

## KIMBERLEY ABORIGINAL LAW AND CULTURE CENTRE

Aboriginal Corporation

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BY:.....ATSIA.....

The Hon Bob Debus

Chair, House of Representatives Standing Committee of Aboriginal and  
Torres Strait Islander Affairs

CC: Senator Scullion, Chair Senate Committee of Inquiry in to Regional and  
Remote Indigenous Communities

29 January 2010

Dear Mr Debus,

Please find attached the submission from the Kimberley Aboriginal Law and Culture Centre to the Committee's current Inquiry in to Indigenous Incarceration. We do understand that the Committee has its terms of reference but from our perspective the key elements to this issue are as follows:

1. Lack of political will, on both sides of politics, to see any changes to current justice and corrective services practices;
2. To the extent that there is any commitment to change, those commitments from Government are almost invariably based on increased investment in Government programs – as distinct from investment in to Non Government Aboriginal corporations;
3. Failure of Government through COAG processes to address justice and youth issues within the billions of dollars currently being spent on COAG at present.

We feel comfortable and assured in making these observations. Those observations are backed by dozens of letters from State and Commonwealth Ministers – all providing reasons why they can't invest in preventative and diversionary programs.

In addition, we raised these issues with yourself when you were the relevant Minister and when you visited Fitzroy Crossing. And last week we met with the Western Australian Attorney General, having met three times with the previous Minister for Corrective Services.

Below we have provided a list of some of the reports pertaining to the issue of Indigenous Justice and, in particular, the need for diversionary programs. Some of these reports are very recent. But others, including the comprehensive September 2006 Law Reform Commission Report, have been around for over three years.

It is true that at the end of 2009 all states and territories committed to implementation of the National Indigenous Justice Framework. As recently as last week the Western Australian Attorney General informed us in a meeting that the Western Australian Government would implement the National Indigenous Justice Framework and that it would do so by expanding Government services.

However, as you will see below, that of itself does not alleviate our concerns because we approach this issue entirely from the same perspective as the President of the Children's Court (Judge JD Reynolds) and the perspective of the Law Reform Commission of Western Australia. Both the Judge and the Commission call for non government Aboriginal organisations to be empowered to deliver justice and diversionary programs.

In pursuit of these goals, apart from five meetings with relevant Ministers and endless items of correspondence over the last four years, the three particular goals we are pursuing are as follows:

1. **Prevention and At Risk Programs** ie early intervention before the justice system or at the very first points of contact with the justice system – in March 2009 we presented a comprehensive ***Business Case in Support of a Kimberley Youth At Risk Program***. Nearly a year later we are yet to receive any substantive responses from either State or Commonwealth Governments;

2. **Formal Youth Justice Diversion Programs** ie based on the successful January to April trial pilot program run in conjunction with Kimberley Magistrate Bob Young. Brief concept outlines were provided to former Minister Margaret Quirk and the Department of Corrective Services in April and July 2008. A formal Business Case has not been developed because in the absence of Government support for particular models or concepts, developing a Business Case seemed quite pointless;
  
3. **Juvenile Work Camps** ie based on the Tirkandi Inaburra model from New South Wales. We have not even developed concept plans at this stage and would need to firstly develop concepts and perhaps undertake a study tour to assist with developing these concepts.

Thus, from a KALACC perspective, our challenge to your committee is for you to examine and explore the political realities and to draw your conclusions as to whether you truly believe that Government:

- a). has the will to invest in diversion and prevention programs and
- b) is itself best placed to provide such services – as distinct from Aboriginal corporations.

