- Indigenous women sought assistance to escape family violence at a rate of 45 per 1000 population compared with 3 per 1000 for non-Indigenous women.
- Nationally the Indigenous homicide death rate is 7 times the non-Indigenous rate.
- 65% of Indigenous people living in remote areas are likely to be living in overcrowded, often very substandard, housing.
- Indigenous young people are three and a half times less likely to be in the labour force than non-Indigenous young people in very remote areas.

1.5 Members will be aware of *Corrective Services for Indigenous Offenders – Stopping the Revolving Door*, the recent speech by the Hon Wayne Martine, the Chief Justice of Western Australia. Justice Martin noted the high incarceration rate of Indigenous people, especially young Indigenous people, and the futility of such incarceration. He quoted numerous statistics to illustrate his point.

1.6 For example, His Honour cited the WA Auditor-General's 2008 report regarding the cost of dealing with young offenders, especially young Indigenous offenders. The Auditor-General identified a sample 1000 young offenders who had more than 10 formal contacts with police over a 5 year period. Of these 75% were Indigenous. A group of 120 young people who had 25 or more formal contacts with the police over five years were identified. The cost of dealing with these 250 young individuals over a 5 year period between 10 and 15 years of age was calculated to be \$100 million, ie an average cost of \$400,000 per person, or \$80,000 per person per annum. There must be a more productive use of this

\$100million than funding the random ricocheting of these young people around the criminal justice system.

1.7 Members also will be aware of the statistics and recommendations of the 2007 report *Little Children are Sacred*.

1.8 There must be some way of preventing the circumstances that give rise to these terrible statistics.

1.9 Many well meaning social policy initiatives are tried with Indigenous people but, when results are not immediate, initiatives are usually discontinued after a short time. One Indigenous leader recently commented that Indigenous people are constantly undergoing sociology experiments and, when they don't work, rather than looking at why they did not work, the Indigenous people are blamed for the failure of the ill conceived initiative. Non-indigenous people would not accept such experimental intrusions into their lives and Indigenous people are cynical of each latest initiative imposed upon them from afar.

1.10 An Indigenous leader commented that many of the initiatives are developed in cities and are city based models, inappropriate for remote areas. Another leader noted that in his remote community in recent years, almost every day during the middle of each year (ie not during the wet or the heat of summer) he was visited by public servants on learning or review tours. Another noted that, in a community of 300 people, there were 70 government programs or services in operation, each with its own requirements and that the community was visited by more than 120 public servants in a 6 month period. Such situations are typical in remote Australia.

Long Term – What should be done so that there will not be yet another Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system in 20 years time?

2.1 Early intervention is a better economic investment than prisons. As noted by the WA Auditor General, it can cost up to \$400,000 over 5 years to process a young person through the criminal justice system. The \$400,000 spent processing a young person in the criminal justice system could be better spent preventing them falling into the system. By the time such young people reach the criminal justice system it is almost too late and harm minimisation becomes almost the only effective strategy. But harm minimisation is at least better than a punitive criminal justice system.

2.2 Housing, Health, Education, Nutrition, Jobs and Family are all factors that influence how one grows as a person. Millions of dollars have been spent on Indigenous programs over the past 30 years but the situation has deteriorated. Rather than just examining the symptoms of the problem (eg the high level of Indigenous youth in the criminal justice system), it is suggested that the Inquiry examine why the symptoms have developed, ie the causes and the solutions of the problem.

2.3 Housing is an example of urgent need. Members will be familiar with the NTER's housing programs and the millions spent with few houses constructed. The need for housing is urgent. An average of 30 people living in a 2 bedroom substandard dwelling is common in many Indigenous communities. Health, Education and Family are all affected by such conditions. The report *Little Children are Sacred* is one of many reports that have documented the results of such conditions. If a young person is living in such conditions,

they cannot sleep properly, or study or (often) feel safe. There are many cases where a young Indigenous person has committed an offence in order to be incarcerated to get away from the dangers inherent in such conditions.

2.4 A birth to death strategy is needed. Children and families have a right to adequate food, clothing, shelter, education, health and the many other conditions that other Australians take for granted. For example, the Inquiry should look at the NTER funds expended to date on Indigenous housing with the improvements in housing, such as the number of new dwellings or changes in the average occupancy rate of houses.

2.5 Assistance needs to be provided to parents seeking to raise their children in such conditions. Punitive measures are rarely appropriate incentives to parents already struggling with overpowering circumstances, difficult to imagine from a safe middle class non-Indigenous perspective.

2.6 Many children growing up in such environments develop physical and mental problems, including borderline intellectual and growth issues. If safe homes cannot be provided then other safe accommodation must be provided in towns and communities to enable Indigenous children to escape the dangers of drunkenness and other factors stemming from overcrowding.