1. Lack of political will, on both sides of politics, to see any changes to current justice and corrective services practices

As with most issues pertaining to Indigenous Affairs, there are mountains of reports and recommendations and these are often accompanied by failures by Government to implement these recommendations. The key reports, speeches and research papers that we are aware of are as follows:

- September 2006 Western Australian Law Reform Commission ***Final Report on Aboriginal Customary Laws***- particularly recommendation number 50;
- January 2008 report commissioned by the Criminology Research Council – ***Juvenile Diversion and Indigenous Offenders***, by Lucy Snowball;
- June 2007 Australian Institute of Criminology ***Pre-Court Diversion in the Northern Territory: Impact of Juvenile Offending*** by Teresa Cunningham;
- 15 May 2008 Final Report of the Western Australian Parliament Standing Committee on Health and Education ***Report in to Successful Initiatives in Remote Indigenous Communities*** – particularly recommendation number 13;
- 2008 Australian Institute of Criminology ***Responding to Substance Abuse and Offending in Indigenous Communities: Review of Diversion Programs*** by Jacqueline Joudo;
- June 2009 National Indigenous Drug and Alcohol Committee – ***Bridges and Barriers, Addressing Indigenous Incarceration and Health***;
- November 2009 ***Third Report of the Senate Committee of Inquiry in to Regional and Remote Indigenous Communities*** – particularly recommendations 2, 7, 8 and 9;
- 25 November 2009 ***Speech by Judge DJ Reynolds***, President of the Children’s Court of Western Australia – particularly his comments regarding the need for outsourcing of programs;
- January 2010 Human Rights and Equal Opportunities Commission ***Social Justice Report 2009*** – particularly recommendations 1, 2, 3 and 4.

Some of these reports and speeches are very recent but others have been available for several years. Certainly, the issues have been well known to Government for many years. Despite this awareness there has been a failure to act by Government.

When the current [Liberal] Western Australian Government was elected the new Attorney General informed the media that Aboriginal justice issues would not be amongst his priority issues. The previous Minister for Corrective Services had the following to say to the media about her department and her [Labor] Government :

- Officers within her Department were racist ;
- The pace of Departmental action and progress was glacial ;
- That she had taken submissions to Cabinet seeking advances in Indigenous justice but the Cabinet had not supported them – with tragic consequences such as the death of a Kalgoorlie elder in a prison transport van.

More recently, the Chief Justice of Western Australia offered the following comments to the Australian newspaper of November 27 2009 :

***Politicians are playing 'punitive chicken' as they compete to impose tougher laws, fueled by distorted public perceptions ... this can lead to a form of punitive chicken in which politicians from opposing parties take increasingly extreme views, daring each other to drop out of the bidding war at the price of electoral failure .... 'It is, I think, naive to suppose that politicians will knowingly adopt policies which are electorally unpopular. The onus is therefore on the judiciary to do what we can ... to inform reasoned public debate,' he said.***

Thus, the senior law officer of Western Australia concludes that there is little prospect of advancement coming from Departments such as the Department of the Attorney General or the Department of Corrective Services.

If there is opposition to progressive programs from these Departments, there is systemic disinterest from every other Government department. This point will be expanded upon in point three below – the failure to address youth and justice issues within COAG.

2. To the extent that there is any commitment to change, those commitments from Government are almost invariably based on increased investment in Government programs – as distinct from investment in to Non Government Aboriginal corporations.

KALACC met on three occasions with former Western Australian Corrective Services Minister Margaret Quirk. We have nothing tangible to show from those meetings.

KALACC met once with the Hon Bob Debus when he was Minister for Home Affairs – with portfolio responsibilities for Indigenous Justice. We have nothing tangible to show from that meeting.

KALACC has recently met for the first time with the Hon Christian Porter, current Western Australian Minister for Corrective Services and Attorney General. The Minister told us that the reason why we had not received substantive responses to our project proposals and concept outlines of April and July 2008 was that Government was bound by competitive tendering processes and were the Government to work with KALACC to develop up firm business cases then this would contravene competitive tender processes.

The Minister also said that the Government would implement the strategies and actions within the National Indigenous Justice Framework and would do so through the expansion of Government services where appropriate and as resources permitted.