2.7 An education system that is appropriate for children in such circumstances is needed urgently. Assistance to overcome the barriers to learning is imperative but must be cognizant of the circumstances in which children live. For example, Reading Recovery Programs have been successful in some communities but more must be done.

2.8 Other successful education initiatives include cooperation between Charles Darwin University and the Catholic Education Office (CEO) in Darwin with the program "Growing your own". This is a program in which teachers' aides are educated to become fully qualified teachers but the lecturers travel to the communities rather than the usual method taking the students out of their communities with consequent failures. The program is proving to be very successful in training teachers with commitment to and knowledge of communities. The Government school system is considering implementing the program.

2.9 Figures from the Department of Health and Ageing indicate that the Indigenous Chronic Diseases Related Mortality Rate has increased from 800 per 100,000 in 1996 to 1000 per 100,000 in 2009. This 25% increase is a telling symptom of the under-resourced health services for Indigenous communities.

2.10 Petrol sniffing is another symptom of Indigenous health. Opal has significantly, but not completely, reduced the prevalence of petrol sniffing. But there are many individuals permanently damaged by petrol sniffing who will need considerable support as they move through adolescence and adulthood over coming decades. Such people need substantial specialist assistance but, in the absence of adequate assistance, are more likely to be dealt with by the criminal justice system. Without assistance, these damaged individuals will also cause considerable disruption in Indigenous communities with consequent social problems. This major problem requires substantial resources and a holistic approach to redress past and future damage. The alternative is more expenditure on more prisons.

Medium Term – what can be done to assist young Indigenous people before they get involved in the criminal justice system?

3.1 The WA Auditor General's report described the cost of having young people in the criminal justice system. The economic arguments to encourage alternatives are compelling, in addition to the social justice arguments. Some initiatives are being taken but they are too few, too poorly funded and often do not produce the immediate results so preferred by policy makers who make funding decisions.

3.2 For example, many young Indigenous people caught in the criminal justice system need a social welfare system, not a criminal justice one. They are often in the criminal justice system because of a failure of society to adequately provide for them. They need processes and facilities to redress the damage that has been inflicted on them. As noted in 1988 and many times since, further punishment should be an absolute last resort.

3.3 Suicide by young Indigenous people is a terrible indicator of a disastrous situation that would not be acceptable anywhere else in the country. Discussion of this issue requires great delicacy but it must be addressed as it is a symptom of the gravity of the circumstances of many young Indigenous people. Members will be aware that the WA Coroner, Mr Alistair Hope, has noted that there are more suicides in WA than motor vehicle deaths. Mr Hope noted that in a sample of 27 such cases, alcohol and/or marijuana were involved in 24 cases. He noted that, in the Kimberley region, the suicide rate for Indigenous people is 4 times higher than for non-Indigenous people. In some communities it is much higher. For some desperate young Indigenous people suicide or prison are seen as an escape from intolerable situations. Such situations must be fixed as a matter of urgency.

However, as noted, discussion of this issue, especially public discussion, must be handled with great sensitivity.

3.4 In July 2009, a conference was held at Beagle Bay WA between Indigenous groups, Churches and other NGOs and Government organisations to discuss this tragic problem. Minister Jenny Macklin attended. In a subsequent radio interview (Fran Kelly, Radio National, 27 July 2009), Ms Macklin said that some of the things needed are to “make sure you've got the alcohol controls in place, put the services in place for mental illness and for those who are addicted to alcohol. But you also have to get to the basics - make sure you focus on education, get the kids into school, make sure that they can get a job so that they can be proud of what they can do, make sure they're responsible for looking after their own health”. The Minister's comments provide a succinct summary of some of the greatest needs. Addressing these needs is both challenging and urgent. But the task is not short-term.

3.5 As an Indigenous leader attending the conference at Beagle Bay noted “It's not about service delivery, it's about setting right relationships and it's about healing deep wounds”.

3.6 When the education system has failed a young person, they can be 16 and illiterate with few job prospects. Many at such age desperately want to learn to read and write but there are few facilities or resources to assist them. The few facilities are often city based models that are inappropriate for remote areas and for such young people who have multiple disadvantages. Some success has been noted with a modified version of Reading Recovery for such young people but, as noted, the resources are few and the need is great.

3.7 If literacy problems for young Indigenous people could be overcome, many of the problems that are subsequent to illiteracy could be overcome. Of course, literacy should not be seen in isolation. For example, there is a need for engagement between literacy and mental health services but, unfortunately, such different services are often funded by different agencies or different levels of government and turf wars and silos make an obvious solution an insurmountable obstacle.