Following that advice, we took the opportunity to read to the Minister the following words from the President of the Children's Court, Judge DJ Reynolds, delivered in a speech given on 25 November 2009 :

***At present, it seems to me that agencies are so risk averse and process focused so as to be paralysed. The agencies including Youth Justice need***

***to be 'less risk averse' and to be innovative and engage with and outsource to aboriginal organisations and aboriginal people. There are obviously some things that need to be kept inhouse, but in my view partnerships and outsourcing is the way for the future.***

The Minister was non committal in his response, but asked for a copy of the Judge's speech as he had not previously read it and was – as chance had it – meeting with the judge that same evening.

On 01 April 2009 Kimberley Magistrate Bob Young wrote to KALACC, following a four month trial pilot justice diversionary program. The Magistrate's letter contained the following words :

***I regard the camp as an excellent alternative to mainstream justice which, for a variety of reasons, frequently provides superficial supervision of young people in remote areas and has little relevance to them ... I think it is important to note that the project received the full support of the Police prosecutors and the Fitzroy police ... I have no doubt the Yiriman project will instil in young people respect for their culture and their elders ... it was heartening to see that the boys each expressed a goal of attending school and seeking out job opportunities and that each was encouraged to 'live in two worlds' – having an education and work on the one hand whilst still valuing and practising Aboriginal culture on the other.***

Then in the same November 2009 speech as referred to previously from Judge Reynolds he also states the following :

***There is a lot in common between this Albany example and the approach in Fitzroy Crossing with the Yiriman Project. They provide a very good template for the future. With respect, a program designed and delivered by non-aboriginal people could not have and would not have achieved the results that the Albany example achieved. These sorts of programs need to be supported.***

In the meeting with the Attorney General I did not have the opportunity to make the observation that the position of Judge Reynolds was not a radical departure from

previous thinking on the subject. In September 2006 the Law Reform Commission of Western Australia published its ***Aboriginal Customary Laws Final Report***. Recommendation Number 50 in that report is 'Diversion to a Community Justice Group.' It is crucially important to note that when the Law Reform Commission published this recommendation it did not mean by that recommendation that the Government should deliver services through Juvenile Justice Teams [the current Department of Corrective Services diversion methodology]. Nor did the Commission mean some form of new Departmental justice program as the current Attorney General is committed to. What the Law Reform Commission wrote in large print at the top of page 203 is the following :

***The Commission's view is that there should be diversion to Aboriginal – owned or Aboriginal controlled processes.***

The President of the Children's Court has recently reached the same conclusion, but the Government of Western Australia has not.



3. Failure of Government through COAG processes to address justice and youth issues within the billions of dollars being spent on COAG at present.

On 25 June Commonwealth Ministers O'Connor and Snowdon jointly issued a Media Statement entitled 'Indigenous Drug and Alcohol Committee Paper Welcomed.' This Media Statement is a deeply disingenuous document. The Media Statement refers to a COAG investment of \$4.6 Billion in to Closing the Gap initiatives and leads the reader to conclude that these investments are made in areas that will lead to reduced levels of Indigenous incarceration. If this is true, it is at best very partially true.

KALACC has a collection of letters from Commonwealth Ministers all saying that youth programs are not in their portfolio or that Indigenous youth issues are primarily the responsibility of FAHCSIA. So, there may be \$4.6 billion or more in COAG but there is very little investment in to Indigenous youth programs. And to the extent that we are genuinely talking about formal justice diversion programs, it is worth remembering that the Commonwealth Attorney General's Department has Preventative and Diversionary programs funded at the level of \$7.0 million for the entire Australian nation. With due respect to Ministers O'Connor and Snowdon, \$7.0 million is a long way short of \$4.6 billion.

The point made above seems to be accepted by the Senate Committee on Regional and Remote Indigenous Communities. In that committee's November 2009 **Report Number Three** there is the following :

***Recommendation 2 – the Committee recommends that the Commonwealth government take a more active role in driving reform of the criminal justice system with the aim of reducing the alarming high level of contact of Indigenous Australians, particularly Indigenous young people.***

COAG is in fact constructed and developed around six building blocks and not surprisingly the National Partnership Agreements and the Government investments under COAG are made in accordance with those building blocks. What is not contained in those building blocks is :

- Any recognition of the value of culturally based social programs ;
- Any explicit recognition of the need for youth strategies and programs ;
- Any explicit recognition of the need for justice programs.