3.8 As noted, education must be appropriate and relevant. Members will be aware of debates in the NT about the use of English and/or Indigenous language in schools. To concentrate on language is to misunderstand the real issue which is relevance of education to the young person's circumstances. Different strategies are needed to take account of the young person's immediate and cultural background. Unfortunately, even when there are personnel available to redress many of these issues, academic arguments frustrate such initiatives, a continuation of the sociology experiments noted above.

3.9 Many Indigenous children first have contact with the law via Motor Vehicle Driving Licences (MDL). Especially in remote communities, most cars are not registered (not a problem until they are driven on declared roads) and many Indigenous people do not have MDLs. An irony of increased policing in remote areas has been a corresponding increase in the number of driving offences being prosecuted.

3.10 Driving without a licence is a very common offence in areas where the car is the only means of transport. A typical scenario sees a young person being stopped and fined for MDL offences on numerous occasions but without the ability to pay the fines imposed and without any alternative form of transport. Such fines often can accumulate to more than

\$6000. A difficulty is that the person must pay off the fines before they can acquire a MDL. There is thus a vicious circle. Indigenous people have a 12.5% imprisonment rate for driving offences compared with a 2.5% rate for non-Indigenous people. Recent requirements for learner drivers requiring log books etc have only made the MDL situation worse for young Indigenous people.

3.11 But there have been some minor successes. For example, the charity Boystown is working with young people at Balgo, training them in building skills in order to enable them to build much needed houses in the community. The work that Louie and Marion Dolby do at Mount Pierre Station in WA, while not ideal for all, has provided many youth at risk with a way forward.

3.12 Jobs are the solution to many problems but there are many barriers to Indigenous young people seeking to enter the labour force. Safe accommodation near employment is a particular need for young Indigenous people. Hostels to facilitate transition to the labour force are much needed and, where available, very valuable.

3.13 But one of the problems, especially in remote areas, is that Indigenous young people have great difficulty accessing the jobs that are available. Skills and education are one factor. Fly in fly out employment, though cost effective in the short term for employers, effectively shuts out local youths, especially Indigenous youths from such employment. There is also a long standing prejudice against employing Indigenous youth in many industries and areas. One hesitates to label the prejudice racism but it is difficult to avoid such an impression. One notable exception is Argyle Diamonds who have a 40% Indigenous workforce at their mines. Argyle Diamonds has demonstrated that when one is prepared to

take the time to implement appropriate programs the return more than exceeds the investment.

3.14 One factor that has had an impact upon jobs in remote communities has been the aggregation of municipal and similar services either to centralised shires or to outsourced providers. The basic municipal jobs previously performed by locals are often now performed by providers from distant locations. There may be economic reasons for such aggregation but one wonders if the human costs have been included in the equation.

Short term – What should be done to assist those Indigenous juveniles and young adults who are currently caught up in the criminal justice system?

4.1 Prisons are terrible places. Members will be aware of a recent study by Murdoch University (funded by the Uniting Church) that found that 14% of prisoners are raped in WA prisons and 23% say that they were forced to perform sex acts while in prison. Anecdotal evidence suggests that these figures are much higher for young prisoners. As the Head of the Uniting Church in WA said “It is in nobody’s interests for prisoners to be coming out of prison more damaged than when they went in”. The incarceration rate for Indigenous people in WA is one in 28, almost the highest incarceration rate in the world. Such disgraceful statistics are the product of long term neglect or indifference by so-called mainstream Australia.

4.2 An Indigenous juvenile is 28 times more likely to be in prison than a non-Indigenous juvenile. As Justice Martin has noted, the rate of detention of Indigenous juveniles in WA is about 700 per 100000. The next highest rate is SA with 528 per 100000. 80% of juvenile Indigenous detainees return to prison compared with 40% for adult non-Indigenous prisoners.

4.3 There are long term and medium term initiatives that must be taken if this Inquiry is not to be repeated in 20 years time. But there are also things that can be done to reduce the damage done to those already caught in the criminal justice system. For example: As noted, the criminal justice model is often inappropriate for those in need of welfare assistance. A number of models have been developed to offer alternatives to incarceration. For example, the Kimberley Law and Culture Centre has developed a number of diversion

justice models that are appropriate for Indigenous youth and are effective despite minimal funding.

4.4 Bail hostels are also needed in many communities but at least in major towns. It is often inappropriate to return an individual to the situation in which they were living when arrested. Unless the judge or magistrate has access to an alternative such as a bail hostel, then remand to jail becomes the only option.

4.5 The difficulty of MDLs has been noted. Another factor that is significant in the involvement of young Indigenous people in the criminal justice system is the prevalence of drugs and alcohol. Mr Hope, the WA Coroner, has noted that relationship between drugs, alcohol and suicide.