One of the COAG Building Blocks is Safe Communities. It seems perverse to us that the basis of the Northern Territory Intervention ie building safe communities, is the one Building Block that does not have a National Partnership Agreement and thus no serious strategies or funding associated with it.

At KALACC's recent meeting with the Attorney General, in attendance was the Executive Director [Kimberley and Pilbara Regions], Department of Indigenous Affairs. There is a recognition by senior State Government officers, by Senior Commonwealth Officers [such as the ICC Kimberley Manager] and by Senior COAG RSD Officers that youth issues have not been adequately addressed. Whilst we acknowledge this recognition, what we haven't seen to date is a tangible or comprehensive response.

On 30 November 2009 the Coordinator General for Remote Indigenous Services released his first six monthly report. In that report, on page 91, Mr Brian Gleeson makes the following comments :

**In each of the jurisdictions in which the 29 priority communities are situated, juvenile justice statistics tell a worrying story of early contact with the criminal justice system, repeated infringement and ultimately expensive incarceration. Too often, the point at which young Indigenous people spend time in custodial settings, the battle to rehabilitate them has been lost. The importance of youth strategies, proactive sport and recreation officers, youth workers and the availability of youth activities does not appear to be recognised as these are not yet provided in many of the 29 communities.**

**Given the social and budgetary costs that flow from the imprisonment of so many young Indigenous people, a new approach is needed. This might pair legislative provisions which aim to prevent criminal behaviour and divert juvenile offenders from the justice system with local programs that better engage young people. A nationally consistent approach could be developed jointly by Attorneys-General and Indigenous Ministers and agreed by COAG.**

KALACC naturally welcomes the recognition of this issue by the Coordinator General for Remote Indigenous Services. We are also aware of the significant Commonwealth investments in to the Northern Territory for the support of youth programs and the announcement last week of a \$5.4 million plan to provide alcohol services for Alice Springs for the next two and a half years.

Unfortunately, one cannot find similar investments in the Kimberley, despite Western Australia having the worst incarceration rates of any State in Australia and despite the Kimberley having suffered over 100 suicides in the last 100 months.

It is over a year since KALACC wrote to State and Commonwealth Governments on 16 November 2008 calling for a Kimberley regional alcohol management plan. It is close to a year since we submitted a ***Business Case for a Kimberley Youth at Risk Diversion Program***. Our most recent correspondence from the Commonwealth is a letter, dated 18 January 2010, from Ms Nicole Keefe, State Manager, Commonwealth Health Department – and a member of the WA Board of Management for the Kimberley Regional Operations Centre. Ms O’Keefe’s letter is similar to a number of letters from Commonwealth Ministers advising that FAHCSIA is the lead agency for COAG Indigenous Remote Services Delivery National Partnership.

The failure of COAG to address youth issues and justice issues is a theme taken up recently by the outgoing Human Rights and Equal Opportunities Commissioner, Tom

Calma. In his **2009 Social Justice Report** provides the following four recommendations :

**Recommendation 1 : That COAG set criminal justice targets ;**

**Recommendation 2 : That pilot projects in targeted communities be supported in the short tem ;**

**Recommendation 3 : That justice reinvestment be added to the social inclusion agenda ;**

**Recommendation 4 : That a portion of Corrective Services budgets be diverted away from prison construction and towards diversion and prevention programs.**

In summary, there has not to date been a focus on either youth programs or justice initiatives within COAG. And within the broader Government processes, KALACC is in receipt of letters from the following Ministers – Snowdon, Roxon, Ellis, OConnor, McClelland – all explaining that their department has no funds to support Indigenous Youth programs and that we really needed to take the issue up with Minister Macklin.

In March 2009 we submitted a comprehensive **Kimberley Youth At Risk Diversion Plan** to Minister Macklin but we have not to date received a substantive response from her or from the Western Australian Government.