4.6 Drugs are a major problem in Indigenous communities, especially with young Indigenous people. One problem is that there is not a consistent approach to the problem of drugs and law enforcement across the States and Territories. The use of drugs (including the so-called soft drugs) is harmful to youth for obvious health reasons and also because the use of drugs is chronic in some communities to the point where normal patterns of behaviour have been substantially altered in some of the remote communities giving rise to a criminal class of young people who are unemployable. This abuse prevents youth engagement in work and school, impedes their learning ability, and causes the pursuit of crime as a means to finance their harmful habit.

4.7 The use of courts as a means to engage youths in this serious health and social issue should be encouraged. In Western Australia the use of the so-named Cannabis Infringement Notice (CIN) as a means to deal with this abuse has been an absolute failure.

The youth are not engaged in any measure to assist to reform their cannabis drug habits and their bad behaviour continues, including on-going involvement in crime.

4.8 Activities that remove youth from drug environments to enable education about the health issues associated with drug abuse are essential. These activities need to be available to youth as a means to deal with their criminal charges - sentencing with an emphasis on training and education about health and behaviour. Criminal records should be removed from the files of delinquents after the completion of a behaviour modifying course. Many Aboriginal communities have the capacity to design and manage these youth behaviour modifying courses/activities that could also be tied to health education services provided in the community.

4.9 In WA the only facilities for women and children outside Perth are at Kalgoorlie and Geraldton. Thus a woman or a child remanded or sentenced to jail in the Pilbara or Kimberley is often sent 2000kms from country and family with consequent devastating results. A similar situation exists in NT and other parts of remote Australia.

4.10 Will we be having this conversation again in 20 years time or will Australian society have the long term commitment needed to fix the problems not just address the symptoms?

The Terms of Reference

5.1 The following addresses the specific Terms of Reference (TOR) of the Inquiry.

Information provided in the discussion above will be noted and not repeated.

1. How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement.

5.2 As noted above, adequate Housing, Health, Education, Nutrition, Jobs and Family are matters that most Australians take for granted. But for many Indigenous young people the reality is more likely to involve grossly overcrowded housing, inadequate or inappropriate family support, health education and nutrition and almost impossible barriers to secure employment.

2. The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this;

5.3 As noted above, living in overcrowded housing with many unemployed people who drink, take drugs and fight to ignore their situation, is not the conditions to result in optimum outcomes for Indigenous young people. As noted above, silos and turf wars cripple much of the effectiveness of health and justice authorities. Fix the problems and the symptoms will be solved.

3. Any initiatives which would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system;

5.4 As noted above, education must be appropriate to the circumstances of the child otherwise it is at best useless and, at worst, counterproductive. Many Indigenous young people who are involved in the criminal justice system have been failed by an inappropriate and inadequate education system. Remedial education for such youth is urgently needed but it too must be appropriate and adequately resourced.

4. The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised;

5.6 As noted above, jobs and the means for Indigenous young people to access them are imperative. Most employment programs provided to date are band-aids but better than nothing. Transition to work hostels and initiatives such as those noted above are imperative to getting Indigenous young people into jobs and out of very difficult situations.

5. Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres;

5.7 As noted above, there are some very good diversionary programs for Indigenous young people but they are too few and too underfunded to provide a real alternative to jail. The costings of the WA Auditor General are noted as justification for providing real funding for such programs

6. The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system;

5.8 As noted above, silos and turf wars across every level of government are a major inhibitor against proper delivery of services to Indigenous people. Until these obstacles can be overcome money will continue to be wasted and Indigenous people will continue to be disadvantaged. More committees and more Inquiries are not the answer.

7. The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

5.9 With the greatest of respect, it is difficult to take this TOR seriously. The bureaucratic jargon and vague terminology render the TOR almost unintelligible. As noted above and by many people many times before, the current bureaucratic models are a disaster for Indigenous people. They may provide careers for some policy makers and social researchers but little is done to redress long standing disgraceful conditions for Indigenous people. If any other sector of Australian society had an imprisonment rate 28 times the national average, it would be seen as a national disgrace. It would not be seen as merely an opportunity for an Inquiry regarding the extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents (living in small substandard housing, in intolerable and often unsafe conditions with 30 other people in the dwelling), any gaps or duplication in effort, and recommendations for their modification and enhancement.

In Conclusion

6.1 The Bishops of Australia wish the Members involved in the Inquiry well in their deliberations regarding these important issues. But the caveat is that these matters have been examined many times before without any improvement in conditions. The comments of Indigenous leaders (noted above) that the problems are too hard and that it is easier to study than to fix resonate. We hope that this Inquiry is different. If the Inquiry needs any additional information or assistance, all agencies of the Catholic Church and Bishops in particular would be happy to assist. In particular, if the Inquiry wishes to follow up any of the matters discussed above, we shall be happy to provide additional information or contact with relevant people.

We wish the Members well in this Inquiry

December 2009